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By Email

Mr Gavin Crooks
Assicant Director, Investigations
Anti-Dumping Commission
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Dear Gavin,

RE: Continuation Inquiry No. 588 – Exports of A4 Copy Paper from the Republic of Indonesia – Submission – Adjustments – Normal Value and Export Price

As you would be aware, in Review 551 adjustments were made to the determination of the cost to make (CTM) of A4 Copy Paper produced and sold in domestic sales in the Republic of Indonesia (Indonesia) by PT Riau Andalan Kertas (RAK). Specifically, the adjustment was to the cost of pulp.

Given that the verification team has completed its verification of information in the response to the Exporter Questionnaire filed by APRIL Far East (Malaysia) Sdn. Bhd (AFEM)¹ and is now preparing the draft verification report, it was considered appropriate for APRIL to set out its views on the abovementioned adjustment and associated issues on the off chance that a similar adjustment may be considered in this inquiry.

Accordingly, the following observations are made: -

1. Particular Market Situation (PMS)

In Review 551, it was determined that a PMS existed in the Indonesian A4 Copy Paper market, although this did not render sales in that market being unsuitable for use in the determination of a normal value for exports of A4 Copy Paper to Australia by APRIL. Given the close proximity of time between that review and this inquiry, and the absence of any material change in the Indonesian A4 Copy Paper market and RAK's sales in that market, there would be no basis for any change in this regard.

However, it is to be noted that the basis of the finding of a PMS was an apparent excess of supply of certain raw materials used in the production of A4 Copy Paper, in particular, wood chips and pulp, and that this excess was due to the policies and programmes of the Government of Indonesia. Essentially, an excess of supply of demand for these raw materials existed in the relevant Indonesian

¹ For the purposes of this submission AFEM and RAK are collectively referred to as APRIL.

market resulting in prices for inputs to manufacture being lower than arguably would otherwise be the case and that this ultimately affected the price of A4 Copy Paper produced in Indonesia.

It is useful to contrast this with the situation in Australia.

In Australia, the A4 Copy Paper market has been in progressive decline since 2015 due to technological change.² This has resulted in the market contracting from approximately 200,000 tpa to currently 130,000 tpa or less. According to Paper Australia Pty Limited (**AP**), imports from all sources account for approximately 30,000 tpa to 40,000 tpa of the Australian A4 Copy Paper market, leaving approximately 100,000 tpa to be supplied by domestic production. AP has a production capacity of approximately 200,000 tpa of A4 Copy Paper and has been producing approximately this volume since at least 2015.

Consequently, there is an excess of approximately 100,000 tpa or 50% of AP's A4 Copy Paper production available to the Australian market. In other words, there is an excess of supply in the Australian A4 Copy Paper market that, of itself, should lead to a decline in prices. Such a decline in prices also would be exacerbated by the contraction in demand in the Australian A4 Copy Paper market. However, this combined excess in supply and decline in demand have not led to a reduction of prices in the Australian A4 Copy Paper consistent with the laws of supply and demand in an open, competitive market. Rather, the opposite has incurred – prices have increased in the Australian market and are higher than in overseas markets, as acknowledged by AP that its 'less lucrative' export sales are unprofitable, as well as by the Commissioner in Report 551.

Why the Australian A4 Copy Paper market and, in particular, prices in that market do not respond to prevailing market conditions and the laws of supply and demand is unclear and has not been addressed or explained by the Commissioner in his investigations into and reviews of exports of A4 Copy Paper to Australia, nor why, with in excess of 85% market share of the Australian A4 Copy Paper market and, possibly, as much as 90%, AP's A4 Copy Paper has been unprofitable for at least the last four years as determined by the Commission³.

Further, also not addressed or explained by the Commissioner is why competitive market conditions operate in the Indonesian A4 Copy Paper market, as determined by the Commissioner in Review 551, but not in the Australian A4 Copy Paper market when the latter is claimed to be an open, competitive market.

