



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 19 February 2020 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Paper Australia Pty Ltd
Address: 307 Ferntree Gully Road, Mt Waverley, Victoria, 3149.
Type of entity (trade union, corporation, government etc.): Company.

2. Contact person for applicant

Full name: Mr Matt Decarne
Position: Trade Affairs Manager, Paper Australia Pty Ltd
Email address: matt.decarne@opalanz.com
Telephone number: +61 425 619 677

3. Set out the basis on which the applicant considers it is an interested party:

<p>Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.</p> <p>The reviewable decision under Section 269ZZA(1)(c) relates to a decision of the Minister following receipt of recommendation(s) by the Commissioner following a Division 5 Review of Measures to revoke the anti-dumping measures applicable to the two exporters PT Indah Kiat Pulp & Paper Tbk ("Indah Kiat") and PT Pindo Deli Pulp and Paper Mills ("Pindo Deli") on A4 copy paper "the goods" exported from Indonesia.</p> <p>Paper Australia Pty Ltd (hereafter referred to as either "Australian Paper" or "AP") is an Australian manufacturer of A4 copy paper and was an applicant company that originally sought the imposition of measures (refer Investigation Report No. 341).</p>
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4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the anti-dumping measures are:

Uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

7. Provide the tariff classifications/statistical codes of the imported goods:

The goods are classified to 4802.56.10 statistical code 03 and 4802.56.10 statistical code 09.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number applicable to the decision is : ADN No. 2020/090.

Date ADN was published: 14 September 2020.

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission’s website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Refer Non-Confidential Attachment A.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Refer Non-Confidential Attachment A.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Refer Non-Confidential Attachment A.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Refer Non-Confidential Attachment A.

13. Please list all attachments provided in support of this application:

Refer Non-Confidential Attachment A.

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: Matt Decarne

Position: Trade Affairs Manager

Organisation: Paper Australia Pty Ltd

Date: 09 / 10 / 2020

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:
Organisation:
Address:
Email address:
Telephone number:

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

9. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

I. Introduction

Following a request by the Minister for Industry, Science and Technology (the Minister) the Commissioner commenced on 12 March 2020 a review of the anti-dumping measures (in the form of a dumping duty notice) applying to A4 copy paper (the goods) exported to Australia from the Republic of Indonesia (Indonesia) by Pt Indah Kiat Pulp & Paper Tbk (Indah Kiat) and PT Pindo Deli Pulp and Paper Mills (Pindo Deli).

The review of measures investigation considered:

- the variable factors relevant to the taking of measures in relation to A4 copy paper exported to Australia from Indonesia by Indah Kiat and Pindo Deli; and
- the anti-dumping measures may no longer be warranted in relation to the measures applying to Indah Kiat and Pindo Deli.

Following an investigation by the Anti-Dumping Commission (the Commission), the Minister accepted the recommendations of the Commissioner in respect of Indah Kiat:

- the variable factors of export price and normal value relevant to the taking of the measures have changed and that the relevant dumping margin applying to Indah Kiat for the review investigation period is 0.1 per cent; and
- that revoking the measures applying to Indah Kiat would not lead, or not likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent,

and in respect of Pindo Deli:

- the variable factors of export price and normal value relevant to the taking of the measures have changed and that the relevant dumping margin applying to Pindo Deli for the review investigation period is 17.5 per cent; and
- that revoking the measures applying to Pindo Deli would not lead, or not likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

The Minister accepted the Commissioner's recommendations and revoked the anti-dumping measures applicable to Indah Kiat and Pindo Deli. A notice (ADN 2020/090) advising of the Minister's decision was published on 13 September 2020 (the "decision"), with public notification published on 14 September 2020.

Australian Paper is seeking a review of the Minister's decision to revoke the measures applicable to Indah Kiat and Pindo Deli.

Australian Paper has detailed its grounds for review of the Minister's decision below.

II. First ground – The Minister cannot be satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

9. **Grounds**

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

Section 8.1 of Review of Measures Report No. 547 (Report 547) states:

“The evidence before the Commissioner does not demonstrate any recommencement of dumped exports to Australia by Indah Kiat or Pindo Deli that would cause material injury to the Australian industry.

