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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 – APRIL – Verification Report - Non-Injurious Price and Termination

I refer to the Anti-Dumping Commission's ("**Commission**") draft verification report ("**Report**") in relation to this review for APRIL Far East (Malaysia) Sdn. Bhd. ("**AFEM**") and PT Riau Andalan Kertas ("**RAK**"), collectively '**APRIL**'.

As you are aware, the Report, amongst other things, is incomplete. It was stated in the Sections of the Report addressing 'normal value' and dumping margin for APRIL that these matters had been referred to case management. In the circumstances, normal value and dumping margin for APRIL were not addressed in the Report. The reasons for this were set out in the Report. APRIL reserves its position regarding the Commission's determination of export prices, normal value and dumping margin in relation to its exports until it is provided with a copy of such determination and associated calculations for its review, as it has requested.

APRIL does note that, if adopted in this review, the analysis and methodology adopted in Review 547, which was initiated at the request of the Minister, contains a number of significant deficiencies in relation to assessing the effect, if any, on the 'particular market situation' determined for the Indonesia A4 Copy Paper market and the consequent effect on suitability of sales in Indonesia for the purposes of determining a normal value within the meaning of Section 269TAC(2)(c) of the *Customs Act 1901*. Some, but not all, of those deficiencies are referred to in Attachments A and C of this submission, which form part of this submission. These deficiencies are in addition to the deficiencies in the export price determination for APRIL identified in our submission of 22 March 2021.

In the meantime, it is useful to recall that Section 269ZA (1) of the *Customs Act 1901* makes it clear that, if an affected party considers it appropriate to review anti-dumping measures as they affect a particular exporter or exporters generally because one or more of the variable factors that

underpinned the taking of those measures may have changed, an application may be made for a review of those measures. Review 551 is a review of the anti-dumping measures in relation to certain variable factors named by Paper Australia Pty Ltd. ("**Australia Paper**") as they affect exporters generally, which includes APRIL.

While the requirement for filing an application is that the affected party considers it appropriate to review the measures because one or more of the underlying variable factors may have changed, the review itself is a review of the anti-dumping measures. Such a review will include not just whether the variable factors in question have in fact changed, but also what impact such change has or should have on the continuation of the anti-dumping measures. A change in a variable factor is, in and of itself, of no relevance. Any change in a variable factor must be assessed against the relevance of that change to the taking or continuation of the anti-dumping measures. That relevance is to prevent injury to a domestic industry caused through the effects of dumping: Article 3.5 of the WTO Agreement on the Implementation of Article VI of GATT 1994 ("**WTO Anti-Dumping Agreement**").

This is supported by Article 11.1 of the WTO Anti-Dumping Agreement, which states:

*"An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury."*¹

This necessarily requires an assessment to establish the relevance, if any, of a change in one or more of the variable factors to the anti-dumping measures then in force. That is:

- were the measures effective when imposed;
- have they remained effective;
- have they remained effective notwithstanding any change in variable factors; and
- if they have ceased to be effective, when did this commence to occur and why?

In the context of this review, it means a recommendation should only be made by the Commissioner to the Minister where there has been a change in the variable factors, such change alters the effect of dumping with consequent injury to domestic industry, and the taking or continuation of the anti-dumping measures is necessary to counteract the dumping which is causing injury. If the change in variable factors has the result that there is no dumping, or that dumping is not causing injury, then any anti-dumping measures then in force should be revoked and cease to remain in force.

As mentioned above, the Report provided to APRIL for review was incomplete. One of the areas in which the Report was incomplete was the failure to account for the volume of A4 Copy Paper exported by APRIL to Australia during the review period, that is, in 2019. As the Commission is aware that volume was 'negligible', namely, less than 3% of the total import volume of A4 Copy Paper into Australia during the review period. The Commission has yet to establish that there was dumping in relation to this negligible volume of A4 Copy Paper exported by APRIL into Australia. Further, that volume could not have caused injury to the Australian industry had it been at 'dumped'

¹ See also WTO Panel Reports in *US-Drams*, paras 6-26-29, 6.42 and 6.43, and *EU-Tube or Pipe Fittings*, para 7-113.

export prices, especially when the Australian market share in 2018 was determined by the Commission to be 85% and the market share of countries subject to anti-dumping measures was determined by the Commission in the same report to be 4%.²

As the total market share of the countries that are the subject of Review 551, was 4% in 2018, it is unlikely that the volume of exports from these countries could have caused injury to the Australian domestic industry during the review period, especially given the near market monopoly/dominance of Australian Paper.³

I note that in Review 547 the negligible volumes of exports of A4 Copy Paper from Indonesia was a reason for the revocation of the anti-dumping measures applying to exports by the two Indonesian exporters that were the subject of that review: see *Report 547*.

