



# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> 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 party<sup>2</sup> 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](mailto:adrp@industry.gov.au).

---

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

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

**PART A: APPLICANT INFORMATION****1. Applicant's details**

Applicant's name: <b>This application is made jointly and severally by APRIL Far East (Malaysia) Sdn. Bhd. (AFEM) and PT Riau Andalan Kertas (RAK) (collectively, "Applicants").</b>
Address: <ul style="list-style-type: none"> <li>• <b>AFEM: Level 12, Tower 2, Averis Tower, Avenue 5, Wisma Averis, Bangar South, No. 8 Jalan Kerinchi, 59200 Kuala Lumpur, Malaysia; and</b></li> <li>• <b>RAK: Jl. Teluk Betung No. 31, Kebon Melati, Tanah Abang, Jakarta Pusat 10230, Indonesia.</b></li> </ul>
Type of entity (trade union, corporation, government etc.): <b>Both are corporations.</b>

**2. Contact person for applicant**

Full name: <b>Ms Seh Li LIM</b>
Position: <b>Vice President, Legal</b>
Email address: <a href="mailto:SehLi.Lim@rgei.com">SehLi.Lim@rgei.com</a>
Telephone number: <b>+65 6216 9339</b>

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

<p><b>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.</b></p> <p><b>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'.</b></p>
--

**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:**

- |  |   |
|--|---|
| <input type="checkbox"/> Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice                    | <input type="checkbox"/> Subsection 269TL(1) – decision of the Minister not to publish duty notice                                |
| <input type="checkbox"/> Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice      | <input checked="" type="checkbox"/> Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures   |
| <input type="checkbox"/> Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice             | <input type="checkbox"/> Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry                 |
| <input type="checkbox"/> Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice | <input type="checkbox"/> 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 dumping duty notice published on 9 July 2021, Anti-Dumping Duty Notice No 2021/075 (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 <sup>2</sup> or more but not more than 150 g/m <sup>2</sup> , 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 <sup>2</sup> or more but less than 90 g/m <sup>2</sup> :	
	<i>Statistical Code</i>	<i>Description</i>
	03	White
	09	Weighing 90 g/m <sup>2</sup> or more but not more than 150 g/m <sup>2</sup>

#### 8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: <b>Anti-Dumping Notice (ADN) No. 2021/075 (copy attached) ("ADN 2021/075")</b>
Date ADN was published: <b>9 July 2021</b>

***\*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:

**The grounds on which the Applicants believe that the *reviewable* decision is not the correct or preferable decision are set out in Attachment A to this application.**

**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:**

As set out in Attachment A, in the Applicants' opinion, the *correct or preferable decision(s)*, resulting from the grounds set out in response to Question 9, ought to be:

- (i) in relation to the 'ascertained export price', that the correct or preferable 'ascertained export price' is the price paid by Australian customer(s) to AFEM for the GUC during the review period ('*Actual EXP*'), being the actual price paid by Australian importer(s) for the GUC exported to Australia by AFEM and at which the GUC is introduced into the commerce of Australia;
- (ii) in relation to the 'ascertained normal value', if the 'ascertained export price' remains based on the price paid for GUC by AFEM to RAK ('*ADC EXP*'), then the correct or preferable 'ascertained normal value' is the weighted average domestic selling price of like goods sold by RAK during the review period in Indonesia as determined by the Commissioner in Review 551 less all costs and expenses incurred in the exportation of the GUC to Australia during the review period after the sale of GUC by RAK to AFEM; and
- (iii) in relation to the 'ascertained non-injurious price', the correct or preferable 'ascertained non-injurious price' is the weighted average price of like goods sold by the Australian industry during the review period, being the market price of such goods, being a price unaffected by exports of GUC at 'dumped' export prices, less all post-exportation costs and expenses incurred by AFEM during the review period in the exportation of GUC to Australia to derive an FOB non-injurious price.

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

The grounds supporting the making of the proposed *correct or preferable decision(s)* are set out in Attachment A to this application.

**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.

The reasons why the proposed *correct or preferable decision(s)* provided in response to Question 10 are materially different from the reviewable decision are set out in Attachment A.

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

Anti-Dumping Notice (ADN) No. 2021/075

Report No. 551

Statement of Essential Facts No. 551

Dumping Commodity Register – A4 Copy Paper.

Notice pursuant to section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975

Anti-Dumping Notice No. 2016/34

Report 312

Confidential Appendix 4 – Dumping Margin Calculation

## PART D: DECLARATION

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

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



Signature:

Name: **Andrew Percival**

Position: **Authorised Representative of Applicants**

Organisation: **Percival Legal**

Date: **9 August 2021**

**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: <a href="#">Andrew Percival</a>
Organisation: <a href="#">Percival Legal</a>
Address: <a href="#">1 Rickard Avenue, Mosman, NSW, 2088</a>
Email address: <a href="mailto:andrew.percival@percivallegal.com.au">andrew.percival@percivallegal.com.au</a>
Telephone number: <a href="#">0425 221 026</a>

**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.

Please refer to authorisation of representative to act as the Applicants' representative in relation to this application and any review that may be conducted as a result of this application previously provided.



## Attachment A

**Grounds on which the Applicants believe that the reviewable decision is not the *correct or preferable* decision and related matters – Responses to Questions 9 to 12**

**1. Reviewable Decision**

The ‘*reviewable decision*’ comprised in ADN 2021/075 the subject of this application is the decision by the Minister of Industry, Science and Technology (**Minister**) that the dumping duty notice “*applying to the goods exported to Australia from Brazil, China, Indonesia (...) and Thailand ... are taken to have effect as if different variable factors had been fixed in relation to exporters generally, relevant to the determination of duty*”.

ADN 2021/075 is silent on precisely what different variable factors have been fixed in relation to the Applicants and their exports of GUC to Australia<sup>3</sup>. The Applicants infer from the subject of Review 551 that the variable factors that have been fixed are the ‘ascertained export price’, the ‘ascertained normal value’ and the ‘ascertained non-injurious price’ applicable to exports of GUC to Australia by the Applicants.

**2. Relevant legislative provisions**

Attachment B to this application sets out extracts of the legislative provisions relevant to the *reviewable decision*, including observations on the implications of such provisions to the *reviewable decision* as affecting the Applicants.

**3. Grounds on which the Applicants believe that the *reviewable decision* is not the correct or preferable decision**

Having regard to the *reviewable decision* and to the legislative provisions extracted at Attachment B and observations therein, the Applicants believe that the *reviewable decision* is not the *correct or preferable* decision in so far as it fixed different variable factors for exports of GUC by the Applicants because:

- (i) in relation to the ‘ascertained export price’, it was incorrectly based on the ‘exporter’ of the GUC being RAK, not AFEM, and, in any event, regardless of which entity was determined to be the ‘exporter’, the ‘ascertained export price’ was incorrectly determined to be the price paid by AFEM to RAK for the GUC (**ADC EXP**) as opposed to the price paid for the GUC by Australian importer(s) to AFEM (**Actual EXP**);
- (ii) in relation to the ‘ascertained normal value’, if the ‘ascertained export price’ is determined to be the price paid by AFEM to RAK for the GUC during the review period (i.e., the ADC EXP) notwithstanding the Applicants’ contentions, then adjustments to domestic selling prices of like goods in Indonesia by RAK in the determination of the normal value ought to have been undertaken by the Minister pursuant to section

---

<sup>3</sup> As noted in the response to Question 3 of the application form, the Applicants contend that AFEM, not RAK, is the ‘exporter’ of the GUC and as addressed later in this application, for convenience reference is made to exports of the GUC as being made by the ‘Applicants’, although the anti-dumping measures were originally imposed on RAK as the ‘exporter’. Curiously, the Dumping Commodity Register (copy **attached**) refers to exports of GUC being either directly by RAK or through AFEM even though this was not set out in ADN 2021/075.

269TAC(8)(c) of the *Customs Act 1901*, however, such adjustments were not so made; and

- (iii) in relation to the 'ascertained non-injurious price', it was incorrectly based upon an unsuppressed selling price (**USP**) because, amongst other things, an USP is not a 'price', nor a 'price' that could reasonably be expected to be obtained in a market unaffected by dumping and, in the circumstances, not the minimum price necessary to prevent injury caused by exports of GUC at dumped export prices as the Minister ignored that the finding in Review 551 that the prices of all other participants in the Australian A4 Copy Paper market, including those of the Australian industry, undercut the prices of the Applicants.

**4. The correct and preferable decision(s) and grounds therefor ought to be the following**

The *correct and preferable decision(s)* so far as different variable factors for exports of GUC to Australia by the Applicants are concerned, are:

- (i) in relation to the 'ascertained export price', that the 'ascertained export price' ought to be the price paid by Australian customer(s) to AFEM for the GUC during the review period, the Actual EXP, being the actual price paid by Australian importer(s) for the GUC exported to Australia by the Applicants and at which the GUC is introduced into the commerce of Australia;
- (ii) in relation to the 'ascertained normal value', if the 'ascertained export price' remains based on the price paid for GUC by AFEM to RAK, that is, the ADC EXP, then the 'ascertained normal value' ought to be the weighted average domestic selling price of like goods sold by RAK during the review period in Indonesia as determined by the Commissioner in Review 551 less all costs and expenses incurred in the exportation of the GUC to Australia during the review period after the sale of GUC by RAK to AFEM; and
- (iii) in relation to the 'ascertained non-injurious price', that the 'ascertained non-injurious price' ought to be the weighted average price of like goods sold by the Australian industry in the Australian A4 Copy Paper market during the review period, being the market price of such goods unaffected by exports of GUC at 'dumped' export price, less all post-exportation costs and expenses incurred by AFEM during the review period in the exportation of GUC to Australia to derive an FOB non-injurious price.

**5. The material difference between proposed *correct and preferable decision(s)* and the *reviewable decision***

The *correct and preferable decisions* are materially different from those in the *reviewable decision* because:

- (i) in working out any interim dumping duty payable on GUC exported to Australia by the Applicants using the 'combined fixed and variable' duty method, the fixed duty component will be 'zero', as opposed to an *ad valorem* rate of 14.7%, as the 'ascertained export price' based on the Actual EXP exceeds the 'ascertained normal value' in the *reviewable decision* and, consequently, results in a negative dumping

- margin of -10.3% with the result that no interim dumping duty is payable in connection with that component of the 'combined fixed and variable' duty method;
- (ii) the variable component of the 'combined fixed and variable' duty method will cease to be operative because it is required to be the proposed 'ascertained export price' under Sections 5(2)(a) of the *Customs Tariff (Anti-Dumping) Regulation 2013* and, for this reason, the 'combined fixed and variable' duty method should be replaced with the 'floor price' duty method and, therefore, interim dumping duty will be payable under that duty method only if the actual export price of GUC exported to Australia by the Applicants is less than that 'ascertained normal value' as fixed by the *reviewable decision*, subject to the application of the proposed 'ascertained non-injurious price'; and
  - (iii) the *correct and preferable* 'ascertained non-injurious price' will be the operative measure because it is less than the 'ascertained normal value' and, consequently, interim dumping duty will be payable only if the actual export price of exports of GUC to Australia by the Applicants is less than that non-injurious price and in an amount by which such export price is less than that non-injurious price.