In addition, and pursuant to section 269ZDA(1A), a revocation review notice in relation to the measures has been published, and the Commissioner is not satisfied as a result of this review that revoking the anti-dumping measures applying to Indah Kiat and Pindo Deli would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.”

The Commission references guidance for examining the likelihood of dumping and material injury continuing or recurring to the Federal Court’s decision in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No. 2¹)*. The Commission references the finding of Rares J that the context of “likely” that appears in subsection 269ZHF(2) suggested that Parliament used that word to convey “more probable than not”, rather than a lesser degree of certainty.

Australian Paper addresses its disagreement with the Minister’s decision concerning the likely recurrence of dumping and injury separately for Indah Kiat and Pindo Deli. It should be recalled that Indah Kiat and Pindo Deli did not cooperate with the Commission’s inquiries in respect of normal value information for the 2019 investigation period. This is a relevant consideration that prevented the Commission from accurately determining normal values in 2019 (and hence raises questions as to the reliability of dumping margins determined for 2019 for Indah Kiat and Pindo Deli).

I. Indah Kiat

The Commission states at Section 8.6 of Report 547 that it determined the dumping margin established for Indah Kiat for the review investigation period as 0.1 per cent (addressed further below). Setting aside the calculation of the dumping margin, it can be seen that the Commission has relied almost exclusively on the determination of the Indah Kiat dumping margin as indicative as to whether a resumption of exports of the goods by Indah Kiat would result in a recurrence of material injury, or threat thereof, that the measures are intended to prevent.

The conclusion of the Commission, and relied upon by the Minister, is not the correct or preferable decision concerning the likely threat of future material injury should the measures be revoked.

The Commission restates the factors raised by Australian Paper in its submission in response to SEF 547. Most notably, these factors include:

- Indah Kiat is the largest pulp and paper producer in Indonesia with a production capacity of 1.45 million tonnes;
- Indah Kiat’s Perwang facility possesses a cash cost advantage that is approximately 33 per cent below the next most efficient APP facility of Tjiwi Kimia;
- The lower cash cost and higher output capability would likely result in Indah Kiat recommencing exports to Australia.

The Commission referenced the requirements of Section 269TAE(1) concerning considerations to be taken into account when assessing material injury to the Australian industry. It also referenced that the size of the dumping margin was one relevant factor to consider. The Commission further states that Section 269TAE(2AA) “*requires that any determination of material injury must be based on facts and not merely on allegations, conjecture or remote possibilities.*”

The Commission correctly identifies Australian Paper’s representations about Indah Kiat’s dumping in 2015. The Commission further states that it “*has had regard to Australian Paper’s submission about the effect of the imposition of measures in April 2017*” and comments that Indah Kiat ceased exporting to Australia during 2016 and has not exported since the imposition of the measures.

The impact of the notification of the commencement of Investigation 341 and the initial PAD (29 September 2016) were significant events influencing the future export intentions of exporters of the

¹ [2009] FCA 838.

goods to Australia. It is relevant to consider the fact that APP's only mill not the subject of the measures has been the sole exporter of the APP Group of Companies in Indonesia following the imposition of the measures. The Commission erred by not actively examining the move away from exports by the three APP entities – Indah Kiat, Pindo Deli and Tjiwi Kimia – to the sole exporter not the subject of measures (including through until 2020).

Australian Paper's representations concerning the positive impact of the measures imposed on Indah Kiat (and Pindo Deli) cannot be summarily dismissed. The measures influenced the APP Group to continue to export to Australia and maintain a position in the Australian market via Tjiwi Kimia – the only APP exporter not the subject of measures. Tjiwi Kimia is the next most efficient producer of the goods behind Indah Kiat in the APP Group of companies in Indonesia and has played an increased active supply role to the Australian market as the measures have applied to Indah Kiat (and Pindo Deli).

The facts demonstrate that the measures dissuaded Indah Kiat from exporting to Australia - replaced with volumes supplied by the associated supplier Tjiwi Kimia. It has been Australian Paper's contention that the measures had the desired effect resulting in the cessation of injurious exports and dumped prices by Indah Kiat.