The Commission may argue that revocation is not possible because Review 551 does not include consideration of revocation as part of the review. This is because Review 551 was not extended in accordance with the provisions of Division 5 of Part XVB of the *Customs Act 1901* to include revocation as a matter for consideration. This argument is misconceived.

WTO jurisprudence is to the effect that reviews under Article 11 of the WTO Anti-Dumping Agreement, which Division 5 of Part XVB of the *Customs Act 1901* is intended to give effect to, are subject to Article 5.8 of the WTO Anti-Dumping Agreement. That is, there is to be “*immediate termination in cases where the authorities determine ...the volume of dumped imports, actual or potential, or the injury, is negligible*”.

If, therefore, it is determined in Review 551 that the volume of exports by a particular exporter or exporters is ‘negligible’ or that the injury being caused by such exports is ‘negligible’ or does not exist, the measures must be immediately revoked, consistently with Australia’s international legal obligations under Article 5.8 of the WTO Anti-Dumping Agreement. Failure to do so constitutes a breach of the WTO Anti-Dumping Agreement and, if that failure is due to Australia’s anti-dumping legislation precluding termination in such circumstances, then that legislation is to that extent inconsistent with the WTO Anti-Dumping Agreement and must be appropriately amended.

Alternatively, if it is claimed that the grounds for revocation or termination of the anti-dumping measures do not exist, then it would seem that the variable factor of non-injurious price as it affects APRIL and its exports should be set at ‘zero’, this being the minimum price necessary to prevent injury caused by its exports. This is because the volume of its exports, as verified, is insufficient to cause injury, regardless of the export price that remains not yet determined for APRIL’s exports. If no injury is being caused by such exports, then the minimum price necessary to prevent injury must be ‘zero’. In other words, the anti-dumping measures must be revoked in relation to APRIL.

It must be noted that Australian Paper made its application for review for the purpose of ensuring that “*the revised measures reflect contemporary costs and prices for exporters in the nominated*

² See ‘Table 3: Comparative share of the Australian market’ in Report 463 at p.27, extracted at Attachment A.

³ *ibid*

countries". This has nothing to do with there having been, or the continuation of, dumping or even injury being caused through the effects of dumping, and there has been no evidence of the same.

Attachment B, which is incorporated into and forms part of this submission, sets out further submissions on the 'non-injurious price' relevant to this review.

I trust that all the issues raised in this submission will be addressed in detail in the soon-to-be-published Statement of Essential Facts. That is, the Statement of Essential Facts will set out the preliminary findings of fact supported by evidence addressing these matters, as required by the relevant statutory provisions and Australia's obligations under the WTO Anti-Dumping Agreement.

In addition, having regard to the matters raised in this submission, it would seem appropriate for the Commissioner to recommend to the Minister that the Minister directs the Commissioner pursuant to Section 269ZA(3) of the *Customs Act 1901* to undertake a review as to whether the anti-dumping measures in question remain warranted. This would ensure Australia's compliance with its obligations under the WTO Anti-Dumping Agreement that the anti-dumping measures only remain in force for so long as is necessary to counteract injury being caused through the effects of dumping.

Please contact me if you have any queries or concerns or require clarification on any of the foregoing.

