



A-560-828

Investigation

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MEMORANDUM FOR:

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Director, Office II  
AD/CVD Operations

THROUGH:

Shawn Thompson *st*  
Program Manager, Office II  
AD/CVD Operations

FROM:

Shannon Morrison  
International Trade Compliance Analyst, Office II  
AD/CVD Operations

SUBJECT:

Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia: Preliminary Determination of Affiliation/Single Entity Treatment of April Fine Paper Macao Limited (AFPM), PT Anugerah Kertas Utama (AKU), and PT Riau Andalan Kertas (RAK)

## I. Summary

On February 18, 2015, the Department initiated the above referenced investigation, and in April 2015 we selected AFPM as a mandatory respondent.<sup>1</sup> In May, AFPM submitted a consolidated response to on behalf of itself and two affiliated producers, AKU, and RAK.<sup>2</sup>

Based on the evidence on the record in this investigation, we recommend preliminarily finding that AFPM, AKU, and RAK are affiliated. In addition, we recommend finding that AFPM, AKU, and

<sup>1</sup> See the Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Kate Johnson, Senior International Trade Compliance Analyst, AD/CVD Operations, Office II, entitled, "Antidumping Duty Investigation of Certain Uncoated Paper from Indonesia: Selection of Additional Mandatory Respondents," dated April 10, 2015 (Additional Respondent Selection Memo).

<sup>2</sup> See Letter from APRIL, Re: Section A Questionnaire Response of PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL Fine Paper Macao Commercial Offshore Ltd., dated May 11, 2015 (APRIL's Section A Response).



RAK, (collectively, “APRIL”) are a single entity for purposes of our analysis in the above-referenced proceeding.

## II. Background

On February 18, 2015, the Department initiated an antidumping duty (AD) investigation of uncoated paper from Indonesia.<sup>3</sup> On April 10, 2015, the Department selected AFPM and Pabrik Kertas Tjiwi Kimia (TK) as additional mandatory respondents.<sup>4</sup>

On May 11, 2015, AFPM, AKU, and RAK submitted a consolidated Section A questionnaire response, in which they indicated that they were affiliated during the period of investigation (POI).<sup>5</sup> The Department requested more information in a supplemental questionnaire for Section A on May 28, 2015.<sup>6</sup> On June 16, 2015, APRIL submitted its response to the Section A supplemental questionnaire.<sup>7</sup>

## III. Issues Related to Collapsing

### 1. Affiliation

#### A. Legal Standard

Section 771(33) of the Act sets out several categories of persons who are considered to be “affiliated” or “affiliated persons” under the Act:

- (A) Members of a family;
- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person, directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;

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<sup>3</sup> See Certain Uncoated Paper From Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Initiation of Less-Than-Fair-Value Investigations, 80 FR 8608 (February 18, 2015).

<sup>4</sup> See the Additional Respondent Selection Memo.

<sup>5</sup> See APRIL’s Section A Questionnaire Response - AKU, RAK, and AFPM, dated May 11, 2015 (APRIL’s Section A Response).

<sup>6</sup> See Letter from the Department to APRIL, Re: Antidumping Investigation of Certain Uncoated Paper from the People’s Republic of Indonesia dated May 28, 2015.

<sup>7</sup> See Letter from APRIL, Re: Certain Uncoated Paper from Indonesia: Section A Questionnaire Response - PT Anugerah Kertas Utama, PT Riau Andalan Kertas, and APRIL Fine Paper Macao Commercial Offshore Limited, dated June 16, 2015 (APRIL’s Supplemental A Response).

- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
- (G) Any person who controls any other person and such person.

The Act further states that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”<sup>8</sup> “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”<sup>9</sup> 19 CFR 351.102(b)(3) defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act.