These and similar issues have been raised in Investigation 583 by the legal advisor to the exporter, PT Pabrik Kertas Tjiwi Kimia Tbk (see: [583 - 018 - submission - exporter - pt. pabrik kertas tjiwi kimia tbk -](#)

² Refer: Report 463, Section 5; Report 547, Section 5.3; Investigation 583, Paper Australia Pty Limited Application (Document 1); and, Continuation Inquiry 588, Paper Australia Pty Limited Application (Document 1) and Australian Industry Verification Report, Figure 2 (Document 15).

³ Source: Australian Industry Verification Report: [588 - 015 - verification report - australian industry - paper australia pty ltd.pdf](#)

[second submission on causation of material injury including response to opal australia papers submission.pdf \(industry.gov.au\)](#) (copy **attached**).

APRIL agrees with the contentions made in that submission, which apply equally to this inquiry including the following contention:

“Information provided by [Australian Paper] in this investigation and in submissions to Continuation Investigation 588 indicate that [Australian Paper] receives lower prices from its export sales than it receives from its sales in Australia. For example, in the Application [in Investigation 583], [Australian Paper] stated:

“Opal Australian Paper has had to sell this production to the less lucrative export markets to maintain volume throughput in its production facilities.”

with the consequence that:

“products like Reflex ... must forego the premium price they achieve in the local market.”

It is difficult to reconcile this admission [by Australian Paper] that price levels for A4 Copy paper are lower in other countries than in Australia with the findings of several ADC investigations that exporters in no less than nine countries have been selling at higher prices in their home markets than in their export sales to Australia. In reality, [Australian Paper] is using anti-dumping applications to insulate it from the competitive world price.” (at pages 6 and 7) (square brackets added, footnotes omitted)

These issues require addressing in this inquiry and it is requested that they be addressed and be addressed by duly qualified experts with the requisite expertise in inquiring into and assessing competitive conditions in markets in Australia. Such an expert obviously would be the Australian Productivity Commission, the Federal Government agency expert in such matters, that is the efficiencies of industries within the Australian economy (see section 6 of the *Productivity Commission Act 1998*). This would be consistent with the Australian Government’s policy that the Anti-Dumping Commissioner should obtain the advice and assistance of qualified experts.⁴ APRIL requests that this be undertaken for the purposes of this inquiry.

2. Adjustment to pulp price in CTM

As noted earlier above, an adjustment was made in Review 551 in the CTM of A4 Copy Paper produced by RAK and sold in the Indonesian A4 Copy Paper market. This was because it was considered that the price that RAK paid for pulp, an input to manufacture of A4 Copy Paper, was lower due to the PMS, as measured against a ‘benchmark’ price, which was described as a ‘competitive cost benchmark’⁵. Specifically:

⁴ ‘Streamlining Australia’s anti-dumping system, An effective anti-dumping and countervailing system for Australia’ (June 2011), Section 3.1.

⁵ Source: refer to Appendix B of Report 551.

“The Commission compared RAK’s purchase prices of pulp to the competitive market pulp prices and found that the benchmark prices were materially higher than the cost of pulp recorded in RAK’s records. The Commission is therefore satisfied that while the pulp costs recorded in RAK’s records may reasonably reflect the costs associated with the production or manufacture of the goods in 2019, because of the particular market situation, they do not reasonably reflect competitive market costs associated with the production or manufacture of the goods or like goods.”⁶ (Report 551, Section 4.6.3.5, p.51)

While there were a number of errors in and issues concerning the reasons for making this adjustment and in the adjustment itself, no issue was taken with the making of this adjustment in Review 551 because it became moot in the dumping margin calculation.

This was unsurprising. The third-party source of the information on which the adjustment was made was the same third-party source on whose data APRIL derived its raw material prices based on transfer pricing principles.⁷ In other words, the purported ‘particular market situation’ and ‘artificially low’ raw material prices were and are irrelevant to APRIL. Relevant raw material prices and, consequently, CTM A4 Copy Paper are not based on raw material prices affected by the purported particular market situation in so far as APRIL is concerned. Rather, they reflect global prices similar to the prices used by the Commission in making the adjustments.

