



Australian Government
Anti-Dumping Review Panel

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 6 July 2021 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 (s 269ZZG(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.

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.

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*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name:

This application is made jointly and severally by APRIL Far East (Malaysia) Sdn. Bhd. (AFEM) and PT Riau Andalan Kertas (RAK) (collectively, "Applicants" or "APRIL")

Address:

PT Riau Andalan Kertas (RAK):

Registered address - Jl. Teluk Betung No. 31, Kebon Melati, Tanah Abang, Jakarta Pusat 10230, Indonesia.

Operating address - Kecamatan Langgam Kabupaten Pelalawan, Pangkalan Kerinci, Pekanbaru Riau, 28300 Indonesia

APRIL Far East (Malaysia) Sdn. Bhd. (AFEM):

Registered address - Level 12, Tower 2, Averis Tower, Avenue 5, Wisma Averis, Bangar South, No. 8 Jalan Kerinchi, 59200 Kuala Lumpur, Malaysia

Type of entity (trade union, corporation, government etc.): **Corporations**

2. Contact person for applicant

Full name: **Ms Wendy LEONG**

Position: **Vice President, Legal**

Email address: **Wendy_Leong@rgei.com**

Telephone number: **+65-62169286**

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

The Applicants are 'interested parties' because they are directly and/or indirectly involved in the production and/or exportation of A4 Copy Paper from Indonesia to Australia.

RAK produces A4 Copy Paper in Indonesia that is exported to Australia. AFEM exports to Australia the A4 Copy Paper produced by RAK in Indonesia. The Anti-Dumping Commissioner (Commissioner) contends that RAK is the 'exporter' of the A4 Copy Paper it produces, not AFEM, but, as set out in this application, the Applicants contend that AFEM, not RAK, is the 'exporter'. That is, the Applicants have disagreed with and continue to disagree with the Commissioner's contention in this regard.

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 reviewable decision 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 [grams per square metre] and cut to sheets of metric size A4 (210 mm x 297 mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper) exported from the Republic of Indonesia (*Indonesia*), the Federative Republic of Brazil (*Brazil*), the People’s Republic of China (*China*) and the Kingdom of Thailand (*Thailand*) by the exporters specified in the in Anti-Dumping Duty Notice No 2022/23 published on 31 March 2022’ (copy *attached*) (the “GUC”).’

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

The goods are generally, but not exclusively, classified under the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

<i>Tariff Subheading</i>	<i>Description</i>
4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punchcards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of 4801 or 4803; hand-made paper and paperboard:

4802.56	Weighing 40 g/m ² or more but not more than 150 g/m ² , in sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm, in the unfolded state:	
4802.56.10	Printing and writing paper, 297 mm x 210 mm (A4 paper): Weighing 40 g/m ² or more but less than 90 g/m ² :	
	Statistical Code	Description
	03	White
	09	Weighing 90 g/m ² or more but not more than 150 g/m ²

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: [ADN 2022/023](#)

Date ADN was published: [31 March 2022](#)

****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 **highlighted in yellow**, and the document 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:

[See 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:

[See Attachment A](#)

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

[See 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 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

[See Attachment A](#)

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

1. [Attachment A](#)
2. [Anti-Dumping Duty Notice No 2022/23](#)
3. ['Streamlining Australia's antidumping system; An effective anti-dumping and countervailing system for Australia' \(June 2011\)](#)

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: *Wanyan Shaohua*

Name: **Wanyan Shaohua**

Position: **Director**

Organisation: **APRIL Far East (Malaysia) Sdn. Bhd.**

Date: **29 / 04 / 2022**

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: Andrew Percival
Organisation: Percival Legal
Address: N/A
Email address: andrew.percival@percivallegal.com.au
Telephone number: +61 (0)425 221 036

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: **Wanyan Shaohua**

Position: **Director**

Organisation: **APRIL Far East (Malaysia) Sdn. Bhd.**

Date: **29 / 04 / 2022**

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Part I - Reviewable decision

The *reviewable decision* is the decision of the Minister for Industry, Energy and Emissions Reduction (**Minister**), pursuant to section 269ZHG(1)(b) of the *Customs Act 1901*, to secure the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand, including that:

- (a) the dumping duty notice should continue to apply in relation to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters]¹ on and after the due expiry date of 19 April 2022 pursuant to section 269ZHG(4)(a)(ii) of the *Customs Act 1901*; and
- (b) the variable factors applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] be altered so different variable factors apply on and from 19 April 2022; and
- (c) the amount of interim dumping duty payable on A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] be an amount worked out in accordance with the combination of fixed and variable duty method as specified in sections 5(2) and (3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*; and
- (d) a lesser amount/rate of duty, being the non-injurious price, not apply to A4 Copy Paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*.

Part II – Grounds that the reviewable decision is not the Correct or Preferable Decision - Question 9 of the Application

The grounds on which the Applicants contend that the *reviewable decision* is not the correct or preferable decision are set out in **Part VI – Grounds** of this **Attachment**.

Part III – Correct and preferable decision - Question 10 of the Application

The Applicants contend that:

- (1) the *correct and preferable decision* is for the Minister to decide pursuant to section 269ZHG(1)(a) of the *Customs Act 1901*, not to secure the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand and, consequently, that such anti-dumping measures expire on and from the due expiry date of 19 April 2022 (**Preferable Decision 1**), or

alternatively, if the securing of the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Brazil, China,

¹ Note: please note that the square brackets around 'RAK' and 'all other exporters' where included are solely for convenience and ease of identification.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Indonesia and Thailand on and from the due expiry date of 19 April 2022 is to be affirmed, then

(2) the *correct and preferable decision* is:

- (a) for the Minister to decide pursuant to section 269ZHG(4)(a)(ii) of the *Customs Act 1901*, that the dumping duty notice ceases to apply in relation to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] on and after the due expiry date of 19 April 2022 (**Preferable Decision 2**); or
- (b) for the Minister to decide that:
 - (i) the variable factors applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] be altered but with different variable factors to those in the *reviewable decision*; and
 - (ii) the amount of any interim dumping duty payable on A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] is an amount worked out in accordance with the 'floor price' duty method as specified in section 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*; and
 - (iii) a lesser amount of duty apply to the goods exported from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, being the non-injurious price as defined in section 269TACA of the *Customs Act 1901*.

(**Preferable Decision 3**)

Part IV – Grounds in support of correct and preferable decision – Question 11 of the Application

The grounds in support of the *correct and preferable decision* are set out in **Part VI – Grounds** of this Attachment.

Part V – Material difference of the correct and preferable decision to the reviewable decision- Question 12 of the Application

The *correct and preferable decision(s)* is/are materially different to the *reviewable decision* because:

- (1) pursuant to Preferable Decision 1, the continuation of the anti-dumping measures is not secured but, rather, the anti-dumping measures as applying to exports of A4 Copy Paper to Australia from Indonesia, Brazil, China and Thailand expire on the due expiry date of 19 April 2022;

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

or, alternatively:

- (2) pursuant to Preferable Decision 2, if securing the continuation of the anti-dumping measures is affirmed, then the anti-dumping measures cease to apply to exports of A4 Copy Paper to Australia from Indonesia by [RAK] and/or by [all other exporters] on the due expiry date of 19 April 2022;

or, alternatively:

- (3) pursuant to Preferable Decision 3, if securing the continuation of the anti-dumping measures applying to exports of A4 Copy Paper from Indonesia by [RAK] and/or [all other exporters] is affirmed, then the variable factors applying to exports of A4 Copy Paper from Indonesia by [RAK] and/or [all other exporters] are altered but altered differently from the alteration comprised in the *reviewable decision* as set out in Part VI below, that is the export prices, normal values and adjustments to normal value are altered differently, and the method of working out any interim dumping duty payable on exports of A4 Copy Paper from Indonesia by [RAK] and/or [all other exporters] is not the combination fixed and variable duty method but the 'floor price' method, which 'floor price' is to be based on the lesser amount of duty to be applied to exports of A4 Copy Paper to Australia from Indonesia by [RAK] and/or [all other exporters], being the non-injurious price as defined in section 269TACA of the *Customs Act 1901*.

Part VI – Grounds - Questions 9 and 11 of the Application

The grounds in support of the *reviewable decision* not being the correct or preferable decision and that the *correct and preferable decision*, in order of precedence, is Preferable Decision 1, 2 or 3 are set out below.

[Preferable Decision 1](#)

Grounds: The grounds on which it is contended that the *reviewable decision* was not the correct or preferable decision and that the *correct and preferable decision* is for the Minister to decide pursuant to section 269ZHG(1)(a) of the *Customs Act 1901*, not to secure the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand and, consequently, that such anti-dumping measures expire on and from the due expiry date of 19 April 2022 (that is, **Preferable Decision 1**) are set out below under the headings: **National interest** and **Material injury**.

Please note that these two categorisations of the grounds on which it is contended that the *reviewable decision* was not the correct or preferable decision and what is the *correct and preferable decision* are not mutually exclusive. That is, the grounds on which it is contended that the *reviewable decision* was not the correct or preferable decision and what is the *correct and preferable decision* are that:

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (i) securing the continuation of the anti-dumping measures is not in the national interest as it does not and cannot address or remedy the systemic, structural issues confronting the Australian industry but, rather, national interest is served by not securing the continuation of the anti-dumping measures and allowing them to expire and, instead, inquiring into other remedies to address the issues confronting the domestic industry producing A4 Copy Paper; and
- (ii) the expiry of the anti-dumping duty measures on the due expiry date of 19 April 2022 would not lead to or be likely to lead to the material injury that the measures are intended to prevent.

National interest

National interest a relevant consideration

1. The Minister is empowered by section 269ZHG(1) of the *Custom Act 1901* to take into account, amongst other things, the national interest in considering whether to continue anti-dumping measures for a further five (5) years pursuant to that section.
2. This is because section 269ZHG(1) of the *Customs Act 1901* expressly empowers the Minister to take into account any information that the Minister considers relevant in determining whether to secure the continuation of the anti-dumping measures, or to allow them to expire on the due expiry date, in addition to the report he receives from the Commissioner.
3. It is submitted that information concerning the national interest is such a relevant consideration and is consistent with the Minister's Ministerial responsibility in, amongst other things, exercising statutory discretions.
4. This is consistent with the position expressed in Sections 6.1. and 6.2 of '*Streamlining Australia's antidumping system; An effective anti-dumping and countervailing system for Australia*' (June 2011) regarding that it is within the Minister's statutory discretion in deciding whether to publish a dumping duty notice under sections 269TG(1) and (2) of the *Customs Act 1901* (copy **attached**).
5. It is noted that the Commissioner appears to agree that the Minister has the discretion to take into account the national interest, but that there is no express obligation for the Minister to do so. This is reflected in the following statement by the Commissioner in Report 588:

"There is also no express power in Australia's domestic legislation that authorises the Minister to take into account the national interest or otherwise conduct a public interest test before continuing measures." (at page 102 of Report 588)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

6. This is a strange statement to be made by the Commissioner. If section 269ZHG(1) of the *Customs Act 1901* does not expressly empower that the Minister may take into account any information that the Minister considers relevant in determining whether to allow the anti-dumping measures to expire or to continue them for a further five years, such as whether to do so is in the national interest, in addition to the report he receives from the Commissioner, what does that provision expressly empower the Minister to take into account? Why would the national interest not be a relevant consideration in the exercise of that statutory discretion by a Minister?
7. It is respectfully submitted that taking into account the national interest is a relevant consideration in the exercise of Minister's discretion and has been expressly provided for in section 269ZHG(1) of the *Customs Act 1901*. It is a matter of Ministerial responsibility for a Minister of the Crown to take into account and act in the national interest.
8. In any event, it appears that because the Commissioner did not consider that:
- (a) section 269ZHG(1) of the *Customs Act 1901* expressly empowered the Minister to take into account the national interest; and
 - (b) the national interest was a relevant consideration in making the decision whether to continue the anti-dumping measures, and
 - (c) taking into account the national interest was a matter of Ministerial responsibility in making that decision,
- this issue was not raised with the Minister by the Commissioner in Report 588 and recommendations. Further, it was not raised by the Commissioner for consideration by the Minister notwithstanding that that the matter had been raised with the Commission in submissions, thereby arguably usurping the Minister's consideration of the matter by the Commissioner.
9. It, presumably, is a matter for the Minister, not the Commissioner, to determine what is or is not in the national interest. No doubt the Commissioner may consider whether continuation or expiry of the anti-dumping measures would be in the national interest and provide the Minister with his advice and recommendations in relation thereto, but, ultimately, it is a matter for consideration and determination by the Minister, similar to whether the Minister accepts the Commissioner's other recommendations and the findings on which they are based.²

² See, for example, the then Minister's decision in Continuation Inquiry 569, 'Grinding Balls exported to Australia from the People's Republic of China': [Microsoft Word - MS21-001413 002 Attachment A - Grinding balls decision 569 - Statement o.. \(industry.gov.au\)](#)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

10. Further, while there is no statutory obligation for the Commissioner to address the national interest in his report to the Minister in a continuation inquiry, there is equally no statutory prohibition prohibiting the Commissioner from addressing in his report to the Minister matters relevant for the Minister to take into account, such as the national interest, where circumstances so warrant, and particularly, when submissions raise this as an issue with the Commissioner. Otherwise, presumably, interested parties should make their case directly to the Minister.
11. Hence, it is contended that the national interest is a relevant consideration for the Minister to take into account in deciding whether or not to secure the continuation of the anti-dumping measures, as well as the Commissioner's report and recommendations.

Continuation of the anti-dumping measures not in the national interest

12. It is submitted that securing the continuation of the anti-dumping measures is not in the national interest because:
- (a) the continuation of the anti-dumping measures for a further five years will not prevent the continuation of the injury (that is, unprofitability) that the Australian industry has been incurring, since the anti-dumping measures were imposed on 19 April 2017 (see paragraph 25 below), any more than it has done since the measures were imposed, because that unprofitability (that is, injury) was not and is not being caused by exports from the subject countries whether at dumped export prices or not; and
 - (b) anti-dumping measures are not designed and, therefore, are not capable of remedying systemic, structural economic factors adversely affecting a domestic industry such as here where:
 - (i) demand for a product is declining because, in this case, of the progressive year-on-year contraction of the Australian A4 Copy Paper market from 2015 onwards due to technological changes (that is, digitalisation) with the substitution of electronic solutions for paper products; and
 - (ii) supply is exceeding demand due, in part, by domestic production of A4 Copy Paper exceeding demand in the Australian A4 Copy Paper market by approximately 50%, resulting in the Australian industry selling the balance of its product into 'less lucrative' export markets, also unprofitably (that is, presumably, at dumped export prices); and
 - (iii) the Australian industry is characterised as a high-cost producer, as determined by the Commissioner in Review 551, with high costs for inputs to manufacture such as raw materials, energy, labour water, etc., which costs to

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

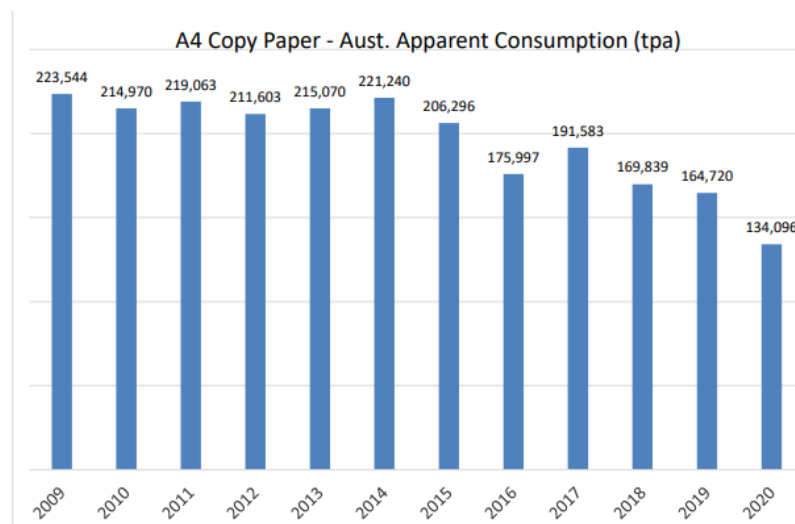
- manufacture and sell it is unable to recover in its prices, resulting in it apparently operating at a loss continually since the anti-dumping measures were imposed; and
- (iv) in a market where the Australian industry holds a market share of between 65% to over 90% since 2017³, that market has become conditioned to the Australian industry's loss-making prices making it difficult, if not impossible, for the industry to increase its prices for a commodity product, especially when, as it claims, it is a 'price taker' in a market where market power is held, according to claims made by the Australian industry, by resellers and retailers; and
- (c) end-users of A4 Copy Paper in Australia, namely, Australian businesses and consumers will be continuing to subsidise a globally and domestically uncompetitive, unprofitable Australian industry producing A4 Copy Paper, that is, Paper Australia Pty Limited (**Australian Paper**), the sole Australian producer of A4 Copy Paper, through continuing high prices, arguably from a protective tariff due to the imposition of the anti-dumping measures.
13. It, therefore, is not in the national interest to continue the imposition of a tax (that is, dumping duty) at the expense of Australian businesses and consumers in the form of higher prices than available globally for the same product, which tax has not achieved its objective of preventing injury to a domestic industry since it was imposed, and will not in the future. This is because that injury has not been caused by alleged 'dumping'. In other words, the cost of the measures outweighs any benefit, and there is and will be no benefit in terms of the intended objective of the anti-dumping measures of preventing injury as that 'dumping' is not the cause of the industry's injury, which is due to ongoing structural change to the industry that anti-dumping measures cannot remedy nor are designed to remedy.
14. Accordingly, it is respectfully submitted that, it would not be in the national interest to continue a protective tariff barrier in the form of a dumping duty, that is, a special duty of customs imposed on the importation of the product in question that:
- (a) in the previous five years has not prevented the Australian industry from operating unprofitably (i.e., at a loss) each year since the anti-dumping measures were imposed; and

³ Note: estimates of Australian Paper's market share vary from 65% claimed by Australian Paper and over 95% by an interested party, both in connection with this inquiry, and 85% by the Commission in Investigation 463 (see Report 463, page 27: [Microsoft Word - ATT A REP 463 \(industry.gov.au\)](#))

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (b) cannot prevent or otherwise remedy the Australian industry from operating unprofitably because such losses are caused by the industry's cost to make and sell exceeding its revenues in a domestic market that is characterised by supply exceeding demand due to:
- (i) the market progressively contracting year-on-year from approximately 200,000 tpa in 2015 to 130,000 tpa in 2020⁴ or less due to a change in technology – that is, the replacement of paper records with electronic records (see chart below); and
 - (ii) domestic production by the Australian industry of approximately 200,000 tpa exceeding demand by approximately 50%.



