

Date: 5 October 2021

By Email

Ms. Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
Department of Industry, Innovation and Science
10 Binara Street
Canberra City ACT 2601

Dear Ms. Fisher,

Re: A4 Copy Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia (except by PT. Indah Kiat Pulp & Paper Tbk, PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp & Paper Mills) and the Kingdom of Thailand

I refer to the notice dated 2 September 2021 advising of the initiation of the review of the decision by the Minister for Industry, Science and Technology (**Minister**) under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* (**Customs Act**) to fix different variable factors in respect of A4 Copy Paper exported to Australia from the abovementioned countries and that submissions may be made in respect of that review within 30 days of that notice.

The following submission is made on behalf of my clients, APRIL Far East (Malaysia) Sdn. Bhd. (**AFEM**) and PT Riau Andalan Kertas (**RAK**) (collectively, **APRIL**).

The following submissions are made:-

1. Ground 1

While APRIL reiterates its position that AFEM, not RAK, is the 'exporter' of A4 Copy Paper to Australia for the reasons set out in the application for the review of the Minister's decision (**Application**) and in submissions to the Anti-Dumping Commission (**Commission**), it contends that, regardless of who is the 'exporter', the 'export price' should be the price payable by Australian customers of AFEM in the sale and purchase of A4 Copy Paper from AFEM.

Apart from any other reason, it is only at that price that the A4 Copy Paper exported from Indonesia enters into the commerce of Australia¹. It is only that price that is capable of causing material injury to the Australian industry producing like goods.

The price that AFEM pays to RAK for its purchase of A4 Copy Paper from RAK is not the price at which the A4 Copy Paper in question enters into the commerce of Australia. Further, because that price is not the price at which the A4 Copy Paper in question enters into the commerce of Australia, it is not capable of causing material injury to the Australian industry.

¹ Article 2.1 of the WTO Anti-Dumping Agreement.

Hence the Minister's decision in this regard was not correct and that the correct and preferable decision as to the port price' is that specified in the Application.

2. Ground 2

If it is determined (wrongly) that the 'export price' is the price payable by AFEM to RAK, then, in the determination of a normal value, adjustment must be made to the prices at which RAK sells A4 Copy Paper in Indonesia to distributors. Such an adjustment is required by section 269TAC(8)(c) of the Customs Act.

That is, such an adjustment is required because the 'export price' and the 'domestic price' are modified in different ways by the terms or circumstances of the sales to which they relate, including because:

- (i) RAK's sales in Indonesia are to distributors of A4 Copy Paper in Indonesia, whereas RAK's sale to AFEM is not to a distributor because AFEM is not a distributor of A4 Copy Paper; and
- (ii) RAK's Indonesian customers are unrelated to RAK and the transactions between RAK and its Indonesian customers are negotiated at arm's length having regard to market conditions in Indonesia, whereas RAK and AFEM are related bodies corporate, and prices between them are derived through using a transfer pricing methodology to reflect a market price.

The adjustment required to take account of this and provide for a 'fair comparison' (i.e., proper comparison) between 'export price' and the normal value is an amount equal to the weighted average amount that the price payable by AFEM's Australian customers during the review period (i.e., 2019) is reduced in accordance with the transfer pricing methodology to derive the notional market price between RAK and AFEM.

Hence, for this reason the Minister's decision concerning the alteration of the normal value for APRIL's exports was not the correct decision but that the correct and preferable decision is a normal value determined as set out above.

3. Ground 3

APRIL reiterates that the non-injurious price determined by the Minister was not the correct or preferable decision but that the correct and preferable decision for the reasons set out in the Application is a non-injurious price determined to be the weighted average price of like goods sold by the Australian industry during the review period (being a market price unaffected by exports of the goods under consideration (**GUC**) at 'dumped' export price), less all post-exportation costs and expenses incurred by APRIL in the exportation of GUC to Australia to derive an FOB non-injurious price

APRIL notes that the weighted average price of like goods sold by the Australian industry during the review period was a price unaffected by dumping because of the existence of anti-dumping measures during the review period. In the absence of evidence to the contrary, it is reasonable to assume that those measures were achieving their intended objective of preventing and removing material injury being caused through the injurious effects of dumping, through the imposition of dumping duty on exports of A4 Copy Paper from the captioned countries and consequent payment of interim dumping duty before such exports entered into the commerce of Australia. Further, because interim dumping duty payable was to be worked out using the combined fixed and variable method, then to the extent that such exports were at actual export prices less than their ascertained export prices, additional interim dumping duty would be payable in addition to the 'fixed' duty amount.

This APRIL submits is the correct and preferable decision for the non-injurious price.

In support of this contention, APRIL notes the following information, all of which is publicly available and before the Commissioner before the Commissioner reported to the Minister in Review 551:

- (i) anti-dumping measures were in place from a number of countries, namely, China, Indonesia, Brazil, Thailand, Finland, Korea, Russia and Slovakia, imposing dumping duty on exports of A4 Copy Paper to Australia from those countries;
- (ii) Australian Paper had a production capacity of 2000,000 tpa that it needed to produce annually for operational reasons;

- (iii) the Australian A4 Copy Paper market, of which Australian Paper held a market share of approximately 85%, has been progressively declining since 2015, and in 2020, it was estimated that approximately 134,000 tpa was sold by Australian Paper, leaving it with excess production of approximate 66,000 tpa;
- (iv) Australian Paper exported its excess production to less lucrative' export markets; and
- (v) the cost to make and sell and selling prices of A4 Copy Paper were higher in Australia than in Indonesia as found by the Commissioner in Review 551 and presumably in other low-cost jurisdictions such as China, Brazil and Thailand.

What conclusions are to be drawn from this information regarding Australian Paper's application for a review of variable factors that led to Review 551? Arguably, Australian Paper, in a declining domestic market with high prices protected by tariff barriers in the form of dumping duties and in a global export market with 'less lucrative' prices that are not subject to protective tariff barriers, was seeking through Review 551 to increase rates of dumping duty on exports of A4 Copy Paper from the countries in question to Australia with the consequent increase in prices in the Australian market, this being the only way Australian Paper can increase its revenues from sales in the Australian market.

In such a market, the non-injurious price should not be an artificially high 'unsuppressed selling price', which in fact is neither a 'price' nor 'unsuppressed' given that the Australian market is unaffected by dumping due to the measures in place. Instead, the non-injurious price should be, as APRIL contends, Australian Paper's existing market price or, alternatively, the price that it obtains in global export markets. Of the two, arguably it should be the price in global export markets if lower than the price in the Australian market because such prices presumably are unaffected by dumping.

Clearly, the Minister's decision regarding the non-injurious price was neither the correct nor preferable decision for these reasons and the reasons set out in APRIL's application for this review. Rather, the correct and preferable decision is the non-injurious price contended by APRIL.

I hope this is of assistance, but please contact me if you have any questions or further require clarification or information regarding the Application.

Yours faithfully,



Andrew Percival
Principal