



**Australian Government**  
**Anti-Dumping Review Panel**

# Application for review of a Commissioner's decision

## *Customs Act 1901 s 269ZZQ*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

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 the applicant was notified of the reviewable decision.

### **Conferences**

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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

**Further application information**

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZQA(1)). See the ADRP website for more information.

**Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

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](mailto: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: Matt Decarne

Position: Trade Affairs Manager

Email address: [matt.decarne@australianpaper.com.au](mailto:matt.decarne@australianpaper.com.au)

Telephone number: (03) 8540 2451

**3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO**

For the purposes of this application for review of a decision by the Commissioner, Australian Paper (hereafter referred to as "AP") is the person in accordance with subsection 269ZZO that made an application for dumping and countervailing measures and is the person entitled to request a review of a decision made under subsection 269TDA(1), (2) and (7) of the *Customs Act*.

**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.

Refer to Confidential Attachment 1 for a completed Authority to Represent declaration.

***\*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 269TC(1) or (2) – *a negative prima facie decision*
- ☒ Subsection 269TDA(1), (2), (3), (7), (13), or (14) – *a termination decision*
- ☐ Subsection 269X(6)(b) or (c) – *a negative preliminary decision*
- ☐ Subsection 269YA(2), (3), or (4) – *a rejection decision*
- ☐ Subsection 269ZDBEA(1) or (2) – *an anti-circumvention inquiry termination decision*

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

The goods the subject of the application were described as:

*“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 to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).”*

Further clarifying information describing the goods included the following:

*“The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.”*

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

The goods are classified to the following tariff subheadings:

- 4802.56.10 statistical code 03;
- 4802.56.10 statistical code 09.

**8. If applicable, provide the Anti-Dumping Notice (ADN) number of the reviewable decision**  
*If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.*

The ADN issued notifying of the part termination of the investigation was ADN 2017/34 (refer Non-Confidential Attachment 2).

**9. Provide the date the applicant received notice of the reviewable decision**

The date of notification of the decision was 17 March 2017.



**PART C: GROUNDS FOR YOUR APPLICATION**

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds 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.

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: ☐

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

**10.1 *The Commissioner has determined that subsidies received by Indah Kiat, Pindo Deli, Tjiwi Kimia and Riau Andalan Kertas were below negligible levels***

In Termination Report No. 341 the Commission confirmed that the Indonesian exporters Pt Indah Kiat Pulp & Paper Tbk ("Indah Kiat"), Pt Pindo Deli Pulp and Paper Mills ("Pindo Deli"), Tjiwi Kimia and Riau Andalan Kertas ("KAT") received subsidies but the level of the subsidies during the investigation period never exceeded negligible levels (i.e. 2 per cent). The level of subsidies determined in respect of each of the Indonesian exporters were as follows:

Exporter	Subsidy Margin
Indah Kiat	1.6%
Pindo Deli	1.1%
Tjiwi Kimia	0.9%
RAK	1.0%

The Commission's investigation into subsidy programs provided by the Government of Indonesia (GOI") focused on the following 4 programs:

Program No.	Program Name	Program Type	Countervailable (Y/N)
1	Provision of access to and use of land for less than adequate remuneration	Provision of goods	Yes
2	GOI's Log Export Ban	Provision of goods	No
3	Debt Forgiveness – Buyback of debt from GOI	Financial benefit	Yes
4	Income tax facilities for capital investment in certain business fields and/or certain regions	Preferential tax policy	Yes

AP considers that the Commission's consideration of *Program 2: export bans* is incorrect and not the preferable decision. The Commission has stated that it is not a countervailable subsidy as, unlike the

United States Department of Commerce (“USDOC”) that countervails *“export restraints as a matter of policy”*, the Commission *“has no such policy”*. In AP’s view the absence of a policy as to whether a program is countervailable or otherwise, does not enable the Commission to reject the Program as countervailable. AP further notes the comments of the Commission that *“an export ban does fall within any of the forms of financial contribution set out in the definition of subsidy in Section 269T”*. Respectfully, AP submits that if the export ban on logs contributes to a surplus supply of logs on the Indonesian domestic market thereby suppressing domestic prices, the export log ban thereby influences the remuneration for logs in Indonesia.

AP submits to the ADRP that the export ban on logs does create a financial benefit to purchases of timber for further processing in Indonesia (i.e. pulp and paper manufacturers) and is therefore a countervailable subsidy that provides a benefit to pulp and paper producers.

*Program 3: Debt forgiveness* applies to the APP companies Indah Kiat, Pindo Deli and Tjiwi Kimia. The Commission received *“a lack of complete responses from Indah Kiat, Pindo Deli, and Tjiwi Kimia”* in the exporter questionnaire responses in relation to this program. The Commission stated that the *“APP Group of companies in its 13 July 2016 submission advised that the presumed allocation period for non-recurring subsidies in the USDOC CFS decision was 13 years. APP argued that the 13-year period ended during 2016 and accordingly the effect of the debt forgiveness should no longer be counted”*.