Source: Australian Paper application for continuation of the anti-dumping measures

15. The anti-dumping measures have not benefitted the Australian industry by preventing the injury that the Australian industry was incurring and continued to incur following the imposition of the measures because the measures could not prevent that injury from being incurred. The anti-dumping measures could not reverse the Australian A4 Copy Paper market from progressively contracting due to technological change. Nor could the anti-dumping measures alter the Australian industry's relatively high input costs to manufacture, such as raw material, energy, labour and environmental costs amongst others, that result in it being a high-cost producer of A4 Copy Paper. Nor could the anti-dumping measures alter the Australian industry's excess production capacity to meet domestic demand or alter prices in export markets to enable the Australian industry to sell its excess production in such markets profitably and not at a loss.

⁴ See Graph A-4.1 in Australian Paper's application for anti-dumping measures in Investigation 583 at pages 21-22 which is reproduced above: [APPLICATION \(industry.gov.au\)](https://www.industry.gov.au/publications/application-for-anti-dumping-measures-in-investigation-583)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

16. These are structural domestic industry issues that the anti-dumping regime is neither designed nor equipped to remedy. Rather, as was submitted to the Anti-Dumping Commission (**Commission**), it is a matter appropriately addressed by the Productivity Commission. That should have been and should now be the recommendation to the Minister.
17. These matters are, of course, not only in the national interest for the Minister to have taken into account but also are required by section 269TAE(2A) of the *Customs Act 1901*, namely, 'contractions in demand or changes in patterns of consumption', 'developments in technology' and 'the export performance and productivity of the Australian industry' as causing injury to the Australian industry.

Material injury

18. The *reviewable decision* is not the correct and preferred decision because the expiry of the anti-dumping measures will not lead to or be likely to lead to the continuation of the material injury that the anti-dumping measures are intended to prevent. This is because the injury that the Australian industry has incurred and is continuing to incur since the anti-dumping measures were imposed on 19 April 2017 was not and is not being caused by exports of A4 Copy Paper from the countries in question at dumped export prices. It is being caused by other economic factors, which other economic factors anti-dumping measures can neither address nor remedy. These, amongst others, are those factors mentioned in paragraph 17 above. Hence the correct and preferable decision is not to secure the continuation of the anti-dumping measures but to allow them to expire on their expiry date.
19. The detailed reasons are set out below.

Outcome of continuation of anti-dumping measures

20. The outcome of the *reviewable decision* (that is, the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand) is that it will not and cannot prevent the injury it is intended to prevent. That is, the Australian industry will continue to be unprofitable notwithstanding the continuation of the anti-dumping measures.
21. Specifically, in so far as the *reviewable decision* concerns the continued application of the anti-dumping measures on exports of A4 Copy Paper to Australia from Indonesia by [RAK], if such exports are exported at an export price equal to the ascertained export price as ascertained by the Minister, then, based on the Commissioner's findings in Report 588:
 - (a) AFEM's sales to its Australian customers will be profitable;

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (b) the Australian customers sales of [RAK's] exports into the Australian A4 Copy Paper market will be profitable;
- (c) the Australian Government obtains will obtain revenue in the form of the fixed component of interim dumping duty payable on [RAK's] exports; and
- (d) the Australian industry's prices will continue to be undercut by the prices of [RAK's] exports and it will continue to sell at a loss and unprofitably and operate its A4 Copy Paper business at a loss,

regardless of the continuation of the anti-dumping measures on [RAK's] exports. In other words, all interested parties will ostensibly benefit from the continuation of the anti-dumping measures other than the interested party for whom the measures are intended to benefit.

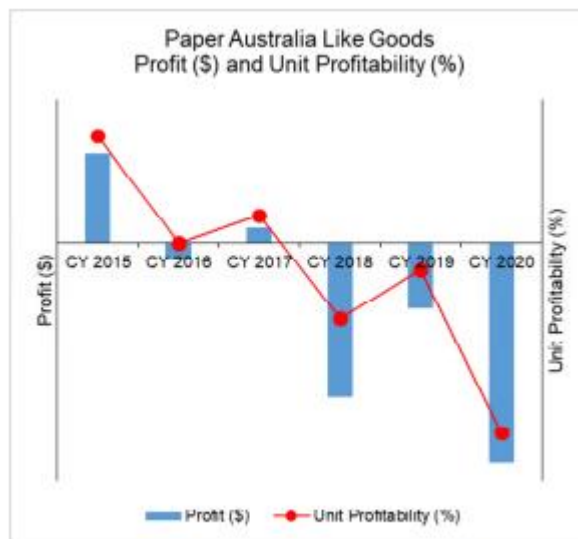
- 22. Further, this outcome would be the same if [RAK] exported A4 Copy Paper to Australia from Indonesia at an export price equal to the normal value as determined by the Minister in the *reviewable decision*, that is, at un-dumped prices, because exports at that price according to the Commissioner's finding in Report 588 also would undercut the Australian industry's unsuppressed selling price and, consequently, presumably cause injury to the Australian industry.
- 23. Based on the Commissioner's findings in Report 588, the outcome of the *reviewable decision* is the same regarding exports of A4 Copy Paper to Australia from Brazil, Thailand and China by exporters from those countries. That is, they will continue to be profitable, as will the sale of their exports into the Australian A4 Copy Paper market, and the Australian Government will derive revenue from any interim dumping duties payable, whereas the Australian industry will continue to operate its A4 Copy Paper business unprofitably, that is, at a loss. No evidence has been advanced to the contrary.
- 24. For this reason, the *reviewable decision* is not the preferable decision, nor the correct decision. It also underscores the fact that the expiry of the measures will not lead or be likely to lead to the continuation or recurrence of the injury that the measures are intended to prevent because the injury being incurred by the Australian industry during the past five years cannot be prevented by the measures, not being injury caused by 'dumping'.

Unprofitability of the Australian industry

- 25. In other words, the last time that the Australian industry was profitable was **before** the anti-dumping measures were imposed. Since then, Australian industry has been unprofitable and apparently operating at a loss each year notwithstanding the imposition of anti-dumping measures. This is demonstrated in the following graph extracted from Report 588:

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Figure 7 Profit and profitability⁶⁰

Source: Report 588, page 34

26. A 'profit' is, of course, a "trading surplus whereby the revenues earned from a commercial operation exceed its costs".⁵ Where the revenues of an entity's commercial operations do not exceed its costs or where, due to reduced revenues, do not exceed its costs to same extent, and, as consequence, the entity's commercial operations are not profitable or are less profitable, it incurs injury in the form of reduced or absence of profit.
27. Australian Paper's A4 Copy Paper business, which comprises both domestic and export sales of the A4 Copy Paper that it produces at its plant, is a commercial operation, the objective of which is to make a profit for the benefit of the company's owners (shareholder), Nippon Paper Industries (**Nippon Paper**).

⁵ "To define a successful business it is necessary to begin by understanding what a business is in essence 'a commercial operation that is run with the aim of making a profit'. This poses two questions: what is a commercial operation and what is profit?"

- A commercial operation is an activity that is conducted for the benefit of its owners. The significant part is 'for the benefit of its owners', which differentiates it from a government organisation or a charity where the activity is conducted for the benefit of the people it serves. Although the difference is about who gains from success, the route to success for all these activities is to understand and satisfy customers better than your competitors.
- A profit is a trading surplus whereby the revenues earned from a commercial operation exceed its costs. This surplus belongs to the owners of the business to use as they choose; to take for themselves, to reinvest in the business or a mixture of the two. For a government organisation or a not-for-profit organisation such as a charity the surplus is reinvested back in the activities to further benefit the people it serves."

J Tennent, 'Guide to Financial Management', The Economist in association with Profile Books Ltd., London, U.K., 2008, page 1.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

28. Each year since the imposition of the anti-dumping measures, Australian Paper's A4 Copy Paper business has been unprofitable to varying degrees with its export business being less profitable than its domestic business. In other words, Australian Paper's cost to make and sell A4 Copy Paper has exceeded its revenues from the sale of A4 Copy Paper in both domestic and export sales, with the latter being 'less lucrative' than the former according to Australian Paper.
29. As stated by the Commission in the verification report for Australian Paper in this inquiry and by the Commissioner in Report 588 to the Minister, since the imposition of the anti-dumping measures in 2017, Australian Paper's prices for A4 Copy Paper were insufficient to meet its cost to make and sell, that is, it was selling the A4 Copy Paper it produced at a loss. This was especially the case in the period 2019 to 2021.
30. That injury was not caused by and cannot be attributed to A4 Copy Paper exported from Indonesia, China, Brazil and Thailand at dumped export prices. Throughout the period that Australian Paper's domestic and export A4 Copy Paper businesses were unprofitable, anti-dumping measures were in place to prevent exports of A4 Copy Paper the subject of this inquiry from entering the commerce of Australia at dumped export prices. As discussed later below and as discussed earlier above, such injury (that is, unprofitability) was caused by other economic factors, including the normal ebb and flow of business in a contracting market due to technological change.⁶
31. Due to the that unprofitability not being caused by A4 Copy Paper exported from Indonesia, China, Brazil and Thailand at dumped export prices, that injury will continue to be incurred by Australian Paper for so long as the economic factors causing that injury continue to subsist, and regardless of whether the anti-dumping measures are allowed to expire or are continued.
32. That this is the case is evidenced by, if nothing else, Figure 7 extracted earlier above from Report 588 on the Australian industry's profitability or, more accurately, unprofitability. It is also evidenced by the following Table and Graph extracted from Report 588:

⁶ See: Ministerial Direction on Material injury: [Microsoft Word - ACDN - Streamlining Australia's Anti-Dumping System - Ministerial Direction on Material Injury - FINAL v2 co \(industry.gov.au\)](#)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Country of origin	2015	2016	2017	2018	2019	2020
Australian Industry	100	108	141	152	150	108
Brazil	100	78	41	26	9	22
China	100	48	2	2	11	38
Indonesia	100	115	73	36	32	33
Thailand	100	53	24	16	15	10
Other Subject Countries (463)	100	11	698	382	0	0
All Other Countries	100	52	98	96	197	67
Total Market	100	84	86	81	80	64

Table 8 Index of change in sales volume⁵⁴Figure 5 Unit Selling Price⁵⁸

33. The above Table regarding sales volume and the Graph regarding Australian Paper's unit selling price indicate that both sales volumes and prices of Australian Paper have remained relatively constant since the imposition of the anti-dumping measures with no material increase observable at the time anti-dumping measures were imposed in 2017 and in 2019, but did increase subsequently despite the market contracting.
34. These observations, of course, must be viewed in the context of a progressively contracting Australian A4 Copy Paper market as shown earlier above. That is, the Australian industry has either increased or maintained sales volumes and prices in a contracting market but has nevertheless been unprofitable since the anti-dumping measures were imposed. The injurious effects of dumping appear to be absent.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

35. In this context, it is important to distinguish between ‘injury’ that a commercial entity may incur and the causes and/or causal links that result in such injury being incurred. This distinction is set out in **Schedule 1**.
36. Having regard to the methodology set out in **Schedule 1**, it is evident that the injury that the Australian industry, that is, Australian Paper has incurred both during the review period and since the anti-dumping measures were imposed was the unprofitability of its A4 Copy Paper business, both domestic and export businesses, that have been and are both operating at a loss.

Application of the ‘but for’ test to the occurrence of injury

37. Applying the counterfactual, that is, the ‘but for’ test, as recommended by Frontier Economics in its report commissioned by the Commission (see: [Economic framework for injury and causation analysis \(industry.gov.au\)](https://www.industry.gov.au/publications/economic-framework-for-injury-and-causation-analysis)) and not uncommonly adopted by the Commission, it would seem apparent that ‘but for’ the imposition of anti-dumping measures in April 2017, the Australian industry would have continued to be profitable. The only relevant change in the market at that time would appear to be the imposition of the anti-dumping measures and this seemingly has led to it being unprofitable. Clearly, there must be other factors that are causing that unprofitability.
38. It also appears that Australian Paper’s acquisition at that time of APRIL’s loss making Australian distributor, Edwards Dunlop, a division of BJ Ball, to increase sales volumes was insufficient to counteract this, that is, the effect of the imposition of the anti-dumping measures. Presumably, the increase in sales volumes in 2017 and/or 2018 by Australian Paper reflected in the Table extracted above from Report 58 was principally due to that acquisition. It also is unclear whether, following the acquisition of this business the loss-making prices to customers of this business continued or were increased and, if the latter, why was Australian Paper’s A4 Copy Paper business unprofitable following the acquisition and the imposition of the anti-dumping measures?

Effect of sales at a loss on market

39. Similar to the approach taken to exporters pursuant to sections 269TAAD and 269TAA of the *Customs Act 1901* whose export sales are at a loss, the Australian Industry, that is, Australian Paper, presumably will be reimbursed for such losses by its parent company or someone else. In other words, the systemic unprofitability/losses of the Australian industry and the likelihood of it being reimbursed for such losses, raises the question of whether its sales of A4 Copy Paper into the Australian market are at arm’s length. That is, whether Australian Paper’s entry into loss making sales transactions has been on the basis that it will be reimbursed or otherwise made whole for such losses. This then raises the question of whether the sales

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

transactions are at arm's length or that the prices obtained in such transactions have been influenced by the reimbursement of losses. This obviously is relevant to the material injury and causation analysis but has not been addressed by the Commissioner in Report 588.

40. Regardless of whether and to what extent Australian Paper is reimbursed for its losses or its loss making A4 Copy Paper business is otherwise supported, the fact that the Australian industry has been operating at a systemic loss over the five year period since the anti-dumping measures were imposed precludes an analysis of the effects, if any, of the subject exports on the Australian A4 Copy Paper market during this period and/or on the Australian industry and/or effect, if any, of the imposition of the anti-dumping measures preventing the injury they are intended to prevent.
41. The fact that a commercial entity is prepared to operate an unprofitable business over a five-year period and, apparently, to continue to do so raises the question of what its motivation is for doing so. Clearly, it is not on the expectation of making a profit. That motivation, whatever it might be, is a relevant consideration as to why Australian Paper has operated and continues to operate an unprofitable business with no reasonable expectation of it becoming profitable in the foreseeable future, as it will identify the cause(s) of the injury being incurred. It cannot be 'dumping' because that is what the anti-dumping measures have prevented in the absence of evidence to the contrary.
42. Because the Australian industry has elected to run a high-cost business, as determined in Review 551 and again in this inquiry, in a contracting market where supply from domestic production alone significantly exceeds demand unprofitably, that is, both its domestic and export businesses are unprofitable, and, clearly, operating at a loss, where it dominates the distribution network in the market with prices that no doubt reflect this over a five year period, one would reasonably expect this to have significantly affected that market. This must be so, especially when the Australian industry dominates the market with a market share estimated to be between 65% to over 90%, and determined by the Commission in 2019 to be 85%, as noted earlier above.
43. Has operating its A4 Copy Paper business at a loss affected pricing within the Australian market and precluded both it and other participants from increasing prices? Has it precluded the anti-dumping measures from having any effect on pricing in the Australian A4 Copy Paper market? Has it conditioned resellers and retailers in the Australian A4 Copy Paper market, whom the Australian industry claims to possess the market power within the market, to prices that for the Australian industry are unprofitable?
44. In other words, has Australian Paper, by supplying A4 Copy Paper at unprofitable prices over a period of five years, acclimatised the Australian A4 Copy Paper market into expecting that

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

this is the market price of that commodity product in Australia and thereby precluding material price increases regardless of increases in costs of inputs to manufacture such as pulp and energy costs?