In short, the *correct and preferable* decision(s) regarding fixing the applicable variable factors are materially different from those in the *reviewable decision* in so far as they relate to the fixing of different variable factors for exports of GUC to Australia by the Applicants because interim dumping duty will be payable only if the actual export price of exports of GUC to Australia by the Applicants is less than the proposed non-injurious price and in an amount by which such export prices are less than that non-injurious price.

**6. *Miscellaneous - method of working out any interim dumping duty payable***

As noted below in this Attachment A, the Commissioner recommended to the Minister and the Minister accepted recommendations regarding the methods by which interim dumping duty is to be worked out on exports of GUC to Australia. This was so notwithstanding, as contended by the Commissioner, that a review of anti-dumping measures under Division 5 of the *Customs Act 1901* based on possible changes to the variable factors is confined to whether and to what extent the variable factors have changed and, therefore, require alteration. It is unclear, therefore, on what legal basis the Commissioner could lawfully make such recommendations regarding the method for working out any interim dumping payable on exports of GUC and/or for the Minister to adopt them in this context.

In any event, the 'combined fixed and variable' duty method was the recommended method in the original investigation and was the method prescribed by the Minister for exports of GUC to Australia from Indonesia, including by the Applicants: see '*Notice pursuant to section 8(5) of the Customs Tariff (Anti-Dumping) Act 1975*' dated 18 April 2017 (copy **attached**). Consequently, there has been no change to that method as a result of the *reviewable decision*.

However, the *correct and preferable* decisions as set out above in fixing different variable factors for exports of GUC to Australia by the Applicants render the 'combined fixed and variable' duty method as an inappropriate method for working out any interim dumping

duty payable. This is because the fixed component is redundant if the Actual EXP is used in the margin calculation, resulting in a negative dumping margin as indicated above.

Further, because the proposed 'ascertained export price' is greater than the 'ascertained normal value' in the *reviewable decision*, the variable component is inoperative. This is because the proposed 'ascertained export price' is greater than that 'ascertained normal value' and, consequently, the amount by which actual export prices are less than that 'ascertained export price' is irrelevant, especially if they are not less than the 'ascertained normal value'.

In other words, interim dumping duty should be payable only if the actual export prices of GUC exported to Australia is less than the 'ascertained normal value' fixed by the *reviewable decision*, which, by definition would be a 'dumped' export price', subject, of course, to the application of the proposed non-injurious price. Hence, the variable component of the 'combined fixed and variable' duty method would not be operative and is redundant.

In such circumstances, the appropriate method is the 'floor price' duty method. If, as contended, for this method to be substituted, it should be substituted in place of the 'combined fixed and variable' duty method in working out any interim dumping duty payable on exports of GUC by the Applicants, subject, of course to the proposed 'ascertained non-injurious price' being the operative measure.

If this is not permissible, then, in applying the combined fixed and variable method:

- (i) the fixed component, would be based on the proposed 'ascertained export price' and, consequently, would consist of an *ad valorem* fixed duty rate of 'zero'; and
- (ii) the variable component would be based on the 'ascertained normal value price' fixed by the *reviewable decision*, subject to,

the operative measure being the proposed 'ascertained non-injurious price'.

**7. The detailed grounds on which the Applicants believe that the *reviewable decision* is not the correct or preferable decision**

The detailed grounds upon which the Applicants believe that the *reviewable decision* is not the correct or preferable decision are set out below, along with the reasons why the proposed decisions are the *correct and preferable* decisions.

At the outset it must be noted that in the *reviewable decision*, the Minister decided that, amongst other things, the dumping duty notice applying to exports of the GUC to Australia is to be 'taken to have effect as if different variable factors had been fixed in relation to exporters generally, relevant to the determination of duty'. It was not specified in ADN 2021/075 what those 'different variable factors' were in relation to exporters generally or, in particular, which variable factors applicable to the Applicants were fixed differently and to what extent.

In this regard, Section 8.2 of Report 551 states that the 'different variable factors' are those specified in Confidential Attachment 18 to Report 551. Given the scope of Review 551, the

Applicants have assumed that the ‘different variable factors’, as they apply to exports of the GUC to Australia by the Applicants, are the ‘export prices’, ‘normal value’ and ‘non-injurious price’ determined by the Commissioner as set out in Sections 4.6.1 to 4.6.3 of Report 551 and Confidential Attachment 12 to Report 551. If so, then the ‘different variable factors’, being the ‘ascertained export price’ and ‘ascertained non-injurious price’ and the ‘ascertained normal value’, were wrongly determined, both factually and legally, for the reasons set out below.

## **7.1 Ground 1: Alteration of the variable factors – ‘ascertained export price’**

### **7.1.1 Errors in the ‘ascertained export price’**

The Minister accepted the findings of fact made by the Commissioner in Report 551 and, therefore, determined the ‘ascertained export price’ of exports of GUC to Australia made by the Applicants to be the price at which AFEM purchased the GUC from RAK:

*“Having regard to all the circumstances of the exportation in the review period, the Commission determined the export price using the price between RAK and AFEM, in accordance with section 269TAB(1)(c).”* (Section 4.6.1.1 of Report 551, at page 39)

Therefore, in the *reviewable decision*, in so far as it fixed a different ‘ascertained export price’ for exports of GUC to Australia by the Applicants, it fixed that ‘ascertained export price’ as the price paid by AFEM to RAK for the GUC, that is, as the ADC EXP.

This determination of the ‘ascertained export price’ of exports of GUC to Australia by the Applicants (ADC EXP) was wrong for the following reasons:

- (1) The Minister (wrongly) determined that RAK, not AFEM, was the ‘exporter’ of the GUC from Indonesia to Australia: refer to Section 4.6.1 of Report 551. This was factually and legally incorrect for the reasons set out in the submissions to the Commission dated 16 March 2021, 22 March 2021, 15 April 2021 and 19 April 2021 (Document Nos. 37, 38, 45, and 47): see Commission’s electronic public file [551 | Review | Department of Industry, Science, Energy and Resources](#).
- (2) In summary, for the reasons set out in those submissions, RAK did not cause the GUC to be removed from Indonesia and then to be transported to Australia. This was undertaken by AFEM and was so undertaken by AFEM as principal and not as agent of RAK. In so doing, AFEM was fulfilling its contractual obligations to its Australian customer(s). The Australian customer(s) / importer(s) of the GUC had no involvement contractually or otherwise with RAK. RAK’s contractual obligation was to deliver the GUC to AFEM at the nominated place in Indonesia, at which time all property rights comprised in the GUC, including title and exclusive right of possession and disposal, passed to AFEM. RAK had no involvement in the removal of the GUC from Indonesia, nor their transportation to Australia, nor any involvement in the supply of the GUC to the Australian importer(s). The Australian importer(s) are customer(s) of AFEM, not RAK, and dealt with AFEM, not with RAK. On any analysis, therefore, AFEM, not RAK, was the ‘exporter’ of the GUC.

- (3) The determination that RAK, not AFEM, is the ‘exporter’ of GUC to Australia reflects a misconception of the relationships and arrangements between the parties. RAK is the producer of A4 copy Paper in Indonesia, which it supplies to AFEM pursuant to purchase orders placed by AFEM on RAK. RAK has no involvement so far as the sale and export of GUC to Australia is concerned, be it the marketing of the GUC in Australia, dealing with potential customers, or negotiating contracts with potential customers in Australia for the supply of A4 Copy Paper, including terms and conditions, quantities, timing of supply and price. AFEM undertakes all matters relating to the sale and export of GUC to Australia by itself as principal. Further, the prices negotiated by AFEM with Australian customer(s) influence the prices payable by AFEM to RAK for GUC supplied by RAK to AFEM and not the other way around.
- (4) These arrangements are consistent with AFEM being the ‘exporter’ in accordance with Federal Court decisions. As His Honour, Finn J. stated in *Companhia Votorantim De Celulose E Papel v Anti-Dumping Authority, Christopher Cleland Schacht In His Capacity As Minister of Science and Small Business and Australian Paper Limited* [1996] FCA 1399; (19 April 1996):

*“The attribution or non-attribution of the label exporter to an intermediate party in the position of a company ... should turn in my view upon a characterisation made of its role vis-a-vis both the Australian importer and the manufacturer in the latter’s sale of, and the former’s acquisition of, the goods in question.”*

and

*“... I would equally suggest that circumstances may exist where a supplier of goods so uses a manufacturer as its instrument in its supply of goods to an importer that the supplier can properly be characterised as the exporter of those goods from the country of origin in question”* (paras 48 & 50]

- (5) Hence, the *correct and preferable decision* is that the ‘export price’ is the actual price payable and paid by the Australian customer(s) (i.e., Australian importer(s)) to the exporter of the GUC, AFEM, in arm’s length transactions between those parties, that is, the Actual EXP. Accordingly, the ‘export price’ ought to have been determined under section 269TAB(1)(a) of the *Customs Act 1901* as the price payable and paid by the Australian ‘importer(s)’ to AFEM for the GUC.
- (6) Alternatively, even if it is determined (wrongly) that RAK, not AFEM, is the ‘exporter’ of the GUC to Australia, the ‘export price’ nevertheless is the price payable and paid by the Australian importer(s) for the GUC to AFEM. It would properly be determined to be the ‘export price’ pursuant to section 269TAC(1)(c) of the *Customs Act 1901* as being the price paid by ‘importer(s)’ in Australia for the GUC and, therefore, the price at which the GUC is introduced into the commerce of Australia: Article 2.1 of the WTO Anti-Dumping Agreement.

- (7) In addition, regardless of whether RAK or AFEM is the 'exporter' of the GUC, the Minister (wrongly) determined that the price paid by AFEM to RAK for the GUC was the 'export price' of the GUC (i.e., the ADC EXP). The ADC EXP, that is, the price paid by AFEM to RAK for the GUC, could not be the 'export price' of the GUC. That price was paid by an entity in Malaysia to an entity in Indonesia for the sale of goods between those two parties and that sale did not involve or require, as a term of the sale and purchase, the exportation of the goods to Australia. Under the terms and conditions governing the sale of goods between RAK and AFEM, all property rights subsisting in those goods, including the right to exclusive possession and disposal along with title, passed from RAK to AFEM in Indonesia. RAK ceased to have any right, title or interest on the GUC from that moment onwards. No evidence has been adduced by the Commissioner in Report 551 proving any nexus between the ADC EXP and Australia. In the circumstances, the ADC EXP, price paid by AFEM to RAK, was not and could not be the price at which the GUC was introduced into the commerce of Australia: Article 2.1 of the WTO Anti-Dumping Agreement and section 269TAB(1) of the *Customs Act 1901*. As stated above, that price had no nexus with Australia.
- (8) As the ADC EXP, namely, price paid by AFEM to RAK for the GUC, was not the price payable by Australian importer(s) of the GUC and, therefore, was not the price at which the GUC was introduced into the commerce of Australia: Article 2.1 of the WTO Anti-Dumping Agreement and section 269TAB(1) of the *Customs Act 1901*. The ADC EXP was not a price that could cause any injury to the Australian industry producing like goods, whether at 'dumped' export prices or otherwise. The ADC EXP was not the price at which GUC exported to Australia by AFEM competed with the like goods produced by the Australian industry as the GUC and the products of the Australian industry were being sold at a different points in the supply chain.