The Commission – in response to Australian Paper's assertions that the measures have had the desired effect – was focused solely on the dumping margin determined for Indah Kiat throughout the investigation period. The correct and preferred decision would have additionally involved an examination of other relevant factors including:

- Indah Kiat's available capacity to supply;
- Indah Kiat's lower cost position and advantage relative to other AAP suppliers (i.e. Tjiwi Kimia);
- likelihood of APP switching to resumption of supply from the lower cost Indah Kiat in the absence of measures;
- recognition that Indah Kiat continued to have well-established distribution links into the Australian market; and
- whether Indah Kiat's resumption of exports at dumped prices would undercut the Australian industry's selling prices.

These were factors that were at least relevant to the material injury analysis (in addition to the dumping which was determined at 0.1 per cent margin and, in Australian Paper's view is tenuous at best) in accordance with Section 269TAE(1) in the consideration as to whether in the absence of measures the Australian industry would suffer, or be threatened with, material injury from the dumped exports to Australia by Indah Kiat.

The correct or preferred decision concerning the revocation of measures applicable to Indonesia's largest manufacturer of the goods would have considered relevant factors that extended beyond the uncertain dumping margin established for Indah Kiat. Consideration of factors beyond the level of the dumping margin would have been the correct and preferable decision in examining whether the revoking of the anti-dumping measures applying to Indah Kiat would lead, or be likely to lead, to a recurrence of, the dumping and the material injury that the measures are intended to prevent.

II. Pindo Deli

The Commission established that Pindo Deli's exports to Australia during 2019 were at dumped prices with a margin of 17.5 per cent determined.

It was further established by the Commission that Pindo Deli ceased exportations of the goods to Australia "since 2018". The Commission rejected Australian Paper's arguments that the measures had the desired impact when imposed in 2017 as it considered that Australian Paper had "*not addressed the evidence that Pindo Deli has not exported A4 copy paper to any country since 2018.*" It was further stated by the Commission that prior to 2017 Pindo Deli was "*exporting to more than 20 countries*".

Australian Paper is not persuaded by the Commission's contention that the absence of exports from Pindo Deli to any country can be relied upon for the purpose of being satisfied that future exports at dumped prices would not be injurious to the Australian industry. The major flaw with the Commission's argument is that it fails to acknowledge that Pindo Deli is one of three affiliated producers of the goods within the APP Group of companies in Indonesia. It would be naïve to consider that the three entities - Pindo Deli, Indah Kiat and Tjiwi Kimia – operate independently of each other (given that they export via a single export agent to Australia). The impact of the dumping findings in the original investigation highlighted that Pindo Deli was considered the less efficient of the three affiliated exporters (due to it having the highest margin of dumping assessed) and that it was incurring the largest losses per metric tonne exported to Australia (or any other destination). This is confirmed by the Commission in its commentary about Pindo Deli appearing "*to be the most expensive producer*".

In light of the Commission's findings in Report 341 it is not surprising that Pindo Deli ceased exports of the goods to not only Australia but all other countries. APP could continue to supply to export markets from its two alternate producers from a lower cost base than Pindo Deli. This, however, does not mean that Pindo Deli would not resume exports at dumped prices in the absence of measures. Pindo Deli has access to well-maintained distribution links into the Australian market.

The Commission's analysis of the future threat of injury posed from Pindo Deli also examined the share of total imports from Indonesia into Australia in the original investigation period and presented this as demonstrative that Pindo Deli posed no future threat of increased volumes in the absence of measures. Curiously, this approach would seem to contradict the original cumulation of injury analysis by the Commission for all exporters found to be dumping in Report 341. Again, Australian Paper points to past performance of supply in the absence of measures as a likely indication of future resumption of exports by Pindo Deli – at dumped prices.

The correct or preferred decision concerning the revocation of the measures applicable to exports by Pindo Deli is that the revocation of the measures would likely result in the resumption of exports of the goods by Pindo Deli to Australia at prices that would undercut the Australian industry resulting in a recurrence of material injury that the measures are intended to prevent. This finding is considered to be the correct and preferred decision as it is considered reasonable to conclude that the APP companies would operate to supply volumes from all of its manufacturing facilities to increase production output – including for both Pindo Deli and Indah Kiat – in the absence of the measures. The Australian industry would again experience material injury from the dumped exports from Pindo Deli (and Indah Kiat) that the measures are intended to prevent.