## B. Analysis

Section 771(33)(F) of the Act considers entities to be affiliated if they directly or indirectly control, are controlled by, or are under common control with, any person. For purposes of statutory construction, the term “person” can be construed in the singular or plural and can include a corporate entity or group.<sup>10</sup> Moreover, the statute does not require evidence of actual control; it is the ability to control that is dispositive.<sup>11</sup> A company may be in a position to exercise restraint or direction, for example, through “corporate . . . groupings {and} . . . joint venture agreements . . .”<sup>12</sup> Additionally, the Department will not consider control to exist unless the relationship has the potential to impact decisions concerning price and production.<sup>13</sup>

During the POI, AFPM, AKU, and RAK shared a common parent company, Asia Pacific Resource International Holding Limited (APRIL Holdings). Specifically, APRIL Holdings indirectly held more than a [ ] percent interest in each of the companies.<sup>14</sup> Through its majority-ownership interests, APRIL Holdings is in a position to exercise control, either direct or indirect, over AFPM, AKU, and RAK. Thus, the Department preliminary finds that AFPM, AKU, and RAK are directly or indirectly controlled by APRIL Holdings and, as a consequence, that they are thus affiliated entities within the meaning of section 771(33)(F) of the Act.

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<sup>8</sup> Id. See also 19 CFR 351.102(3).

<sup>9</sup> See 19 CFR 351.102(b)(37).

<sup>10</sup> See Dongkuk Steel Mill Co. v. United States, Court No. 04-00190, Slip Op. 05-75 (CIT June 22, 2005).

<sup>11</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27297-98 (May 19, 1997) (Preamble).

<sup>12</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreement Act, H.R. Doc. No. 316, 103<sup>rd</sup> Congress, 2d Session (1994) at 838; see also 19 CFR 351.102(b)(3).

<sup>13</sup> See 19 CFR 351.102(b)(3); Certain Welded Carbon Standard Steel Pipe and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47638 (September 10, 1997).

<sup>14</sup> See APRIL’s Section A Response at Exhibit A-4.

Recommendation

We recommend preliminarily finding that AFPM, AKU, and RAK are affiliated parties in accordance with section 771(33)(F) of the Act because these entities are under common control.

Agree

Disagree

2. Collapsing

A. Legal Standard

The Department's practice of collapsing affiliated producers is codified in 19 CFR 351.401(f), which states:

In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. . . . In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

The Preamble to the final regulations clarifies how the Department should apply the "significant potential for manipulation" prong of its collapsing analysis, explaining that this list of factors is "non-exhaustive."<sup>15</sup> The Preamble also states that "the Department has not adopted the suggestion that it will collapse only in 'extraordinary' circumstances. A determination of whether to collapse should be based upon an evaluation of the factors listed in paragraph (f), and not upon whether fact patterns calling for collapsing are commonly or rarely encountered."<sup>16</sup> Further, while

<sup>15</sup> See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27345-46 (May 19, 1997) (Preamble).

<sup>16</sup> Id.



our standard does not require evidence of actual manipulation, the Preamble states that the Department must still find that the potential for manipulation of price and production is significant.<sup>17</sup>

The Department's determination in Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42853 (Aug. 19, 1996), details the concerns underlying the Department's practice of collapsing affiliates:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines the question of whether reviewed companies "constitute separate manufacturers or exporters for purposes of the dumping law."<sup>18</sup>

The Court of International Trade (CIT) expressly affirmed the Department's authority to collapse affiliated parties for purposes of antidumping analysis in Queen's Flowers de Colombia v. United States, 981 F. Supp. 617, 622 (CIT 1997):

Commerce's authority to ignore the separate legal existence of some parties for purposes of calculating dumping margins arises out of the "basic purpose of the statute – determining current margins as accurately as possible," Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990) as well as the Department's responsibility to prevent circumvention of the antidumping law. See Mitsubishi Electric Corp. v. United States, 700 F. Supp. 538, 555 (CIT 1988).