On any analysis, therefore, the ADC EXP (i.e., the price paid by AFEM to RAK for the GUC) was not and could not be the 'export price' of the GUC ultimately exported to Australia by AFEM.

Under both Australia's anti-dumping regime and the WTO Anti-Dumping Agreement, the 'export price' of goods exported to Australia is the price at which such goods are actually introduced into the commerce of Australia. If those exports compete with the products of an Australian industry, it is at that 'export price' that such exports compete with the products of the Australian industry. Consequently, the Actual EXP (being the price paid by Australian importer(s) to the 'exporter', AFEM, for the GUC imported into Australia), is the price at which the GUC entered the commerce of Australia and competed with the like goods produced by the Australian industry. That is the 'export price'.

Support for the above argument is found in section 269TAB of the *Customs Act 1901*, being the price payable by the 'importer'. Had the 'export price' been determined in accordance with section 269TAB(1)(a) of the *Customs Act 1901*, the Minister should have ascertained that the Actual EXP is the 'export price' within the meaning of section 269TAB(1)(a) of the

*Customs Act 1901*, and not the ADC EXP. In any event, even if RAK, not AFEM, is the ‘exporter’, the ‘export price’ is nevertheless the price paid by Australian ‘importer(s)’ to AFEM, being the price at which the GUC is introduced into the commerce of Australia, and determined to be the ‘export price’ pursuant to section 269TAC(1)(c) the *Customs Act 1901* in such circumstances.

The Commissioner acknowledged that the ADC EXP is not the actual ‘export price’ of the GUC in the following statement at Section 7.2.2 in Report 551:

*“... the variable component would be calculated as the amount, if any, by which the **actual export price (i.e., the price between AFEM and the importer)** is lower than **the ascertained export price (i.e. the floor price, being the price between AFEM and RAK)**”.* (bold added) (at page 74)

The Commissioner here effectively acknowledges that the ADC EXP is not the ‘actual export price’ as the ADC EXP is a price paid at a different and earlier stage in the supply chain prior to and separately from its exportation to Australia. The Commissioner also was aware, based on verified information, that the Actual EXP was greater than the ADC EXP with the former being the actual price payable on importation of the GUC into Australia.

Further, the above statement by the Commissioner also reveals that working out the variable component of any interim dumping duty pursuant to the fixed and variable duty method necessarily involved a comparison of two different prices at two different levels of trade. It is not a comparison of ‘like-with-like’. This is unlawful and impermissible in working out any interim dumping duty payable under Australian anti-dumping laws, as well as the WTO Anti-Dumping Agreement.

Finally, the following inconsistencies in the findings in Report 551 appear to have escaped the attention of the Commissioner and the Minister:

- (a) domestic selling prices in Indonesia of A4 Copy Paper are comparatively lower than elsewhere due to access to lower inputs to manufacture in Indonesia (Section 4.6.3.1 of Report 551);
- (b) Indonesian producers and exporters of A4 Copy Paper enjoyed a cost and price advantage in the Australian market that is not available to other producers or exporters (Section 4.6.3.2 of Report 551);
- (c) in Australia, as a higher cost economy, prices of A4 Copy Paper in the Australian market are significantly higher:

*“In Australia, where no market situation or input cost decrease exists, competitive pricing prevails at a higher level. Higher production costs for those participants producing without the benefit of a market situation establishes a higher minimum threshold for competitive prices. Under these circumstances, the effect of the market situation in Indonesia on the price of A4 copy paper sold into the Australian market results in competitive advantages and disadvantages between market players.* (Section 4.6.3.3 of Report 551, at p. 47);



- (d) the Applicants had not taken advantage of this comparative advantage in exports of the GUC to Australia because their prices *'in the Australian market were higher than other cooperating exporters' prices, and APRIL was not undercutting other participants in the market'* (Section 4.6.3.2 of Report);
- (e) the Applicants had exported the GUC to Australia during the review period at dumped export prices with a dumping margin of 14.7%, that is, at 'export prices' lower than their 'normal value' based on domestic selling prices in Indonesia; and
- (f) however, it was found that during the review period, GUC exported to Australia by the Applicants did not undercut the prices of other participants in the Australian A4 Copy Paper market, including those of the Australian industry (Section 4.6.3.3 of Report 551).

In other words, how was it possible for the Applicants to export the GUC from Indonesia at 'export prices' less than their normal value from a country with lower A4 Copy Paper costs and prices to a higher priced A4 Copy Paper market in Australia at prices higher than those of other participants in that higher priced market? As indicated in Section 4.6.3.3 of Report 551 this finding on the absence of price undercutting was based on evidence, indicating that the error is with the dumping margin calculation and, specifically, the determination that the 'export price' is the ADC EXP. Clearly that is not correct.

#### 7.1.2 Implications of Actual EXP as the 'ascertained export price'

When the Actual EXP, being the actual price at which the GUC is introduced into the commerce of Australia by Australian 'importer(s)', is substituted in place of the ADC EXP in the Commissioner's dumping margin calculation, the result, as noted earlier above, is a negative dumping margin of -10.3%<sup>4</sup>. The Actual EXP is greater than both the ADC EXP and, more relevantly, the normal value of the GUC exported to Australia by AFEM. This means that exports of the GUC to Australia by AFEM during the review period were at 'un-dumped' export prices.

In the circumstances, the Applicants consider that the 'ascertained normal value' as fixed by the *reviewable decision* remains the correct and preferable decision in this context and does not require re-determination. It is, in the Applicants' view, properly comparable with the proposed 'ascertained export price' based in the Actual EXP and changes, if any, would at most be negligible.

The alteration of the variable factors of the anti-dumping measures applying to exports of the GUC by the Applicants in the *reviewable decision* set out in ADN 2021/075 does not reflect that such exports during the review period were at 'un-dumped' export prices. Therefore, the *reviewable decision* was not the *correct and preferable* decision in this regard. The *correct and preferable* decision is that the Actual EXP is the 'export price' of the GUC exported to Australia by the Applicants. As noted earlier above, fixing that variable factor as the Actual EXP means that exports of the GUC to Australia by the Applicants during the review period were at 'un-dumped' export prices with a negative dumping margin of -10.3%.

---

<sup>4</sup> Refer **Confidential Appendix 4 – Dumping Margin Calculation**.

This, obviously, is materially different from the *reviewable decision* in this respect.

### **7.2 Ground 2 - Alteration of the variable factors – ‘ascertained normal value’**

Alternatively, if, contrary to the Applicants’ contentions, the ‘ascertained export price’ is to remain as being based on the ADC EXP, then under section 269TAC(8)(c) of the *Customs Act 1901*, an adjustment was and is required in the determination of the ‘normal value’ of exports of GUC to Australia by the Applicants’ to effect a ‘fair comparison’ between such ‘ascertained export price’ and the ‘normal value’.

This adjustment is required so as to take into account the extent by which the domestic prices of like goods to the GUC sold by RAK and the ADC EXP are modified, in different ways by the terms or circumstances of their respective sales. That such an adjustment was required was set out in APRIL’s submission to the Commission dated 19 April 2021 (Document No. 47): see [551 - 047 - submission - exporter - april far east malaysia sdn bhd pt riau andalan kertas - calculation of dumping margin.pdf \(industry.gov.au\)](#).

Similar to the method by which the ‘transfer price’ for pulp purchased by RAK from a related body corporate is determined, as advised to the Commission, the price payable by AFEM to RAK for its purchases of GUC from RAK is influenced by the independently negotiated price for GUC between AFEM and its Australian customer(s), which price is worked back to the price payable by AFEM to RAK for the GUC, ensuring at the same time that such purchases are profitable to both AFEM and RAK. That this is how pricing between RAK and AFEM is influenced is evident from the verified information submitted to the Commission. That this was not expressly addressed in submissions to the Commission until the submission dated 19 April 2021 was because the Applicants were unaware and had no reason to believe that the Commission would determine the ‘export price’ to be the ADC EXP and this was not raised by the Commission with the Applicants. Had it been, it would have been addressed, including that on this basis an adjustment was required in the determination of a normal value pursuant to section 269TAC(8)(c) of the *Customs Act 1901* to ensure a ‘fair comparison’ between the ADC EXP and normal value.

The effect of such an adjustment to the normal value is, again, a negative dumping margin as indicated in the abovementioned submission to the Commission.

### **7.3. Ground 3: Alteration of the variable factors - ‘ascertained non-injurious price’**

In ADN 2021/075, the Minister stated that *‘the non-injurious price does not apply to exports by RAK as the non-injurious price was higher than the normal value for exports by RAK’*. This statement is not correct because the determination of the non-injurious price was factually and legally incorrect. For the reasons set out below, it misconceived the nature of a non-injurious price and the non-injurious price that should apply to the GUC exported to Australia by the Applicants.

A ‘non-injurious price’ is the minimum price necessary to prevent injury to the Australian industry: section 269TACA of the *Customs Act 1901* and Article 9.2 of the WTO Anti-Dumping Agreement. Further, a non-injurious price only applies where the ‘ascertained export price’

is less than the 'ascertained normal value'. This is because, if an anti-dumping measure is set at a price equal to the 'ascertained normal value' (that is, a so-called 'floor price'), then by definition any actual export price at or above that price will be an 'un-dumped' export price attracting no liability for interim dumping duty. The non-injurious price, therefore, must be a price below the 'ascertained normal value' that prevents injury to the Australian industry. This is often referred to as the 'lesser duty rule' by reason of Article 9.2 of the WTO Anti-Dumping Agreement on which the 'non-injurious price' in Australia's anti-dumping regime is based. A lesser amount than an amount equal to the full dumping margin will prevent the injury to the domestic industry that the anti-dumping measures are intended to prevent.

### 7.3.1 *Is there a 'non-injurious price'?*

Here:

- (i) exports of the GUC to Australia by the Applicants during the review period were at 'undumped' export prices as the Actual EXP (as opposed to the ADC EXP), was greater than the normal value of such exports; and
- (ii) exports of the GUC to Australia by the Applicants during the review period were determined by the Commissioner and the Minister to be at higher prices in the Australian A4 Copy Paper market than those of all other participants, including the Australian industry. Such exports could not therefore have caused, or be causing, injury to the Australian industry whether at 'dumped' or 'undumped' export prices.

It follows from the foregoing that the minimum price necessary to prevent injury being caused by dumping of the GUC exported to Australia by the Applicants must be 'zero'. As such exports were sold at 'undumped prices', there was no dumping, and, as such, no injury was being caused or could be being caused by such exports to the Australian industry. Absent dumping and, therefore, injury being caused by dumping, there is no justification for anti-dumping measures, including a non-injurious price, applying to the exports in question.