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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Attachment A
Comparative share of the Australian market

Report 463 - Table 3: Comparative share of the Australian market (at p.27)

	2014	2015	2016	2017	2018
Australian industry	42%	44%	57%	75%	85%
Finland, Korea, Russia, Slovakia	0%	1%	0%	10%	5%
Countries subject to measures (excl. Tjiwi Kimia)	53%	52%	38%	11%	4%
Countries not subject to measures (incl. Austria)	5%	3%	5%	4%	6%

It is interesting to note that the Commission to date has not seen fit to obtain expert advice, including from the Australian Competition and Consumer Commission (“ACCC”) on the monopoly or near-monopoly position and associated market power that Australian Paper has in the Australian A4 Copy Paper market and the effect this has on competition in that market, including prices and whether that market power is itself a barrier to entrants to that market as evidenced by the decline in import competition between 2014 to 2018, which is presumably continuing.

It also is noted that Australian Paper’s market share significantly increased by double digit figures year on year from 2016. This coincided not only with the imposition of anti-dumping measures but also Australian Paper’s acquisition of B.J. Ball’s A4 Copy Paper distribution business in Australia. The latter event, in particular, has significantly increased Australian Paper’s market share, as well as increased its control over distribution channels in the A4 Copy Paper supply chains in Australia.

It is difficult to see how, without an expert analysis on competition dynamics, any conclusion can be drawn on competitive conditions in the Australian A4 Copy Paper market. It is submitted that such expert advice and assistance should be obtained, be it from the ACCC or from other experts in this field, as a matter of priority.

In the absence of such expert advice on market competition within the Australian A4 Copy Paper market and its consequent effects on imports from all countries including those subject to anti-dumping measures, it is difficult to understand how any conclusion could be drawn on the effects a 'particular market situation' in Indonesia may have on export prices on exports of A4 Copy Paper to Australia having regard to the analysis and methodology adopted by the Commission in Section 3.2 and Appendix D of Report 547 on these matters. Obviously, that analysis and methodology were untested in that review because the measures the subject of that review were terminated for unrelated reasons.

If such expert advice has not been obtained in this review to assist in the analysis of whether the sales in the domestic Indonesian A4 Copy Paper market are 'unsuitable' for the purposes of determining normal values to date within the meaning of Section 269TAC(2)(c) of the *Customs Act 1901*, then it is submitted that such expert advice must be obtained. If the Commissioner has obtained the aforesaid expert advice, such expert advice should be set out in the Statement of Essential Facts.

Also, as there are deficiencies in the methodology and analysis employed in Report 547 that were not tested because the measures applying to the exports of the two Indonesian exporters were revoked on other grounds, such expert advice on competition dynamics in the Australian A4 Copy Paper market should be obtained if the Commissioner is so minded to adopt the same or similar methodology and analysis in Review 551.

Attachment B
Further Submissions on ‘Non-Injurious Price’

‘Non-injurious price’ is defined in Section 269TACA of the *Customs Act 1901* as being the ‘minimum price’ necessary to prevent the injury from being caused or threatened to a domestic industry in the importing country.

This provision is intended to give effect to Article 9.1 of the WTO Anti-Dumping Agreement, which states:

“It is desirable that the imposition [of anti-dumping measures] be permissive ... and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.” (brackets added)

The reference to ‘price’ in Section 269TACA of the *Customs Act 1901* is a reference to the ‘export price’, being the ‘price’ at which goods are exported to Australia. That would be the price at which the goods entering the commerce of Australia causes injury, if any, to a domestic industry.

The reference to ‘minimum price necessary to prevent injury’ is a reference to the minimum ‘export price’ that will prevent injury to a domestic industry. That minimum price is a ‘price’, whether dumped or un-dumped, that will prevent injury to the Australian industry. If that ‘price’ exceeds the ‘dumped’ export price uplifted by the full dumping margin to an ‘un-dumped’ price, then that uplifted ‘un-dumped’ export price is the level at which the anti-dumping measures are to be set to counteract injury from dumping. Conversely, if that ‘price’ is less than the amount of a ‘dumped’ export price uplifted to an ‘un-dumped’ price, then that lesser ‘price’ is the level at which the anti-dumping measures are to be set to prevent injury to a domestic industry.

In other words, the anti-dumping measure is to be set at the minimum level that prevents injury to the domestic industry. That level cannot exceed the full dumping margin, that is, an ‘un-dumped’ price. But, if a lesser level achieves that objective of counteracting injury from dumping, then the anti-dumping measure must be set at that lesser level.