AP would highlight that APP has not denied the existence of the benefit received. What APP has argued is that the 13-year allocation period expired in 2016 (APP did not argue against the 13-year allocation period). However, for the purposes of Investigation No. 341, the investigation period was 2015. The Commission has selected a 15-year average useful life (“AUL”) period to apply the benefit based on Taxation Ruling TR2016/1 that notifies an effective life of depreciating assets (applicable from 1 July 2016). AP understands that the selection of the 15-year period is arbitrary as it is the mid-point in the recommended 10 to 20 year AUL for manufacturing assets in the paper industry. AP, however, contends that a more realistic AUL is that used by USDOC of 13 years (reflecting high levels of wear and maintenance), thereby increasing the amount of the benefit received in 2015 (as opposed to a 15-year AUL). The correct or preferable decision is that the AUL over which the benefit is received is 13 years (a period APP has not rejected).

AP is not challenging the Commission’s assessment of Program 4.

## **10.2 The total volume of exports from Indonesia that received countervailable subsidies was negligible**

The total volume of exports of A4 copy paper that received countervailable subsidies is influenced by the decisions subject to review in 10.1. AP considers that the correct and preferable decisions as detailed in Sections 10.1 will result in the volume of exports from Indonesia that received countervailable subsidies exceeding the negligible volume benchmark and should attract interim countervailing duties.

## **10.3 The goods exported by Tjiwi Kimia were at dumped prices**

Section 4.6.3 states that the Commission *“substituted the pulp benchmark price into the exporter’s raw material costs (except for production using 100% recycled paper)”*. Following the Statement of

Essential Facts ("SEF") the Sinar Mas Group ("SMG") made representations claiming that *"in relation to Tjiwi Kimia that the Commission had not correctly accounted for the amount of pulp used in the production of paper<sup>2</sup>".*

The Commission further states at Section 4.6.3.6.2 that *"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 the verified costs relating to Tjiwi Kimia."*

The adjustment made by the Commission altered the applicable dumping margin in the SEF from 2.4 per cent to negative 2.18 per cent.

AP does not consider that the Commission's findings on normal value determination for Tjiwi Kimia is the correct or preferable decision based on the following grounds:

- The Commission should have used a benchmark price for pulp for 100 per cent recycled paper as the virgin pulp price influences the recycled pulp price;
- The adjustment of the percentage of pulp used in the production of A4 copy paper is low and influenced by the market situation finding in Indonesia; and
- The proportion of pulp used in the production of A4 copy paper has been understated by Tjiwi Kimia.

**(i) Benchmark pulp price for 100 per cent recycled paper**

Section 4.6.3 of Termination Report 341 states:

*"The Commission substituted the pulp benchmark price 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 4 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."*

AP considers the Commission has erred in this assessment. The price for pulp used in recycled paper is heavily influenced by the cost of virgin pulp, given that they are highly substitutable. The Commission had access to recycled pulp pricing via the independent industry analysts RISI and Hawkins Wright and should have validated this to be the case.

To further highlight this point, AP provided details to the Commission as part of the AP verification visit concerning De-Inked Pulp ("DIP") prices and production costs. The information demonstrated that according to RISI the average 2015 Market DIP price was A\$xxxx per metric tonne (or US\$xxxx

<sup>2</sup> Termination Report No. 341, Section 4.6.3.6.2, P. 23).



per metric tonne). Therefore, the raw material cost for 100 per cent recycled paper (DIP) for Tjiwi Kimia should only be considered to reflect competitive market costs if the exporter's DIP costs were circa the benchmark price referred to (i.e. US\$xxxx per metric tonne).

The correct or preferable decision would have been for the Commission to not accept that the raw material cost for 100 per cent recycled paper in Indonesia is not affected by the artificially low pulp prices that prevail in that country, and substitute a benchmark DIP price for Tjiwi Kimia's production costs for 100% recycled paper.

**(ii) Percentage of pulp used in production of A4 copy paper**

Section 4.6.3.6.2 of Termination Report 341 states:

*"SMG made multiple submissions<sup>3</sup> 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."*

The Commission re-assessed its position from SEF 341, as reflected in the following:

*"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."*

The Commission appears to be asserting that there is a difference between the pulp input percentage in paper reels versus the pulp input to produce A4 copy paper. Any claimed difference of pulp consumed in the production of paper reels and A4 copy paper is made under false pretence. AP confirms there is no difference in the percentage input of pulp/fibre for paper reels when compared to A4 copy paper.