The CIT has recognized that when determining whether there is a significant potential for manipulation, 19 CFR 351.401(f)(2)(i), (ii), and (iii) are considered by the Department in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.<sup>19</sup> Also, while 19 CFR 351.401 (f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the

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<sup>17</sup> Id. The Department's practice is consistent with the statement in the Preamble that the "significant potential" criteria provided in section 351.401(f) are non-exhaustive. For instance, in Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administration Review, 62 FR 47632, 47638 (Sept. 10, 1997), the Department stated that "[n]ot all of these criteria must be met in a particular case; the requirement is that the Department determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation."

<sup>18</sup> See Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain, 53 FR 24335, 24337 (June 28, 1988).

<sup>19</sup> See Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1346 (CIT 2007), citing Light Walled Rectangular Pipe and Tube from Turkey; Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

criteria in the regulation in its analysis.<sup>20</sup> Thus, where nonproducing entities (e.g., exporters) are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity.<sup>21</sup> The CIT has held that once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.<sup>22</sup>

## B. Analysis

Pursuant to 19 CFR 351.401(f)(1), affiliated parties will be treated as a single entity, or collapsed, where: (1) “those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities”; and (2) the Department concludes that “there is a significant potential for the manipulation of price or production.”

### a. *Affiliation*

As described above, we preliminarily find that AFPM, AKU, and RAK are affiliated with each other. Consequently, the prerequisite finding of affiliation under 19 CFR 351.401(f)(1) has been satisfied.

### b. *Similarity of Production Facilities and Substantial Retooling*

As indicated above, the second criterion in 19 CFR 351.401(f)(1) requires that the affiliated producers have “production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities.” APRIL explained that AKU and RAK both manufacture subject merchandise at the same site in

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<sup>20</sup> See, e.g., Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 1458, 1461-62 (January 18, 2012) unchanged in Honey From Argentina: Final Results of Antidumping Duty Administrative Review, 77 FR 36253 (June 18, 2012); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The CIT has found that collapsing exporters is consistent with a “reasonable interpretation of the antidumping duty statute.” See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d. 1323, 1338 (CIT 2003)(Hontex).

<sup>21</sup> See, e.g., Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value, 65 FR 5554 (February 4, 2000); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; Automotive Replacement Glass Windshields from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 25545 (May 7, 2004); Automotive Replacement Glass Windshields from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 69 FR 61790 (October 21, 2004); Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review, 69 FR 54635 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1. See also Hontex at 1343 (CIT 2003).

<sup>22</sup> See Hontex

Indonesia.<sup>23</sup> Because AKU and RAK produce the subject merchandise, they would not need to substantially retool their production facilities to restructure their manufacturing priorities. Thus, the criterion of production facilities for similar or identical products is met.

c. *Significant Potential for Manipulation of Price or Production*

With respect to the final prong of the collapsing analysis, 19 CFR 351.401(f)(2) provides a non-exhaustive list of three factors that the Department may consider in determining whether a significant potential for manipulation of price or production exists: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. We consider the totality of the circumstances particular to the case at hand in analyzing the factors, as no one factor is more important than another and not all three factors listed in the regulations are required.<sup>24</sup>

Our analysis, based on 19 CFR 351.401(f)(2), is as follows:

1. 19 CFR 351.401(f)(2)(i) - The Level of Common Ownership

We described the level of common ownership in the affiliation section above. The analysis above demonstrates that AFPM, AKU, and RAK are all majority-owned, either directly or indirectly, by APRIL Holdings. Therefore, we find that there was significant common ownership between AFPM, AKU, and RAK during the POI.

2. 19 CFR 351.401(f)(2)(ii) - The Extent to Which Managerial Employees or Board Members of One Firm Sit on the Board of Directors of an Affiliated Firm

During the POI, AKU and RAK, the producers, shared [ ] of [ ] directors.<sup>25</sup> Thus, cross membership on the board of directors indicates the potential of the authority to exercise control over each of these companies. APRIL did not report any such overlap between AFPM, the trading company, and AKU and RAK. The Department preliminarily finds that AKU and RAK share common directors among affiliated producers. Therefore, we find this information indicates a potential for manipulation of price or production.