This, obviously, requires an assessment of the injury suffered by a domestic industry and its causes during the review period. Such an assessment is necessary to determine whether and to what extent anti-dumping measures are required to counteract injury caused by ‘dumping’. If this is not assessed for circumstances prevailing during the review period, then the ‘minimum price necessary to prevent injury’ cannot be known. It would not be known whether dumping is causing injury during the review period and, if so, to what extent. Consequently, the ‘minimum price’ necessary to address the cause of that injury and its extent would not be known.

Such an assessment is consistent with Article 11.1 of the WTO Anti-Dumping Agreement that stipulates the following over-arching obligation:

“An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.”

Clearly the words “*extent necessary to counteract dumping which is causing injury*” reflect the object of an anti-dumping measure, namely, to counteract dumping which, through its effects, is causing injury. If there is no ‘dumping’, or ‘dumping’ is not causing injury, then there is nothing to

counteract. Similarly, to the extent that ‘other economic factors’ are causing injury, then measures are not required to counteract that injury because it is not being caused by ‘dumping’.

However, in calculating a ‘non-injurious price’ for this purpose, the Commission’s policy and practice is to calculate an ‘unsuppressed selling price’ (“**USP**”): see, for example, the Commission’s Dumping and Subsidy Manual’ and Reports 463, 341 and 547. Based on information in the Australian industry’s accounting records, it is calculated by the Commission as an amount representing the Australian industry’s cost to make and sell (“**CTMS**”) the product in question plus a notional amount for profit. The Commission contends that this amount is the ‘price’ that the Australian industry could reasonably ‘expect’ to obtain in a ‘market’ unaffected by dumping.

However:

- an USP is not an actual ‘price’ but an artificially constructed amount based on the Australian industry’s CTMS plus a notional amount for profit;
- whether a purchaser in the relevant Australian market is willing to pay the USP for that product and, if so, on what terms is unknown as it is untested in the relevant market. There is no evidence to support that it is a ‘price’ that a purchaser is willing to pay and on what terms;
- it is assumed that an amount equal to the full CTMS plus an amount for profit must prevent injury but no explanation is given to what is the nexus between that amount and injury. That is, why is injury assumed to exist where that amount is not achieved in the sale of the product in question? What is the ‘injury’ that is assumed to have occurred and why is that ‘injury’ injurious to the entity in question? No explanation is given as to why it is necessarily the case that the USP the only ‘price’ that the Australian industry could reasonably ‘expect’ to obtain in a ‘market’ unaffected by dumping. In other words, there is no necessary nexus between an USP and ‘injury’ and no explanation on this front has been put forward;
- further, the Commission’s calculation does not take into account the market conditions prevailing in the relevant market that affect market prices, including the prices of competing products in that market, whether they be imported or locally produced products. The Commission’s calculation also does not apply market tests such as the cross-elasticity of demand or similar to the ‘small but significant and non-transitory increase in the price (**SSNIP**)’ test;
- an USP also assumes that a product cannot be sold at a loss as part of a deliberate marketing strategy. As the information technology industries have demonstrated, this can ultimately be a very profitable strategy; and
- it is an amount that the Commission is of the opinion, unsupported by evidence, that the Australian industry can ‘expect’ to obtain in the Australian market and, therefore, is merely speculative – conjecture unsupported by evidence as to whether it is achievable or not and in what circumstances.

In this context, it is important to reiterate the requirements of Article 3.5 of the WTO Anti-Dumping Agreement, namely:

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing material injury within the meaning of this Agreement.”

The Commission's USP calculations do not address this. There is no nexus, supported by evidence, between the Commission's calculation of an USP and the 'effects of dumping causing injury'. The two are unrelated and, therefore, a USP is of limited relevance, if any, to the determination of a 'non-injurious price'.

In addition, USPs have invariably tended to be greater than 'un-dumped' export prices. This inevitably raises the question of what is the cause of injury if the minimum price necessary to prevent injury (i.e. a USP) exceeds the 'margin of dumping'? If the domestic industry will incur injury even if exports are at an 'un-dumped price' because the 'un-dumped price' is less than the USP, then the injury must be being caused, wholly or partly, by 'other economic factors'. If so, what those 'other economic factors' are needs to be determined. Without assessing this, it is not possible to determine what is the 'minimum price necessary to only counteract that injury caused through the effects of dumping'.