45. These questions above do not appear to have been considered and addressed by the Commissioner in Report 588, nor apparently investigated despite clearly being relevant to the injury and causation analysis. Unfortunately, the only interested party in Australia from whom information has been sought and obtained on the Australian A4 Copy Paper market appears to be Australian Paper. Nevertheless, it is respectfully submitted that Australian Paper's conduct in the market would have had that effect in the same way that consumer products frequently and constantly being on 'sale' has conditioned consumers to purchase only when the product is on 'sale' and not when 'full priced'. It has acclimatised the market, that is, resellers and retailers, as well as end-users, that the market price for A4 Copy Paper, which is a commodity product, is the low price at which the Australian industry, being the major supplier, unprofitably sells its product into the market. Information and evidence of this should have been obtained concerning this and related issues and, had it been obtained, it would have evidenced this.
46. In this regard, information and evidence on the Australian A4 copy Paper market appears to have been obtained solely from the Australian industry and some import data from the ABF import databased. No information or evidence appears to have been sought and/or obtained from other interested parties, such as, importantly, suppliers, distributors, resellers, retailers and end-users in the Australian A4 Copy Paper market. The question then is what current information and evidence has actually been obtained and relied upon in this inquiry and whether it is sufficient information and evidence from which to draw conclusions. This issue is addressed further below.
47. As indicated by the following diagram extracted from Report 588 on the structure of the Australian A4 Copy Paper market, it would appear that information was sought and obtained only from interested parties in the top tier of the market and then only from a limited number of such parties. There is, therefore, a significant deficit of information and evidence from interested parties in the other tiers of the market. Had such information and evidence been obtained, it would support the views expressed above.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

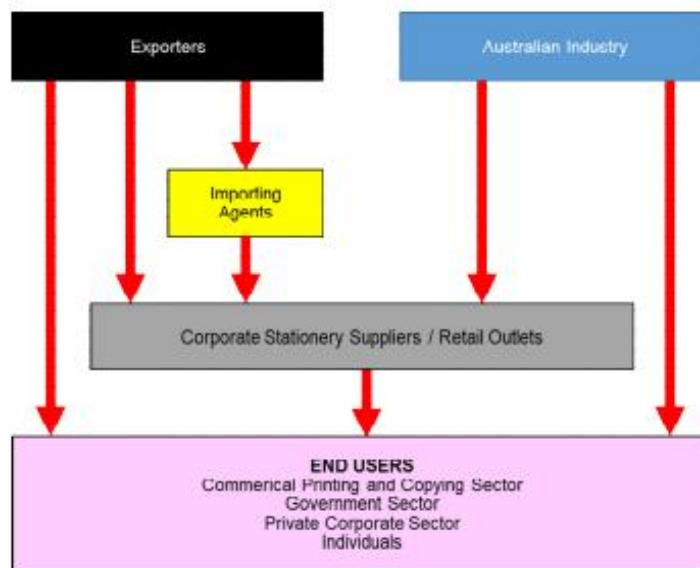


Figure 1 The commission's representation of the Australian market

Source: Report 588

48. Obtaining information and evidence from a limited number of interested parties regarding the Australian A4 Copy Paper market and the economic performance of the Australian industry's performance in that market, possesses the risk of presenting a distorted view. This has been recognised in WTO jurisprudence – see **Schedule 2**. Essentially, when relying on information and evidence from a limited number of interested parties, especially, if limited to the only interested party seeking the continuation of the anti-dumping measures, special care must be taken by the investigating authority to ensure that this limitation does not give rise to a material risk of distortion. This is particularly so when the information and evidence is primarily sourced from the party claiming injury. That risk does not appear to have been addressed with the consequent result that the effect of the major supplier's loss-making business on the Australian A4 Copy Paper market is not addressed in Report. Had it been, it would have confirmed the views expressed above.
49. In this regard, the over-riding obligation is, of course, that the determination of injury and causes thereof is 'based on positive evidence and involving an objective examination of the effect of the dumped imports on prices in the domestic market for like products, and the consequent impact of these imports on domestic producers of such products' as required by Article VI of GATT47 and Article 3.1 of the WTO Anti-Dumping Agreement.

Effect of exports from subject countries

50. There is also no evidence that exports from the subject countries caused the injury incurred by the Australian industry in the period 2017 to 2019, whether by 'dumping' or otherwise.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

51. There has been no inquiry into whether exports caused any injury to the Australian industry during the period 2017 to 2019 until the current inquiry. In the most recent review of the anti-dumping measures, Review 551, despite submissions that inquiry be undertaken as being relevant to whether the variable factors should be altered and to what extent to prevent the injury the measures are intended to prevent, the Commissioner, presumably on the advice of the Commission, elected not to inquire whether material injury was being caused to the Australian industry by dumped exports from the countries in question notwithstanding the imposition of the anti-dumping measures and, therefore, whether the variable factors required alteration to prevent such injury.
52. Given the injury incurred by the Australian industry during the period 2017 to 2019, that is, its unprofitability following the imposition of the anti-dumping measures, what injury could have been caused by exports from the countries in question attributable to dumping that the Australian industry would have incurred regardless of the measures? This is not addressed by the Commissioner in Report 588. Further, there is no evidence of material injury being so caused to the Australian industry by exports through the effects of price suppression or depression or reduced sales volumes in 2020 due to dumping notwithstanding the altered variable factors following Review 551 and continued imposition of the anti-dumping measures.
53. The Australian A4 Copy Paper market during the period 2017 to date is a market characterised as one that is protected by the anti-dumping measures, which measures were reviewed and altered following Review 551, and protected by additional dumping measures imposed in 2019 on exports of A4 Copy Paper from other countries. Despite this extensive tariff protection, the Australian industry continued to be unprofitable and, presumably, operates at a loss. In other words, the Australian A4 Copy Paper market during this period is not only characterised as a market protected by anti-dumping measures but also a market dominated by an unprofitable, loss-making near-monopoly supplier, and a market in which demand is progressively contracting due to technological change and that is over-supplied by excess domestic production alone.
54. The effect of exports from the subject countries on the Australian A4 Copy Paper market and on the Australian industry during this period, if any, and whether any such effect can be attributed to dumping notwithstanding the imposition of anti-dumping measures on such exports as well as on exports from other countries since 2019, has not been investigated. Sufficient, reliable and relevant information and evidence from participants in that market has not been obtained, either in this inquiry or previously, regarding this issue. It is submitted that in the absence of sufficient evidence, no sensible conclusion can be made regarding the likelihood of the expiry of the anti-dumping measures resulting in the injury that the measures are intended to prevent.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

55. Further, having regard to the foregoing, how will the continuation of the anti-dumping measures address and remedy the Australian industry's systemic unprofitability and loss-making A4 Copy Paper business in the prevailing market conditions when such measures have not done so and, apparently, could not do so thus far? What injury is being prevented that the measures are intended to prevent? What injury will continue or recur on the expiry of the anti-dumping measures that would not otherwise occur regardless of whether the measures are continued or expire?
56. These questions are not answered in Report 588, nor addressed. As such, it would seem problematic to draw any conclusion that the expiry of the anti-dumping measures would lead or be likely to lead to the continuation or recurrence of the injury that the measures are intended to prevent, when injury has continually been incurred since the anti-dumping measures were imposed and the Australian industry only became unprofitable following the imposition of the measures. The better and preferred view and, indeed, only view it is contended, is that the expiry of the anti-dumping measures would not lead or be likely to lead to the continuation or recurrence of the injury that the measures are intended to prevent because the injury being incurred is injury that the measures were neither intended nor designed to prevent injury caused by dumping.
57. Hence, for these reasons, if for no other reason, the *reviewable decision* is not the correct and preferred decision. As outlined above, the expiry of the anti-dumping measures would not have led to or be likely to have led to the continuation or recurrence of the material injury to the Australian industry producing like goods that the measures are intended to prevent. The *correct and preferred decision*, therefore, is that the continuation of the anti-dumping measures not be secured but, rather, that they expire on the due expiry date.

Additional grounds expiration of the measures would not lead to injury intended to be prevented

58. There are also additional reasons/grounds why the *reviewable decision* is not the correct and preferred decision, and that the *correct and preferred decision*, therefore, is that the continuation of the anti-dumping measures not be secured but, rather, that they expire on the due expiry date. These are set out below.
59. The expiry of the anti-dumping measures would not have led to or be likely to have led to the continuation or recurrence of the material injury to the Australian industry producing like goods that the measures are intended to prevent because:

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (a) injury incurred by the Australian industry following the imposition of the anti-dumping measures on 19 April 2017 cannot be attributed to exports of A4 Copy Paper from the countries in question at dumped export prices; and
- (b) injury incurred and continuing to be incurred by the Australian industry following the imposition of the anti-dumping was and is being caused by factors other than dumping, and

consequently, the anti-dumping measures are not intended and cannot prevent such injury, being injury not caused by dumping of exports here in question. Therefore, continuation of the anti-dumping measures should not have been secured but, rather, should have been allowed to expire on the due expiry date.

- 60. Since the imposition of the anti-dumping measures on 19 April 2017, Australian Paper, the sole producer of A4 Copy Paper in Australia and, therefore, constituting the entire Australian industry, has been unprofitable as demonstrated by the graph on the Australian Industry's profitability on and from 2015 extracted from Report 588 page 34, set out at paragraph 25 above.
- 61. That graph clearly shows that each year since the imposition of the anti-dumping measures, Australian Paper's A4 Copy Paper business has been unprofitable, that is, operating at a loss, to varying degrees with the greatest increases in unprofitability occurring immediately after the imposition of the anti-dumping measures in 2017 and again in 2020 immediately after the imposition in 2019 of additional anti-dumping measures on exports of A4 Copy Paper to Australia from other countries.
- 62. It is understood that Australian Paper has been unable to recover its cost to make and sell A4 Copy Paper and, further, that both its domestic and export A4 Copy Paper businesses have been unprofitable throughout this period with its export business being more unprofitable as it sells its production of A4 Copy Paper to export markets at 'less lucrative prices' (that is, dumped export prices) than it obtains in the Australian A4 Copy Paper market.
- 63. Given that interim dumping duty was payable on exports of A4 Copy Paper from the subject countries on and from 19 April 2017 worked out using the combination fixed and variable duty method and, therefore, such exports were entering into the commerce of Australia at 'un-dumped' prices:
 - (a) the injury being incurred by the Australian industry could not have been being caused by such exports at dumped export prices;

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (b) the injury being incurred by the Australian industry was not prevented by the imposition of anti-dumping measures; and
 - (c) the injury incurred by the Australian industry, including the fluctuations in that injury, could not have been caused or be attributed to exports from the subject countries at dumped export prices, and there is no analysis supported by evidence in Report 588 in this regard.
64. As set out above, information and evidence has not been obtained from participants in the Australian A4 Copy Paper market at all levels to enable a proper analysis of the Australian A4 Copy Paper market following the imposition of the anti-dumping measures, including the Australian industry's unprofitable economic performance in that market and the effect of its loss-making business operations on that market, as well as the effect of exports from the subject countries on that market and the Australian industry during this period following the imposition of the measures.
65. Specifically:
- (a) there is no analysis supported by evidence in Report 588 as to what was the actual cause of the injury incurred by the Australian industry during this period, including the fluctuations in unprofitability during this period;
 - (b) there is no analysis supported by evidence as to how and what injury the anti-dumping measures prevented during this period, nor why the measures did not prevent the Australian industry from being unprofitable throughout this period;
 - (c) there is no analysis supported by evidence of the Australian A4 Copy Paper market in relation to market forces prevailing in that market during this period, including why prices in that market did not respond to the market forces of supply and demand;
 - (d) there is no analysis supported by evidence of pricing within the Australian A4 Copy Paper market at each level of trade within that market, including no analysis of the price elasticity of demand and cross-elasticity of demand, if any, within that market as between 'paper products' and 'electronic (digital) solutions' and as between different grades (MCCs) of A4 Copy Paper and nor import price elasticity of demand between imported and domestically produced A4 Copy Paper products;
 - (e) there is no analysis supported by evidence of whether and which participants in the Australian A4 Copy Paper market are 'price takers' and/or 'price makers', nor the effect that this has on pricing and, consequently, the economic performance of participants in that market; and

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (f) there is no analysis supported by evidence as to the extent to which exports from the subject countries have penetrated the Australian A4 Copy Paper, including which market segments, such as between business and consumer end-users, and their effect on the market, if any, independently of that caused by the Australian industry.
66. For example, on the issue of whether and which participants in the Australian A4 Copy Paper market are 'price takers' and/or 'price makers', the Australian industry has claimed that it is a 'price taker' and that the resellers and retailers possess the market power within the Australian A4 Copy Paper market and set prices. Assuming this to be the case, then why would it be in the commercial interests of those parties to raise prices or to raise prices in a contracting market? Their A4 Copy Paper business is a commodity product business that depends upon sales volumes for profitability. How would increasing prices in such a business be of benefit to those entities in a market that is contracting due to technological change? Price increases, presumably, would apply to both imported and domestically produced product and likely only accelerate that process, resulting in a further decline in sales volumes. Hence, it would it not be in their commercial interests to maintain and/or reduce prices?
67. A claim that resellers and retailers could readily substitute lower priced imported product for higher priced domestic products because of A4 Copy Paper being a commodity product has not been made out, nor supported by evidence. Apart from some limited anecdotal evidence that resellers and retailers have been offered lower priced imported products, there is no evidence of this resulting in a decline in prices, nor a decline in the Australian industry's sales volumes, as indicated earlier above. Indeed, Australian Paper's application in Review 551 demonstrated that prices of exports from the subject countries had increased and the Commissioner found that the prices of [RAK's] exports exceeded those of all other participants in the Australian A4 Copy Paper market. As discussed earlier above, sufficient information concerning the Australian A4 Copy Paper market an analysis of that market appears from Report 588 not to have been obtained or undertaken.
68. Further, given that the dominant supplier to the Australian A4 Copy Paper market, Australian Paper, is selling its product into the market at prices that do not cover its cost to make and sell and is doing so systematically and over an extended period of time as reflected in its unprofitability since the imposition of the anti-dumping measures, would the Australian A4 Copy Paper market, including resellers and retailers as well as end-users, not have been acclimatised to such pricing and be resistant to price increases as discussed earlier above?
69. Again, unfortunately, there is no information or evidence that addresses these issues. This apparently is because information and evidence has not been sought and/or obtained from

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

such interested parties despite the relevance of this information and evidence they could provide on the operation of the Australian A4 Copy Paper market.

70. Similarly, there has been no investigation, nor analysis of price elasticity of demand within the Australian A4 Copy Paper market. Such investigation and analysis would seem to be relevant for present purposes for the reasons set out below.⁷
71. For example, the Commission accorded different model comparison codes (**MCCs**) to the various grades of A4 Copy Paper to take account of the physical differences and consequent attributes of each grade of A4 Copy Paper for the purposes of the dumping assessment and comparison with the effect of each on the Australian industry. It is evident that there is product differentiation in the A4 Copy Paper market between the different models/grades of paper otherwise, presumably, only one model/grade would be produced and sold into the market. Further, each model/grade possesses its own price points in the market.
72. The issue, therefore, is at what price or prices does an end-user such as a business-user or consumer switch from one model/grade of paper to another? For example, a business may prefer 100 gsm paper with a particular brightness because its thickness and rigidity prevents mis-feeding in high-speed photocopiers and it presents better to clients. Hence, at what price would such a business switch to purchase a lesser model/grade of paper, if at all? For a consumer on the other hand, such attributes may be of less importance, and it may more easily switch to lower-priced paper regardless of the model/grade? Unless such price elasticity of demand is addressed, it is unknown what effect a change in price of a model/grade, that is, within and between MCCs, will have in the market.
73. Further, there has been no assessment of the price elasticity of demand between A4 Copy Paper and electronic-based solutions, that is, digital, electronic solutions. At what price or prices will end-users switch from paper-based solutions to electronic-based solutions? Again, this apparently has not been investigated.
74. Similarly, the extent import price elasticity of demand in the Australian A4 Copy Paper market is unknown. That is, when and to what extent, for example, will resellers and retailers substitute imported A4 Copy Paper for that of the Australian industry or vice versa, and to what extent has this occurred in the Australian A4 Copy Paper market either before or after the imposition of the anti-dumping measures given that a switch in suppliers of significant volume of paper is unlikely to be solely based on price, however price sensitive the market is

⁷ Note: for guidance, most economics texts contain chapters on market analysis, including on price elasticity of demand. See, for example, Mateer D and Coppock 'Principles of Economics', 3rd, W.W. Norton and Company, New York, 2021, Chapter 4; and Frank RH, Bernanke BS, Antonovics, K and Heffetz O 'Principles of Economics', 8th Ed, McGraw Hill, New York, 2022, Chapter 4

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

claimed to be, especially given the widely known disruption that the pandemic has had on supply chains and effect on overseas freight costs. Again, this is unknown because it has not been investigated, either in this inquiry or beforehand.

