DATE: April 3, 2018

MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

RE: Decision Memorandum for the Preliminary Results of 2015-2016  
Countervailing Duty Administrative Review: Certain Uncoated  
Paper from Indonesia

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the  
countervailing duty (CVD) order on certain uncoated paper from Indonesia. The period of  
review (POR) is June 29, 2015, through December 31, 2016. We preliminarily determine that  
PT Anugrah Kertas Utama (AKU), PT Riau Andalan Kertas (RAK), APRIL Fine Paper Macao  
Commercial Offshore Limited (AFPM), and their cross-owned affiliates (collectively APRIL)  
received countervailable subsidies during the POR.

If these preliminary results are adopted in the final results of this review, we will instruct U.S.  
Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries  
of subject merchandise during the POR. Interested parties are invited to comment on these  
preliminary results. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the  
Tariff Act of 1930, as amended (the Act), we will issue the final results no later than 120 days  
after the publication of these preliminary results.
II. BACKGROUND

On March 3, 2016, Commerce published in the Federal Register the CVD order on certain uncoated paper from Indonesia.\(^1\) On March 6, 2017, Commerce published a notice of opportunity to request an administrative review of the CVD order on uncoated paper from Indonesia.\(^2\)

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), (2) and (3), on March 31, 2017, Commerce received timely requests to conduct an administrative review of two companies: (1) PT. Indah Kiat Pulp and Paper Tbk, PT. Pabrik Kertas Tjiwi Kimia Tbk, and PT. Pindo Deli Pulp and Paper Mills (collectively, APP); and (2) APRIL.\(^3\) On May 9, 2017, Commerce published in the Federal Register a notice of initiation of administrative review.\(^4\)

On May 16, 2017, Commerce issued the initial questionnaire to the Government of Indonesia (GOI), instructing the GOI to forward the questionnaire to APP and APRIL.\(^5\) In June 2017, we received the affiliated companies’ questionnaire responses from APRIL and APP.\(^6\) On June 26, 2017, APP timely withdrew its request for an administrative review.

In July 2017, we received APRIL’s and the GOI’s initial questionnaire responses.\(^7\) In August 2017, the petitioners submitted new subsidy and uncreditworthiness allegations.\(^8\) In September 2017, Commerce initiated an investigation of the new subsidy and uncreditworthiness allegations\(^9\) and issued questionnaires to the GOI and APRIL related to them. On September 15, 2017, Commerce rescinded this administrative review with respect to APP.\(^10\)

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\(^2\) See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 82 FR 12551 (March 6, 2017).


\(^4\) See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 82 FR 21513 (May 9, 2017), as corrected by Initiation of Antidumping and Countervailing Duty Administrative Reviews, 82 FR 26444, 26445, 26451 (June 7, 2017).


\(^6\) See APRIL’s June 7, 2017, Affiliation Questionnaire Response (APRIL Affiliation Response), and APP’s June 14, 2017, Affiliation Questionnaire Response.

\(^7\) See APRIL’s July 6, 2017, Initial Questionnaire Response (APRIL IQR); and GOI’s July 6, 2017, Initial Questionnaire Response (GOI IQR).


In October, we timely received responses from APRIL and the GOI to the new subsidy and uncreditworthiness allegations questionnaires.11

From September 2017 through January 2018, Commerce issued supplemental questionnaires to the GOI and APRIL, and received their responses from October 2017 through February 2018.12

On November 6, 2017, Commerce extended the deadline for the preliminary results of this administrative review until April 2, 2018.13 On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. The revised deadline for these preliminary results is now April 3, 2018.14

On March 6, 2018, APRIL submitted benchmark information to measure the adequacy of remuneration. However, because the deadline for the submission of this information was March 5, 2018 (i.e., 30 days before the date of the preliminary results), we rejected APRIL’s March 6 submission as untimely.15 On March 16, 2018, Commerce officials met with counsel to APRIL, to discuss Commerce’s requirements that parties file their submissions by the appropriate deadlines and the revised procedures counsel for APRIL implemented to ensure that its future filings would be timely. We also requested that counsel to APRIL file a letter on the record of this administrative review to explain that it understood Commerce’s requirements and detail the internal steps it had undertaken to meet Commerce’s filing requirements.16 On March 20, 2018, counsel for APRIL filed the requested letter17 and, on this same date, we permitted APRIL to refile its March 6 benchmark submission.18 However, because we received this benchmark information too close to the date of the preliminary results to use it in our calculations, we will consider it for purposes of the final results.