In this context it is important to recall the submissions made by Jackaroo Pty Limited ("**Jackaroo**") in this review and Australian Paper's responses: refer to Document Nos. 14 to 19, 22 and 23 on the public file for Review 551.

Essentially, Jackaroo pointed out the Australian Paper had imported A4 Copy Paper from Malaysia and South Africa, countries whose exports were not subject to measures, at export prices that undercut its own prices for A4 Copy Paper that it produced in Australia. Australian Paper did not deny that the export prices A4 Copy Paper from Malaysia and South Africa undercut the prices of its own locally produced product. Further, it was claimed that such imports by Australian Paper were substantial, a claim denied by Australian Paper.

Nevertheless, as correctly submitted by the advisor to Jackaroo, any determination of a 'non-injurious price' must commence with the export prices at which Australian Paper imported A4 Copy Paper from Malaysia and South Africa. However, that of itself is not adequate. The 'other economic factors' must be analysed to determine if there is injury, what caused the injury and the extent to which they are doing to ensure that the anti-dumping measures are not being imposed to counteract injury that is not existent or that is being caused otherwise than through the effects of 'dumping'.

Attachment C
Conclusion on particular market situation in Report 547

Extracts from Appendix D of Report 547 setting out the Commissioner's conclusions on the effects of the 'particular market situation' in Indonesia on 'suitability' of domestic sales within the meaning of Section 269TAC(2)(c) of the *Customs Act 1901* for the purposes of 'normal value' determination are set out below.

In these extracts, the word 'considers' has been struck out and replaced by the phrase 'is of the opinion that' and highlighted wherever occurring.

These extracts show that rather than making findings of fact that are supported by evidence, as is required in a review of anti-dumping measures, the Commissioner has only expressed opinions.

While the Commissioner's opinion and his reasoning for holding that opinion are of interest, it remains no more than an 'opinion'. Others may have different opinions, including different opinions based on the same information that was before the Commissioner.

Extracts from Appendix D of Report 547:

"D6.5 Conclusion on the effects of the situation in the market

D6.5.1 Competitive advantage in the Australian export market

The Commission ~~considers~~ is of the opinion that, due to the degree of price sensitivity in the Australian A4 copy paper market, price competition is a major condition of competition between the imported goods, and between the imported goods and the domestically produced goods. As such, the Commission ~~considers~~ is of the opinion that any pricing advantage owing to a market situation "affects prices" and is relevant to the consideration of whether the market situation has had a differing impact on domestic sales and export sales.

The Commission ~~considers~~ is of the opinion, based on the evidence and analysis undertaken above and from the original investigation period, Indonesian A4 copy paper producers have benefited through access to cheaper pulp including from related parties. Since all producers in Indonesia obtain this benefit, any advantage in pricing of one competitor over another arising from the market situation is competed away. Thus, the market situation does not create a competitive pricing advantage in the domestic market, including for Indah Kiat and Pindo Deli. Therefore, the Commission ~~considers~~ is of the opinion that the market situation has a net neutral effect on the prevailing conditions of competition and that it does not create a competitive pricing advantage in the domestic A4 copy paper market.

In contrast, the Australian market is characterised by high levels of import penetration, relative to that of Indonesia, including multiple importers from differing countries of export. Furthermore, Australian A4 copy paper market participants do not have access the benefit of the low priced pulp, in the way Indonesian market participants do. As such, one of the effects of the market situation is

that, in terms of pricing, Indonesian producers of A4 copy paper benefit from a competitive advantage in the Australian market.

[Figure D8: Indonesian domestic A4 copy paper unit pricing by producer]

The Commission ~~considers~~ **is of the opinion** the price effect of the market situation in the Australian A4 copy paper market to be materially different. Australian Paper is the sole producer of A4 copy paper in Australia and sets prices relative to imports. Data provided by Australian Paper **indicates** that the Australian market for A4 copy paper is **price sensitive**. Australian Paper's prices and the prices of the imported goods show a degree of correlation that **indicates** strong market competition in a market that is price sensitive. For example, the majority of sales at the retail level of trade occur at times when products are promoted and offered at a discounted price. This is the case for both imported A4 copy paper and A4 copy paper produced by Australian Paper.

