



ADRP Conference Summary

Review No. 153 – A4 Copy Paper exported from the Federative Republic of Brazil, the Republic of Indonesia and the Kingdom of Thailand

Panel Member	Paul O'Connor
Review type	Review of Minister's decision
Date	Tuesday, 10 May 2022
Participants	Mr. Andrew Percival, Percival Legal
Time opened	10:00 AEST/AEDT
Time closed	11:00 AEST/AEDT

Purpose

The purpose of this conference was to obtain further information and clarification in relation to the application before the Anti-Dumping Review Panel (Review Panel) in relation to A4 Copy paper exported from the Republic of Indonesia.

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act).

In the course of the conference, I was able to ask Mr Percival to clarify any arguments and claims contained in the application. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference to the extent that it relates to relevant information within the meaning of section 269ZZK of the Act. Any conclusions reached at this conference are based on that relevant information

At the time of the conference, I advised Mr Percival:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.
- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel's website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.



Prior to the conference, Mr Percival was provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). Mr Percival indicated that he understood the Privacy Statement and consented to:

- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

Discussion

The specific information that the Review Panel sought in this conference was:

1. The application to the Review Panel proposes what are termed as three Preferable Decisions. Mr Percival acknowledged that Preferable Decisions 1 and 2 are offered in the alternative, such that if Preferable Decision 1 (which focuses upon material injury) were to succeed, then Preferable Decision 2 would fall away. He went on to note that if the reviewable decision was affirmed, i.e. if the measures were continued, Preferable Decision 2 argues that exports from RAK and APRIL should be exempted.
2. At the time of the original investigation, it was noted that APRIL had links to a major distributor in Australia. However, following that investigation, the distributor was bought by Australian Paper thereby denying APRIL access to a distributor and conferring greater volume upon Australian Paper. The outcome of the acquisition was to see a reduction in APRIL's export sales and an increase in Australian Paper's market share. It was noted that the Commissioner's analysis did not examine the impact of this acquisition upon Australian Paper's penetration of, and influence over, the changes in the composition of the market's distribution channels.
3. It was confirmed that APRIL or RAK only produce to order, both for domestic and export sales, such that export volumes to Australia are driven by the demand of the Australian market. Mr Percival argues that the Commission's analysis does not acknowledge the fact that A4 copy paper is not a homogenous product and that there are different grades or qualities. He is critical that the analysis did not include a thorough market analysis focusing upon competition aspects within the market, as 'dumping' concerns the substitution of domestic products by imports due to price.



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Such an analysis would address price elastic of demand and import price elasticity of demand within and between product models (i.e. MCCs) at the various levels of trade as they possess different price points as found by the Commissioner.

4. Further, more than price is taken into account in making a purchasing decision as evidenced in Officeworks' publicly available video, instructing potential customers of the relevant features of A4 copy paper when making a purchasing decision.
5. Clarification was sought regarding arguments put by Mr Percival in relation to other exporters from Indonesia. It was noted that the definition of "interested party" is not conditioned by a requirement similar to that contained within the ADJR Act which references an "aggrieved party" nor does the legislation circumscribe the matters that an interested party can raise. The argument with respect to other exporters was said to be advanced to cover the possibilities of other entities, either within the group or unrelated to APRIL, commencing exports of A4 copy paper and impacted by the measures. Accordingly, Mr Percival asserts that APRIL has standing to pursue this argument.
6. The application takes issue with the determination of export price based upon AFEM's transfer price paid to RAK, the Indonesian producer. It was noted that this issue was argued and rejected by the Commission. Further, a previous Review Panel report had adopted a similar approach. Mr Percival accepted that this was the case but stressed he sought in the application to avoid re-arguing who is the exporter. His focus has been on a more fundamental issue, namely that the relevant prices at which the goods are introduced into the commerce of Australia and at which it competes with the Australian industry's products.
7. He noted that the transaction between RAK and AFEM is for the purchase and supply of A4 copy paper produced by an Indonesian producer and purchased by a Malaysian trading company for delivery at a port in Indonesia. He maintains that the price for that transaction makes no reference to and has no obvious link to an export sale or export price to Australia.
8. The relevant price in terms of a dumping inquiry should be the price at which the product is introduced into the commerce of Australia as it is at that price which the goods compete with the product of the Australian industry. Therefore, the relevant price is the price payable by the Australian customer to, in this case, AFEM.



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Acknowledging that section 269TAB(1)(c) confers upon the Minister a wide discretion, Mr Percival argues in exercising that discretion the Minister must come to a price that is payable for the paper for its introduction into Australia. Mr Percival maintains that is not the price payable between the Indonesian producer and the Malaysian trading company.

9. Looking at the relevant features of the transactions, it is AFEM who negotiates with the Australian customer in an arms length transaction as to the price, quantity and delivery. On the other hand, the price between the producer RAK and AFEM is determined under transfer pricing arrangements such that there is no nexus between the transfer price and the price paid by the Australian customer. The price paid by the customer can in no way be said to be driving or influencing the price paid by AFEM to RAK.

10. The focus of Preferable Decision 3 is upon the determination of the variable factors, including the non-injurious price and upon the method of calculating the amount of duty, which in turn reflects the application of the lesser duty rule. In response to the suggestion that the Review Panel lacks the ability to review duty calculation methodology, Mr Percival argued, if it is assumed that dumping is continuing to cause material injury, this may reflect the method of working out the interim dumping duty payable is ineffective. Such a conclusion would constitute a relevant consideration in deciding whether the expiry of the measures would lead or be likely to lead to the continuation or recurrence of injury caused by dumping.

11. In such circumstances the ineffectiveness of the anti-dumping measures would be indicative that the injury is being caused by factors unrelated to dumping or, if dumping is a cause of the injury, the measures are inappropriate. In other words, if injury is continuing this would indicate either the measures are ineffective for some reason in preventing injury caused by dumping such as the measures been inappropriate in the circumstances, or the injury not being caused by dumping. Mr Percival argues, either way, it is an appropriate subject for review.

Paul O'Connor

Member

Anti-Dumping Review Panel

24 May 2022