Hence the ‘particular market situation’ is largely irrelevant to APRIL and why the adjustment in Review 551 was moot.⁸ The position should and must be no different in this inquiry. If it is, it indicates an error in either the methodology or calculations or both.

Nevertheless, there were errors and those errors and issues concerning this adjustment were considerable and material, namely:

- (i) the purchase price of pulp by RAK, being a price derived on transfer pricing principles, and the ‘competitive cost benchmark’ used by the Commission, were both based on prices published by Fastmarkets RISI (**RISI**) for pulp. Why, therefore, there would be a

⁶ Note: RAK’s pulp purchase price was a price derived on transfer pricing principles that complied with relevant tax laws and Organisation for Economic Cooperation and Development (**OECD**) Guidelines for Multinational Enterprises, and with reference to pulp prices published by RISI, which, in turn, was based on pulp market prices of other countries than Indonesia. APRIL has furnished the Commissioner with a report issued by DDTC Consulting (Deloitte Report) that confirmed that the prices, derived on transfer pricing principles, complied with those laws and guidelines, (that is, it reflected a market price). The Deloitte Report did not set the pulp prices but merely reported on them and found that the pulp price derived on transfer pricing principles was a market price.

⁷ Note: as the price of pulp to RAK is a market price derived from the application of transfer pricing principles, prices of raw materials used earlier in the supply chain, such as wood and wood chips, are irrelevant to the extent that they are not also based on transfer pricing principles. This is because they do not affect the price of pulp to RAK, which is derived from the application of transfer pricing principles as has been verified again.

⁸ Note: interestingly, APRIL’s sales in the low-priced Indonesian market due to the particular market situation were profitable in Review 551 despite the Commission’s (inflationary) adjustment to RAK’s CTM, but the Australian industry’s sales in the Australian market are unprofitable and have been for at least four years despite prices in the Australian A4 Copy Paper market being higher as determined by the Commissioner in Review 551.

difference between the two was unclear nor explained or reconciled by the Commission. Further, despite being used as a comparator for deriving the price to RAK on transfer pricing principles, the Commission did not disclose to APRIL details of the RISI price on which the 'competitive cost benchmark' was based or how either was derived notwithstanding its legal obligations to do so and notwithstanding neither was confidential to any other interested party. Accordingly, APRIL was not in a position to assess the suitability or correctness of either the RISI pulp price used by the Commission or the 'competitive cost benchmark', when it was legally entitled to be placed in such a position by the Commission under domestic legislation, World Trade Organisation (WTO) rules and principles of administrative law;

- (ii) that is, details of the so-called 'benchmark' were not provided to APRIL for review, thereby denying APRIL the opportunity to defend its interests as required by section 269ZJ of the *Customs Act 1901* and Article 6.2 of the WTO Anti-Dumping Agreement and principles of procedural fairness and natural justice. The so-called 'benchmark' was not confidential information concerning the Australian industry or its CTM of A4 Copy Paper. It was an amount independently calculated by RISI, which was used as a point of comparison for RAK's CTM of A4 Copy Paper and, in particular, its cost of pulp. Not providing RAK with access to how prices published by RISI was suitable for such use and appropriately reflected purchases of pulp by RAK arguably constituted procedural unfairness and a denial of natural justice, as well as a breach of domestic legislation and WTO rules;
- (iii) the so-called 'benchmark' price is not and cannot be a measure of anything let alone be a measure of whether the pulp prices paid by RAK were influenced by the Government of Indonesia, either directly or indirectly, or, if they were, to what extent. It is simply a comparator price that is different from the price against which it is being compared. If a producer or purchaser of pulp wishes to compare prices against it for whatever purpose, that is a matter for that purchaser or producer but the comparator price of itself is not a measure of anything other than a point of comparison. It simply demonstrates differences between the two prices being compared and not the reason for the differences or the extent of any such differences. If different methodologies are used, it simply confirms that different methodologies will result in different outcomes and nothing more. In any event, as the Commission was aware, the pulp purchase prices by RAK were prices derived on transfer pricing principles from third country market prices, details of which had been provided to the Commission. Consequently, the particular market situation in Indonesia, if any, was irrelevant to RAK's pulp purchases. The price of RAK's pulp purchases was not based on Indonesian pulp prices. The Commission's conclusion on this issue, therefore, was based on a false assumption, or an assumption that it should have known to be false or, at best, misconceived;
- (iv) in addition, the 'competitive cost benchmark' it is not a 'competitive cost' but, rather, simply an artificial construct. It is not based on actual costs of production of producers of the product in question but 'estimates' of such costs based on information obtained from public and third-party sources obtained by RISI, itself an external, third-party

