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By Email

Mr Justin Wickes
Director, Investigations 2
Anti-Dumping Commission
Melbourne VIC 3000

Dear Mr Wickes,

RE: Review 551 – Statement of Essential Facts – Revocation of Measures

I refer to the Statement of Essential Facts (“SEF”) that the Anti-Dumping Commission (“Commission”) recently issued in relation to Review 551, being a review of the anti-dumping measures affecting exporters of A4 Copy Paper from the Federative Republic of Brazil, the People’s Republic of China, the Kingdom of Thailand and the Republic of Indonesia, including A4 Copy Paper produced and exported by my clients, APRIL Far East (Malaysia) Sdn. Bhd. and PT. Riau Andalan Kertas (collectively, “APRIL”).

We draw the Commission’s attention to one sentence in the SEF in particular, namely:

“The Commission found that APRIL’s prices in the Australian market were higher than other cooperating exporters’ prices, and APRIL was not undercutting other participants in the market.”¹

Notwithstanding the Commission’s preliminary determination that APRIL’s export prices were 14.7% less than their normal value², its exports were at export prices that did not undercut (as evidenced in the above extract), but were higher than the prices of everyone else for A4 Copy Paper in the Australian market, including those of the Australian industry, which holds a monopoly or near-monopoly market share of not less than 85% in the Australian A4 Copy Paper market.³

¹ SEF, Section 4.6.3.2, page 37.

² As the Commission is aware, APRIL was not given an opportunity to review the Commission’s dumping margin calculations, including normal value determination, prior to publication in the SEF, as these were not available in the incomplete draft verification report that was provided to APRIL for review. These are currently under review by APRIL and APRIL reserves its rights in relation thereto.

³ See ‘Table 3: Comparative share of the Australian market’ in Report 463 at p.27, copy on Commission’s electronic public file.

Consequently, APRIL's exports at such export prices could not cause injury to anyone including the Australian industry.⁴

Further, given that the Commission has preliminarily found in the SEF that prices in the Indonesian A4 Copy Paper market are closely aligned, it would clearly indicate that prices in the Indonesian A4 Copy Paper market are on the whole higher than those in the Australian A4 Copy Paper market.⁵ I also note that the SEF does not identify any other exporters of A4 Copy Paper from Indonesia, presumably because there are none or none relevant to this review.

In light of these findings⁶, the anti-dumping measures applying to APRIL's exports of A4 Copy Paper from Indonesia must be revoked consistent with Australia's international legal obligations under the *WTO Agreement on the Implementation of Article VI of GATT 1994* ("**WTO Anti-Dumping Agreement**").

I am aware that Division 5 of Part XVB of the *Customs Act 1901* does not permit the revocation of measures unless a review of the anti-dumping measures has been extended on application following initiation to include consideration of whether the measures remain warranted. Such an extension did not occur in relation to Review 551.

However, that argument would be misconceived. If anything, it would merely point to an inconsistency of Australia's anti-dumping legislation with its international legal obligations under the WTO Anti-Dumping Agreement, which obligations cannot be altered by domestic legislation.⁷

Article 11.1 of the WTO Anti-Dumping Agreement stipulates that:

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

This Article imposes an over-arching obligation on WTO member countries, including Australia, according to WTO jurisprudence and does not require for its operation some prior investigative or administrative procedure.⁸

It is clear that the operation of Article 11.1 of the WTO Anti-dumping Agreement has been triggered in the present circumstances. Given that APRIL's exports are causing no injury and cannot cause injury given that their prices are higher than everyone else's in the Australian A4 Copy Paper market, there is no "injury being caused by dumping" that needs to be "counteracted". Accordingly, the

⁴ This must also be the case given the negligible volume of A4 Copy Paper exported by APRIL from Indonesia to Australia during the review period.

⁵ These findings would render much, if not all, of the analysis in the SEF concerning particular market situation, relationship between cost and prices in markets, suitability of domestic sales, benchmarking, etc., redundant and irrelevant, putting aside the multitude of errors in that analysis.

⁶ It is understood that statements of essential facts such as the SEF undergo extensive peer review within the Commission to ensure completeness and accuracy before publication.

⁷ Shaw, M.N. *'International Law'*, Cambridge Uni Press, 8th Ed., Cambridge, 2017

⁸ *EC-Tube or Pipe Fittings* (WT/DS219/R, 7 March 2003) and *US – Drums* (WT/DS99/R, 29 January 1999)

anti-dumping measures against APRIL's exports are required to be revoked and to be revoked now as they are no longer "necessary".

Further, there is no likelihood of APRIL's exports resuming at significant volumes. The distribution channels in the Australian A4 Copy Paper market are closed to APRIL's exports for reasons beyond its control, which has resulted in APRIL's export volume being negligible. The Commission is well aware of such reasons and has documented the same in the SEF.

Accordingly, I request, on behalf of APRIL, that the Commission or the Anti-Dumping Commissioner recommends to the Minister that the anti-dumping measures applying to APRIL's exports of A4 Copy Paper from Indonesia be revoked immediately consistent with Australia's international legal obligations under the WTO Anti-Dumping Agreement. To do otherwise, would be a breach of those obligations.

I look forward to your confirmation that the anti-dumping measures will be so revoked.

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

Yours sincerely,



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