75. This is particularly relevant because, as determined and verified by the Commission, Australian Paper only produces 80 gsm A4 Copy Paper at its Australian plant.⁸ Hence, to what extent is the import price elasticity of demand between the 80gsm A4 Copy Paper produced by Australian Paper and the various grades/models of A4 Copy Paper exported from the subject countries, if any? Clearly, there is a market for the different grades/models otherwise they would not be exported to Australia and sold in the Australian A4 Copy Paper market. The question is what, if any, is import price elasticity of demand between such products? Further, to what extent have those different grades/models of exports penetrated the Australian A4 Copy market and why? Presumably there is some such import price elasticity of demand and market penetration due to their being exported to and sold in the Australian A4 Copy Paper market. But how much and why?
76. Unfortunately, there appears to be no information or evidence addressing this issue or, at least, insufficient information and evidence.

Effect of the subject exports on the Australian A4 Copy Paper market and Australian industry

77. Notwithstanding the foregoing, the question nevertheless remains as to whether the unprofitability of Australian Paper's domestic A4 Copy Paper business since the imposition of the anti-dumping measures, was caused by or can be attributed to A4 Copy Paper exported from Indonesia, China, Brazil and Thailand at dumped export prices.
78. Given that the anti-dumping measures were imposed in April 2017 and Australian Paper's domestic A4 Copy Paper business has been unprofitable to varying degrees each year since the imposition of the measures, it is difficult to see how that unprofitability could be attributed to exports of A4 Copy Paper from Indonesia, China, Brazil and Thailand at dumped export prices. Clearly such exports were entering into the commerce of Australia and competing with Australian Paper's products at un-dumped prices having paid the requisite amount of interim dumping duty payable on importation, if any.
79. In Report 588 to the Minister setting out his findings of fact in this continuation inquiry, the Commissioner did not explain, nor make any findings, as to how such exports could have caused the injury incurred by Australian Paper due to dumping notwithstanding the anti-

⁸ See; Australian industry verification report, page 6; [588 - 015 - verification report - australian industry - paper australia Pty Ltd.pdf](#)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

dumping measures. That is, there is no analysis of the effectiveness of the anti-dumping measures or otherwise.

80. Such an analysis is required because if the anti-dumping measures have not been effective in preventing injury, as would appear to be the case, then that at least indicates, if not establishes, that the injury was caused by other economic factors, and not exports the subject of this inquiry at dumped export prices.
81. However, the Commissioner did seek to establish a causal link between exports the subject of this inquiry at dumped export prices and the injury incurred by Australian Paper through a price undercutting analysis. That analysis did not provide evidence or support for any such causal link.
82. The Commissioner's price undercutting analysis is set out in Section 8.6.1 of the Report. However, it is respectfully submitted that the analysis possesses a number of deficiencies, namely:
 - (a) the Commissioner compared the prices of the subject exports, based on their 'landed value', that is, import price as declared in the import declarations filed with Australian Border Force (ABF) on the importation of the exports, both with interim dumping duty paid and unpaid, with Australian Paper's prices. However, that is not the level of trade at which competition takes place. Rather, it occurs further down the supply chain at the retail level for sales to Australian businesses and to consumers, that is, to the end-users and to retailers and corporate stationary suppliers (refer to Figure 1 in Report 588 extracted earlier above);
 - (b) the above comparison by the Commissioner appears to have treated A4 Copy Paper as a single, homogenous product, when it is not as discussed earlier above, especially when sold at the retail level of trade to end-users as a consumer product. Any injury and causation analysis must be based on an analysis of purchasing decisions for each 'model' of A4 Copy Paper, that is, why is one 'model' preferred over another by which customers and for what reason, and at what price points would purchasers shift their purchasing decision from one 'model' to another, if at all – that is, whether there is any cross elasticity of demand between 'models' and, if so, what it is. Such analysis should also include at what price points would purchasers such as resellers and retailers switch suppliers from those supplying imported products in place of the domestically produced product and vice versa.
 - (c) only in the context of such an analysis can conclusions be drawn from the existence of price undercutting. Price undercutting of itself only demonstrates that one product

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

and, in particular, one model of a product, that is, MCC, is less than another with which it competes. It, of itself, does not establish what effect that the price undercutting actually has, such as obtaining increased sales volumes or affecting pricing within the market, such as depressing or suppressing prices. That requires additional analysis. Specifically, what extent of price undercutting has an effect on prices and sales volumes and in which market segments and to what extent? Further, given that factors affecting purchasing decisions are different at the different levels of trade such as, for example, between resellers/retailers and end-users, then the effect of any price undercutting and its extent will be different. Hence the requirement for additional analysis. Mere observation without analysis does not establish cause and effect;

- (d) further, in such price undercutting analysis and in Report 588 generally, it is unclear to what extent and where exports from the subject countries have penetrated the Australian market. As the Australian A4 Copy Paper market is and has been dominated by Australian Paper with approximately 85% market share, including distribution networks, where and to what extent have exports penetrated the market, especially the retail level of trade market segments and to what extent is price undercutting relevant to that penetration?
- (e) as the point of competition between the subject exports and the Australian industry is at the retail level of trade, that is, with end-users, as found by the Commissioner, then a price undercutting analysis at that level of trade would be required and must assess whether and to what extent has the margin of dumping of the subject exports 'flowed through' to prices at the point of competition and thereby enabling price undercutting due to 'dumping' and, if so, to what extent. Such an assessment was apparently not undertaken. Hence it is not possible to attribute any price undercutting or the extent of any price undercutting to 'dumping' by the subject exports at that level of trade, nor to what extent this may have affected upstream purchasing decisions by resellers and retailers, if at all. There does not appear to be any evidence that it has given the maintenance of its sales volumes by the Australian industry in a contracting market.

- 83. In addition, it is of course the case that the 'export price' of [RAK's] exports is not the 'actual landed value' of such exports. Rather, the 'export price' of 'particular goods' exported to Australia by [RAK] is the price paid or payable by AFEM to RAK, at least as determined by the Commissioner and by the Minister on the Commissioner's recommendation. Whether the dumping margin determined for those exports has 'flowed through' not only to the 'actual landed value' (that is, import price) and then down to the point of competition at each subsequent level of trade was not undertaken by the Commissioner and, consequently, was

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

not addressed in Report 588. Nor has there apparently been an analysis of any such ‘flow through’ but also the effect of the anti-dumping measures on any such ‘flow through’. Hence the Commissioner’s price undercutting analysis possesses this further deficiency in relation to [RAK’s] exports, as well as other exporters.

84. That is, at least in the case of exports of A4 Copy Paper by [RAK], any price undercutting by such exports in the Australian A4 Copy Paper market and the extent of such price undercutting cannot be attributed to ‘dumping’ of such exports.
85. In so far as [RAK’s] exports are concerned, the ‘export price’ determined to be dumped in both this inquiry and Review 551 was the price paid by AFEM to RAK. That is not the price at which [RAK’s] exports enter into the commerce of Australia. The price at which [RAK’s] exports are introduced into the commerce of Australia is the price paid by AFEM’s Australian customers to AFEM. Neither in this inquiry, nor in Review 551, has that price been determined to be a dumped price. Nor has it been determined whether and to what extent the dumping margin determined for the ‘export price’ between AFEM and RAK ‘flowed through’ to the price paid by AFEM’s Australian customers to AFEM, if at all. This would seem to be required especially given how such ‘export prices’ between AFEM and RAK are derived, as discussed later below.
86. Consequently, determining the ‘landed duty inclusive price’ for [RAK’s] exports on the landed price, that is, the price payable by AFEM’s Australian customers, was, with respect, incorrect. The price to be uplifted by the application of the dumping margin, if at all, is the ‘export price’ of the ‘particular goods’, that is, the price payable by AFEM to RAK, not the price payable by AFEM’s Australian customers, which is not the ‘export price’. There is no evidence whether that price requires ‘uplifting’ to offset any margin of dumping that may have ‘flowed through’ to that price notwithstanding that such prices are independently negotiated at arm’s length prior to the ‘export price’ being calculated, or, if it does, to what extent to offset the injurious effects of ‘dumping’. Accordingly, the price undercutting analysis as regards [RAK’s] exports is flawed in this respect.
87. Further, assuming that the Commissioner’s price undercutting analysis is correct in so far as [RAK’s] exports are concerned, it is evident that even entering into the commerce of Australia at an interim duty inclusive price (that is, an un-dumped price), that price would undercut Australian Paper’s prices and, presumably, cause or have the potential to cause, if exported in sufficient volumes, the price and volume effects of price suppression, price depression and reduced sales volumes.
88. This is supported by the Commissioner’s analysis of a non-injurious price (**NIP**) in respect of [RAK’s] exports where he stated in Report 588 that *“In respect of the goods exported to Australia from Indonesia by RAK, the commission found that the NIP is greater than the normal*

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

value of those goods and therefore the NIP is not operative” (at page 109). In other words, at export prices equal to their normal value (that is, un-dumped), [RAK’s] prices would undercut Australian Paper’s unsuppressed selling price, being ‘the sum of Australian Paper’s CTMS of like goods during the review period, plus a profit margin achieved in a period considered unaffected by dumping’.

89. Hence, regardless of whether [RAK’s] exports were dumped or un-dumped, they would still undercut Australian Paper’s prices and, presumably, cause it the price and volume related injury mentioned earlier above. It follows, therefore, regardless of the margin of dumping, if any, [RAK’s] exports will undercut Australian Paper’s prices and this will continue regardless of whether the anti-dumping measures are allowed to expire or are continued. In other words, the expiry of the anti-dumping measures will not lead to or be likely to lead [RAK’s] exports the continuation of the material injury that the measures are intended to prevent. This is because the anti-dumping measures are not intended to prevent injury not caused by dumping.
90. However, it also must be noted that [RAK’s] exports were found to have undercut Australian Paper’s prices in one year only in the period 2019 to 2021, or at any time since the imposition of the anti-dumping measures, namely, only in 2021. In 2019, the period the subject of review in Review 551, Australian Paper’s prices undercut those of [RAK], not the other way around. This was found to be the case by the Commissioner and accepted by the Minister even though [RAK’s] exports were determined to be at dumped export prices with a dumping margin of 10.7% and notwithstanding that it was determined that prices for A4 Copy Paper in Indonesia were significantly less than those in Australia, thereby conferring a comparative advantage for Indonesian exporters.
91. In other words, in Review 551, the Commissioner found as fact, supported by evidence, that the prices of [RAK’s] exports in the Australian A4 Copy Paper market were **higher** than those of Australian Paper and of all other participants in that market and that this was so notwithstanding that [RAK’s] export prices were 10.7% less than its domestic selling prices in the Indonesian A4 Copy Paper market where prices were less than those in the Australian A4 Copy Paper market, thereby conferring a comparative advantage on Indonesian producers and exporters. How the Commissioner made or could have made these findings of fact supported by evidence was not explained in Review 551.
92. This difference in the cost to make and sell A4 Copy Paper and consequent prices of A4 Copy Paper between the Australian and Indonesian markets, with the former being higher than the latter as found in Review 551, has apparently not been further investigated, including in relation to the other countries whose exports were the subject of the continuation inquiry, as being a cause of the Australian industry’s injury. That is to say, for a commodity product,

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

global competitiveness would seem a relevant consideration, especially when the Australian industry's export sales into global markets were 'less lucrative' than its domestic sales.

93. In light of the above deficiencies in the Commissioner's price undercutting analysis, it not only is not possible to attribute any price undercutting to 'dumping' of the subject exports but also, consequently, any price and volume effects from price undercutting such as price suppression, price depression and reduced sales volumes. It therefore follows that it is not possible to causally link any reduced sales revenue and profit to 'dumping' of the subject exports, that is, 'injury', nor the extent of any such 'injury' caused by 'dumping' of the subject exports.

Cause of the Australian industry's injury

94. While it is not possible to causally link any injury incurred by Australian Paper to 'dumping' of the subject exports, it is possible to ascertain what caused injury to Australian Paper, namely, its lack of profitability since the measures were imposed.
95. That unprofitability was caused by Australian Paper's over-production of A4 Copy Paper in a progressively declining domestic market in which prices had not and could not increase and with excess production being sold into export markets at 'less lucrative' prices than those obtained in the Australian market. The effect of this was Australian Paper was incurring increasing costs to make and sell due, amongst other things, to increasing raw material costs, energy cost, labour costs, etc., that it was unable to recover through increased sales prices and volumes either in its domestic or export sales. This is evident from, amongst other things, the findings in Review 551 and the Commission's Australian industry verification report in this inquiry.⁹ Hence its unprofitability.
96. Hence also the finding that Australian Paper's prices were insufficient to cover its cost to make and sell and, as a result, its domestic and export A4 Copy Paper businesses were both operating at a loss, at least for the period from 2019 to 2021, according to the Commissioner in Report 588, if not earlier, as indicated in the graph extracted from Report 588 set out above. That graph discloses that the Australian industry had been unprofitable since the imposition of the anti-dumping measures.
97. Given that the Australian A4 Copy Paper market was progressively declining and had been doing so from at least 2016 due to technological change with 'digitalisation' replacing A4 Copy Paper, and that even if Australian Paper supplied 100% of the market, it would still have production in excess of market size by approximately 40% to 50%, and accordingly, the questions that need to be addressed are:

⁹ See: [588 - 015 - verification report - australian industry - paper australia Pty Ltd.pdf](#)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (a) to what extent would Australian Paper's prices in both its domestic and export sales need to increase in order for it to return to profit; and
 - (b) would the Australian market support such a price increase even in the absence of import competition?
98. These questions were not addressed in Report 588. Consequently, there is no information or evidence that Australian Paper could have increased its prices in the Australian A4 Copy Paper market and to an extent to become profitable and cease incurring injury regardless of the presence of the subject exports and regardless of whether they were at dumped export prices. This would seem remote at best given the absence of material price increases since the imposition of the anti-dumping measures.

Excluding competition from the Australian A4 Copy Paper market

99. Regarding this issue, the purpose in imposing anti-dumping measures is to increase prices in the relevant market that are being depressed and/or suppressed by dumping. It is not to exclude competition from the market.
100. However, since the imposition of the anti-dumping measures in 2017, there is no evidence of a commensurate rise in prices in the Australian A4 Copy Paper market. The reasons for this are self-evident, namely:
- (a) A4 Copy Paper is a consumer product where competition takes place at the retail level of trade in sales to end-users, that is, Australian businesses and consumers;
 - (b) in a frequently acknowledged to be a 'price sensitive' market, it is those end-users that determine the market prices for the various 'models' of A4 Copy Paper or, at least, the suppliers to those end-users, the resellers and retailers;
 - (c) those end-users are unlikely to accept material increases to the prices of A4 Copy Paper, which increases, were they to occur, would likely accelerate the transition to digitalisation, thereby adversely affecting sales volumes and sales revenues;
 - (d) suppliers to Australian businesses and retailers presumably would be well aware of this and purchase A4 Copy Paper at prices that they could re-sell profitably without accelerating the transition to digitalisation as the substitute for A4 Copy Paper; and
 - (e) being a high-cost business, the Australian industry cannot compete globally with lower cost producers in other jurisdictions, as found in Review 551 and evidenced by Australian Paper's 'less lucrative' export sales and, consequently, has maintained its

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

unprofitable prices, which, being the major supplier to the market, has established it as the market price in Australia.

101. If it is not possible to increase prices in the Australian A4 Copy Paper market in amounts sufficient to enable Australian Paper to return to profit, and if the imposition of anti-dumping measures not only has not increased prices in the Australian A4 Copy Paper market but also not materially since the measures were imposed, what is or could be the objective of having measures continued? It cannot prevent the injury being incurred as it is not being caused by the exports of A4 Copy Paper from the subject countries.
102. The answer lies, in part, in the nature of measures imposed as well, that is, the method of working out the interim dumping duty payable on 'dumped' exports. That method typically is the fixed and variable method. The object of that interim dumping duty is to increase the import price of the subject exports as they enter into the commerce of Australia by at least an amount equal to the fixed component.
103. The effect of this is to increase the price of the subject exports in a price sensitive contracting market where historically significant price increase have not been possible. If the subject exports cannot compete in the Australian A4 Copy Paper market at those increased prices, then the effect of the imposition of the anti-dumping measures and payment of interim dumping duty would be to exclude those exports from the Australian market. Presumably the benefit for the Australian Industry would be increased sales volumes but not at increased prices that may reduce its unprofitability.
104. This would seem to be the reason why, when the export prices of the subject exports increased, as determined in Review 551 due to increases in the cost to make, Australian Paper's prices did not increase notwithstanding its acknowledged increased cost to make. At least it seems to be the only available explanation in the circumstances prevailing in the Australian A4 Copy Paper market.
105. The object of the imposition or here, the continuation of, the anti-dumping measures is to exclude the subject exports from the Australian market due to market forces precluding significant increases in prices and this is known by participants in the market, including Australian Paper, then the imposition or continuation of the measures would be for an improper purpose and, also, possibly contrary to section 46 of the *Competition and Consumer Act* as previously submitted.

