



Australian Government

Anti-Dumping Review Panel

ADRP Decision No. 53

A4 Copy Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand

27 June 2017



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Summary

1. On 12 April 2016, the Commissioner initiated Investigation 341 into whether A4 Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia, and the Kingdom of Thailand was dumped or subsidised. The Investigation was initiated as a result of an application by Paper Australia Pty Ltd ("Paper Australia"), which is the Australian industry. Australian Paper's application sought the imposition of dumping and countervailing duties.
2. On 17 March 2017, the Commission terminated so much of Investigation 341 as related to:
 - a. the subsidisation of goods exported from Indonesia by Pt Indah Kiat Pulp & Paper Tbk (Indah Kiat), Pt Pindo Deli Pulp and Paper Mills (Pindo Deli), Pt Pabrik Kertas Tjiwi Kimia Tbk (Tjiwi Kimia) and Riau Andalan Kertas;
 - b. the alleged dumping of goods exported to Australia from Indonesia Tjiwi Kimia; and
 - c. the subsidisation of goods exported from China by UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd (together "UPM").¹

The decision to terminate (Reviewable Decision) was the subject of Anti-Dumping Notice 2017/34.

3. The Reviewable Decision was made because the Commission considered that:
 - a. the subsidies received by the Indonesian exporters were less than 2 per cent and so were negligible within s 269TDA(16)(b) of the Act. Consequently, the amount of subsidised goods exported from Indonesia to Australia was negligible as well;
 - b. goods exported by Tjiwi Kimia were not dumped; and
 - c. the amount of countervailable subsidies received by UPM was never more than 2 per cent, and was also negligible within s 269TDA(16)(b).
4. Paper Australia seeks review of the Reviewable Decision pursuant to s 269ZZO of the Act.
5. In general terms, Australian Paper contended that:

¹ The balance of the Investigation proceeded and has resulted in the imposition of dumping and countervailing duties in respect of some A4 paper exported to Australia.
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- a. a ban on the export of timber from Indonesia imposed by the Government of Indonesia (GOI) was a countervailable subsidy, contrary to the finding made by the Commissioner;
 - b. the Commissioner wrongly calculated the impact of a debt buy back scheme operated by the Government of Indonesia because it used the wrong figure for the average useful life of equipment;
 - c. the Commission made errors in calculating the normal value in respect of Tjiwi Kimia; and
 - d. the Commission made errors in calculating the subsidy margin applicable to UPM.
6. I consider that the Reviewable Decision was the correct and preferable decision for the reasons given below.

Background

7. The goods the subject of the initial application were:
- uncoated white paper of a type used for writing, printing, or other graphic purposes, in the normal basis weight range of 70 to 100 gsm and cut into sheets of metric size A4 (210mm x 297mm) (also referred to as cut sheet paper, copy paper, office paper or laser paper).
8. The goods were further described as:
- The paper is not coated, watermarked, or embossed and is subjectively white. It is made mainly from bleached chemical pulp/or pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.
9. The goods were classified to tariff subheadings 4802.56.10, statistical code 03 and 4802.56.10, statistical code 09.
10. The investigation period was 1 January 2015 to 31 December 2015.
11. The Commission published Termination Report 341 (TER341) in March 2017.²

² TER 341.

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12. The application for review was made on 13 April 2017. The Senior Member directed that I constitute the Panel for the purpose of dealing with the application for review. I accepted the application for review under s 269ZZQA.
13. Section 269ZZT(1) requires that I make a decision affirming or revoking a termination decision. I must affirm a termination decision if it is the correct or preferable decision, and revoke the termination decision if I consider it is not the correct or preferable decision. In making my decision, I may have regard only to the information that was before the Commissioner when he made the reviewable decision³ and to certain information received at a conference under s 269ZZRA.
14. I held two conferences under s 269ZZRA. One was with representatives of Paper Australia on 5 May 2017. The other was with representatives of the Anti-Dumping Commission on 11 May 2017. Summaries of those conferences have been placed on the Anti-Dumping Review Panel website.

The issues

15. The following issues arise:
 - a. Was the ban imposed by the GOI on the export of timber a countervailable subsidy?⁴
 - b. What was the correct figure for the average useful life of equipment, for the purposes of calculating the amount of subsidy received by the Indonesian exporters from a GOI debt buyback?⁵
 - c. Did the Commission wrongly calculate the dumping margin for Tjiwi Kimia by:
 - i. failing to use a benchmark price for recycled pulp in calculating the dumping margin of Tjiwi Kimia, rather than using the costs for recycled pulp identified in the records of that producer;
 - ii. using an adjustment for the percentage of pulp that was low; and
 - iii. incorrectly identifying the proportion of costs of production attributable to the cost of pulp?⁶
 - d. Did the Commission wrongly calculate the subsidy margin of UPM?⁷

³ Section 269ZZT.