It is noted that the Commissioner at Section 6.4.2 in Report 551 stated that:

*"As set out earlier in this chapter, the NIP is the minimum price necessary to prevent the injury, or a recurrence of injury, referred to in section 269TG(1) or (2). Therefore, the NIP should be the minimum price necessary to prevent the injury or a recurrence of injury caused by dumping, which was found in Investigation 341."* (at page 69)

This statement is consistent with the position that in the absence of dumping, there is no warrant for a non-injurious price because there is and can be no injury being caused by dumping, as well as, for that matter, no warrant for the application of anti-dumping measures in such circumstances.

Further, because it was not part of the scope of Review 551 to review whether any changes to the variable factors the subject of the review were causing injury to the Australian industry by reason of dumping due to such changes, it is not known whether the Australian industry was incurring any injury from dumping during the review period. Just as the variable factors may have changed since the anti-dumping measures were imposed, so also

could all and/or any of the factors affecting the economic performance of the Australian industry relevant to whether it was incurring material injury caused by dumping during the review period. This is more likely to have occurred than not for obvious reasons.

Unfortunately, this was not investigated in Review 551 despite submissions that it should be. Consequently, it appears that the Commission has merely assumed that the anti-dumping measures continued to be effective in achieving their intended purpose notwithstanding any evidence to that effect. Also, it should be noted that in Australian Paper's application for Review 551, there was no claim supported by evidence that the anti-dumping measures had ceased to be effective in preventing injury to it due to changes in the variable factors. Australian Paper's silence on this point in its application and subsequently raises the question of why did Australian Paper apply for a review of the anti-dumping measures if there was no evidence that the measures had ceased to be effective due to a change in the variable factors since the imposition of the measures?

Also, the non-injurious price proposed by the Commissioner in Report 551 was based upon a so-called 'unsuppressed selling price' (**USP**). An USP is essentially an artificial construct based on the Australian industry's cost to make and sell the product in question plus an amount for profit. It is supposed to represent the price that the Australian industry could reasonably expect to obtain in a market unaffected by dumping.

It is to be observed that an USP is not a 'price' on any analysis but an artificial construct that has not been tested as a 'price' in a market. Accordingly, it is not a 'price' that the Australian industry 'could reasonably expect to obtain' or, at least, it is not known whether that 'price' could be so obtained. It is mere speculation unsupported by any evidence on the price that the Australian industry could reasonably expect to obtain in a market unaffected by dumping.

Further, the price that the Australian industry could reasonably expect to obtain in a market unaffected by dumping is the prevailing market price obtaining in the Australian A4 Copy Paper market during the review period. It is a market unaffected by dumping due to the prevalence of anti-dumping measures preventing the injurious effects of dumping. There is no evidence referred to in Report 551 to the contrary that prices in that market were affected by dumping during the review period notwithstanding the existence of anti-dumping measures.

A non-injurious price based upon an USP not only contains the errors mentioned above but also ignores the finding of fact in Review 551 that the prices of all participants in the Australian A4 Copy Paper market, including those of Australian Paper, undercut those of the Applicants. In addition, it also was found that Indonesian exporters had not taken advantage of the comparative advantage that Indonesian exporters had over the Australian industry due to Indonesia being the lower cost of production of A4 Copy Paper in Indonesia as compared with the higher cost of production of A4 Copy Paper in Australia (and resultant higher A4 Copy Paper prices in Australia): refer Section 4.6.3.1 to 4.6.3.2 of Report 551. A non-injurious price based upon an USP effectively ignores these findings of fact in Review 551, all of which are relevant considerations in the determination of a non-injurious price.

Accordingly, as the *correct and preferable decision* is that the ‘ascertained export price’ should be the Actual EXP and the Actual EXP of the GUC exported to Australia by the Applicants is higher than the ‘ascertained normal value’ of such exports, then, arguably, there can be no ‘non-injurious price’. As the ‘ascertained export price’ of the GUC exported during the review period was greater than the normal value during the same period, such exports of the GUC were made at ‘un-dumped’ export prices.

Consequently, there was no injurious effect caused by dumping of such exports that requires prevention in such circumstances. There being no injury caused by dumping that needs to be prevented, a ‘non-injurious price’ is redundant, as are the measures.

### *7.3.2 Alternate approach to ‘non-injurious price’*

Alternatively, it could be argued that in the present circumstances a non-injurious price is in fact required where the non-injurious price consists of an amount less than the normal value (that is, a ‘floor price’). Such a ‘non-injurious price could be considered to be required because it achieves the intent of the anti-dumping measures of preventing injury but at a price that is less than the ‘ascertained normal value’ through application of the ‘lesser duty rule’.

Hence, the working out of any interim dumping duty payable based on the application of a ‘non-injurious price’ could prevent injury or the recurrence of injury caused by dumping at a price less than the ‘ascertained normal value’ if and when actual export prices of the GUC exported by the Applicants fall below that ‘non-injurious price’ (i.e., ‘floor price’).

### *7.3.3 Determination of non-injurious price*

The issue, therefore, is how to determine such a non-injurious price and whether it is less than the ‘ascertained normal value’. If it is, then it should constitute the operative measure, being less than the so-called ‘floor price’ (i.e., ‘ascertained normal value’).

It was found in Review 551, as a finding of fact supported by evidence, that prices of the GUC exported to Australia by the Applicants during the review period did not undercut those of any other participants in the Australian A4 Copy Paper market, including those of the

Australian industry<sup>5</sup>. It also was found that the volume of GUC exported by the Applicants during the review period was low due to circumstances beyond the Applicants' control<sup>6</sup>.

Consequently, in such circumstances the GUC exported to Australia by the Applicants during the review period were not at 'dumped' prices, and did not and could not have caused any injury to the Australian industry during the review period. In the absence of price undercutting and the low volume of exports of the GUC by the Applicants during the review period, any price and volume effects such as price suppression and/or reduced sales volume

---

<sup>5</sup> Refer to Section 4.6.3.2 of Report 551 where the Commissioner found that:

*"The Commission found that APRIL's prices in the Australian market were higher than other cooperating exporters' prices, and APRIL was not undercutting other participants in the market. Further, APRIL's profit margin on its exports of the goods to Australia was similar to the margin achieved on its sales of the same goods in the domestic market in Indonesia. The Commission also found that APRIL's profit margin on its export sales to Australia in the review period was within the range of profit margins achieved by other exporters (i.e. it was not the highest or lowest margin in the review period)." (page 46)*

And at Section 4.6.3.2 of Report 551 where the Commissioner found that:

*"In respect to APRIL's sales in 2019 specifically, the Commission found no evidence that APRIL undercut other participants in the Australian market. Further, the Commission did not find that APRIL achieved a higher profit margin on its exports of the goods to Australia than it achieved on its sales of the same goods in the domestic market in Indonesia." (at page 47)*

<sup>6</sup> Refer Section 4.6.1.1 of Report 551 where the Commissioner found that:

*"The Commission found that the volume of goods exported by RAK to Australia in the review period was significantly lower than the volume of goods it had exported in the original investigation period (2015) and the following periods. Further, the volume of goods exported by RAK to Australia in the review period was significantly lower than the volume<sup>63</sup> of goods exported by other cooperating exporters in the same period." (at page 34)*

The Commissioner also found that this low volume of exports by the Applicant was due to circumstances beyond the Applicants' control:

*"The Commission considers that the acquisition of RAK's two main customers, which purchased the greatest proportion of its export volume to Australia from 2015 to 2018, is a factor that affected RAK's exports of the goods to Australia in the review period. The Commission considers that this factor is not within the control of RAK." (Section 4.6.1.1 of Report 551, at page 37)*

incurred by the Australian industry could not have been caused by such exports. Consequently, such exports could not have caused any injury to the Australian industry (i.e. reduced revenues and profits) during the review period.

In such circumstances, it is submitted that the non-injurious price should be determined as:

- (a) being the price of the GUC exported to Australia by the Applicants that did not undercut those of the other participants in the Australian A4 Copy Paper market, including those of the Australian industry (that is, the ADC EXP), with this price being reduced by an amount equal to the weighted average price of like goods sold by the Australian industry during the review period, this being a price unaffected by dumping; or
- (b) the weighted average price of like goods sold by the Australian industry during the review period, this being a price unaffected by dumping, and deducting from that price all costs and charges incurred by the Applicants after exportation of the GUC to Australia to derive a non-injurious FOB price,

whichever is the less.

As such a non-injurious price would be less than the 'ascertained normal value', then it would be the operative 'anti-dumping measure'. Any interim dumping duty payable on exports of the GUC to Australia by the Applicants, therefore, would be worked out on the basis of if and when actual export prices are less than that non-injurious price.

#### 7.3.4 Conclusion

The determination of an 'ascertained non-injurious price' applying to exports of GUC to Australia by the Applicants was not the *correct or preferable* decision regarding such a 'non-injurious price'. The *correct or preferable* decision regarding the determination of such a 'non-injurious price' is as set out earlier above, that is, as determined in accordance with subparagraphs (a) or (b) immediately above. As that 'non-injurious price' is less than the 'ascertained normal value', it would be the operative measure in working out whether any interim dumping duty is payable on exports of GUC to Australia by AFEM.

#### 8. **Extent to which the proposed *correct and preferable* decision(s) in fixing different variable factors are materially different from those in the *reviewable decision***

The *correct and preferable decision(s)* in so far as they fix different variable factors for exports of GUC to Australia by the Applicants are materially different from the *reviewable decision* in this regard because:

- (a) when working out any interim dumping duty payable on GUC exported to Australia by the Applicants using the 'combined fixed and variable' duty method:
  - (i) the fixed duty component will be 'zero' because the 'ascertained export price' (based on the Actual EXP) exceeds the 'ascertained normal value' and, consequently, results in a negative dumping margin of -10.3%;
  - (ii) the variable component will be the 'ascertained normal value' and, therefore, interim dumping duty will be payable if the actual export price of GUC exported

- by the Applicants is less than that ‘ascertained normal value’, subject to the application of the correct and preferable ‘ascertained non-injurious price’; and
- (iii) the proposed ‘ascertained non-injurious price’ will be the operative measure because it is less than the ‘ascertained normal value’ and, consequently, interim dumping duty will be payable only if the actual export price of exports of GUC to Australia by the Applicants is less than that non-injurious price and in an amount by which such export price is less than that non-injurious price.

Consequently, the proposed *correct and preferable* decision regarding the ‘ascertained export price’ (i.e., the proposed ‘ascertained export price’) results in the fixed and variable components in the ‘combined fixed and variable’ duty method being as set out in the Table below:

<b>Export Price (USD/MT)</b>	<b>Normal Value (NV) (USD/MT)</b>	<b>Dumping Margin</b>	<b>Fixed Rate (%)</b>	<b>Variable Rate</b>
XXXXXX	XXXXXX	-10.3%	0%	Ascertained export price

Refer: **Confidential Appendix 4 - Dumping Margin Calculation**

However, the operative measure for working out any interim dumping duty payable on exports of GUC to Australia by the Applicants would be the correct and preferable non-injurious price, which would be less than the variable rate. Consequently, interim dumping duty would be payable on exports of GUC to Australia by the Applicants if and to the extent that the actual export price (i.e., the price paid by Australian importers to AFEM) is less than the non-injurious price.