Conclusion – Preferable Decision 1

106. For the reasons set out above, the *reviewable decision* is not the correct or preferable decision, but that the *correct and preferred decision* is that the continuation of the anti-

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

dumping measures not be secured but be allowed to expire, both in the national interest and because the expiry of the anti-dumping measures would not lead or be likely to lead to the continuation or recurrence of the injury that the measures are intended to prevent.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Schedule 1

Distinction between ‘injury’ and causes thereof

It is not unusual in dumping investigations for it to be asserted that the domestic injury has incurred injury in the form of:

- price undercutting
- price suppression
- price depression
- reduced sales volumes
- reduced sales revenues
- loss of market share
- reduced profit and profitability
- reduced return on investment

Of this shopping list, only reduced profit constitutes injury incurred by the commercial entity or entities comprising the domestic industry.

Price undercutting, price suppression, price depression and reduced sales revenues are the causal links between the exports at dumped export prices and the reduced profit (injury) incurred by the domestic industry.

That is, that exports are at dumped export prices enables those exports to undercut the prices of the domestic industry to the extent of the dumping. Beyond that, the price undercutting cannot be attributed to ‘dumping’.

Depending upon the volumes of the exports undercutting the prices of the domestic industry because of ‘dumping’, then such price undercutting can lead to price suppression (i.e., preventing the domestic industry from increasing its prices) and/or price depression (i.e., causing the domestic industry to reduce its prices) and/or reduced sales volumes. These price and volume effects, either individually or collectively, can result in reduced revenues for the domestic industry that, in turn, after taken into its costs to make and sell result in reduced profit.

Absent, for example, price undercutting or price undercutting due to ‘dumping’, it is difficult to see how exports at dumped export prices could cause injury to the domestic industry. Hence the importance of establishing the causal links between the exports at dumped export prices and the injury incurred by the domestic industry.

Such analysis is required by and reflected in Article 3 of the WTO Anti-Dumping Agreement:

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- “3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the **effect of the dumped imports on prices** in the domestic market for like products, and (b) the **consequent impact** of these imports on domestic producers of such products.
- 3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the **effect of the dumped imports on prices**, the investigating authorities shall consider whether there has been a significant **price undercutting** by the dumped imports as compared with the price of a like product of the importing Member, or whether the **effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree**. No one or several of these factors can necessarily give decisive guidance.” (emphasis added)

It is these ‘effects’, both price effects and sales volumes ‘effects’, that dumped export ‘prices’ have on the domestic industry through price undercutting due to ‘dumped’ export prices that cause injury, that is reduced revenues and consequent reduced profit.

Absent one link in the ‘causation chain’ between ‘export price’ and ‘injury’ (i.e., reduced revenues and profit), the injury being incurred cannot be causally linked to ‘dumping’.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Schedule 2

WTO Jurisprudence

Extract from Appellate Body Report in *EC – Fasteners (China)* (Article 21.5 – China), para. 5.319:

"In the original proceedings, the Appellate Body found that, in special market situations such as a fragmented industry with numerous producers, the practical constraints on an investigating authority's ability to obtain information regarding domestic producers may justify defining the domestic industry on the basis of a lower proportion than would be permissible in a less fragmented market. Nevertheless, even if it relies on a lower proportion, an investigating authority should not seek to rely exclusively or predominantly on those domestic producers that consider themselves to be injured and may thus be willing to be part of the injury sample. We recall that 'objective examination' under Article 3.1 requires that the domestic industry, and the effects of dumped imports, 'be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation'. Where an investigating authority relies on a lower proportion of domestic producers to define the domestic industry in the case of fragmented industries, it is particularly important that the process used to select domestic producers does not introduce a material risk of distortion and that, therefore, the proportion of total production included in the domestic industry definition is representative of the total domestic industry." (underlining added)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Preferable Decision 2

Grounds: The grounds on which it is contended that the *reviewable decision* was not the correct or preferable decision and that the *correct and preferable decision* is for the Minister to decide pursuant to section 269ZH(1)(a) of the *Customs Act 1901*, not to secure the continuation of the anti-dumping measures in the form of a dumping duty notice applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] but that such anti-dumping measures expire on and from the due expiry date of 19 April 2022 are set out below:

[RAK]

1. The expiry of the anti-dumping measures applying to exports of A4 Copy Paper to Australia from Indonesia by [RAK] would not have led to or be likely to have led to the continuation or recurrence of the material injury to the Australian industry producing like goods that the measures are intended to prevent.
2. There is no finding of fact supported by evidence in Report 588 or elsewhere that exports of A4 Copy Paper to Australia from Indonesia by [RAK] caused material injury to the Australian industry, let alone caused material injury to the Australian industry due to its exports being at dumped export prices following the imposition of the anti-dumping measures on 19 April 2017.
3. The material injury incurred by the Australian industry during the period 2017 to 2020, being its unprofitability during this period, was not and could not have been caused by exports of A4 Copy Paper to Australia from Indonesia by [RAK]. To the extent that there were any such exports during this period, they either were:
 - (a) not at dumped export prices; and/or
 - (b) even if they were at dumped export prices, were at insufficient volumes to cause any injury; and/or
 - (c) even if they were at dumped export prices, there was no evidence that they were undercutting the prices of the Australian industry in the Australian A4 Copy Paper market. Rather, as found in Review 551, such exports were not undercutting the prices of the Australian industry in the Australian A4 Copy Paper market or any other participant in that market; and/or
 - (d) even if they were exported at dumped export prices, they were entering into the commerce of Australia at un-dumped prices due to payment of any interim dumping duty on importation using the combination fixed and variable duty method.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

4. Hence, there was no finding of fact, supported by evidence, that exports of A4 Copy Paper to Australia from Indonesia by [RAK] during the period 2017 to 2020 were causing injury in the form of unprofitability.
5. Further, and in the interests of completeness, there has been no finding of fact supported by evidence that exports of A4 Copy Paper to Australia from Indonesia by [RAK], to the extent that there were any, caused injury to the Australian industry at any time during the period 2017 to 2020, whether from dumping or otherwise..
6. There also could not be any finding of fact supported by evidence of this occurring, given the volume of such exports by [RAK] during this period and the finding of fact in Review 551 that [RAK's] exports in 2019 were not undercutting the prices of the Australian industry. Further, there is no evidence, or none referred to, of [RAK's] exports during the period prior to 2019, to the extent there any, being at 'dumped' export prices.
7. Hence, any injury incurred by the Australian industry on or before 2020 could not have been caused by [RAK's] exports.
8. In relation to [RAK's] exports in 2021, there was no analysis and, consequently, no finding of fact that the Australian industry would not have incurred the injury it incurred in that year and to that extent but for [RAK's] exports, whether alone or accumulated with other exports from the countries in question. That is, there was no analysis nor quantification of any injury that could be attributed specifically to [RAK's] exports at dumped export prices in that year that the Australian industry would not have otherwise incurred from other causes.
9. Further, the finding of fact in Report 588 was, that [RAK's] exports in 2021 were undercutting the prices of the Australian industry after payment of any interim dumping duty payable using the combination fixed and variable duty method, and hence any injury attributable to [RAK's] exports in 2021 was not caused by its exports being at dumped export prices. That is, there was no finding of fact supported by evidence that the anti-dumping measures were not preventing any injury that could have been caused by [RAK's] exports at dumped export prices that the Australian industry would not otherwise have incurred regardless of any such exports or their export prices.
10. In addition, it was found in Report 588 that [RAK's] exports if exported at un-dumped export prices, that is, at export prices equal to their normal value as determined by the Commissioner in Report 588, such exports would undercut the Australian industry's unsuppressed selling price and, presumably, cause injury to the Australian industry. Again, any injury incurred by the Australian industry, would not be caused by [RAK's] exports.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

11. Hence, even at un-dumped export prices, exports of A4 Copy Paper to Australia from Indonesia by [RAK] would cause injury to the Australian industry if exported in sufficient volumes, whether alone or cumulated with others.

[All other exporters]

12. The expiry of the anti-dumping measures applying to exports of A4 Copy Paper to Australia from Indonesia by [all other exporters] would not have led to or be likely to have led to the continuation or recurrence of the material injury to the Australian industry producing like goods that the measures are intended to prevent.

13. This is because:

- (a) there have been no exports of A4 Copy Paper from Indonesia by an exporter falling within the category of 'all other exporters' since the imposition of the anti-dumping measures or beforehand nor any evidence of this occurring in the foreseeable future; and
- (b) there was no finding of fact supported by evidence in Report 588 of exports of A4 Copy Paper Indonesia by an exporter falling within the category of 'all other exporters' either during the investigation period or beforehand; and
- (c) in the unlikely, that is, remote event of an exporter falling within the category of 'all other exporters' commencing to export A4 Copy Paper to Australia from Indonesia produced by some unidentified Indonesian producer at some indefinite future point in time at the same export price as that for [RAK's] exports at the same point in the supply chain as [RAK's] exports, then, as found by the Commissioner in Report 588 in relation to [RAK's] exports, the landed duty paid prices of such exports would undercut the Australian industry's prices, as would they if exported at their normal value – that is, duty-paid or un-dumped prices of such exports would undercut the Australian industry's price and, thereby cause injury but not from 'dumping'; and
- (d) consequently, 'dumping' of exports by such exporters could not 'continue' or 'recur' on the expiry of the anti-dumping measures in the absence of exports by such exporters at any time and no evidence that they would or could occur in the future or when or at what export prices.

Detailed grounds are set out below.

14. As noted above, there have been no exports of A4 Copy Paper from Indonesia by an exporter falling within the category of 'all other exporters' since the imposition of the anti-dumping

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

measures or beforehand nor any evidence of this occurring in the foreseeable future and there is and has been no finding of fact supported by evidence to the contrary including in Report 588.

15. In other words, the ‘best available information and evidence’ is that there have been no exports of A4 Copy Paper to Australia from Indonesia by an exporter falling within the category of ‘all other exporters’ either before or after the imposition of the anti-dumping measures.
16. Further, there is no evidence and none referred to in Report 588, nor a finding of fact supported by evidence, that the expiry of the anti-dumping measures on the due expiry date would lead or be likely to lead to such exports.
17. In the absence of exports by such exporters, then ‘dumping’ of such exports could not ‘continue’ or ‘recur’ not having previously occurred, let alone the ‘continuation’ or ‘recurrence’ of the material injury caused to the Australian domestic industry producing like goods by such non-existent exports.
18. Further, there is no evidence of the likelihood of such exports occurring in the foreseeable future, whether or not at dumped export prices. To suggest otherwise is mere speculation.
19. There is no finding of fact supported by evidence of any producer of A4 Copy Paper in Indonesia whose A4 Copy Paper could commence to be exported to Australia in the foreseeable future apart from those producers whose A4 Copy Paper if and when exported to Australia are exempt from anti-dumping measures including the subject anti-dumping measures. No such producer of A4 Copy Paper in Indonesia is identified in Report 588 by the Commissioner.
20. The Commission’s Dumping and Subsidy Manual (December 2021) defines who the Commission considers to fall within the ‘all other exporters’ category, namely:

“The ‘all other exporters’ rate’

The Commission will generally determine an ‘all other exporters’ rate in investigations, reviews and continuation inquiries, as relevant. The ‘all other exporters’ rate applies to any exporters not known, or which did not exist, at the time of the investigation, and applies to any new exporters. In practice the Commission generally calculates one rate for uncooperative and all other exporters known as the ‘the uncooperative and all other exporters rate’.” (at page 122)

21. If an entity did not exist or is unknown, it is difficult to comprehend how that a ‘non-existent’ entity could be an ‘exporter’ of the goods in respect of which anti-dumping measures are

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

considered being imposed or considered being continued. To be an 'exporter' presumably the 'exporter' must exist as an entity and have exported the product in question to the importing country at the relevant time.

22. To impose or continue anti-dumping measures on entities who do not exist or who are unknown to exist and, therefore, have not exported the product in question to the importing country, is to speculate that at some indefinite time in the future such exporter(s) may come into existence and commence to export A4 Copy Paper produced in Indonesia by an unidentified producer who also has since come into existence and/or commenced production of A4 Copy Paper to newly acquired Australian customers at 'dumped' export prices with neither export prices nor normal value having altered in the intervening period, thereby causing material injury to an Australian industry that also has remain unchanged along with the Australian A4 Copy Paper market in the intervening period.
23. The likelihood of the above occurring would seem remote and is not 'based on facts' but is 'mere allegation, conjecture and remote possibility', contrary to Article 3.7 of the WTO Anti-Dumping Agreement, especially as it has not occurred since the anti-dumping measures were imposed and is not reasonably foreseeable and imminent as required by section 269TAE(2AA) of the *Customs Act 1901*.
24. The anti-dumping measures applying to exports of A4 Copy Paper from Indonesia by 'all other exporters' is, in effect, a 'country-wide' anti-dumping measure, the imposition of which is not permitted under the WTO Anti-Dumping Agreement unless the conditions specified in Article 9.2 exist. There is no evidence that those conditions exist here. Hence, the continuance of the anti-dumping measures applying to exports of A4 Copy Paper from Indonesia by all other exporters is inconsistent with the WTO Anti-Dumping Agreement.
25. Further, there is no factual or evidentiary basis for the continuation of anti-dumping measures on a 'country-wide' basis consistent with administrative law, nor a construction of provisions in Australia's legislative regime in Part XVB of the *Customs Act 1901* consistent with the WTO Anti-Dumping Agreement that it implements.
26. Presumably, the rationale in imposing anti-dumping measures on exports from a country by all other exporters is that if some exporters whose exports from that country have been found to have been exported at dumped export prices and because of that caused material injury to a domestic industry in the importing country, then exports from that country by all other exporters if and when occurring must also be at dumped export prices and because of that cause material injury. This would seem to be the rationale even if exports from that country by some exporters are found not to have been at dumped export prices as is the case for Indonesia.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

27. Nevertheless, on this basis, and taking the rationale to its logical conclusion, would it not also be the case that if exports from one country have been found to be at dumped export prices and because of that caused material injury to a domestic industry in the importing country, then exports from all and any other countries must necessarily be at dumped export prices, or this is likely to be the case, and because of that cause material injury, thereby permitting the imposition of 'global' anti-dumping measures as well as 'country-wide' anti-dumping measures? It is respectfully submitted that this cannot be correct.
28. The effect of continuing the anti-dumping measures on exports of A4 Copy Paper from Indonesia by all other exporters is that if and when such an exporter were to commence to export to Australia, its exports would be subject to the measures notwithstanding that there has been no investigation into whether exports by that exporter are at dumped export prices and because of that causing material injury to the Australian industry.
29. This is contrary to Article 1 of the WTO Anti-Dumping Agreement. It is also contrary to Australia's anti-dumping legislation as the Minister could not be satisfied, supported by evidence, that the expiry of the anti-dumping measures as applying to [all other exporters] would lead to or likely lead to the continuation or recurrence of the injury that the measures are intended to prevent, including the threat of injury, which must be imminent and foreseeable.¹⁰
30. Further, there is no evidence that, if and when such an exporter were to commence to export to Australia, those exports would be at dumped export prices. If, on the other hand, if there were such exports by such an exporter and no anti-dumping measures applied to such exports, the Australian industry is not deprived of a remedy if it considers such exports to be at dumped export prices and because of that causing it material injury. The Australian industry may make an application for the imposition of anti-dumping measures on such exports in the usual way under Division 2 of Part XVB of the *Customs Act 1901* as expressly contemplated by that Division.
31. That such remedy is available and has been available to Australian Paper is evidenced by its application that led to exports of A4 Copy Paper from Indonesia by an exporter not whose exports were not subject to anti-dumping measures, namely, Investigation 583 (see [583 | Investigation | Department of Industry, Science, Energy and Resources](#)). Further, such remedy is available if exporters commence to export from countries not subject to anti-dumping measures as Investigation 463 evidences (see: [EPR 463 | Investigation | Department of Industry, Science, Energy and Resources](#)).