⁴ Ground 10.1 in the application for review.

⁵ Ground 10.1.

⁶ Ground 10.3.

⁷ Ground 10.4.



Timber Export Ban

16. Pulp, produced from timber, is a significant component of paper. The cost of pulp is a significant component of the cost of producing paper. The GOI implemented a ban on the export of timber from Indonesia. The ban was identified as “Program 2” in TER341.⁸ The Commission found that the ban was not a countervailable subsidy.⁹ Paper Australia contended that this finding was wrong.¹⁰
17. Paper Australia contended that the export ban was a countervailable subsidy because:
- a. the effect of the export ban was to artificially lower the price of timber, which thereby made the price of pulp lower than it would have been, but for the ban; and
 - b. this conferred a financial benefit on Indonesian paper exporters.¹¹
18. In order for the Minister to make a declaration under s 269TJ of the Act enabling the imposition of countervailing duties, the Minister must be satisfied that a “countervailable subsidy” has been received in respect of the goods.¹²
19. “Subsidy” is defined in 269T of the Act. The definition is:
- subsidy**, in respect of goods exported to Australia, means:
- (a) a financial contribution:
 - (i) by a government of the country of export or country of origin of the goods; or
 - (ii) by a public body of that country or a public body of which that government is a member; or
 - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;that involves:
 - (iv) a direct transfer of funds from that government or body; or
 - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or

⁸ TER341 at Appendix 2, Section A2.1.1.

⁹ TER at p82.

¹⁰ Ground 10.1.

¹¹ Ground 1.1, at p 6 of the application.

¹² Section 269TJ(1).

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- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
 - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
 - (viii) the purchase by that government or body of goods or services;
- or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;
- if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

20. The scheme of this definition is that there are two broad categories of subsidies, being first, financial contributions falling within paragraph (a) and, second, income or price support falling within Article XVI of the General Agreement on Tariffs and Trade 1994 (GATT).

21. Paragraph (a) of the definition of “subsidy” is specific as to the means by which the financial contribution is conferred. The financial contribution must involve one of the activities identified in subparagraphs (iv) to (vii). For present purposes, it may be assumed that the imposition of the export ban depressed the price of timber and timber products used by the exporters of A4 paper from Indonesia, and that this had the effect of lowering the market price of pulp, thereby conferring a financial benefit on the Indonesian exporters. However, the mechanism by which this benefit was conferred on the exporters was not one of the mechanisms identified in any of paragraphs (iv) to (viii) of the definition. The financial benefit enjoyed by the Indonesian exporters is not, therefore, a subsidy within paragraph (a) of the definition.

22. The GOI’s ban on the export of logs is not a form of income or price support within Article XVI of GATT and paragraph (b) of the definition of “subsidy”. Australian Paper contends that it had the opposite effect of driving down income and prices.

23. Paper Australia pointed out that the US Department of Commerce (“USDOC”), which has responsibilities related to the imposition of dumping duties in the United States of



America, “countervails export restraints as a matter of policy”. The Report stated that the Commission did not have a policy in respect of export restraints.¹³ Paper Australia contended that the Commission ought to adopt a policy which was the same as that of USDOC. While it may be desirable for there to be consensus between nations about the circumstances in which Government action amounts to a subsidy, the language of the Australian legislation is clear and does not extend to the export ban in this case.

24. The Commission was correct to conclude that the export ban is not a “subsidy” within s 269T of the Act.

Debt Buy-Back

25. The second ground of review raised by Paper Australia related to a specific aspect of a subsidisation program effected through a debt buy back involving the Indonesian Bank Restructuring Agency (IBRA), an agency of the GOI. The Commission accepted that an affiliate of the SMG/APP group, Orleans Offshore Investments Limited, purchased debt owed by the SMG/APP group to the IRBA at a significant discount to the face value of the debt. The Commission treated this discount as a subsidy. Each of Indah Kiat, Pindo Deli and Tjiwi Kimia was part of the SMG/APP Group of companies, and was treated as having benefited from the debt buy back.¹⁴
26. Australian Paper and the Commission proceeded on the basis that the buy back should be treated as having an ongoing subsidising effect to be attributed to the exporter over the average useful life of the assets of the exporters. The dispute was as to the average useful life of the assets.
27. Paper Australia contended that the useful life of the assets should be 13 years, in line with findings by USDOC. USDOC stated that it was required to treat the average useful life of the assets as 13 years, in accordance with the US Tax Law.¹⁵
28. At Appendix A2.4.1 of TER341, the Commission stated that the average useful life of fixed assets was 15 years, having regard to the Australian Taxation Office schedule of the effective life of fixed assets. However, in the body of TER341,¹⁶ the Commission

¹³ The Report went on to state that the ban did not fall within any of the forms of financial contribution set out in paragraphs (a)(iv) to (a)(viii) of the definition of “subsidy” (at page 83).