source. It is not a 'competitive' cost because the 'cost' as a 'price' has not been subject to market conditions. Rather, it is simply an artificial construct based on various sources of information that do not include actual product costs of a producer or producers. As such, it is used as a point of comparison for a variety of purposes by participants in the relevant industry and is suitable for those purposes as its limitations are recognised by those in the industry using it. It is not, as relevant here, a comparison of actual market prices of pulp in various jurisdictions recognising the differences in market prices in the relevant different jurisdictions. It, therefore, cannot be used as a measure of what would or should have been the actual cost of production in Indonesia absent relevant government influence from the Government of Indonesia, if any;

- (v) further, RISI publishes a number of pulp prices for different regions and, if required, for different countries. Which of those prices is suitable for use as a so-called 'benchmark price' – all or only some of them – and if they are different, which is relevant in indicating that pulp prices may have been influenced by the Government of Indonesia and the extent to which such prices may have been influenced? That none is suitable in determining whether and to what extent the Government of Indonesia may have influenced pulp prices, either directly or indirectly, is self-evident;
- (vi) the adjustment made to the CTM of A4 Copy Paper produced by RAK was limited to the calculation of a CTM of A4 Copy Paper produced and sold by RAK in the Indonesian A4 Copy Paper market. No similar adjustment was made to the calculation of the CTM for A4 Copy Paper produced by RAK and ultimately supplied into export markets. This was so notwithstanding that the identical production processes, inputs to manufacture and equipment were used by RAK to produce A4 Copy Paper regardless of which markets the A4 Copy Paper is ultimately supplied into. The CTM is identical for all A4 Copy Paper produced by RAK. Accordingly, to make an adjustment of the cost of pulp in the CTM calculation for A4 Copy Paper supplied into the Indonesian domestic market is to artificially inflate the CTM when, as a question of fact that has been verified, there is no such difference in the CTM. Of itself, if used in a constructed normal value, it would preclude a 'proper comparison' with export prices as well as not reflecting the cost of production in the country of origin (refer Attachment A);
- (vii) Article 2.2 of the WTO Anti-Dumping Agreement requires that the cost of production of the product under investigation must be the 'cost of production in the country of origin'. Adjusting the cost of production of the product in question by some arbitrary amount, as was done in Review 551, does not reflect the true cost of production of the product under investigation in Indonesia. As WTO jurisprudence indicates (see Attachment A), where an external source of information is used in determining the cost of production, appropriate adjustment must be made to such information to ensure that the resulting cost reflects the 'cost of production in the country of origin'. This would require, if the cost in question has been influenced by government, assessing to what extent it has been so affected and thereafter making adjustment to such cost. Simply using a so-called 'benchmark' does not do that and the so-called 'benchmark' does not establish that the cost has been influenced by government, nor to what extent. If, as contended, the cost

of production has been influenced by the Government of Indonesia, then the extent to which the cost of production has been so influenced must be determined by reference to the effect that relevant government policies and practices have actually affected costs. Data derived from prices in other jurisdictions and/or estimates of such prices/costs are not and cannot be evidence of the extent to which prices in Indonesia have been influenced or the extent to which they may have been influenced. It is nothing more than mere speculation.