10. **Correct or preferable decision**

Identify what, in the applicant's opinion the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The correct or preferable decision is that the revocation of the measures on exports of A4 copy paper from Indah Kiat and Pindo Deli would lead, or would be likely to lead, to a recurrence of material injury that the measures are intended to prevent.

Australian Paper considers the reviewable decision should be rescinded and the measures applicable to Indah Kiat and Pindo Deli should be reimposed.

11. **Grounds in support of decision**

The grounds raised above (Question 9) demonstrate that the correct or preferable decision is that the measures should not be revoked and that exports of the goods to Australia by Indah Kiat and Pindo Deli should be the subject of anti-dumping measures.

12. Material difference between the decisions

The proposed decision is materially different to the reviewable decision as the recommended decision involves a reversal of the decision to revoke the anti-dumping measures applicable to exports of A4 copy paper to Australia by Indah Kiat and Pindo Deli.

III. Second ground – That the determination of normal values for Indah Kiat and Pindo Deli are incorrect and the Commission has failed to take in relevant considerations in normal value determinations for the respective exporters.

9. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

Australian Paper is not disputing the particular market situation finding in respect of the goods manufactured in Indonesia by Indah Kiat and Pindo Deli. A constructed normal value with the relevant benchmark cost included (i.e. woodchips for Indah Kiat; pulp for Pindo Deli) in the exporter's production costs, plus amounts for selling and general administrative expenses, and profit, is the correct and preferred normal value methodology.

Australian Paper is seeking a review of the constructed normal value methodology for both exporters.

I. Indah Kiat

Indah Kiat is an integrated pulp and paper manufacturer. The Commission noted that Indah Kiat produces both woodchips and pulp that are consumed in the manufacture of a range of downstream goods, including A4 copy paper. The Commission further stated that it considers "*Indonesian producers manufacturing pulp from logs and/or woodchips are the primary beneficiaries of the GOI's influence on domestic log prices and these logs have a major influence on domestic woodchip and pulp costs in Indonesia.*"

The Commission considered that in order to account for the Government of Indonesia's (GOI) influence, it would assess Indah Kiat's woodchip costs with an appropriate competitive market cost for woodchips. The Commission preferred the selection of an external benchmark for woodchip and considered that "*it is appropriate to use import pricing within the Asian region*". As such, the Commission maintained its view from SEF 547 that "*it is preferable to use the Indonesian import prices into Japan as the benchmark for assessing domestic competitive market costs in Indonesia*".

Australian Paper had nominated the use of woodchip import prices from a range of countries in the Asian region (sourced from available TradeData International import statistics), however, the Commission preferred to use import prices into Japan, calculated from the CIF level. In adjusting the Indonesian export prices for woodchips to Japan, the Commission made the following adjustments:

- *prices have been adjust (sic) to an ex works price using a calculated bulk shipping rate and relevant aspects of Indah Kiat direct SG&A costs;*
- *relevant Indah Kiat SG&A costs (excluding the above direct costs) have been deducted to remove relevant SG&A costs from the price; and*
- *a profit has been deducted. The profit deducted was Indah Kiat's profit on non A4 copy paper sales during 2015.*

Indah Kiat did not cooperate with the Commission to provide 2019 costs relating to the production and sale of A4 copy paper in the review of variable factors investigation. Australian Paper agrees with the Commission's position that Indah Kiat's non-cooperation rendered the exporter uncooperative for the purposes of the review of 2019 variable factors investigation. Notwithstanding, the Commission's selection of Indonesian import prices into Japan for the purposes of a suitable benchmark for woodchip pricing is considered incorrect and undervalues the woodchip price as:

- the Indonesian import prices for Japan are below the average import price for a range of export destinations by 3 per cent;
- there was an absence of analysis as to a comparison of woodchip quantities exported to Japan during 2019 versus volumes to other destinations for reasonable comparison purposes; and
- the data obtained was at the CIF level, requiring adjustments for freight based upon indicative values rather than actual freight costs incurred.

Australian Paper considers that the benchmark cost selected by the Commission may be described as an “arbitrary” number and cannot be considered to be representative or reliable.

