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AUSTRALIA – ANTI-DUMPING MEASURES ON A4 COPY PAPER

REQUEST FOR CONSULTATIONS BY INDONESIA

The following communication, dated 1 September 2017, from the delegation of Indonesia to the delegation of Australia and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Australia pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement) with respect to the imposition of an anti-dumping order on A4 copy paper and the investigation and determination leading thereto.

Pursuant to Article 4.4 of the DSU, the reasons for this request for consultations, including identification of the measures at issue and of the legal bases for this complaint, are provided below.

MEASURE AT ISSUE

Determination by the Australian Anti-Dumping Commission (The Commission) including the conduct of the investigations, any notices, annexes, decision memoranda, orders, amendments, or other instruments issued by Australia in connection with the anti-dumping measures on: 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) under HS code 4802.56.10 (statistical code 03) and 4802.56.10 (statistical code 09) exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand, Anti-Dumping Notice (ADN) 2017/39.

LEGAL BASIS

1. Inconsistency with Article 2.2 of the Dumping Agreement ("AD Agreement") as applied

The Commission did not use the Indonesian exporters' home market price for normal value because it found that a particular market situation existed. Instead, the Commission used a constructed value to determine normal value. The Commission found a particular market situation existed because the Government of Indonesia allegedly implements policies that increase the supply of timber which allegedly result in lower paper prices due to lower timber prices. Australia has acted inconsistently with Article 2.2 of the AD Agreement as applied because, even if a particular market situation existed, domestic and export prices would have been affected and a proper comparison could have been made without resorting to constructed value. Australia's actions also were inconsistent with Article 2.2 of the AD Agreement because a "particular market situation" did not exist within the meaning of that term.

2. Inconsistency with Article 2.2.1.1 of the AD Agreement as applied

The Commission replaced the Indonesian exporters' actual costs for pulp with a benchmark comprised of a weighted average price taken from an industry publication. It violates Article 2.2.1.1 of the AD Agreement as applied because the costs were recorded in the companies' books and records and reasonably reflected the cost of producing the merchandise subject to investigation.

3. Inconsistency with Article 2.4 of the AD Agreement as applied

The Commission adjusted the export price to remove selling expenses and profit to derive an f.o.b. plant price. For normal value, the Commission refused to deduct selling expenses and profit incurred by an affiliated home market reseller that were not included in export price. In this regards, Australia has acted inconsistently with Article 2.4 of the AD Agreement as applied because export sales were not sold through an affiliate but home market sales were, and the Commission refused to adjust for the expenses and profit incurred by the affiliated home market reseller in calculating normal value. This means the Commission failed to make a fair comparison as required by Article 2.4 of the AD Agreement.

Indonesia reserves the right to raise additional factual issues or legal claims or matters during the course of consultations and in any request for the establishment of a panel.

Indonesia looks forward to receiving the response of Australia to this request and to fixing a mutually convenient date and venue for consultation.