¹⁴ In making these findings, the Commission, in the absence of better information, relied on findings by USDOC made during the course of an investigation by USDOC into the subsidisation of A4 Paper exported from Indonesia to the United States.

¹⁵ USDOC Memorandum of 8 January 2016, “Countervailing Duty Investigation of Certain Uncoated Paper from Indonesia: Issues and Decision Memorandum for the Final Affirmative Determination”, page 9.

¹⁶ At page 33.

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indicated that it was appropriate to use an average useful life of 23 years, being the actual average useful life of the assets of the SMG Group companies shown in their books of account. Twenty-three years was used in Commission's subsidy calculation.

29. I consider that it was appropriate to have primary regard to the records of the Indonesian exporters in determining the useful life of the assets. This reflects the policy of Regulation 43 of the *Customs (International Obligations) Regulation, 2015* (CIO Regulation). The figure arrived at by the Commissioner as a consequence of examining the Indonesian exporter's records was 23 years. This is the correct and preferable figure.

Tjiwi Kimia Dumping Margin Calculation

30. Australian Paper raised three issues with the calculation of the normal value of the goods exported by Tjiwi Kimia.¹⁷

Benchmark price for recycled pulp

31. In carrying out its dumping margin calculations, the Commission proceeded on the basis that the costs for virgin pulp recorded in the Indonesian exporters' records did not reasonably reflect market costs and used a benchmark price to calculate the normal value of the domestic sales. The Commission also used the benchmark price for all the pulp used in the manufacturing of 50% recycled paper. However, the Commission took a different approach to 100% recycled paper. It did not form the view that the raw material costs for 100% recycled paper were not reasonably reflective of competitive market costs within Reg 43(2)(b)(ii) of the CIO Regulation.¹⁸ The Commission used the costs recorded in the books of Tjiwi Kimia to calculate the normal value of 100% recycled paper.
32. Australian Paper contended that the Commission was wrong to use the exporter's recorded costs in relation to 100% recycled paper. Australian Paper contended that the price for recycled pulp was heavily influenced by the price for virgin pulp. It contended that the pulp used in recycled paper is "highly substitutable" for virgin pulp, used in make "unrecycled" paper. Australian Paper said that the price for recycled pulp did not reflect competitive market costs and referred to material provided to the Commission on 6 September 2016 containing prices for de-inked pulp provided by RISI Inc (RISI), a commercial provider of market intelligence. Australian Paper

¹⁷ Ground 10.3.

¹⁸ TER341 at p20.

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contended that a price for recycled pulp which differed from the RISI prices should not be considered to reflect competitive market costs.

33. The contentions of Australian Paper do not persuade me that the Commission was wrong. Virgin pulp is not substitutable for recycled pulp in the manufacture of 100% recycled paper. Only recycled pulp can be used for 100% recycled paper.¹⁹ Tjiwi Kimia did not sell recycled paper on the domestic Indonesian market. It produced 100% recycled paper only for export sales, and [REDACTED] unrecycled paper. It cannot, therefore, be concluded that the link between the price of virgin pulp and recycled pulp was as direct as Paper Australia asserts. The Commission considered effect of the GOI market distortions in depth at Appendix 4 of TER341 and concluded that they impacted primarily on the market for the production of A4 copy paper from virgin fibre.²⁰ The existence of a price differential between domestic Indonesian prices and international prices is not, of itself, sufficient to establish that a producer's records do not reflect competitive market costs.

Percentage of pulp used in production of A4 copy paper

34. Australian Paper referred to section 4.6.3.6.2 of TER341, which reads:

SMG made multiple submissions in relation to the methodology used by the Commission to calculate normal values based on the adopted benchmark pulp prices. These submissions claimed in relation to Tjiwi Kimia that the Commission had not correctly accounted for the amount of pulp used in the production of paper.

Following the SMG submissions, the Commission also adjusted the benchmark to account for the proportion of pulp applied towards the production of A4 copy paper. In its submissions, SMG provided information on the proportion of pulp used to produce a tonne of paper. It was noted that this proportion related to the quantity of pulp consumed to produce paper reels. However, the Commission considers that it is more appropriate to make the adjustment based on the proportion of pulp used to produce A4 copy paper, which was verified during the verification visit. On this basis, the Commission adjusted the pulp benchmark price to reflect the verified proportion of pulp consumed in the production of A4 copy paper. This was based on verified costs relating to Tjiwi Kimia.

¹⁹ Obviously, virgin pulp can be used in paper which is only partly recycled, but the Commission used the benchmark price for pulp where the paper was only 50% recycled.