¹⁰ See section 269TEA(2BB) of the *Customs Act 1901*.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

32. The imposition and, therefore, continuance of anti-dumping measures on exports by exporters falling within the category of ‘all other exporters’ is in effect, as noted earlier above, the imposition of measures on a ‘country-wide’ basis. To do so is inconsistent with Australia’s anti-dumping regime and Article 9.2 of the WTO Anti-Dumping Agreement except in the limited permitted exception. As noted above, that exception does not apply here.
33. The ‘all others’ rate referred to in the WTO Anti-Dumping Agreement is in Article 9.4:
- “The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.”* (See Appellate Body Report, *US – Hot-Rolled Steel*, [para. 116])
34. Clearly Article 9.4 of the WTO Anti-Dumping Agreement refers to exporters who do exist and existed at the time of the investigation and provided information in the investigation but who were not investigated
35. If, on the other hand, reliance is being had to the ‘new shipper’ provision in the WTO Anti-Dumping Agreement, namely, Article 9.5, that Article relevantly provides:
- “9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.”* (underlining added).
36. That Article operates on a condition precedent, namely, that ‘*a product is subject to anti-dumping duties imposed by the importing country*’, which condition precedent must be satisfied in order for the remaining provisions of that Article to have any application.
37. Accordingly, it is necessary to inquire into and identify where in the WTO Anti-Dumping Agreement provision is made for the imposition of anti-dumping measures on a product by an importing country on a ‘country-wide’ basis.
38. The only provision of the WTO Anti-Dumping Agreement that permits the imposition of anti-dumping measures on a ‘country-wide’ basis is Article 9.2, which provides:

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

“9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.” (underlining added).

39. There is and was no evidence either when the anti-dumping measures were originally imposed or when the Minister made the reviewable decision that it was ‘impractical’ to name ‘all exporters’ of A4 Copy Paper from Indonesia to Australia. Hence that provision permitting the imposition of ‘country-wide’ anti-dumping measures did not and cannot apply.
40. Finally, the effect of imposing ‘country-wide’ anti-dumping measures on exports from Indonesia is, in effect, to impose a customs duty¹¹ on A4 Copy Paper exported from Indonesia to Australia under the guise/artifice of a dumping duty, in breach of Australia’s obligations under the *General Agreement on Tariffs and Trade 1994 (GATT94)* incorporating the *General Agreement on Tariffs and Trade 1947 (GATT47)* and, in particular, in breach of its most favoured nation (**MFN**) obligations under Article I of GATT47 and its ‘bound tariff’ obligations under Article II of GATT47.
41. Similarly, the continuation of the anti-dumping measures on a ‘country-wide’ basis would be in breach of Australia’s obligations under preferential trade agreements, that is, free trade agreements, to which Australia and Indonesia are parties.

Conclusion – Preferable Decision 2

42. Accordingly, to secure the continuation of the anti-dumping measures as applying to [all other exporters] and not to except exports by [all other exporters] pursuant to section 269 ZHG(4)(a) of the *Customs Act 1901* is not the correct or preferred decision. The *correct and preferred decision* is, having regard to the foregoing, to except exports by [RAK] and/or [all other

¹¹ Note: dumping duties are ‘special duties of customs. As such they are imposed on the importation of the goods in question on importation with the amount of interim dumping duty being worked out (i.e. payable) in accordance with the fixed and variable duty method. A ‘country-wide’ dumping duty has the effect of imposing a dumping duty on all exports from the exporting country at the highest rate of duty, with named exporters receiving their respective ‘referential’ rate of duty. Not dissimilar to imposition of customs duties that are imposed by Schedule 3 (general rate of duty) and, where applicable, Schedule 4 (preferential/concessional rate of duty) by the *Customs Tariff Act 1995*.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

exporters] pursuant to section 269 ZHG(4)(a) of the *Customs Act 1901* from the continuation of the anti-dumping measures if the continuation of the anti-dumping measures is to be affirmed

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Preferable Decision 3

Grounds: The grounds on which it is contended that the *reviewable decision* concerning the alteration of the variable factors applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] is not the correct or preferable decision and that the *correct and preferable decision* is

- (i) the variable factors applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] be altered but with different variable factors to those in the *reviewable decision*, as set out below; and
- (ii) the amount of any interim dumping duty payable on A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] is an amount worked out in accordance with the ‘floor price’ duty method as specified in section 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*; and
- (iii) a lesser amount of duty apply to the goods exported from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, being the non-injurious price as defined in section 269TACA of the *Customs Act 1901*.

(Preferable Decision 3)

The detailed grounds for this contention are set out below.

Variable Factors (1) - Export Prices – [RAK]¹²

1. Contrary to the *reviewable decision*, it is contended that the export price of [RAK’s] exports of A4 Copy Paper to Australia from Indonesia is not the price paid or payable by AFEM to RAK for the purchase of A4 Copy Paper by AFEM from RAK, being A4 Copy Paper that is ultimately exported to Australia.

¹² Note: The Applicants continue to disagree that RAK is the exporter of the A4 Copy Paper to Australia from Indonesia and continue to contend that the exporter is AFEM for reasons submitted in this inquiry and in Review 551. The Commissioner’s contentions on this issue in this inquiry do not dissuade the Applicants from this view. The Applicants reiterate views previously submitted to the Commission on this issue in this inquiry and in Review 551. It is respectfully submitted that repeating and revisiting the arguments as to who is the ‘exporter’ serves no useful purpose in connection with this application for review especially when, whichever view is taken, ‘export prices’ would be determined pursuant to section 269TAB(1)(c) of the *Customs Act 1901*. In that context, the only relevant price is the price at which the A4 Copy Paper exported to Australia from Indonesia enters into the commerce of Australia as it is that price and only that price that competes with the products of the domestic industry on price. Hence, the best information is actual information establishing that price.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

2. At the outset, in determining what is the 'export price' of goods exported to Australia from, in this case, Indonesia, the question is what makes a 'price' an 'export price' for the purpose of determining whether the goods in question is being entered into the commerce of Australia at less than its normal value. That is, whether it is being 'dumped' in Australia within the meaning of Article VI.1 of GATT47 and Article 2.1 of the WTO Anti-Dumping Agreement.
3. The term 'export price' is not used in Article VI.1 of GATT47 but is referred to in Article 2.1 of the WTO Anti-Dumping Agreement. However, it is neither defined in the WTO Anti-Dumping Agreement, nor in Part XVB of the *Customs Act 1901*. Nevertheless, methods of working out an 'export price' are set out in Article 2.3 of the WTO Anti-Dumping Agreement and section 269TAB of the *Customs Act 1901*, although Article 2.3 addresses how an export price is to be worked out when there is no actual export price or where the export price is unreliable.
4. Guidance may be had from Article VI.1 of GATT47. It refers to dumping as occurring when a product enters into the commerce of a country at less than its normal value, and proceeds to stipulate that this occurs when the 'price' of the product exported to the importing country is less than its normal value in accordance with paragraphs (a) or (b) of that Article.
5. The question then is to what 'price' is being referred to in Article VI.1 of GATT47. The only 'price' at which a product is introduced into the commerce of the importing country must be the price paid or payable for the importation of the product into the importing country. It is upon the importation of the product into the importing country that the product is introduced into the commerce of the importing country. Further, it is only that price that the product competes with the domestically produced product in the importing country on price.
6. A price paid for the export of a product from the exporting country by definition cannot be the price paid or payable for the importation of the product into the importing country unless, by its terms, that price also is for the importation of the product into the importing country as well as for export from the country of export.
7. This position is reflected in section 269TAB(1) of the *Customs Act 1901*. For example, paragraph (a) of that section declares that where that section applies, the export price is the price paid or payable by the 'importer' and an 'importer' is defined in section 269T(1) of the *Customs Act 1901* to mean:

"... the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed".
8. The reference to '*the time of their arrival within the limits of the port or airport in Australia at which they have landed*' in the definition is a reference to 'importation'. That is, importation of goods occurs when goods arrive within the limits of the port or airport, being the port or

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

airport of intended destination, or when physically landed within Australia, whichever is the earliest.

9. The 'export price', therefore, is the price paid or payable for goods exported from a country, by the importer on and for the importation into Australia, this being the price and the only price at which the goods are introduced into the commerce of Australia and at which they then compete with the domestic product in Australia on price following such introduction into the commerce of Australia.
10. If, as contended by the Commissioner in Report 588, that, for whatever reason, the export price of A4 Copy Paper exported from Indonesia by [RAK] cannot be determined in accordance with either paragraph (a) or (b) of section 269TAB(1) of the *Customs Act 1901*, an export price determined under section 269TAB(1)(c) of the *Customs Act 1901* must be a price that is payable by the importer on and for the introduction of the A4 Copy Paper into the commerce of Australia, that is, its importation.
11. To contend that an 'export price' is the price payable between two entities neither of whom is involved in the importation of the goods in respect of which dumping duty is imposed and payable, that is, upon which a special duty of customs has been imposed, has the necessary consequence that the owner, as defined in section 5 of the *Customs Act 1901*, who is liable to pay the duty charged on the goods on importation, has no control over that tax liability. The amount of interim dumping duty payable is determined by the 'export price' between the two parties overseas, in this case between AFEM and RAK and not the import price payable by the 'owner', that is, AFEM's Australian customer. This would seemingly preclude the taxpayer, that is, the importer/owner, from both ascertaining and managing the tax liability being incurred on the importation of the goods in question.
12. The amounts determined by the Minister in the reviewable decision as being the 'export price' are not, as a matter of fact supported by evidence, the price paid or payable by the importer at which A4 Copy Paper exported from Indonesia by [RAK] is introduced into the commerce of Australia. That price has no nexus with the importation and introduction into the commerce of Australia of such A4 Copy Paper. It is not factually the price at which the A4 Copy Paper is imported and introduced into the commerce of Australia.
13. Indeed, the 'export price' recommended by the Commissioner to the Minister in Report 588 and subsequently accepted by the Minister as the 'export price' in making the *reviewable decision*, is neither a 'price', nor the 'price' paid by AFEM for the purchase of A4 Copy Paper from RAK, let alone the price paid by an importer for the importation of the A4 Copy Paper into Australia, that is, its introduction into the commerce of Australia. Again, it is not factually the price at which the A4 Copy Paper is imported and introduced into the commerce of Australia.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

14. That 'export price' is an amount calculated by the Commissioner on advice from the Commission. It is no more than that, an amount arbitrarily calculated as somehow representing a purchase price of A4 Copy Paper between AFEM and RAK. It is not the actual amount at which anyone purchased A4 Copy Paper from anyone, nor was it the amount that AFEM purchased A4 Copy Paper from RAK – that is, it is neither a 'price' nor the price payable and paid by AFEM to RAK for the purchase of the A4 Copy Paper. Nor, more importantly, is it the 'price' payable by the importer and at which the A4 Copy Paper is imported and introduced into the commerce of Australia.
15. Assume hypothetically, that a response to the Exporter Questionnaire included a spreadsheet setting out a calculation that deducted from the prices paid by AFEM's Australian customers to AFEM various amounts to derive an amount that was claimed to be the 'export price' payable by AFEM to RAK for A4 Copy Paper purchased by AFEM from RAK where that amount:
- (a) was not a 'price', being a sum of money payable by a buyer to a seller for the purchase of the goods the subject of a sales transaction;
 - (b) was not payable by AFEM to RAK for the purchase of A4 Copy Paper in a transaction for the sale and purchase of A4 Copy Paper;
 - (c) was not recorded in any accounts or financial records of the companies as the 'price' paid for the purchase of A4 Copy Paper;
 - (d) was not specified in any commercial documents such as commercial invoices or bank statements evidencing that that amount was payable or paid by AFEM to RAK as the 'price' for the purchase of A4 Copy Paper;
 - (e) was not the (actual) 'price' paid or payable by the importer for the importation of the A4 Copy Paper into Australia; and
 - (f) consequently, was not the (actual) 'price' at which the A4 Copy Paper was introduced into the commerce of Australia and which competed with the products of the Australian industry on price,
- would that have been accepted as the 'export price'? It is respectfully submitted that this seems implausible. However, this is in fact the Commissioner's recommendation to the Minister, which recommendation the Minister accepted.
16. Even if it were argued that the price payable by AFEM to RAK for the purchase of A4 Copy Paper is the price at which the A4 Copy Paper is exported from Indonesia however determined, it is clearly not the price at which it is exported to and imported into Australia

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

and at which it is introduced into the commerce of Australia and competes with the products of the domestic industry on price.

17. It is common knowledge and was submitted to the Commission that there can be any number of transactions (sales) for the importation of a product that occur prior to the importation of the product into the importing country. From a customs duty point of view and, in particular, for customs value purposes, the issue is whether to take the last transaction for the importation of the product into the importing country, also known as the 'last import sale', or some earlier transaction. Obviously, the earlier the transaction that is used for this purpose, the lesser the customs value of the product will be for customs duty purposes.
18. Australia has adopted the last import sale prior to importation for customs value and duty purposes: see Division 2 of Part VIII of the *Customs Act 1901* and, in particular, the definition of 'transaction value'.
19. It is the price paid by an Australian customer to AFEM that is declared by the customer in an import declaration filed with Australian Border Force (**ABF**) to obtain approval to clear and deliver the imported A4 Copy Paper into home consumption in Australia as the customs value of the A4 Copy Paper and upon which customs duties are calculated. Obviously, that price is different from the price paid by AFEM to RAK for the same A4 Copy Paper, which price is, in turn, different from the amount calculated by the Commissioner as being the 'export price'.
20. For these reasons, amongst others, including those previously submitted both in this inquiry and in Review 551, it is respectfully contended that the *reviewable decision* concerning the determination of the 'export price' of the A4 Copy Paper exported to Australia from Indonesia is not the *correct or preferred decision*.
21. Rather, the price at which exports of A4 Copy Paper from Indonesia by [RAK] is imported into Australia and introduced into the commerce of Australia¹³ is the price paid by AFEM's customers, the Australian importers of such products. It is that 'price' that constitutes the 'export price' after deduction of costs, charges and expenses arising in relation to the goods after exportation.
22. An export price determined in accordance with paragraphs (a) and (b) of Section 269TAB(1) of the *Customs Act 1901* is the price paid or payable by the importer to the exporter for the goods in question, thereby reflecting that it is the price payable by the person on importation of the goods into Australia, being also the time at which the goods are introduced into the commerce of Australia.

¹³ Refer: Article 2.1 of the WTO Anti-Dumping Agreement and Article VI.1 of GATT47

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

23. To whom that price is paid or payable is less critical than by whom that price is paid and in what connection. Clearly the price paid or payable to an exporter has no necessary connection with the importing country unless that price is not only for the export from that country but also for the importation into the importing country. Rather, it is the price paid or payable by the importer for the importation of the goods into the importing country that is critical because that is the price at which the goods are imported and introduced into the commerce of the importing country as contemplated by Article VI.1 of GATT⁴⁷ and Article 2.1 of the WTO Anti-Dumping Agreement.
24. This is supported by the commercial arrangements between the various parties in connection with the export of A4 Copy Paper produced by RAK to Australia from Indonesia, namely:
- (a) AFEM solicits orders for A4 Copy Paper from its customers and potential customers in Australia.
 - (b) Orders are negotiated between AFEM and an Australian customer at arm's length, which negotiations include negotiations on paper grade and specification, quantities, delivery, price and other commercial terms. Such negotiations do not involve RAK.
 - (c) Once agreement has been reached and the customer has placed a purchase order on AFEM for the purchase of the A4 Copy Paper on the agreed terms, which purchase order AFEM has confirmed its acceptance of to the customer, AFEM places a corresponding purchase order on RAK.
 - (d) The purchase order placed on RAK is for an identical quantity of A4 Copy Paper and otherwise on terms that enables AFEM to comply with and satisfy its contractual obligations with its Australian customers.
 - (e) The price that is payable by AFEM to RAK for the A4 Copy Paper it has ordered from RAK is a price calculated in accordance with accepted transfer pricing principles to ensure for tax purposes that the price payable by AFEM to RAK is an arm's length price that reflects a market price, due to AFEM and RAK being related bodies corporate.
 - (f) AFEM's placement of a purchase order with RAK is the event that causes the production of the A4 Copy Paper because, as verified by the Commission, RAK produces A4 Copy Paper to order and not otherwise.
 - (g) On production of the A4 Copy Paper ordered by AFEM, RAK delivers it to AFEM to a logistics/shipping company nominated by AFEM at Port Buatan in Indonesia, at which

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

time RAK has performed and satisfied its contractual obligations to AFEM. That is, it has discharged its contractual obligations to AFEM by performance and RAK has no further interest or involvement in the shipping/transportation of the A4 Copy Paper or any transactions occurring in Australia in relation to that A4 Copy Paper, including the sales to the Australian customers (that is, the importers in Australia).