## 9. Miscellaneous - Method of working out interim dumping duty

### 9.1 *No interim dumping duty should be payable in the absence of dumping*

The effect of the *reviewable decision* in determining any interim dumping duty payable on exports of GUC to Australia by the Applicants was that the amount of interim dumping duty payable on such exports of the GUC to Australia by the Applicants is to be worked out in accordance with the ‘combined fixed and variable’ duty method as detailed in the Table set out in ADN 2021/075 with:

- (i) the fixed rate of interim dumping duty being an *ad valorem* rate of 14.7%; and
- (ii) the variable component being an amount equal to the amount by which actual export prices paid or payable by Australian importers is less than the ‘ascertained export price’, being price the ADC EXP.<sup>7</sup>

The decision to ascertain the ‘export price’ based on the ADC EXP for the purposes of working out any interim dumping duty payable on exports of GUC to Australia by the

<sup>7</sup> See Section 7.2.2 of Report 551, page 74.



Applicants on the 'combined fixed and variable' duty method was *not* the *correct and preferable* decision for the reasons set out earlier above.

In relation to the 'combined fixed and variable' method in working out the interim dumping duty payable, the fixed duty rate component of 14.7% was erroneously determined. A number of errors of fact and law that were made by the Minister led to that decision, as discussed in Ground 1 above.

To recapitulate, it was based on an erroneous 'export price', namely the ADC EXP, when it ought to have been the Actual EXP. Replacing the ADC EXP with the Actual EXP results, as noted earlier above, in a negative dumping margin.

Consequently, in the absence of dumping, no interim dumping duty should be payable and the fixed duty component of the 'combined fixed and variable' duty method would have no operation and, thereby, defeat the operation of that methodology in working out any interim duty payable because the variable component also would become redundant in circumstances where there is no dumping. In the absence of dumping, no interim dumping duty, therefore, should be payable.

#### 9.2 *Use of the combination of fixed and variable duty method*

In Report 551, the Commissioner recommended to the Minister, and the Minister subsequently accepted that recommendations in the *reviewable decision*, that the method by which interim dumping duty is to be worked out on exports of GUC to Australia by the Applicants should be the 'combined fixed and variable' duty method.

This was recommended and accepted notwithstanding:

- as contended by the Commissioner, a review of anti-dumping measures under Division 5 of the *Customs Act 1901* based on possible changes to the variable factors is confined to whether and to what extent the variable factors require alteration; and
- the 'combined fixed and variable' duty method was the recommended method in the original investigation and was the method prescribed for exports of GUC to Australia from Indonesia, including by the Applicants: see Notice pursuant to section 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* dated 18 April 2017 (copy **attached**).

It is unclear, therefore, on what legal basis pursuant to sections 269ZDA(1) and 269ZDB(1) of the *Customs Act 1901* the Commissioner could lawfully recommend, and the Minister accept, a recommendation regarding the method by which interim dumping duty is to be worked out.

In any event, there has been no change to the method by which any interim dumping duty is to be worked out in relation to exports of GUC by the Applicants as a result of or in connection with the *reviewable decision*.

However, assuming it was lawful for the Commissioner and Minister to redetermine the method by which any interim dumping duty is to be worked out in relation to exports of GUC by the Applicants as a result of or in connection with the *reviewable decision*, then because the proposed decision fixes different variable factors for exports of GUC to Australia by the Applicants, it renders the ‘combined fixed and variable’ duty method as an inappropriate method for working out any interim dumping duty payable because:

- (a) the fixed component would provide for a rate of ‘zero’ as the proposed ‘ascertained export price’ would be greater than the ‘ascertained normal value’ in the *reviewable decision* (i.e., no dumping); and
- (b) the variable component would cease to be operative as it would purport to render interim dumping duty payable if and to the extent that actual export prices were less than the proposed ‘ascertained export price’ (i.e., less than the Actual EXP) as opposed to the situation contemplated by this method where the ascertained export price is less than the ascertained value and actual export prices are less than that ascertained export price.

In substance, therefore, the proposed ‘ascertained export price’ would render the ‘combined fixed and variable’ duty method inappropriate, with the appropriate method being the ‘floor price’ duty method.

In such circumstances, it is submitted that it would be appropriate for the Minister to replace the ‘combined fixed and variable’ duty method with the ‘floor price’ duty method in working out any interim dumping duty payable on exports of GUC by the Applicants, subject, of course, to the proposed decision regarding the non-injurious price, which would become the operative measure.

### 9.3 *Selection of combined fixed and variable duty method in Review 551*

As noted above, the method for working out the amount of any interim dumping duty payable was selected/confirmed in Review 551 as the ‘combined fixed and variable’ duty method.

This method was chosen because “... *the Commission considers that the combination duty method (combination of fixed and variable duty) is appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the market*”<sup>8</sup>.

No authority nor evidence was relied upon by the Commissioner in Report 551 in support of these bald assertions. No reason was given, and no authority or evidence cited by the Commissioner in support of the assertion that ‘*circumvention behaviour is likely where complex company structures exist*’ as opposed to any other corporate structure or where the relevant entities are not related bodies corporate. In relation to the Applicants, no evidence was referred to in Report 551 that the corporate structure of the Applicants is ‘complex’. It is the Applicants’ contention that the Applicants’ corporate structures are straightforward

---

<sup>8</sup> See Section 7.2 of Report 551, page 71.

and in no way unusual or 'complex' (as seen in the confidential response to the Exporter Questionnaire (Indonesia)).

Also, the Commissioner has not cited any incidence where the Applicants had sought to circumvent any measures, nor did the Commissioner refer to any evidence of a '*proven case of price manipulation*' since the anti-dumping measures were imposed or at any other time. Indeed, the findings of fact regarding the volume and prices of GUC exported by the Applicants during the review period contradict such unsubstantiated assertions: refer Section 4.6.1.1 of Report 551. The above extracted assertions were unsubstantiated and unsupported by any authority or evidence. As such, they are unwarranted and must be disregarded.

There was therefore no legal or factual basis for the adoption of a 'combined fixed and variable' duty method to work out any interim dumping duty payable on exports of GUC by the Applicants as recommended by the Commissioner in Report 551 and adopted by the Minister. Consequently, the adoption of this methodology to determine how to work out any interim dumping duty payable on exports of the GUC to Australia by the Applicants for this reason was wrongly proposed and wrongly adopted.

In any event, it is unclear why the Commissioner considered it necessary to determine whether the combined fixed and variable duty method was the appropriate method for working out whether any interim dumping duty was payable when that was not a matter that sections 269ZDA(1) and 269ZDB(1) of the *Customs Act 1901* required. Further, it is inconsistent with the Commissioner's contention that Review 551 is confined to a review of the variable factors, that is, to the extent by which such factors may have changed.

#### 9.4 Conclusion on selection of the combination of fixed and variable method

The relevant variable factor, that is, the 'ascertained export price', comprised in the anti-dumping measures applying to exports of the GUC to Australia by the Applicants as fixed in the *reviewable decision* requires correction to reflect that:

- (i) the 'ascertained export price' is the Actual EXP; and
- (ii) that 'ascertained export price' (i.e., the Actual EXP) is higher than the normal value for exports of the GUC by the Applicants during the review period and, therefore, the dumping margin of 14.7% determined by the Minister was incorrect. The correct dumping margin was a negative margin of -10.3%.

Consequently, the selection of a combination of fixed and variable duty methodology to work out any interim dumping duty payable in respect of GUC exported to Australia by the Applicants is inappropriate when such exports were at 'undumped' export prices. It is not the correct methodology to work out any interim dumping duty payable on exports of the GUC to Australia by the Applicants for the reasons set out earlier above.

## 5. Conclusion

By way of conclusion and to reiterate, for all the reasons cited above:

- (a) the *reviewable decision*, in so far as it fixed different variable factors for exports of GUC to Australia by the Applicants, was not the *correct or preferable* decision because:
- (iv) in relation to the 'ascertained export price', it was incorrectly based on RAK, not AFEM, being the 'exporter' of the GUC and, in any event, regardless of which entity was the exporter, it was incorrectly based on the ADC EXP (price paid by AFEM to RAK for GUC) being the 'export price';
  - (v) in relation to the 'ascertained normal value', if the 'export price' is maintained (incorrectly) to be the price paid by AFEM to RAK for GUC, then adjustment to domestic selling prices of like goods in the determination of the normal value was not undertaken pursuant to section 269TAC(8) of the *Customs Act 1901* to account for differences in terms and conditions of sales modifying prices differently in such sales; and
  - (vi) in relation to the 'ascertained non-injurious price', it was incorrectly based upon an USP, which is not a 'price' nor, in the circumstances, the minimum price necessary to prevent injury caused by exports of GUC at dumped export prices; and
- (b) the *correct and preferable decision(s)* are:
- (iv) in relation to the 'ascertained export price', this should be the Actual EXP (price paid by Australian customer(s) to AFEM for GUC), being the actual price paid by Australian importer(s) for the GUC exported to Australia by the Applicants and being the actual price at which the GUC entered the commerce of Australia;
  - (v) in relation to the 'ascertained normal value', this should be the weighted average domestic selling price of like goods by RAK during the review period less all costs and expenses incurred in the exportation of the GUC to Australia after the sale of GUC by RAK to AFEM;
  - (vi) in relation to the 'ascertained non-injurious price', this should be the weighted average price of like goods sold by the Australian industry during the review period (being a market price unaffected by exports of GUC at 'dumped' export price), less all post-exportation costs and expenses incurred by the Applicants in the exportation of GUC to Australia to derive an FOB non-injurious price.

## Attachment B

## Legislative Provisions Relevant to a Declaration under Section 269ZDB of the Customs Act 1901

The *reviewable decision* in ADN 2021/075 is a declaration by the Minister under section 269ZDB(1)(a)(iii) of the *Customs Act 1901*. The legislative provisions relevant to that declaration for this application are set out below.

**1. Section 269ZDB(1)(a)(iii) of the Customs Act 1901**

Section 269ZDB(1)(a)(iii) of the *Customs Act 1901* relevantly provides that the Minister must declare, by notice published in accordance with subsection (7), that for the purposes of this Act and the Dumping Duty Act:

*“with effect from a date specified in the declaration, the notice is to be taken to have effect or to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty”.*

**Observation:** The Minister’s declaration in ADN 2021/075, the *reviewable decision*, simply recites this provision. The declaration does not identify which variable factors have been altered, how and to what extent and in relation to which exporters, nor is it apparent from the face of ADN 2021/075. As a legal instrument altering a tax, the declaration is arguably deficient in this respect. Presumably all variable factors applying to all affected exporters have been altered so that different variable factors apply to all exporters, including the Applicants, relevant to working out any interim dumping duty payable.