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<sup>23</sup> See APRIL's Section A Response at page 11. AFPM is a trading company that sold subject merchandise produced by AKU to the United States and certain other export markets during the POI. As such, AFPM does not have any production capabilities. See *id.* at 7.

<sup>24</sup> See Final Determination of Less-Than-Fair Value Investigation: Steel Concrete Reinforcing Bars from the Republic of Korea, 69 FR 19399 (April 13, 2004), and accompanying Issues and Decision Memorandum; see also Dongkuk Steel Mill Co. v. U.S., Slip Op. 05-75 (CIT June 22, 2005).

<sup>25</sup> See APRIL's Section A Response at Exhibit A-5; see also APRIL's Supplemental A Response at Exhibit 7.

3. 19 CFR 351.401(f)(2)(iii) - Whether Operations are Intertwined, Such as Through the Sharing of Sales Information, Involvement in Production and Pricing Decisions, the Sharing of Facilities or Employees, or Significant Transactions Between the Affiliated Producers

AFPM, AKU, and RAK explained that APRIL has a corporate pricing committee for paper products which sets the pricing strategy and determines ranges for price and sales volume allocations.<sup>26</sup> AKU, RAK, AFPM, and APRIL Fine Paper Trading Pte. (AFPT) sell paper based on [ ] using both a price list and a volume allocation set by the pricing committee.<sup>27</sup>

In addition, AFPM, AKU, and RAK indicated that APRIL's intercompany sales exist at three levels: 1) from AKU to AFPM for export, 2) from RAK to AFPT<sup>28</sup> for export, and 3) between [ ].<sup>29</sup> Thus, significant transactions exist between AFPM, AKU, and RAK. Further, regarding transactions with affiliated companies, both AKU and RAK purchase the pulp used in the production of subject merchandise from PT Intiguna Primatama and PT Riau Andalan Pulp and Paper, which are both subsidiaries of APRIL Holdings.<sup>30</sup> Additionally, PT Riau Prima Energi, a subsidiary of APRIL Holdings, provides electricity to both producers AKU and RAK.<sup>31</sup>

Accordingly, the Department preliminarily finds that AFPM, AKU, and RAK's operations are intertwined through pricing decisions made by APRIL's corporate pricing committee and significant transactions between affiliated producers. Therefore, we find this information indicates a significant potential for manipulation of price or production.

### **Recommendation**

The Department's practice is to rely on the totality of the circumstances in deciding when to collapse affiliated producers.<sup>32</sup> In this case, we preliminarily find that AFPM, AKU, and RAK are affiliated through their common ownership by APRIL Holdings. In addition, AKU and RAK

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<sup>26</sup> See APRIL's Section A Response at 18-19; see also APRIL's Supplemental A Response at 4, and 11-12.

<sup>27</sup> Id.

<sup>28</sup> APRIL reported that AFPT has not sold any uncoated paper to the United States in the last 5 years. See APRIL's Supplemental A Response at 4.

<sup>29</sup> See APRIL's Supplemental A Response at page 12.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Product, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37159 (July 9, 1993); and Hot-Rolled Steel from Brazil, 64 FR at 38778.



operate production facilities which produce substantially the same products, including the subject merchandise. Moreover, record evidence demonstrates a significant potential for manipulation of prices and production among AFPM, AKU, and RAK because of their common ownership, similar production facilities at the same location, intertwined pricing decisions, and the existence of significant transactions between the parties. Thus, because the criteria outlined in 19 CFR 351.401(f) have been met, we preliminarily recommend collapsing AKU, RAK, and AFPM.

✓  
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Agree                      Disagree

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*8-19-2015*  
\_\_\_\_\_  
(Date)