²⁰ TER341 at p20.

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35. Australian Paper contended that this passage disclosed an error on the part of the Commission because there was no difference in the percentage of pulp/fiber for paper reels when compared to A4 copy paper.

36. The passage from TER 341 referred to by Australian Paper responds to the fact that paper in reels is cut to produce sheets of A4 copy paper. There is some wastage during that process. Therefore, the production of a tonne of cuts sheets of A4 paper requires the pulp that actually ends up as the cut sheets as well as the pulp that end up in the waste. It takes more pulp to produce a tonne of A4 copy paper than it does to produce a tonne of paper in reel form, so that the proportion of pulp in the finished paper is higher with cut sheets of A4 paper, than with reels of paper. No error is disclosed by section 4.6.3.6.2 of TER341.

Proportion of pulp factor

37. Australian Paper was concerned by a submission of SMG²¹ which asserted that pulp costs represented about 70% of the costs to make A4 paper. Australian Paper contended that, in fact, pulp accounted for about 85% of the cost of producing A4 copy paper. The Commission did not accept the submission which gave rise to Australian Paper's concern. It did not use the 70% figure advanced by SMG. It used a figure which approximated the figure advanced by Australian Paper, although the actual percentage depended on the weight of the paper.

Subsidies received by UPM

38. The Commission accepted that UPM, a Chinese exporter, received benefits under a number of subsidy programs which gave rise to a subsidy margin of 0.8 percent.

39. Australian Paper contended that the Commission wrongly attributed the benefits of three particular subsidy programs.

40. Program 29 was a training subsidy on new employer training on Paper Machine 3. Paper Australia contended that the subsidy should only have been attributed to sales of paper made by Paper Machine 3.

²¹ EPR131.

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41. I do not accept this contention. If Paper Machine 3 produced paper which was distinguished in some way from the paper produced on other machines, then a different attribution might be justified. However, the products produced by UPM were not distinguished on this basis. It is appropriate for the subsidy to be attributed across all the relevant goods manufactured by UPM.
42. Program 25 was an award for high tech products. Program 26 was a subsidy for patent applications from the Changshu Economic Development Zone. Australian Paper contended that the subsidies from these programs should be allocated to sales of the goods derived from the products to which the award and the patent apply. Again, there is no reason to believe that the award and the patent resulted in any difference to the product itself.
43. In any event, the amount received pursuant to subsidy programs 25, 26 and 29 was very small compared to the sales of the goods under consideration and the exports of those goods to Australia. Different attribution of these subsidies would not have brought the total amount of subsidies received above the 2% threshold.
44. Australian Paper also contended that UPM should have been treated as an uncooperative exporter because it did not provide a translation of subsidy programs 24, 26, 27, 28, 29 and 31. Having regard to the provisions of the *Customs (Extensions of Time and Non-cooperation) Direction 2015*, and the conduct of UPM overall, I do not consider that the Commission was required to treat UPM as uncooperative. UPM provided information about the subsidy programs. The failure to provide a translation of documentation relating to these subsidies was not so significant that UPM should be regarded as uncooperative in respect of them.

Conclusion

45. I affirm the decision pursuant to s 269ZZT(1)(a) of the Act.
46. Interested parties may be eligible to seek a review of this decision by lodging an application with the Federal Court of Australia, in accordance with the requirements in the *Administrative Decisions (Judicial Review) Act 1977*, within 28 days of receiving notice.



Australian Government
Anti-Dumping Review Panel

A handwritten signature in black ink, appearing to read 'S. Ellis'.

Scott Ellis

Panel Member

Anti-Dumping Review Panel

27 June 2017



Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
Commissioner	The Commissioner of the Anti-Dumping Commission
GATT	General Agreement on Tariffs and Trade 1994
GOI	Government of Indonesia
Goods	Uncoated white paper of a type used for writing, printing, or other graphic purposes, in the normal basis weight range of 70 to 100 gsm and cut into sheets of metric size A4 (210mm x 297mm) (also referred to as cut sheet paper, copy paper, office paper or laser paper)
Indah Kyat	Pt Indah Kiat Pulp & Paper Tbk
IRBA	Indonesian Bank Restructuring Agency
Original Investigation period	1 January 2015 to 31 December 2015
Paper Australia	Paper Australia Pty Ltd
Pindo Deli	Pt Pindo Deli Pulp and Paper Mill
Reviewable Decision	The decision of the Commissioner made on 17 March 2017 to terminate part of the investigation into the dumping and subsidization of the export of A4 Paper to Australia
RISI	RISI Inc
TER 341	The report published by the Commission in relation to the Reviewable Decision and dated March 2017
Tjiwi Kimia	Pt Pabrik Kertas Tjiwi Kimia Tbk
UPM	UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd
USDOC	US Department of Commerce