In contrast to the Indonesian domestic market, the Australian market is supplied by domestic and foreign A4 copy paper producers with imports representing 57 per cent of total A4 copy paper sales in Australia.

An analysis of the prices of foreign-produced A4 copy paper imported into Australia shows that 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 paper market.

[Figure D9: Comparison of Indonesian and other countries ascertained export price]

The Commission ~~considers~~ **is of the opinion that** this substantial difference in pricing compared to domestic and foreign (non-Indonesian) produced A4 copy paper is, in part, attributable to the market situation in Indonesia. The Commission ~~considers~~ **is of the opinion 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.

The Commission **observes** that the low level of import penetration in the Indonesian A4 copy paper market, together with the effects of the market situation gives all Indonesian producers the ability to price A4 copy paper at significantly low prices domestically, which they proceeded to do.

The Commission ~~considers~~ **is of the opinion that** the benefit enjoyed by the Indonesian exporters due to the market situation in Indonesia, by way of a competitive pricing advantage in the Australian export market, resulted in lower export prices and undercutting other producers. The Commission ~~considers~~ **is of the opinion that** the prices in the Indonesian domestic market reflect Indonesian production costs which are affected by the market situation. In contrast, the prices in the Australian market reflect production costs unaffected by the market situation. **In this way, the price-cost relationships in the Indonesian domestic market and the Australian export market materially differ.**

The Commission ~~considers~~ **is of the opinion that** in the absence of domestic and export price information from Indah Kiat and Pindo Deli for the review period, and given their review

questionnaire responses that indicated that their responses from the original investigation period remain relevant, there is nothing on the record of evidence to indicate the pricing behaviour of either exporter would have changed during the review period. Furthermore, as *evidenced above*, the information supplied by RISI confirms the Commission's **understanding** that *the relationship between price and cost* in 2019 is the same to that of the relationship between price and cost in the original investigation period.

On this evidence, the Commission ~~considers~~ **is of the opinion that** there is no reason to believe that the pricing strategies and behaviours of Indah Kiat and Pindo Deli would have changed had they exported during the review period. Furthermore, the Commission ~~considers~~ **is of the opinion that**, noting the existence of the market situation in Indonesia, that the competitive advantage arising from the market situation would not have changed.

On this basis, the Commission ~~considers~~ **is of the opinion** the resultant effects of the market situation on domestic prices and export prices are the same as they were in the original investigation period. Specifically, the Commission ~~considers~~ **is of the opinion** this effect of the market situation has given Indonesian exporters a competitive pricing advantage not available to other producers, such as those from Australia and other countries. In turn, the market situation affects the prevailing conditions of competition in the Australian market in a way that is different to the effect on the prevailing conditions of competition in the Indonesian domestic market.

D6.6 Findings on whether because of the situation in the market for A4 copy paper, sales are not suitable for use under section 269TAC(1)

The Commission ~~considers~~ **is of the opinion** that the situation in the market in Indonesia for A4 copy paper has differently impacted the price paid or payable for the like goods, compared to the export sales of the like goods.

The situation in the market has given Indonesian exporters a competitive pricing advantage in the Australian market, not available to other (international or Australian) producers. The Commission ~~considers~~ **is of the opinion that** the market situation has a neutral impact on the prevailing conditions of competition in the Indonesian domestic market.

The Commission also ~~considers~~ **is of the opinion that** the effect of the market situation in terms of the relationship between price and cost is different in relation to Indonesian domestic and Australian prices. The Commission ~~considers~~ **is of the opinion that** Indah Kiat and Pindo Deli's domestic sales for A4 copy paper, being the price paid or payable for the goods is differently impacted by the market situation compared to the export sales of like goods.

The Commission ~~considers~~ **is of the opinion that** for the purposes of section 269TAC(2)(a)(ii), the situation in the market has impacted domestic sales such that those sales are not suitable for use under section 269TAC(1)."

[Note:strike out, highlighting and other emphasis added]