- (h) On delivery of the A4 Copy Paper to the logistics/shipping company nominated by AFEM, title to and possession of the A4 Copy Paper passes from RAK to AFEM, as evidenced by the issuing of a bill of lading to AFEM. At that time, RAK ceases to have any legal or equitable interest in the A4 Copy Paper and AFEM possesses all property rights in the A4 Copy Paper, including the unencumbered property rights of exclusive possession and disposal of the A4 Copy Paper.
 - (i) Following delivery of the A4 Copy Paper to the logistics/shipping company nominated by AFEM, the logistics/shipping company ships the A4 Copy Paper from Indonesia via Singapore to Australia for delivery to the Australian customer, at which time title to and possession of the A4 Copy Paper passes to the Australian customers and it pays to AFEM the agreed purchase price to AFEM.
 - (j) AFEM's Australian customers, as the 'owner' of the A4 Copy Paper as defined in section 5 of the *Customs Act 1901*, prepares and lodges an import declaration with ABF and pays any customs duty, including interim dumping duty payable, in order to obtain approval to deliver the A4 Copy Paper into home consumption, at which time the A4 Copy Paper enters into 'home consumption' in Australia.¹⁴
 - (k) Hence, the price payable by AFEM's Australian customers, being the importers, is the price at which the A4 Copy Paper is introduced into the commerce of Australia, including the amount on which customs duties are calculated and payable, and, therefore, is the 'export price'.¹⁵
25. In determining the export price based on the price paid or payable by AFEM's customers, costs, charges and expenses arising in relation to the goods after the exportation of the A4 Copy Paper from Indonesia and represented in that price are to be deducted. This is not dis-

¹⁴ Note: it cannot enter into the commerce of Australia before this because until delivery into 'home consumption' in accordance with an approval granted by ABF, it is subject to the control of customs and cannot be dealt with in any way otherwise than with the approval of ABF.

¹⁵ Note: 'importation' is arguably a process that commences when the good being imported enters the limits of the port or airport of intended destination and is complete when it passes out of customs control when delivered into home consumption, this constituting when the good is introduced into the commerce of Australia.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

similar to the customs value of imported goods based on the transaction value, which also is a (notional) FOB price as overseas freight and insurance are excluded.

26. In undertaking the determination of the export price on this basis, the 'rebate', which is deducted in the calculation of the price payable by AFEM to RAK, being the price actually paid by AFEM to RAK for the purchase of the A4 Copy Paper, is not to be deducted as a 'cost, charge or expense arising in relation to the goods after exportation'. It is an amount used to calculate the price payable by AFEM to RAK in accordance with transfer pricing principles – that is, it is part of a formula for calculating a price and not an actual cost, charge or expense.
27. That 'rebate' is neither a cost, charge nor an expense incurred by anyone and payable by someone to someone. For example, it is not a cost or expense incurred by AFEM that RAK has a contractual obligation to pay to or reimburse AFEM or which AFEM is entitled to deduct from a purchase price payable to RAK by customers in Australia. Alternatively, if it somehow could be so construed, then the contractual obligation and liability for that amount would arise upon RAK accepting the purchase order from AFEM, which occurs prior to production and exportation of the relevant A4 Copy Paper. It is not a 'cost, charge or expense' arising after exportation even if it could be characterised as a 'cost, charge or expense'.
28. It is noted that the Anti-Dumping Review Panel in its ADRP Report No 138 concurred with the contention that the 'export price' should be based on the price payable by AFEM's Australian customers to AFEM. However, it also considered that in addition to other post-exportation expenses to be deducted, the amount of the 'rebate' deducted from the price paid by the AFEM's Australian customers to derive the price paid by AFEM to RAK in accordance with transfer pricing principles also should be deducted to reflect what [RAK] would have received had 'the transaction had been between the 'importer' and the 'exporter' (refer to paragraph 64 of ADRP Report 138).
29. With respect we disagree. Had the transactions been between [RAK] as 'exporter' and the Australian customers as 'importers', then the price payable would have been the same as that between AFEM and those Australian customers. This is the reason that the price payable by the Australian customers was the price they were willing to pay for A4 Copy Paper from Indonesia following arm's length negotiations. Who was the seller of that product is or would be irrelevant to the Australian customers and it would be unaware of what arrangements existed, if any, between RAK and AFEM. Therefore, the price that RAK could reasonably expected to have obtained in transactions directly with the Australian customers would have been and be the same price as that payable to AFEM.
30. For these reasons, it is respectfully contended that the 'export price' is the actual price paid or payable by AFEM's Australian customers, being the importers of the A4 Copy Paper and the

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

price at which the A4 Copy Paper is imported and is introduced into the commerce of Australia.

31. Further, in those limited number of transactions where AFEM is the ‘importer’ of the A4 Copy Paper into Australia because of the agreed delivery terms with the Australian customer, the export price should be determined on the same basis regardless of whether it is determined pursuant to paragraph (b) or (c) of section 269TAB(1) of the *Customs Act 1901*. The few exports falling within this category would not have a material effect when on-sold into the Australian A4 Copy Paper market.
32. It is submitted that the forgoing is consistent with the findings of the Anti-Dumping Review Panel in Review 138 set out in the Panel’s ADRP Report No. 138¹⁶ with the exception of the deduction of the ‘rebate’ as a post exportation expense. For the reasons set out above, the Applicant(s) disagrees that that amount is a ‘cost, charge or expense’ arising after exportation and hence is to be deducted.
33. Accordingly, the *correct and preferable decision* is for the ‘export prices’ of [RAK’s] exports to be determined as the prices paid or payable by AFEM’s Australian customers to AFEM less relevant costs, charges and expenses arising after exportation, if any.

Conclusion – Variable Factors (1) - Export Price – [RAK]

34. The *reviewable decision* concerning export prices is not the correct or preferred decision, but the *correct and preferred decision* is that the ‘export price’ is the price paid or payable by AFEM’s Australian customers, being the importers of the A4 Copy Paper and the price at which the A4 Copy Paper is imported and is introduced into the commerce of Australia, and calculated as set out earlier above.

Variable Factors (2) - Normal Value – [RAK]

35. The normal value of the A4 Copy Paper exported to Australia from Indonesia by [RAK] as determined and recommended to the Minister by the Commissioner and accepted by the Minister in making the *reviewable decision* is not the correct or preferred decision for the reasons set out below.
36. It is not the correct or preferred decision because that normal value did not accurately reflect the domestic selling price of A4 Copy Paper in Indonesia by [RAK] during the investigation period. Instead, the normal value was overstated.
37. The Commissioner’s normal value determination for A4 Copy Paper exported to Australia from Indonesia by [RAK] was based on the prices of A4 Copy Paper in domestic sales in Indonesia

¹⁶ See: [2021 138 - a4 copy paper - adrp report no. 138 - public.pdf \(industry.gov.au\)](#)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

by RAK during the investigation period. The Commissioner's calculations of the normal value are contained in **Confidential Attachment 7 to Report 588**.

38. However, because RAK ceased to sell A4 Copy Paper in Indonesia on and from 1 January 2021 to focus on its business of producing paper and, in particular, bulk paper, the Commissioner calculated the normal value for the period 1 January to 30 June as follows:

"For the three MCCs exported to Australia, the commission found the volumes of domestic sales sold in OCOT for each MCC was sufficient. However, for two MCCs there was an absence of relevant domestic sales in certain quarters corresponding with the sales of the exported MCC.

For these MCCs, the commission relied on the normal value of the relevant MCC sold in the quarter nearest to the relevant export quarter with an adjustment for timing differences applied pursuant to section 269TAC(8). The timing adjustments relied on the movement in the normal value for an MCC of the closest product specification or the relevant export MCC movement in cost of production." (Section 7.4.7 of Report 588, page 50)

39. It is contended that the resulting normal values for these MCCs, being the MCCs with the greatest sales volumes, did not accurately reflect prices in the Indonesian domestic A4 Copy Paper market for those MCCs and, consequently, artificially inflated the normal value. This was addressed in the Applicant's submission to the Commission in this inquiry dated 25 January 2022, including information on domestic selling prices of A4 Copy Paper in Indonesia for the first half of 2021.
40. [RAK], as the seller of the A4 Copy Paper it produced in the domestic Indonesian market, was replaced in 2021 by PT Anugerah Kertas Utama (**AKU**) and PT Asia Pacific Rayon (**APR**), both of whom are related bodies corporate in the APRIL group. AKU and APR produce A4 Copy Paper, amongst other paper products, from bulk paper purchased by them from other members of the APRIL group, including [RAK]. The A4 Copy Paper they produce is sold by them into the domestic Indonesian A4 Copy Paper market to the same customers as [RAK] at the same level of trade and on similar terms and conditions. Information concerning such sales and their prices, as well as the weighted average selling price by MCC for such products, for the period 1 January to 30 June 2021 is set out in the **Confidential Attachment** to the abovesaid submission to the Commission dated 25 January 2022.
41. The information contained in that **Confidential Attachment** accurately reflected the domestic selling price of like goods in Indonesia during that portion of the investigation period and, therefore, provides the best information available to determine the normal value for that period. It is consistent with the determination of a normal value under section 260TAC(1)(a) of the *Customs Act 1901*.
42. Further, it evidences that the normal values determined by the Commissioner for the MCCs in question were overstated in the Commissioner's calculations.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Conclusion – Variable Factors (2) - Normal Value – [RAK]

43. Based on the information contained in the **Confidential Attachment** to the submission to the Commission dated 25 January 2022 and the Commissioner's determination of normal values for the period 1 July 2002 to 31 December 2020 in **Confidential Attachment 7** to Report 588, the Applicant(s) contend that the *correct and preferable decision* for the determination of the normal value of A4 Copy Paper exported from Indonesia by [RAK] is to be calculated as set out in the submission to the Commission dated 25 January 2022.

Variable Factors (3) - Adjustments – [RAK]

44. As a preliminary matter, section 269TAC(8) of the *Customs Act 1901* provides for adjustments to the normal value to provide a 'fair comparison' when comparing the normal value with export prices so as to reflect differences between export and domestic sales that 'modify the prices differently' in such sales. That is, it must be demonstrated that a difference in the terms or circumstances of the sales or other differences that affect (that is, modify) prices differently and the extent that they do so in order for an adjustment to be made.
45. Here, however, the so-called 'export prices' are not in fact 'prices' and not the 'prices' actually paid by AFEM to RAK for the purchase of A4 Copy Paper. As such, it is unclear how it can or could have been determined that those 'export prices' and the prices in domestic sales are modified differently? The domestic prices on which the normal value is based are prices payable for the purchase of A4 Copy Paper negotiated at arm's length in a competitive market, whereas the 'export prices' is a **calculated** amount. The circumstances of how each is determined are entirely different and the question is whether they are properly comparable with or without adjustment. It is respectfully submitted that they cannot be properly comparable. If for no other reason, as set out earlier above, the 'export price' comprised in the *reviewable decision* is not in fact a 'price' at all.
46. Further, the adjustments referred to in Section 7.4.8 of Report 588 are costs. However, there is no evidence whether and to what extent those 'costs' have affected (that is, modified) 'prices' and modified export prices and domestic prices differently. The assumption apparently is that such 'costs' must be included/recovered in the 'prices' and, therefore, affected the 'prices' and affected them in an amount equal to the 'cost'. This is reflected in the Commission's statement in Section 7.4.8 that:
- "the Commission considers that certain adjustments in accordance with section 269TAC(8) are necessary to ensure fair comparison of normal value with export prices"* (underlining added).
47. In other words, the Commission is simply of the 'opinion' that such adjustments are necessary, not that those adjustments (that is, costs) actually affect and modify export and domestic prices differently, and such modification is supported by evidence (which it is not). There appears to be a fundamental misconception between 'costs' and 'prices'. Differences in

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

‘prices’ may or may not reflect differences in ‘costs’ but may reflect differences in the markets in which ‘prices’ are negotiated and agreed between sellers and buyers, including the circumstances of such negotiations such as level of trade.

48. Exports of A4 Copy Paper to Australia by RAK involved two transactions, namely, the transaction between [RAK] and [AFEM] and by [AFEM] to its Australian customers, the importers in Australia, whereas [RAK’s] sales in Indonesia involved only one transaction, namely, the sales to Indonesian distributors. Consequently, the export sales to Australia involved two levels of trade, however described, whereas domestic sales involved only one. This obviously affected pricing as the additional level of trade involved additional costs and an amount for profit that were not incurred in domestic sales.
49. Sales to the Australian importers and to the Indonesian distributors were at the same level of trade as both on-sold their purchases of A4 Copy Paper into their respective markets to retailers and, to a lesser extent, end-users such as businesses and consumers. Hence, it is submitted that this level of trade is the appropriate level to compare the normal value with export prices.
50. If, as determined by the Minister in making the *reviewable decision*, the export price is the price paid or payable by AFEM to RAK, then payment of that price is taking place in a transaction at a different level of trade to the prices on which the normal value was determined. AFEM was not on-selling the A4 Copy Paper it purchased from RAK to retailers or end-users. It is not a distributor.
51. The on-sale of A4 Copy Paper by AFEM to its Australian customers were at a price that included an amount sufficient to cover AFEM’s general selling and administration expenses (**SG&A**) and profit.
52. However, it is important to note that the prices payable by AFEM to RAK do not determine the prices payable to AFEM by its Australian customers. The opposite is the case. That is and as stated above, prices along with the other terms and conditions (e.g., grade of A4 Copy Paper, quantity, delivery, payment of purchase price, etc.) are negotiated between AFEM and the Australian customer(s) in arm’s length negotiations. RAK has no involvement in such negotiations, including who the Australian customers are, the terms of purchase AFEM agrees with the Australian customer(s), etc. It is only when negotiations are finalised and a purchase order is placed by the Australian customer(s) with AFEM that AFEM places a corresponding purchase order on RAK for RAK to produce and sell to it the requisite quantity and grade of A4 Copy Paper for AFEM to on-sell to the Australian customer.
53. It is when AFEM places its purchase order on RAK that the purchase price payable by AFEM to RAK is determined. It is calculated by reference to the price payable by the Australian customer to AFEM as specified in the Australian customer’s purchase order placed with AFEM.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

54. Importantly, because RAK and AFEM are related bodies corporate and to ensure that the price payable by AFEM to RAK represents an arm's length market price, they have adopted transfer pricing principles in determining prices that comply with OECD Transfer Pricing Guidelines as adopted and in force in Indonesia.
55. This transfer pricing arrangement entails calculating the price payable by AFEM to RAK by deducting from the price payable by the Australian customer to AFEM an amount determined in accordance with the transfer pricing guidelines that ensures that the transactions between RAK and AFEM represent an arm's length transaction for local tax purposes.
56. In other words, the price payable by AFEM to RAK for the A4 Copy Paper is calculated in accordance with these accepted transfer pricing principles from the base price of the price independently negotiated at arm's length between AFEM and its Australian customers. Whether the Commission agrees that those calculations are consistent with the transfer pricing guidelines, that is, with the findings of the independent expert certifying that they are consistent, is not relevant. What is relevant is whether the resulting 'price' reflects a market price. There is no evidence or finding that it does not. In fact, the determination of the 'export prices' by the Commission did not involve inquiry into whether those 'prices' reflected arm's length market prices.
57. Importantly, pursuant to these arrangements, RAK has no contractual or other obligation to reimburse AFEM any costs of expenses or pay a commission or an amount in the nature of a commission. Nor has AFEM any contractual or other obligation to pay to RAK any of the price paid to it by its Australian customers – that is, RAK has no legal or equitable interest in such payments.
58. If the purchase price payable by AFEM to RAK is the 'export price', then that 'price' is affected (modified) by the circumstances of such sales in a way that is different to the price negotiated with and payable by the Indonesian distributors to RAK. Accordingly, adjustment on the normal value based on the domestic selling prices to Indonesian distributors is required pursuant to 269TAC(8)(c) of the *Customs Act 1901* in order for there to be a fair (proper) comparison with such export prices.
59. Having regard to the foregoing, section 269TAC(8)(c) of the *Customs Act 1901* relevantly provides that:

“(8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

....; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.”

60. Because the normal value of the A4 Copy Paper exported to Australia and that price and the export price of those goods were modified in different ways by the circumstances of the sales to which they relate as set out above, an adjustment is required to the normal value to ensure a proper comparison was made between the normal value and export prices. It was not made.
61. The nature and amount of that adjustment is a deduction from the normal value in an amount equal to the weighted average of the ‘rebate’/percentage of the weighted average of the ‘rebate’ as a proportion of the weighted average of the export prices over the review period
62. Of course, if the ‘export price’ is the price paid or payable by AFEM’s Australian customers to AFEM, then no such adjustment is required because the export sales and domestic sales would be at the same level of trade, that, to distribution level of trade in Australia and Indonesia respectively.
63. As regards those few DDU transactions in which AFEM was considered to be the ‘importer’ and the ‘export prices’ were determined accordingly, an adjustment is required in respect of the normal value, being a level of trade adjustment, as sales by RAK to AFEM are not at the distribution level of trade. AFEM is not a ‘distributor’ into the Australian A4 Copy Paper market. The transactions between it and RAK occur earlier in the supply chain at a different level of trade. Hence an adjustment is required.
64. The adjustment required in this regard is a downwards adjustment equal to the weighted average of the amount deducted as AFEM’s ‘profit margin’ for a proper comparison of the normal value with those export transactions.