**2. Sections 5(2) and (3) of the Customs Tariff (Anti-Dumping) Regulation 2013**

ADN 2021/075 stipulates that the method for working out any interim dumping duty payable on GUC exported to Australia by the Applicants is the ‘combined fixed and variable’ method under Sections 5(2) and (3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. That Section provides as follows:

*“Combination of fixed and variable duty method*

(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*
    - (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)."*

**Observations:** A declaration under section 269ZDB of the *Customs Act 1901*, to the extent it alters the variable factors applying to exports of the GUC by the Applicants, will alter the working out of any interim dumping duty payable on such exports under this method.

Further, to the extent that such alteration of the variable factors applying to exports of the GUC by the Applicants is not the correct or preferable decision, then the *correct and preferable* decision regarding the alteration of those variable factors would not only affect the working out of any interim dumping duty payable under this method but also, may render this method as an inappropriate method for working out any interim dumping duty payable depending upon what is the *correct and preferable* decision regarding the alteration of the variable factors.

The Applicants contend that, having regard to the *correct and preferable* decisions regarding the alteration of the 'ascertained export price' and 'non-injurious price', as set out in Attachment A, the 'combined fixed and variable' method is not the appropriate method for working out any interim dumping duty payable on exports of the GUC by the Applicants for the reasons set out in Attachment A.

Rather, again for the reasons set out in Attachment A, the Applicants contend that the *correct and preferable* method for working out any interim dumping duty payable on exports of the GUC to Australia by the Applicants is the 'floor price' duty method (see below).

### **3. Sections 5(4) and (5) of the Customs Tariff (Anti-Dumping) Regulation 2013**

Sections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013* sets out the 'floor price' method for working out any interim dumping duty payable on exports. That Section provides as follows:

*"Floor price duty method*

- (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.”*

**Observations:** This method, in effect, provides that interim dumping duty is payable only if and only to the extent that the actual export price of exports is less than the ascertained normal value. If the actual export price is equal to or above the ‘ascertained normal value’, then no interim dumping duty is payable because such exports are not at ‘dumped’ export prices.

Whether and in what amount any interim dumping duty will be payable where this method applies will also depend upon any application of the non-injurious price to the exports in question, which is addressed in Attachment A. As set out in Attachment A, the Applicants contend that the operative measure is the proposed non-injurious price.



## **ANTI-DUMPING NOTICE NO. 2021/075**

### **A4 copy paper**

**Exported to Australia from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia (except by PT. Indah Kiat Pulp & Paper Tbk, PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp & Paper Mills) and the Kingdom of Thailand**

### **Findings in Relation to Review of Anti-Dumping Measures No. 551**

#### ***Notice under section 269ZDB(1) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission has completed a review, which commenced on 16 April 2020, of the anti-dumping measures applying to certain A4 copy paper (the goods) exported to Australia from the Federative Republic of Brazil (Brazil), the People's Republic of China (China), the Republic of Indonesia (Indonesia) (except by PT Indah Kiat Pulp & Paper Tbk, PT Pabrik Kertas Tjiwi Kimia Tbk and PT Pindo Deli Pulp & Paper Mills) and the Kingdom of Thailand (Thailand).

Recommendations resulting from the review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in *Anti-Dumping Commission Report No. 551 (REP 551)*.

I, CHRISTIAN PORTER, the Minister for Industry, Science, and Technology, have considered REP 551 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law, set out in REP 551.

Under section 269ZDB(1)(a)(iii) of the *Customs Act 1901* (the Act), I declare that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), that, with effect from the day after the publication of this notice, the dumping duty notice applying to the goods exported to Australia from Brazil, China, Indonesia (except by PT Indah Kiat Pulp & Paper Tbk, PT Pabrik Kertas Tjiwi Kimia Tbk and PT Pindo Deli Pulp & Paper Mills) and Thailand, and the countervailing duty notice applying to the goods exported to Australia from China, are taken to have effect as if different variable factors had been fixed in respect of exporters generally, relevant to the determination of duty.

In respect of the goods exported to Australia by Double A (1991) Public Company Ltd, Greenpoint Global Trading (Macao Commercial Offshore) Ltd, International Paper Exportadora Ltda, and by uncooperative and all other exporters from Brazil, China, Indonesia and Thailand, the non-injurious price of those goods is less than the normal value.



In accordance with sections 8(5B), 8(5BA) and 10(3D) of the Dumping Duty Act, I have had regard to the desirability of specifying a lesser amount of duty and have fixed the interim duty for Double A (1991) Public Company Ltd, Greenpoint Global Trading (Macao Commercial Offshore) Ltd, International Paper Exportadora Ltda, and uncooperative and all other exporters from Brazil, China, Indonesia and Thailand, to be such that the sum of:

- the export price; and
- that lesser duty,

does not exceed the non-injurious price of goods of that kind as ascertained.

For PT Riau Andalan Kertas and UPM Asia Pacific Pte Ltd, the non-injurious price of goods for the purposes of the dumping duty notice is greater than the normal value of the goods. Therefore, a lesser amount of duty has not been applied.

I determine that the interim dumping duty is an amount worked out in accordance with the combination of fixed and variable duty method as detailed in the table below, and the interim countervailing duty is an amount worked out in accordance with the *ad valorem* duty method for all exporters subject to the countervailing duty notice.

Particulars of the rates of interim dumping duty and interim countervailing duty established for each exporter are set out in the following table.

Exporter	IDD method	Fixed rate of IDD	ICD method	Rate of ICD
<b>Brazil</b>				
International Paper Exportadora Ltda	Combination of fixed and variable	8.1%	Not applicable	Not applicable
Uncooperative and all other exporters	Combination of fixed and variable	8.1%		
<b>China</b>				
UPM Asia Pacific Pte Ltd	Combination of fixed and variable	3.2%	Not applicable	Not applicable
Greenpoint Global Trading (Macao Commercial Offshore) Ltd	Combination of fixed and variable	10.0%		
Uncooperative and all other exporters	Combination of fixed and variable	3.0%	Proportion of export price	7.0%
<b>Indonesia</b>				
PT Riau Andalan Kertas	Combination of fixed and variable	14.7%	Not applicable	Not applicable
Uncooperative and all other exporters	Combination of fixed and variable	19.2%		
<b>Thailand</b>				
Double A (1991) Public Company Ltd	Combination of fixed and variable	0.9%	Not applicable	Not applicable
Uncooperative and all other exporters	Combination of fixed and variable	0.9%		

The actual duty liability may be higher than the effective rate of duty due to a number of factors. Affected parties should contact the Anti-Dumping Commission (the Commission) on 132 846 or +61 2 6213 6000, or by email to [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au), for further information regarding the actual duty liability calculation in their particular circumstance.

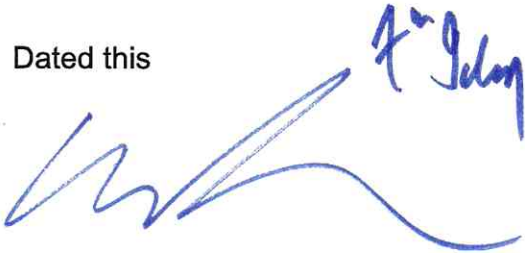
To preserve confidentiality, details of the revised variable factors such as the ascertained export price, normal value and non-injurious price will not be published.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel ([www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 551 has been placed on the Commission's public record. The public record may be examined at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be emailed to [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au).

Dated this

A handwritten signature in blue ink, appearing to read 'C. Porter', is written over the signature line.

7<sup>th</sup> July day of

CHRISTIAN PORTER  
Minister for Industry, Science and Technology



# Dumping Commodity Register

## A4 Copy Paper

Exported from the People's Republic of China, the Kingdom of Thailand, Republic of Indonesia, the Federative Republic of Brazil, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic

Document release date	Brief description of change(s)
20 March 2017	Termination of provisional dumping measures against Pabrik Kertas Tjiwi Kimia Tbk.
20 April 2017	Implementation of Measures.
14 March 2018	Implementation of ADRP amendments.
24 April 2018	Adjustment to duty assessment importation periods
18 May 2018	Implementation of provisional dumping measures against exporters from Finland, the Republic of Korea, the Russian Federation and the Slovak Republic.
23 May 2018	Addition of securities information.
22 November 2018	Amendment of securities for goods exported from Korea and Slovakia.
28 March 2019	Implementation of ADRP amendments for UPM (China) Co. Ltd
11 April 2019	Closure of provisional measures and implementation of measures for goods exported from Finland, Korea, Russia and Slovakia.
3 September 2019	Measures removed on goods exported from Mondi SCP following ADRP decision.
14 September 2020	Measures revoked on goods exported by Indah Kiat and Pindo Deli with effect from 12 March 2020
19 March 2021	Description of the goods altered after Anti-Circumvention Inquiry 552
10 July 2021	Amendment to measures following a review of measures case 551

**Note:**

DCRs notify the outcomes of finalised investigations and should be read in conjunction with any relevant current investigations, such as reviews and inquiries. Please refer to the [Cases page](#) on the website to locate any current information for this commodity.

# Contents

1. What countries do measures apply to?.....	3
2. What types of A4 copy paper are subject to anti-dumping measures? .....	3
3. How much Interim Dumping Duty (IDD) / Interim Countervailing Duty (ICD) will an importer have to pay? ....	4
4. Example of how to calculate the IDD / ICD liability .....	4
5. What is the dumping export price (DXP) and how do I calculate it? .....	5
6. What information is needed to complete an import declaration for goods subject to measures or securities?6	
7. What DSN do I use on the import declaration and what are the rates for my exporter? .....	7
8. How do I find out the confidential rate and ascertained export price for my exporter? .....	9
9. How long are the measures in place for? .....	9
10. Are there any exporters exempt from anti-dumping measures? .....	9
11. What tariff classifications and statistical codes are covered by the anti-dumping measures?.....	10
12. What are the duty assessment importation and application period dates? .....	10

Question	Response
<p>1. What countries do measures apply to?</p>	<p>Measures currently apply to goods from the People’s Republic of China (China), the Kingdom of Thailand (Thailand), Republic of Indonesia (Indonesia), the Federative Republic of Brazil (Brazil), Finland, the Republic of Korea (Korea), the Russian Federation (Russia) and the Slovak Republic (Slovakia).</p> <p>On 19 April 2017, with an effective date of 20 April 2017, anti-dumping measures in the form of interim dumping duty (IDD) were imposed on A4 Copy Paper exported from the People’s Republic of China (China), the Republic of Indonesia (Indonesia), the Federative Republic of Brazil (Brazil) and the Kingdom of Thailand (Thailand). Anti-dumping measures in the form of interim countervailing duty (ICD) were also imposed on A4 Copy Paper exported from China. For more information please refer to the final report and Anti-Dumping Notices <a href="#">ADN 2017/39</a> and <a href="#">ADN 2017/40</a>.</p> <p>On 10 April 2019, with an effective date of 11 April 2019, anti-dumping measures in the form of IDD were imposed on A4 Copy Paper exported from Finland, Republic of Korea, Russian Federation (Russia) and Slovak Republic (Slovakia). For more information please refer to the final report <a href="#">REP 463</a> and Anti-Dumping Notice <a href="#">ADN 2019/37</a>.</p> <p>On 19 March 2021, with an effective date of 28 April 2020, the description of the goods has been altered for A4 copy paper exported from China as a result of Anti-Circumvention Inquiry 552. For further information refer to the Anti-Dumping Notice <a href="#">ADN 2021/024</a></p> <p>On 9 July 2021, with an effective date of 10 July 2021, anti-dumping measures in the form of IDD and ICD were amended on A4 Copy Paper exported from Brazil, China, Indonesia and Thailand following a review of measures. For further information refer to Final Report <a href="#">REP 551</a> and Anti-Dumping Notice <a href="#">ADN 2021/075</a></p>
<p>2. What types of A4 copy paper are subject to anti-dumping measures?</p>	<p><b>The goods subject to measures include:</b></p> <ul style="list-style-type: none"> <li>• uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).</li> <li>• The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.</li> </ul> <p>For more information about the description of the goods subject to measures, please refer to section 3 of the <a href="#">Final Report</a>.</p>