**(iii) Proportion of pulp factor used by Commission**

A further concern for AP relates to the submission by SMG (refer EPR document 131) that alleges pulp costs *"represent about 70% of cost to make A4 copy paper"*. AP considers this assertion made on behalf of SMG to be misleading. AP's standard costs (as verified by the Commission during the verification visit) show that pulp accounts for approximately xx per cent of the cost to make one tonne of A4 copy paper. SMG's assertion that the pulp cost in one tonne of paper is approximately 70 per cent is not correct and is heavily influenced by the fact that Indonesian pulp costs are artificially low (i.e. the correct proportion to be used must reflect market-based data and not a percentage based upon government-influenced artificially low prices).

AP does not consider that the 70 per cent figure for pulp cost as a percentage of A4 copy paper production cost can be relied upon.

<sup>3</sup> EPR documents 131, 143, 147, 148, 159, 171, 173, 180, 183.



The correct or preferable decision concerning the normal value for Tjiwi Kimia involves the incorporation of a benchmark pulp price for 100 per cent recycled paper, a consistent percentage for pulp used in the production of paper reels and A4 copy paper (i.e. no difference in pulp consumed), and a pulp to paper consumption more reliably aligned to an xx per cent usage factor (rather than the 70 per cent nominated by SMG).

The use of the correct proportion rate of pulp to A4 copy paper will substantially influence the normal value(s) determined for Tjiwi Kimia.

#### 10.4 Countervailable subsidies received by UPM greater than negligible

The Commission has determined a subsidy margin for UPM of 0.8 per cent. The Commission established that UPM China received benefits under the following subsidy programs:

Program No.	Program Name	Basis for assessed benefit
7	Preferential income tax program for high or new technology enterprises	Reduced income tax payment allocated across sales revenue
16	City bones for export activity from Finance Bureau	Grant amount allocated to exported goods as proportion of export revenue
17	Award for eco-civilisation of year	Amount of grant allocated to sales of all goods as proportion of sales revenue
18	Subsidy of water balance testing support	Same allocation as Program 17
19	Award for pollution sources facility maintenance	Same allocation as Program 17
20	Subsidy for flue-gas desulfurization (FGD) project	Same allocation as Program 17
21	Subsidy of water usage	Same allocation as Program 17
22	Safety production award	Same allocation as Program 17
23	Award of clean run	Same allocation as Program 17
24	Subsidy for workstation of graduate student	Same allocation as Program 17
25	Award for high tech product award	Same allocation as Program 17
26	Subsidy for patent application support from Changshu Economic Development Zone (CEDZ)	Same allocation as Program 17
27	Subsidy for patent application support Changshu Municipal Department of Science and Technology	Same allocation as Program 17
28	Subsidy of MNCs function center	Same allocation as Program 17
29	Training subsidy on new employee training for PM3	Same allocation as Program 17
30	Individual tax refund for about 20 management level people	Same allocation as Program 17
31	Innovation ability development fund to R&D center	Same allocation as Program 17

AP notes that the subsidies received by UPM China to be both broad and specific. Certain subsidies are correctly allocated across the whole of UPM China's sales revenue, whereas other subsidy programs are not as broad (e.g. Program 29).

AP contends that the allocation of benefits received by UPM China for Program 29 across sales of all goods is incorrect. It is evident that the subsidy benefit applies to production from Paper Machine No. 3 only and should be allocated across sales of paper from Paper Machine No. 3 only. Further,

the grant received for high tech product award (Program 25) and the subsidy for patent application support (Program 26) should have only been allocated to sales of the goods derived from the products to which the award and patent apply. It is noted that for subsidy programs 24, 26, 27, 28, 29 and 31 that no English translation of the subsidy documents were made available to the Commission. It is not clear on what basis the Commission could accurately evidence the category of goods (within UPM China's total goods) to which the grants applied.

The correct or preferable decision in relation to subsidy program 29 is to allocate only across sales of goods produced from PM3. Similarly, the grants received under Programs 25 and 26 should have been allocated only to sales of goods covered by the grants (and not UPM's total sales). In respect of the Programs 24, 26, 27, 28, 29 and 31 where there is an absence of a translated subsidy program document, the Commission should have considered the exporter to be uncooperative.

**11. 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 10**

The correct or preferable decisions ought to be that the Commissioner finds:

- That the Indonesian exporters Indah Kiat, Pindo Deli, Tjiwi Kimia and KAT received subsidies that exceeded negligible levels;
- The total volume of goods exported to Australia from Indonesia during the investigation in respect of which countervailable subsidies that were received was above negligible levels;
- The goods exported to Australia by Tjiwi Kimia during the investigation were dumped, with margins exceeding negligible levels; and
- The goods exported to Australia by UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd (collectively 'UPM') received countervailable subsidies that exceed negligible levels.

**12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision**

*Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.*

The correct or preferable decisions identified above were not impacted by subsection 269X(6)(b) or (c) of the *Customs Act*.



**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* beginning 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;
- 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: 13 / 04 / 2017

**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:     /     /