APRIL requests that these matters be addressed if a similar adjustment is proposed to be made in this inquiry.

Nevertheless, it must be noted that the finding in Review 551 that domestic sales of A4 Copy Paper in Indonesia were suitable for use in the determination of normal value under section 260TAC(1)(a) of the *Customs Act 1901* is concurred with and, so determined, provided for a proper comparison with export prices consistent with the Panel decision in 'Australia – Anti-Dumping Measures on A4 Copy Paper'.⁹ As there have been no material changes in the Indonesian A4 Copy Paper market since the review period in Review 551 and the review period in this inquiry, there is no basis for departure from that finding in this inquiry.

This submission may be placed on the electronic public file for the benefit of interested parties.

Please let me know if you have any questions.

Yours faithfully,



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⁹ Australia – Anti-Dumping Measures on A4 Copy Paper, WTO/DS529/R (4 December 2019)

Attachment A
Extracts from WTO Jurisprudence

**Extracts from 'European Union – Anti-Dumping Measures on Biodiesel from Argentina',
WT/DS473/AB/R (16 October 2016) (EU – Biodiesel)**

“6.70. We observe that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 do not contain additional words or qualifying language specifying the type of evidence that must be used, or limiting the sources of information or evidence to only those sources inside the country of origin. An investigating authority will naturally look for information on the cost of production "in the country of origin" from sources inside the country. At the same time, these provisions do not preclude the possibility that the authority may also need to look for such information from sources outside the country. The reference to "in the country of origin", however, indicates that, whatever information or evidence is used to determine the "cost of production", it must be apt to or capable of yielding a cost of production in the country of origin. This, in turn, suggests that information or evidence from outside the country of origin may need to be adapted in order to ensure that it is suitable to determine a "cost of production" "in the country of origin.

6.71. Turning to the relevant context, we recall that Article 2.2.1.1 of the Anti-Dumping Agreement identifies the "records kept by the exporter or producer under investigation" as the preferred source for cost of production data to be used in such calculation. We do not see, however, that the first sentence of Article 2.2.1.1 precludes information or evidence from other sources from being used in certain circumstances. Indeed, it is clear to us that, in some circumstances, the information in the records kept by the exporter or producer under investigation may need to be analysed or verified using documents, information, or evidence from other sources, including from sources outside the "country of origin". While such documents, information, or evidence are from outside the country of origin, they would, nonetheless, be relevant to the calculation of the cost of production in the country of origin. These considerations support the understanding that the determination of the "cost of production in the country of origin" may take account of evidence from outside the country of origin.

6.73 Yet, Article 2.2 does not specify precisely to what evidence an authority may resort. This suggests that, in such circumstances, the authority is not prohibited from relying on information other than that contained in the records kept by the exporter or producer, including in-country and out-of-country evidence. This, however, does not mean that an investigating authority may simply substitute the costs from outside the country of origin for the "cost of production in the country of origin". Indeed, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 make clear that the determination is of the "cost of production [...] in the country of origin". Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of

production in the country of origin". Compliance with this obligation may require the investigating authority to adapt the information that it collects. It is in this sense that we understand the Panel to have stated that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 "require that the costs of production established by the authority reflect conditions prevailing in the country of origin"

6.74. In light of our examination above of the phrases "cost of production in the country of origin" in Article 2.2 of the Anti-Dumping Agreement and "cost of production ... in the country of origin" in Article VI:1(b)(ii) of the GATT 1994, we consider that these provisions do not limit the sources of information or evidence that may be used in establishing the costs of production in the country of origin to sources inside the country of origin. For this reason, we do not consider that Argentina has demonstrated that the Panel erred in stating that these provisions "do not limit the sources of information that may be used in establishing the costs of production", and do not "prohibit an authority [from] resorting to sources of information other than producers' costs in the country of origin" but do "require that the costs of production established by the authority reflect conditions prevailing in the country of origin"

.....