<p>2. What types of A4 copy paper are subject to anti-dumping measures? (continued)</p>	<p><b>Description of the goods exported from China only:</b></p> <ul style="list-style-type: none"> <li>uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 67 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).</li> </ul> <p>For information on the description of the goods exported from China refer to Anti-Dumping Notice <a href="#">ADN 2021/024</a>.</p> <p><b>Please Note:</b></p> <ol style="list-style-type: none"> <li>When importing goods into the country importers are required to self-assess whether the imported goods meet the goods description outlined above and whether anti-dumping measures apply.</li> <li>The Anti-Dumping Commission is not in a position to provide advice on whether certain goods meet the description above.</li> <li>The use of exemption types is subject to monitoring by the Anti-Dumping Commission (the Commission) and the Australian Border Force (ABF).</li> </ol>
<p>3. How much Interim Dumping Duty (IDD) / Interim Countervailing Duty (ICD) will an importer have to pay?</p>	<p><b>IDD - all exporters (except Tjiwi Kimia, Indah Kiat, Pindo Deli and Mondi SCP)</b></p> <p>IDD is in the form of a fixed and variable measure. The total IDD liability is calculated as follows:</p> <ul style="list-style-type: none"> <li>fixed component of IDD: dumping export price (DXP) or ascertained export price (AEP), whichever is the greatest, multiplied by the applicable IDD ad valorem duty rate; <b>plus</b></li> <li>variable component of IDD: the amount, if any, by which the DXP is lower than the AEP.</li> </ul> <p><b>ICD – all Chinese exporters (except UPM and Asia Symbol)</b></p> <p>The ICD liability is calculated by multiplying the DXP by the ICD ad valorem duty rate.</p>
<p>4. Example of how to calculate the IDD / ICD liability</p>	<p><b>Fixed and variable measures</b></p> <p>The following is an <b>example</b> of how to calculate the IDD fixed and variable liability and ICD liability.</p> <ul style="list-style-type: none"> <li>DXP = AUD \$1,000 (Free-On-Board (FOB), cash)</li> <li>AEP = AUD \$2,000 (FOB, cash)</li> <li>IDD ad valorem rate = 10%</li> <li>ICD ad valorem rate = 15%</li> </ul> <p><b>Fixed component of IDD:</b></p> <p>The higher of the DXP (\$1,000) or AEP (\$2,000) multiplied by the IDD/DSA ad valorem rate (10%)  <math>\\$2,000 \times 10\% = \\$200</math></p>

<p>4. Example of how to calculate the IDD / ICD liability (continued)</p>	<p><u>Variable component of IDD:</u> the amount, if any, by which the DXP (\$1,000) is lower than the AEP (\$2,000) <math>\\$2,000 - \\$1,000 = \\$1,000</math></p> <p><b>Total IDD liability:</b> \$1,200 (\$200 + \$1,000) <b>Total ICD liability:</b> DXP (\$1,000) multiplied by the ICD Ad Valorem rate (15%) = \$150</p>
<p>5. What is the dumping export price (DXP) and how do I calculate it?</p>	<p>The DXP refers to the actual export price of the exported goods. The DXP should reflect the total export (invoice) price of the goods being entered, not the unit price of the goods.</p> <p><b>The DXP should be recorded on the relevant Full Import Declaration for the goods in the same terms as the export terms for the goods. Calculating the DXP may involve adjusting the actual export invoice price of the goods to the terms specified.</b></p> <p>For example, if the export terms are “FOB, cash” and the actual invoice terms of the goods are “CIF, 60 days, packed”, the following adjustments will need to be made in order to calculate the DXP at FOB, cash level.</p> <ul style="list-style-type: none"> <li>• step 1 - an adjustment for interest on credit terms will need to be made; and</li> <li>• step 2 - the overseas freight and insurance components will need to be subtracted from the export invoice price.</li> </ul> <p>Where suitable evidence cannot be proffered by the importer of the interest rate, then 1.0% per month (0.033% per day) should be applied to the actual invoice price credit terms.</p>

<p>5. What is the dumping export price (DXP) and how do I calculate it? (continued)</p>	<p>An example of adjusting for credit and incoterms is provided below:</p> <ul style="list-style-type: none"> <li>• Invoice terms = CIF, 60 days</li> <li>• Specified terms = FOB, cash</li> <li>• Export price - invoice amount = \$1,000</li> <li>• Marine insurance and ocean freight amount = \$100</li> </ul> <p><b>Step 1 - adjust for credit terms</b></p> <ol style="list-style-type: none"> <li>1. 1% per month interest rate should be applied to the invoiced price credit terms (i.e. 30 days = 1%)</li> <li>2. If the invoiced CIF, 60 days price is \$1,000, then the CIF, cash price = \$980 (\$1,000 less 2%)</li> </ol> <p><b>Step 2 - adjust for incoterms</b></p> <ol style="list-style-type: none"> <li>3. Adjust for freight and insurance to calculate DXP at FOB, cash equivalent</li> <li>4. CIF, cash price of \$980 minus freight and insurance amount of \$100 = \$880</li> <li>5. The DXP price = \$880 FOB, cash</li> </ol>
<p>6. What information is needed to complete an import declaration for goods subject to measures or securities?</p>	<p>The information required by an importer or Customs broker to complete an import declaration for goods subject to DSA is:</p> <ul style="list-style-type: none"> <li>• DXP;</li> <li>• Dumping Specification Number (DSN) or exemption type (where appropriate);</li> <li>• Country (this is usually country of origin or export country);</li> <li>• Tariff classification and statistical code;</li> <li>• Exporter / supplier; and</li> <li>• Quantity.</li> </ul> <p>Please see below to determine which DSN applies to the exporter of your goods.</p>



7. What DSN do I use on the import declaration and what are the rates for my exporter?

Following DSNs apply to goods exported from Brazil, Thailand and Indonesia entered for home consumption on or after 10 July 2021.

Exporter	CCID	Measure	Effective Rate of Duty	Ascertained Export Price	Export Terms	DSN
<b>Brazil</b>						
<u>International Paper Exportadora Lta</u>	CEH6996376X	IDD	8.1%	Confidential	FOB, 60 days	76
<u>All other Exporters</u>		IDD	8.1%	Confidential	FOB, 60 days	77
<b>Thailand</b>						
<u>Double A (1991) Public Company Ltd</u>	CEL4373636M	IDD	0.9%	Confidential	FOB, 80 days	78
<u>All other Exporters</u>		IDD	0.9%	Confidential	FOB, 80 days	79
<b>Indonesia</b>						
<u>PT Indah Kiat Pulp &amp; Paper Tbk</u>	CCC3767664W CCF3697993J	Exempt				
<u>PT Pindo Deli Pulp &amp; Paper Mills</u>	CCC3676647F	Exempt				
<u>PT Pabrik Kertas Tjiwi Kimia Tbk</u> Supplied directly	CCC7979967R CEA9434797W	Exempt				
<u>PT Pabrik Kertas Tjiwi Kimia Tbk</u> Supplied through <u>Paper Force (Oceana) Pty Ltd</u>	CCT7343333T CCH9379673X	Exempt Importers entering goods manufactured by Tjiwi Kimia and supplied indirectly through these traders are to use DSN 45. A zero duty liability will be calculated.				45
<u>PT Riau Andalan Kertas (RAK)</u> Supplied directly or through <u>April Far East (Malaysia) SDN BHD</u>	CCH6439776H CFN7669666H	IDD	14.7%	Confidential	FOB, 180 days	80
<u>All other Exporters</u>		IDD	19.2%	Confidential	FOB, 180 days	81

**Please Note:**

1. IDD ad valorem rates and AEP are considered confidential. Please see below on how importers can request the rates.
2. The actual duty liability may be higher than the effective rate of duty published due to the variable component of IDD.

7. What DSN do I use on the import declaration and what are the rates for my exporter? (continued)

The following DSNs apply to goods exported from China and entered for home consumption on or after 10 July 2021.

Exporter	CCID	Measure	Effective Rate of Duty	Ascertained Export Price	Export Terms	DSN
<b>China</b>						
<u>UPM Asia Pacific Pte Ltd</u>	CFF6339797M	IDD	3.2%	Confidential	FOB, 60 days	82
<u>Greenpoint Global Trading (Macao Commercial Offshore) Ltd</u>	CER7774749H	IDD	10.0%	Confidential	FOB, 32 days	83
<u>All other Exporters</u>		IDD & ICD	10.0%	Confidential	FOB, 32 days	84

**Please Note:**

1. IDD ad valorem rates and AEP are considered confidential. Please see below on how importers can request the rates.
2. The actual duty liability may be higher than the effective rate of duty published due to the variable component of IDD.

The following DSNs apply to goods exported from Finland, Russia, Korea and Slovakia and entered for home consumption on or after 11 April 2019.