Conclusion – Variable Factors (3) - Adjustments – [RAK]

65. The *reviewable decision* concerning the adjustments to the normal value is not the correct or preferred decision, but the *correct and preferred decision* is that the normal value be made in accordance with the preceding paragraphs, that is:
 - (a) for the comparison of the normal value with export prices based on the price paid by AFEM’s Australian customers, there be no level of trade adjustment as the comparison is at the distributor level of trade;
 - (b) for the comparison of the normal value with export prices based on the price paid by AFEM to RAK, a downwards adjustment equal to the amounts deducted as post-exportation expenses plus the amount deducted for AFEM’s ‘profit margin’; and

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (c) for the comparison of the normal value with export prices based on AFEM being the exporter, a downwards adjustment equal to the weighted average of the amount deducted as AFEM's 'profit margin'.

Variable factors (4) – [all other exporters]

Grounds: The grounds on which it is contended that the *reviewable decision* is not the correct or preferable decision and that the correct and preferable decision is that the variable factors applying to exports of A4 Copy Paper from Indonesia by [all other exporters] be altered to the equivalent variable factors as applying to exports by [RAK] are set out below.

- (i) The variable factors applying to exports of A4 Copy Paper from Indonesia by [all other exporters] determined by the Minister in the *reviewable decision* were based on the variable factors for such exports as recommended by the Commissioner in Report 588.
- (ii) Those variable factors were determined on the basis of the variable factors determined for exports of A4 Copy Paper to Australia from Indonesia by [RAK], these being the 'predominant' exports of A4 Copy Paper from Indonesia: refer Section 7.5 of Report 588.
- (iii) Accordingly, to the extent that the Minister's determination of the variable factors for exports of A4 Copy Paper to Australia from Indonesia by [RAK] is not the correct or preferred decision, then so also must the determination of the variable factors for exports of A4 Copy Paper to Australia from Indonesia by [all other exporters].
- (iv) Rather, the correct and preferable decision is as set out above for the determination of the variable factors for exports of A4 Copy Paper to Australia from Indonesia by [RAK].

Conclusion - Variable factors (4) – [all other exporters]

- 66. The *correct and preferable decision* regarding the variable factors, that is, export price, normal value and adjustments to normal value for [all other exporters] are same as those for [RAK] as set out in the preceding sections above.

Variable factors (5) – Non-Injurious Price

Grounds: The grounds on which it is contended that the *reviewable decision* concerning the non-application of the 'lesser duty rule' (that is, non-injurious price) was not the correct or preferable decision and that the *correct and preferable decision* is that a lesser amount of duty apply to the goods

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

exported to Australia from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, are set out below.

67. The Commissioner's reasoning in Report 588 for recommending that the lesser duty rule not be applied was based on the assumption that a non-injurious price could not be less than the unsuppressed selling price (**USP**) of the Australian industry. That is, any price less than the USP would cause injury to the Australian industry and, consequently, would not be recommended.
68. In this context the Commissioner found that the 'export price' of [RAK's] exports and, therefore, those of [all other exporters] as well, would undercut the USP of the Australian industry. Hence the lesser duty, that is, the non-injurious price could not apply in lieu of the full dumping margin.
69. It is contended that such reasoning is erroneous and has led to the *reviewable decision* being not the correct or preferable decision.
70. The 'non-injurious price', being the application of the lesser duty rule, is defined in section 269TACA of the *Customs Act 1901* to mean that it is:
- "... the minimum price necessary ... to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b) [of the Customs Act 1901]."*
71. That is, it is the minimum price necessary to prevent material injury to the domestic industry being caused by 'dumping' or, in other words, to offset the injurious effects of the product in question entering the commerce of the importing country at 'dumped' prices. Hence the references to paragraphs 269TG(1)(b) and (2)(b) of the *Customs Act 1901* in the definition.
72. Given that the Commissioner determined in Report 588 that:
- (a) in 2021, the landed duty inclusive and exclusive price of [RAK's] exports of A4 Copy Paper to Australia from Indonesia undercut the Australian industry's prices; and
 - (b) if the price of [RAK's] exports were equal to their normal value, as determined by the Commissioner in Report 588, the price of [RAK's] exports would undercut the Australian industry's USP,
- then, the non-injurious price cannot be determined by Australian Paper's USP. Rather, it is to be determined by reference to the price of [RAK's] exports, that is, the 'un-dumped' price of [RAK's] exports. Whether that 'un-dumped' price causes injury to the Australian industry by being less than the Australian industry's USP is irrelevant. Any such injury would not be being caused by 'dumping'.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

73. Hence, the ‘non-injurious price’ of [RAK’s] exports must be the normal value or the landed duty inclusive price(s) of [RAK’s] exports as determined by the Commissioner, whichever is the lesser.
74. In other words, it is the minimum price necessary to prevent the injury or recurrence of injury caused by dumping. If A4 Copy Paper is exported to Australia from Indonesia at a price not less than its normal value, then it is not being exported at a ‘dumped’ price and any injury that it may cause to the Australian industry cannot be attributed to ‘dumping’.
75. As the normal value of [RAK’s] exports of A4 Copy Paper to Australia is less than the Australian industry’s USP, then that normal value, not the USP, must be the non-injurious price.
76. Further, as the Commissioner determined that the landed duty paid price of [RAK’s] exports of A4 Copy Paper undercut the Australian industry’s prices and that landed duty paid price is, by definition, an un-dumped price, then it must be the non-injurious price if less than the normal value of such exports.
77. The foregoing analysis must also apply equally to the application of the ‘lesser duty rule’ to exports by [all other exporters] as the rate of dumping duty applying to their exports is determined according to the rate of dumping duty applicable to [RAK’s] exports.

Conclusion – Variable Factors (5) – Non-Injurious Price

78. Hence the *correct and preferred decision* is that a lesser amount of duty apply to the goods exported to Australia from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* based on a non-injurious price of the lesser of:
- (a) the normal value of [RAK’s] exports of A4 Copy Paper to Australia from Indonesia; and
 - (b) the landed duty paid price determined by the Commissioner for [RAK’s] exports of A4 Copy Paper to Australia from Indonesia in Section 8.6.1 of Report 588.

Interim dumping duty – method of working out

Grounds: The grounds on which it is contended that the *reviewable decision* for working out interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [RAK] and/or [all other exporters] is not the correct or preferable decision and that *the correct and preferable decision* for working out interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

by [RAK] and/or [all other exporters] is the floor price duty method set out in Sections 5(4) and (5) of *the Customs Tariff (Anti-Dumping) Regulation 2013* are set out below.

[RAK]

79. The *reviewable decision* is that interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [RAK] is to be worked out using the combination fixed and variable duty method as set out in sections 5(2) and (3) of *the Customs Tariff (Anti-Dumping) Regulation 2013*.
80. That method for working out interim dumping duty payable is neither administratively nor legally feasible in relation to exports of A4 Copy Paper to Australia from Indonesia by [RAK]. In addition, if working out the interim dumping duty payable using this method were feasible it would result in the application of dumping duty in excess of the full dumping margin contrary to Article 9.3 of the WTO Anti-Dumping Agreement.

Erroneous application of the reviewable decision in working out interim dumping duty

81. The combination fixed and variable duty method for working out interim dumping duty payable set out in sections 5(2) and (3) of *the Customs Tariff (Anti-Dumping) Regulation 2013* consists of the following:

“(2) A method is:

(a) work out the amount of the difference between:

- (i) the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and
- (ii) the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and

(b) if the export price of the particular goods is less than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice, work out the amount of the difference; and

(c) add the amounts worked out under paragraphs (a) and (b) to obtain the interim dumping duty payable on the goods.

(3) The amount worked out under paragraph (2)(a) must be:

(a) ascertained as a proportion of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice, and applied to the greater of:

- (i) the export price of the particular goods; and

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

- (ii) *the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; or*
- (b) *applied by reference to a measure of the quantity of the particular goods; or*
- (c) *applied by reference to a combination of a proportion mentioned in paragraph (a) and the quantity mentioned in paragraph (b)."* (underlining added)

Erroneous application of the fixed component

- 82. The amount of interim dumping duty to be worked out under paragraph 2(a) above is by, in effect, applying the dumping margin determined by the Minister for [RAK's] exports, being 59.7% to the '*export price of the particular goods*', where the '*particular goods*' is the shipment of A4 Copy Paper on which dumping duty has been imposed (that is, the particular imported consignment).
- 83. This is reflected in Item 4 of the Commission's Dumping and Commodity Register for A4 Copy Paper on the Commission's website: [Microsoft Word - DCR - A4 Copy paper \(industry.gov.au\)](https://www.industry.gov.au/publications/microsoft-word-dcr-a4-copy-paper). Item 5 of the Dumping Commodity Register specifies that, in the example given, 'DXP' refers to the 'actual export price' of the exported goods and should reflect the 'total export (invoice) price of the goods being entered' and recorded on the import declaration form.
- 84. Import declaration forms require the owner making the import declaration form to set out the elements for determining the customs value of the imported goods the subject of the declaration and their customs value.¹⁷ The customs value, which usually is based on the price the importer actually paid, or is going to pay, for the goods (that is, the 'transaction value'), is not the 'export price' or, at least, it is not the 'export price' of [RAK's] exports, this being the price paid or payable by AFEM to RAK and not the price paid or payable by the importer, namely, AFEM's Australian customer(s).
- 85. Consequently, the 'export price' of that shipment/importation of A4 Copy Paper is not known or, at least, it is not known by the owner (importer) of the goods making the import declaration. It is not the 'import price' payable by that owner (importer) for the imported goods the subject of the import declaration that is used to determine the customs value of those goods under Division 2 of Part VIII of the *Customs Act 1901*.
- 86. That 'export price' is the price payable by AFEM to RAK determined in accordance with section 269TAB(1)(c) of the *Customs Act 1901*, which is not the import price payable by the Australian customer to AFEM. That determination of an 'export price' is, of course, to be made by the Minister in order to work out the fixed component of the interim dumping duty payable. The

¹⁷ Note: these forms are publicly available on ABF's website: [B650 - Import Declaration \(N10\) \(abf.gov.au\)](https://www.abf.gov.au/australian-border-force/imports/declaration-forms)

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

information necessary to make that determination would not be available to the Minister nor be information available to the Australian customer making the import declaration as it would consist of information confidential to third parties, namely, RAK and AFEM.

87. The issue, therefore, is where is the statutory obligation for an owner preparing and filing an import declaration for imported goods required to include in the import declaration the 'export price' of the imported goods where it is not the import price paid or payable by the owner (importer) for the importation of the goods into Australia for customs duty purposes? Further, if such a statutory obligation were to exist, how would the owner (importer) obtain the information necessary to enable the 'export price' to be determined when the owner (importer) is not a party to the relevant transaction and the required information is confidential information of the parties to that transaction?
88. Further, if the 'export price' were capable of being determined by the Minister and was determined in the same way as the ascertained export price, it would be similarly flawed, as discussed earlier above. It would not be a 'price', nor the price payable by AFEM to RAK, but an amount calculated by the Minister (or his delegate). It is not the price at which the particular goods enter into the commerce of Australia.
89. If, on the other hand, the dumping duty margin were to be applied to the customs value of the particular goods, that is to the customs value of the A4 Copy Paper imported by AFEM's Australian customer, then it necessarily would exceed the margin of dumping contrary to Article 9.3 of the WTO Anti-Dumping Agreement. This is because the amount to which the dumping margin would be applied, being the customs value, exceeds the price payable by AFEM to RAK, being the 'export price' to be uplifted by the payment of the interim dumping duty. It would be uplifting the customs value as opposed to the 'export price', which, in [RAK's] circumstances, are different amounts.
90. Working out the fixed component of interim dumping duty in this manner necessarily exceeds the margin of dumping because the margin of dumping was not determined on the customs value of [RAK's] exports to Australia but on an earlier, lesser amount claimed to be payable in the supply chain, that is, the 'export price' being the amount paid or payable by AFEM to RAK.
91. Hence this aspect of the *reviewable decision* is not the correct or preferred decision. It is not capable of being worked out and, if (wrongly) applied to the customs value, it would necessarily exceed the margin of dumping.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

Erroneous application of the variable component

92. It also is not possible for an importer of particular goods¹⁸ to work out the export price of those particular goods for the purposes of paragraph (b) section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013* in relation to exports by [RAK]. This for the same reason. It is because the export price of the particular goods would be the price paid or payable by AFEM to RAK for the particular goods and not the price payable by the importer, being AFEM's Australian customer.
93. Again, to compare the export price of the particular goods with the ascertained export price for the purposes of paragraph (b) section 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, that export price would need to be determined by the Minister under section 269TAB(1) of the *Customs Act 1901* on or before the Australian customer lodges its import declaration for the particular goods with ABF.
94. The Australian customer would not have the requisite confidential information to enable the determination of the export price of the particular goods by the Minister under section 269TAB(1) of the *Customs Act 1901*, being the 'export price' payable by AFEM to RAK as opposed to the 'import price' (that is, customs value) determined under Division 2 of Part VIII of the *Customs Act 1901*.
95. Accordingly, the dumping margin determined by the Minister for [RAK's] exports of A4 Copy Paper to Australia from Indonesia cannot be applied to that price of the 'particular goods'. To do so would again be in breach of Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* and Sections 5(2) and (3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, as well as Article 9 of the WTO Anti-Dumping Agreement.
96. Hence this is a further reason why this aspect of the *reviewable decision* is not the correct or preferable decision. Again, it reflects the mismatch between the 'export price' on which the dumping margin was determined and the customs value on which any interim dumping duty payable is to be worked out.

Correct and preferable decision for working out interim dumping duty payable

97. The *correct and preferable decision* is for interim dumping duty to be worked out using the 'floor price' duty method for the reasons set out below.

¹⁸ Note; 'particular goods' means consignments of the goods the subject of the anti-dumping measures being imported into Australia.

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

98. The 'floor price' duty method is to be worked out in accordance with Sections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*, which provides:

“(4) A method is to work out the difference between:

(a) the export price of the particular goods; and

(b) the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; to obtain the interim dumping duty payable on the goods.

(5) However, subsection (4) only applies if the export price of the particular goods is less than the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.” (underlining added).

99. While this method also possesses the problems associated with the combination fixed and variable method due to the reference to the 'export price of the particular goods', if the import price payable by an Australian customer for A4 Copy Paper produced by RAK and exported from Indonesia to Australia is not less than the normal value of such exports, then it would not be entering into the commerce of Australia at a price that is less than its normal value. Hence it would not be lower than the floor price (that is, its normal value) regardless of the amount of the 'export price' payable by AFEM to RAK.
100. Obviously, if the import price payable by AFEM's Australian customers for the particular goods is less than the normal value, then those particular goods would be entering into the commerce of Australia at a price that is less than their normal value regardless of their 'export price'. In that case, interim dumping duty would be payable in an amount equal to the difference to eliminate that difference as the goods enter into the commerce of Australia, which is the objective of the anti-dumping regime.
101. In such circumstances, the anti-dumping measures would be achieving their intended objective of 'preventing' exports by [RAK] from entering into the commerce of Australia at prices that are less than their normal value and thereby causing injury to the domestic industry.
102. Accordingly, it is submitted that the *correct and preferable decision* for working out the interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [RAK] is the 'floor price' method pursuant to Sections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

[All other exporters]

103. For the reasons set out in the preceding part of this section regarding the *reviewable decision* concerning the working out the interim dumping duty in relation to exports by [RAK], that

Attachment A

Reviewable Decision – Responses to Questions 9 to 12 of the Application Form

method for working out interim dumping duty payable is equally not administratively or legally feasible in relation to exports of A4 Copy Paper to Australia from Indonesia by [all other exporters] and would result in the application of dumping duty in excess of the full dumping margin contrary to Article 9.3 of the WTO Anti-Dumping Agreement and Australia's anti-dumping legislation for the same reasons.

104. Rather, and again, the *correct and preferable decision* for working out the interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [all other exporters] is the 'floor price' method pursuant to Sections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Conclusion – Interim dumping duty – method of working out

105. For the reasons set out above, the *reviewable decision* is not the correct or preferred decision for working out any interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [RAK] or [all other exporters], but the *correct and preferable decision* for working out any interim dumping duty payable on exports of A4 Copy Paper to Australia from Indonesia by [RAK] and [all other exporters] is the 'floor price' duty method in accordance with Sections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Conclusion – Preferable Decision 3

106. For the reasons set out above, the *reviewable decision* is not the correct or preferable decision, but that the *correct and preferred decision* is that, if securing the continuation of the anti-dumping measures applying to exports of A4 Copy Paper from Indonesia by [RAK] and/or [all other exporters] is affirmed:-
- (a) the variable factors applying to A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] be altered but with different variable factors to those in the *reviewable decision*; and
 - (b) the amount of any interim dumping duty payable on A4 copy paper exported to Australia from Indonesia by [RAK] and/or [all other exporters] is an amount worked out in accordance with the 'floor price' duty method as specified in section 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*; and
 - (c) a lesser amount of duty apply to the goods exported from Indonesia by [RAK] and/or [all other exporters] pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, being the non-injurious price as defined in section 269TACA of the *Customs Act 1901*.