Australian Paper considers that the Commission should have applied the weighted-average benchmark price for woodchips sold in the region into Indah Kiat’s production costs, which would have at a minimum been 3 per cent higher than the Japanese import prices selected. It is also of concern to Australian Paper that the Commission has adjusted the “deduced” FOB price for SG&A costs that have been derived from Indah Kiat’s 2015 records and not independently validated. Similarly, the level of profit deducted for the benchmark woodchip price is based upon Indah Kiat’s “profit on non A4 copy paper sales during 2015”. The selected profit figure for a further manufactured downstream product would be expected to be significantly higher than for a raw material, high volume, woodchip processing function. The Commission did not seek to apply a level of profit that was more representative than “non A4 copy paper sales” for Indah Kiat which would include pulp and other paper grades.

Australian Paper considers the level of profit deducted from the CIF woodchip price is excessive and requires a reduction.

The Minister’s decision to construct normal values for the purpose of calculating dumping margins for Indah Kiat is not the correct or preferred decision. The determined normal values are considered arbitrary in nature comprising a woodchip benchmark that involves deductions for freight charges that don’t relate specifically to the freight for woodchips, and the amounts for S,G&A and profit obtained from 2015 Indah Kiat data are over-stated.

II. Pindo Deli

It should again be noted that Pindo Deli did not cooperate with the provision of 2019 costs for the purposes of the variable factors review.

Pindo Deli is a non-integrated producer and purchases pulp for conversion to paper products from affiliated suppliers. The Commission selected the import prices for Indonesian exported pulp as a competitive benchmark price for inclusion in Pindo Deli’s costs. At Confidential Appendix E3.2.3 the Commission details the reasoning it has selected Indonesian export prices for pulp as a basis for the external benchmark price. Additionally, the Commission has adjusted the selected benchmark price (which is at the CIF level) for ocean freight costs and SG&A which are based upon Pindo Deli’s costs – presumably for non-A4 sales of goods. The use of the Pindo Deli costs for freight and SG&A is incorrect and unreliable – due to the costs not relating specifically to pulp product.

Australian Paper submits that the more appropriate benchmark pulp price would have been from a country that was unaffected by government policies – as pulp pricing in Indonesia would be influenced by the GOI’s policies.

Australian Paper considers that market pulp prices sold domestically in Korea or Japan would have provided are more comparable and suitable benchmark price for pulp to include in Pindo Deli’s normal (just as the Commission selects domestic prices for hot rolled coil in Korea and Taiwan, for inclusion in Chinese HSS producer costs).

The use of Indonesian export prices for pulp are not considered to be a representative benchmark cost for pulp for inclusion in a constructed normal value for Pindo Deli.

The Minister’s decision to construct normal values for the purpose of calculating dumping margins for Pindo Deli is not the correct or preferred decision. The determined normal values are considered

unrepresentative of domestic market prices for pulp, and involve deductions for freight charges that don't relate specifically to the freight for pulp, with the amounts for S,G&A obtained from 2015 Pindo Deli data.

10. Correct or preferable decision

Identify what, in the applicant's opinion the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The correct or preferable decision involves the construction of normal values for Indah Kiat utilising a woodchip benchmark determined at the FOB level (available from TradeData International) that more accurately reflects a market determined woodchip price. The constructed (or deduced) FOB price arrived at for woodchips by the Commission understates the true benchmark cost for woodchips. Additionally, the adjustments for freight, SG&A costs and profit are considered to be not representative (or sufficiently accurate) for the intended purpose.

As a consequence of the Commission's methodology for determining a suitable benchmark, the constructed normal value for Indah Kiat is considered understated.

The correct or preferable decision involves the construction of normal values for Pindo Deli using a domestic market price for pulp in Korea or Japan, to be adequately representative of a market price unaffected from GOI influence.

Australian Paper considers the Minister's decision concerning the construct of normal values for Indah Kiat and Pindo Deli are arbitrary and that the Commission had available to it more reliable information for the purposes of benchmark prices (for woodchips and pulp) that it should have utilised.

11. Grounds in support of decision

The grounds raised above (Question 9) demonstrate that the correct or preferable decision concerning the determination of normal values for Indah Kiat and Pindo Deli (and hence dumping margins) are understated by the Commission's analysis.