Exporter	CCID	Measure	Effective Rate of Duty	Ascertained Export Price	Export Terms	DSN
<b>Finland</b>						
<u>All exporters</u>		IDD	16.3%	Confidential	FOB, cash	70
<b>Russia</b>						
<u>All exporters</u>		IDD	14.4%	Confidential	FOB, cash	71
<b>Korea</b>						
<u>Hankuk Paper MFG Co. Ltd</u>	CEG9749697J	IDD	3.8%	Confidential	FOB, cash	72
<u>All other exporters</u>		IDD	16.4%	Confidential	FOB, cash	73
<b>Slovakia</b>						
<u>Mondi SCP a.s (SK)</u>	CFT7363346A	Exempt				
<u>All other exporters</u>		IDD	14.6%	Confidential	FOB, cash	75

7. What DSN do I use on the import declaration and what are the rates for my exporter? (continued)	<p><b><u>Please Note:</u></b></p> <ol style="list-style-type: none"> <li>1. IDD ad valorem rates and AEP are considered confidential. Please see below on how importers can request the rates.</li> <li>2. The actual duty liability may be higher than the effective rate of duty published due to the variable component of IDD.</li> </ol>
8. How do I find out the confidential rate and ascertained export price for my exporter?	<p>The IDD ad valorem rate and the AEP for each DSN are considered confidential and will not be published.</p> <p>Importers of these goods may be provided with the confidential IDD ad valorem rate and the AEP, however the onus is on the importer to substantiate their commercial relationship with an exporter/supplier of their goods by providing evidence of:</p> <ul style="list-style-type: none"> <li>• A previous trading history with a nominated exporter/supplier of the goods. Evidence of a trading history would take the form of at least commercial invoices, packing list and bills of lading from previous shipments. Additional documentation may be requested by the Commission; or</li> <li>• In the absence of a trading history, an offer or a quotation from an exporter/supplier of goods subject to dumping/countervailing measures. The offer or quotation must be on the exporter/supplier's company letterhead.</li> </ul> <p>Requests and evidence should be sent to <a href="mailto:clientsupport@adcommission.gov.au">clientsupport@adcommission.gov.au</a></p> <p><b><u>Please note:</u></b></p> <ol style="list-style-type: none"> <li>1. Any requests for the confidential information that do not include sufficient evidence as outlined above will be rejected.</li> <li>2. Only as much of the confidential information as is necessary to enter the goods will be provided.</li> </ol> <p>The ABF will conduct monitoring of imports subject to anti-dumping measures consistent with its published policy.</p>
9. How long are the measures in place for?	<p>The measures have been imposed for five years, unless revoked earlier.</p> <p>In the case of A4 Copy Paper from China, Thailand, Indonesia and Brazil the measures are in place until 19 April 2022. In the case of A4 Copy Paper from Finland, Korea, Russia and Slovakia the measures are in place until 10 April 2024.</p>
10. Are there any exporters exempt from anti-dumping measures?	<p>All exporters and suppliers of A4 Copy Paper from China, Thailand, Indonesia, Brazil, Finland, Korea, Russia and Slovakia are subject to IDD, except for Tjiwi Kimia, Indah Kiat, Pindo Deli and Mondi SCP.</p> <p>All exporters and suppliers of A4 Copy Paper from China are subject to ICD, except UPM and Greenpoint Global.</p> <p>The 'all other exporters' rate of IDD will apply to exported goods unless an importer has evidence that the goods are being supplied either directly by a named exporter or through a linked supplier.</p>

<p>11. What tariff classifications and statistical codes are covered by the anti-dumping measures?</p>	<p>Goods subject to measures should be classified using the tariff sub-headings and associated statistical codes below:</p> <table border="1" data-bbox="712 240 1370 320"> <thead> <tr> <th>Tariff subheading</th> <th>Statistical code</th> </tr> </thead> <tbody> <tr> <td>4802.56.10</td> <td>03, 09</td> </tr> </tbody> </table> <p>These tariff classifications and statistical codes may apply to goods which are not subject to measures, may change because of amendments to the Working Tariff or the subject goods may be imported under tariff classification numbers that are not listed.</p> <p>The listing of this tariff classification and statistical code is for convenience or reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to measures.</p> <p>Where importers are unclear on the correct tariff classification of their goods, it is recommended they check the <a href="#">Working Tariff page</a> on the ABF website or contact the ABF on 131 881.</p>	Tariff subheading	Statistical code	4802.56.10	03, 09								
Tariff subheading	Statistical code												
4802.56.10	03, 09												
<p>12. What are the duty assessment importation and application period dates?</p>	<p>An importer of goods on which an IDD has been paid, may lodge an application with the Commissioner requesting that the Parliamentary Secretary make an assessment of the final liability of those goods to duty.</p> <p>This usually occurs when an importer considers that the IDD paid in respect of goods exceed the total amount payable (i.e. importers consider they are entitled to a refund of duties). In relation to IDD, an importer may consider that the dumping margin for the goods is now less than it was during the investigation period, or that its exporter is no longer dumping, and as a result it has paid more duty than it should have paid.</p> <p>There are a series of time frames fixed by legislation that govern the duty assessment system (referred to as importation periods). The duty assessment importation periods and application dates for A4 Copy Paper from China, Thailand, Indonesia and Brazil are:</p> <table border="1" data-bbox="577 1104 1541 1321"> <thead> <tr> <th>Importation Period</th> <th>Application Period</th> </tr> </thead> <tbody> <tr> <td>19 October 2019 – 18 April 2020</td> <td>19 April 2020 – 18 October 2020</td> </tr> <tr> <td>19 April 2020 – 18 October 2020</td> <td>19 October 2020 – 18 April 2021</td> </tr> <tr> <td>19 October 2020 – 18 April 2021</td> <td>19 April 2021 – 18 October 2021</td> </tr> <tr> <td>19 April 2021 – 18 October 2021</td> <td>19 October 2021 – 18 April 2022</td> </tr> <tr> <td>19 October 2021 – 18 April 2022</td> <td>19 April 2022 – 18 October 2022</td> </tr> </tbody> </table>	Importation Period	Application Period	19 October 2019 – 18 April 2020	19 April 2020 – 18 October 2020	19 April 2020 – 18 October 2020	19 October 2020 – 18 April 2021	19 October 2020 – 18 April 2021	19 April 2021 – 18 October 2021	19 April 2021 – 18 October 2021	19 October 2021 – 18 April 2022	19 October 2021 – 18 April 2022	19 April 2022 – 18 October 2022
Importation Period	Application Period												
19 October 2019 – 18 April 2020	19 April 2020 – 18 October 2020												
19 April 2020 – 18 October 2020	19 October 2020 – 18 April 2021												
19 October 2020 – 18 April 2021	19 April 2021 – 18 October 2021												
19 April 2021 – 18 October 2021	19 October 2021 – 18 April 2022												
19 October 2021 – 18 April 2022	19 April 2022 – 18 October 2022												

12. What are the duty assessment importation and application period dates?  
(Continued)

The duty assessment importation periods and application dates for A4 Copy Paper from Finland, Russia, Korea and Slovakia are:

<b>Importation Period</b>	<b>Application Period</b>
10 October 2020 – 9 April 2021	10 April 2021 – 9 October 2021
10 April 2021 – 9 October 2021	10 October 2021 – 9 April 2022
10 October 2021 – 9 April 2022	10 April 2022 – 9 October 2022
10 April 2022 – 9 October 2022	10 October 2022 – 9 April 2023
10 October 2022 – 9 April 2023	10 April 2023 – 9 October 2023
10 April 2023 – 9 October 2023	10 October 2023 – 9 April 2024
10 October 2023 – 9 April 2024	10 April 2024 – 9 October 2024

More information about duty assessments is available on the [Anti-Dumping Commission website](#).



## Customs Tariff (Anti-Dumping) Act 1975

### A4 Copy Paper

### Exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand

#### *Notice pursuant to subsection 8(5) of the Customs Tariff (Anti-Dumping) Act 1975*

I, CRAIG LAUNDY, Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science,<sup>1</sup> having decided to issue a notice pursuant to subsection 269TG(1) and subsection 269TG(2) of the *Customs Act 1901* (the Act) in respect of A4 Copy Paper described in that notice (the goods), DETERMINE, pursuant to subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), that the interim dumping duty payable on the goods exported from the Republic of Brazil (Brazil) the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand) is an amount worked out in accordance with the combination of fixed and variable duty method specified in subsection 5(2) and subsection 5(3) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Pursuant to subsection 8(5B) of the Dumping Duty Act, I have not had regard to the desirability of fixing a lesser amount of duty for exports of the goods from Brazil and Thailand as the non-injurious price of goods of that kind as ascertained or last ascertained for the purposes of the dumping duty notice is more than the normal value of goods of that kind as so ascertained, or last so ascertained.

Pursuant to subsection 8(5BA) of the Dumping Duty Act, I have had regard to the desirability of fixing a lesser amount of duty for exports of the goods from China such that the sum of the amounts outlined in subsections 8(5BA)(c), (d) and (e) do not exceed the non-injurious price of goods of that kind as ascertained or last ascertained for the purposes of the dumping duty notice and countervailing duty notice.

Pursuant to subsection 8(5BAA)(a) of the Dumping Duty Act, I have not had regard to the desirability of fixing a lesser amount of duty for exports of the goods from Indonesia under subsection 8(5B) of the Dumping Duty Act, as the normal value of those goods was not ascertained under subsection 269TAC(1) of the Act due to the operation of subsection 269TAC(2)(a)(ii).

Subject to section 45 and subsection 269TN(2) of the Act, this notice applies to the goods and like goods entered for home consumption as per my declaration under section 269TG of the Act and to which section 8 of the Dumping Duty Act applies.

Dated this 18<sup>th</sup> day of April 2017

CRAIG LAUNDY

Assistant Minister for Industry, Innovation and Science  
Parliamentary Secretary to the Minister for Industry, Innovation and Science

<sup>1</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this decision the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.



---

## **ANTI-DUMPING NOTICE NO. 2016/34**

*Customs Act 1901 – Part XVB*

### **Certain ammonium nitrate**

### **Exported from the Russian Federation, either directly or via Estonia**

### **Findings of the Continuation Inquiry into Anti-Dumping Measures**

***Notice under subsection 269ZHG(1) of the Customs Act 1901***

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 9 October 2015, into whether the continuation of the anti-dumping measures applying to certain ammonium nitrate (the goods) exported to Australia from the Russian Federation (Russia), either directly or via Estonia, is justified.

Recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 312* (REP 312).

I, KAREN LESLEY ANDREWS, the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science,<sup>1</sup> have considered REP 312 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of fact and law on which the Commissioner's recommendations were based, and particulars of the evidence relied on to support the finding.

Under subsection 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I declare that I have decided to secure the continuation of the anti-dumping measures currently applying to the goods exported to Australia from Russia, either directly or via Estonia.

Pursuant to subsection 269ZHG(4)(a)(iii) of the Act, I determine that, to the extent that the measures comprise the publication of a dumping duty notice, the notice continues in force after 24 May 2016, but that, after this day, the notice has effect in relation to exporters generally as if different specified variable factors had been fixed in relation to all exporters generally relevant to the determination of duty.

---

<sup>1</sup> On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science.

In accordance with subsection 8(5BB) of the *Customs Tariff (Anti-Dumping) Act 1975* and the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation), the duty that has been determined is an amount worked out in accordance with the floor price duty method pursuant to subsections 5(4) and (5) of the Regulation as detailed in the table below.

Particulars of the effective rate of duty is set out in the following table.

<b>Exporter/country</b>	<b>Effective rate of interim countervailing duty and interim dumping duty*</b>	<b>Duty Method</b>
<i>Russia</i>	0%	<i>floor price duty method</i>

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel ([www.adreviewpanel.gov.au](http://www.adreviewpanel.gov.au)), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 312 has been placed on the public record, which may be examined at the Anti-Dumping Commission Office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

Genuine importers who wish to know the floor price should contact the Anti-Dumping Commission Client Support team by email at [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au).

Enquiries about this notice may be directed to the Case Manager on telephone number +61 3 8539 2467, fax number +61 3 8539 2499 or email at [operations1@adcommission.gov.au](mailto:operations1@adcommission.gov.au).

Dated this 04 day of May 2016.

KAREN LESLEY ANDREWS

Assistant Minister for Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science