6.81 ... In our view, domestic prices may reflect world prices and, in such circumstances, a price at the border could, as the European Union argues, be simultaneously characterized as both an international and a domestic price. We do not consider, however, that the Panel failed to take such considerations into account. Rather, the Panel's analysis focused on the EU authorities' understanding of the surrogate price for soybeans. In line with the Panel's understanding, we consider that the mere fact that a reference price is published by the Argentine Ministry of Agriculture does not necessarily make this price a domestic price in Argentina.

6.82. In sum, we consider that the phrases "cost of production in the country of origin" in Article 2.2 of the Anti-Dumping Agreement and "cost of production ... in the country of origin" in Article VI:1(b)(ii) of the GATT 1994 do not limit the sources of information or evidence that may be used in establishing the cost of production in the country of origin to sources inside the country of origin. When relying on any out-of-country information to determine the "cost of production in the country of origin" under Article 2.2, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin", and this may require the investigating authority to adapt that information. In this case, like the Panel, we consider that the surrogate price for soybeans used by the EU authorities to calculate the cost of production of biodiesel in Argentina did not represent the cost of soybeans in Argentina for producers or exporters of biodiesel."

(footnotes omitted)

Extracts from 'Australia – Anti-Dumping Measures on A4 Copy Paper', WT/DS529/R (4 December 2019) (Australia – A4 Copy Paper)

7.89 We find that Australia did not examine whether domestic sales permitted a proper comparison between the domestic prices found to be affected by the decreased cost of pulp with the export prices for which the pulp cost was presumably equally decreased, despite assertions in the underlying proceeding which called for such an examination. In reviewing the ADC's determination, we are not to conduct a de novo review of the evidence, nor substitute our judgment for that of the investigating authority. ...

7.2.4.5 Conclusion in respect of "permit a proper comparison"

7.90 On the basis of the above findings, we determine that the ADC's disregard of Indah Kiat's and Pindo Deli's domestic sales (and consequently of their domestic prices) as the basis for normal value was inconsistent with the requirement to examine whether sales in the exporting country's market do not "permit a proper comparison" because of "the particular market situation" in Article 2.2 of the Anti-Dumping Agreement. **Specifically, where a particular market situation was found to affect domestic market sales prices solely as a result of a decreased cost for an input that was used identically to produce merchandise for the domestic and export markets, the investigating authority was obligated to assess the effect of the particular market situation on the domestic price in relation to the effect on the export price when determining whether domestic prices permitted a proper comparison with those export prices.** (emphasis added)

and:

7.132 The expression "cost of production in the country of origin" in this provision has been understood as "a reference to the price paid or to be paid to produce something within the country of origin".²⁵⁵ Normally, and as reflected in the obligation set out in the first sentence of Article 2.2.1.1, the cost of production in the country of origin should be calculated on the basis of cost information from an exporter's own records. However, as explained by the Appellate Body in *EU – Biodiesel (Argentina)*:

In circumstances where the obligation in the first sentence of Article 2.2.1.1 to calculate the costs on the basis of the records kept by the exporter or producer under investigation does not apply, or where relevant information from the exporter or producer under investigation is not available, an investigating authority may have recourse to alternative bases to calculate some or all such costs.

7.133 We recall that the ADC did not use Indah Kiat's and Pindo Deli's pulp costs to calculate their respective costs of production of A4 copy paper for the purpose of constructing normal value. We have found in the previous section that in disregarding Indah Kiat's and Pindo Deli's costs, the ADC acted inconsistently with the first sentence of Article 2.2.1.1. Accordingly, in the light of the above Appellate Body statement from *EU – Biodiesel (Argentina)*, with which we agree, there was no legal basis for the ADC to have used third-

country export prices of pulp as a proxy for Indah Kiat's and Pindo Deli's pulp costs when constructing normal value of A4 copy paper under the terms of Article 2.2. It follows that the ADC's use of Brazilian and South American export prices of pulp to China and Korea as a starting point for the calculation of the costs of pulp in Indonesia was inconsistent with Article 2.2." (footnotes omitted)