12. Material difference between the decisions

The proposed decision is materially different to the reviewable decision as the proposed normal values would involve the determination of dumping margins for Indah Kiat exceeding 2 per cent (with an increase to Pindo Deli's dumping margin also), requiring a more complete analysis of the future threat of dumping. Australian Paper submits that on this basis the measures applicable to Indah Kiat and Pindo Deli should not have been revoked and the Minister's decision should be rescinded.

IV. Third ground – That the determination of Price for Indah Kiat and Pindo Deli are incorrect and the Commission has failed to take in relevant considerations in export price determinations for the respective exporters.

9. Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

Australian Paper disputes the basis on which the Commission has determined relevant export prices. Exporters Indah Kiat and Pindo Deli were deemed to be uncooperative and did not provide 2019 export sales data to the Commission. Subsequently under section 269TAB(3) the Minister must have

regard to all relevant information for the determination of export prices and disregard information which is considered unreliable.²

Australian Paper notes that according to the Commission's analysis, both exporters did not export like goods to Australia during the 2019 review period. In the Final Report, the Commission confirmed that;

*"the Commission had regard to the exporters' export prices determined in the original investigation and applied a timing adjustment to take into account changes that may have affected the export price from the original investigation period to the review period. This timing adjustment was calculated by establishing an index value based on the relative change of import prices into Australia from the original investigation period to the review period of the related Indonesian producer Tjiwi Kimia."*³

Australian Paper notes that the majority of Tjiwi Kimia's exports of like goods in 2015 as verified in Investigation 341, was A4 copy paper with high recycled content (100% recycled). Market intelligence submitted to the Commission during Investigation 341 confirmed that the known majority of Tjiwi Kimia's exports were 100% recycled content grades and that volumes of virgin (non-recycled content) grades was below negligible. It is also known that exports from Tjiwi Kimia of virgin A4 copy paper grades only commenced in significant volumes after measures were imposed on the related Indah Kiat and Pindo Deli mills i.e. APP shifted virgin capacity to Tjiwi Kimia from early 2017 to successfully avoid Anti-Dumping measures.

In Subsection 6.9.2.1 of the Report 341 the Commission stated;

The Commission substituted the pulp benchmark into the exporter's raw material costs (except for production using 100% recycled paper). The Commission considers that the GOI's market distortions outlined in Appendix 2 predominantly impact the production of A4 copy paper from virgin fibre and considers that the raw material costs for 100% recycled paper do reasonably reflect competitive market costs in terms of subsection 43(2)(b)(ii) of the Regulations.

The Commission determined in Investigation 341 that only virgin fibre production should be subject of the pulp benchmark substitution, and not the recycled pulp, leading the Commission to calculate a negative dumping margin for Tjiwi Kimia given that the exports were mostly 100% recycled grades. In effect the Commission determined that 100% recycled A4 copy paper produced by Tjiwi Kimia during 2015 and exported to Australia was not subject to the particular market situation as were the virgin grades. i.e. the influence of the Government of Indonesia (GOI) centred around wood supply, did not affect the recycled pulp prices, nor did it flow through to the 100% recycled a4 paper exported to Australia.

I. Indah Kiat

The Commission noted in subsection 7.6.1.5.1 that *"the Commissioner is satisfied that it is permissible for the Minister to determine the export price having regard to the export price of Indah Kiat as determined in the original investigation."* Australian Paper agrees with the Commission on this point, however the Commission then goes on to rely on an improper determination that Tjiwi Kimia's 2015 exports were 'relevant information' in making indexed timing adjustments to Indah Kiat 2015 prices.

Australian Paper submits that the Commission has erred in determining 2019 export prices for virgin A4 copy paper produced by Indah Kiat (which is subject to a continuing particular market situation), by calculating an export using the Indah Kiat's 2015 export prices indexed with a timing adjustment based 100% recycled grades produced by Tjiwi Kimia during 2015 (which was not subject to a market situation). The fact that this was considered 'relevant information' and no specification adjustment was made is questionable. Australian Paper contends that it was unreasonable for the Commission to have deemed export prices of production from a different mill, for a different specification of copy

² As per section 269TAB(4).

³ Section 7.3 of Review of Measures Report No. 547

paper, four years apart, as 'relevant', especially considering that the 2015 Tjiwi Kimia product was not subject to the market situation finding as was the Indah Kiat product.

Further, the Commission claimed that whilst *"The index value was calculated using **relevant** (footnote omitted) import prices of Indonesian exporter, Tjiwi Kimia."*⁴ emphasis added, it stated in the footnotes that *"Tjiwi Kimia sold certain types of A4 recycled copy paper not sold by Indah Kiat."* This critical fact hidden in the footnotes points to (at minimum) a requirement for a specification adjustment (of which there was none), but more importantly is shows that the index used was actually not 'relevant' due to the fact that Tjiwi Kimia exported mostly recycled grades to Australia in 2015 and Indah Kiat did not.

II. Pindo Deli

Australian Paper submits that the Commission has erred in its determination of Pindo Deli's export prices for the same reasons as outlined for Indah Kiat above.

The Commission noted in subsection 7.7.1.5.1 that *"the Commissioner is satisfied that it is permissible for the Minister to determine the export price having regard to the export price of Pindo Deli as determined in the original investigation."* Australian Paper agrees with the Commission on this point, however the Commission then goes on to rely on an improper determination that Tjiwi Kimia's 2015 exports were 'relevant information' in making indexed timing adjustments to Pindo Deli's 2015 prices.

The Commission determined the 2019 export prices for virgin A4 copy paper produced by Pindo Deli (which is subject to a continuing particular market situation), by calculating an export using the Pindo Deli 2015 export prices indexed with a timing adjustment based on 100% recycled grades produced by Tjiwi Kimia during 2015 (which was not subject to a market situation). The fact that this was considered 'relevant information' and no specification adjustment was made is questionable. Australian Paper contends that it was unreasonable for the Commission to have deemed export prices of production from a different mill, for a different specification of copy paper, four years apart, as 'relevant', especially considering that the 2015 Tjiwi Kimia product was not subject to the market situation finding as was the Pindo Deli product.

Further, the Commission claimed that whilst *"The index value was calculated using **relevant** (footnote omitted) import prices of Indonesian exporter, Tjiwi Kimia."*⁵ emphasis added, it stated in the footnotes that *"Tjiwi Kimia sold certain types of A4 recycled copy paper not sold by Pindo Deli."* This critical fact hidden in the footnotes points to (at minimum) a requirement for a specification adjustment (of which there was none), but more importantly is shows that the index used was actually not 'relevant' due to the fact that Tjiwi Kimia exported mostly recycled grades to Australia in 2015 and Pindo Deli did not.

10. Correct or preferable decision

Identify what, in the applicant's opinion the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The Commission should not have considered Tjiwi Kimia's 2015 export prices with an indexed timing adjustment to be relevant information. The correct or preferred decision should have included a specification adjustment on any comparison of 100% recycled grade export prices to virgin grade export prices, and one which took into account the impact of the market situation finding on virgin grades versus recycled.

The Commission should have either selected Tjiwi Kimia exports to Australia in 2015 of virgin A4 copy paper (provided that these were above negligible levels) which was also subject to the same market situation findings or at least made an adequate specification adjustment to counteract the impact of the market situation on export prices. Given that Australian Paper understands that such exports did not exist in volumes exceeding negligible levels during 2015, AP considers that the correct or preferred decision should have used Indah Kiat and Pindo Deli's 2015 actual export prices in

⁴ Report No. 547, Subsection 7.6.1.7 page 82

⁵ Report No. 547, Subsection 7.7.1.7 page 95

accordance with section 269TAB(1), given that they are more relevant (i.e. for virgin copy paper) than the prices chosen by the Commission.

11. Grounds in support of decision

The grounds raised above (Question 9) demonstrate that the correct or preferable decision concerning the determination of export price for Indah Kiat and Pindo Deli (and hence dumping margins) have resulted in export prices that are overstated by the Commission's treatment.

12. Material difference between the decisions

The proposed decision is materially different to the reviewable decision as the proposed export prices would involve the determination of dumping margins for Indah Kiat exceeding 2 per cent (with an increase to Pindo Deli's dumping margin also), requiring a more complete analysis of the future threat of dumping. Australian Paper submits that on this basis the measures applicable to Indah Kiat and Pindo Deli should not have been revoked and the Minister's decision should be rescinded.