III. SCOPE OF THE ORDER

The merchandise subject to this order includes uncoated paper in sheet form; weighing at least 40 grams per square meter but not more than 150 grams per square meter; that either is a white

11 See APRIL’s October 12, 2017, new subsidy allegation response; and GOI’s October 12, 2017, new subsidy allegation response.
12 See GOI’s October 24, 2017, supplemental questionnaire response (GOI SQR); APRIL’s October 24, 2017, supplemental questionnaire response (APRIL SQR); GOI’s November 15, 2017, new subsidy allegation supplemental response (part 1); APRIL’s November 15, 2017, new subsidy allegation supplemental response (APRIL NSASQR); GOI’s November 22, 2017, new subsidy allegation supplemental response (part 2); APRIL’s February 1, 2018, supplemental questionnaire response (APRIL SQR2); and GOI’s February 6, 2018, new subsidy allegation supplemental response.
14 See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.
16 See Memorandum to The File, “Meeting with Counsel to APRIL,” dated March 16, 2018.
18 See March 20, 2018, Letter from Elizabeth Eastwood to Matthew McConkey.
paper with a GE brightness level\textsuperscript{19} of 85 or higher or is a colored paper; whether or not surface-decorated, printed (except as described below), embossed, perforated, or punched; irrespective of the smoothness of the surface; and irrespective of dimensions (Certain Uncoated Paper).

Certain uncoated paper includes (a) uncoated free sheet paper that meets this scope definition; (b) uncoated ground wood paper produced from bleached chemi-thermo-mechanical pulp (BCTMP) that meets this scope definition; and (c) any other uncoated paper that meets this scope definition regardless of the type of pulp used to produce the paper.

Specifically excluded from the scope of this order are (1) paper printed with final content of printed text or graphics and (2) lined paper products, typically school supplies, composed of paper that incorporates straight horizontal and/or vertical lines that would make the paper unsuitable for copying or printing purposes. For purposes of this scope definition, paper shall be considered “printed with final content” where at least one side of the sheet has printed text and/or graphics that cover at least five percent of the surface area of the entire sheet.

On September 1, 2017, Commerce determined that that imports of uncoated paper with a GE brightness of 83 +/- 1% (83 Bright paper), otherwise meeting the description of in-scope merchandise, constitute merchandise “altered in form or appearance in minor respects” from in-scope merchandise that are subject to this order.\textsuperscript{20}

Imports of the subject merchandise are provided for under Harmonized Tariff Schedule of the United States (HTSUS) categories 4802.56.1000, 4802.56.2000, 4802.56.3000, 4802.56.4000, 4802.56.6000, 4802.56.7020, 4802.56.7040, 4802.57.1000, 4802.57.2000, 4802.57.3000, and 4802.57.4000. Some imports of subject merchandise may also be classified under 4802.62.1000, 4802.62.2000, 4802.62.3000, 4802.62.5000, 4802.62.6020, 4802.62.6040, 4802.69.1000, 4802.69.2000, 4802.69.3000, 4811.90.8050 and 4811.90.9080. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

\textbf{IV. SUBSIDIES VALUATION INFORMATION}

\textbf{A. Allocation Period}

The average useful life (AUL) period in this proceeding, as described in 19 CFR 351.524(d)(2), is 13 years according to the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System, as updated by the Department of Treasury, for assets used to manufacture the

\textsuperscript{19} One of the key measurements of any grade of paper is brightness. Generally speaking, the brighter the paper the better the contrast between the paper and the ink. Brightness is measured using a GE Reflectance Scale, which measures the reflection of light off a grade of paper. One is the lowest reflection, or what would be given to a totally black grade, and 100 is the brightest measured grade. “Colored paper” as used in this scope definition means a paper with a hue other than white that reflects one of the primary colors of magenta, yellow, and cyan (red, yellow, and blue) or a combination of such primary colors.

\textsuperscript{20} See Certain Uncoated Paper from Australia, Brazil, the People’s Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders, 82 FR 41610 (September 1, 2017).
subject merchandise. Commerce notified the respondent of the AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Further, for non-recurring subsidies, we applied the “0.5 percent expense test” described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

B. Attribution of Subsidies

19 CFR 351.525(b)(6)(i) states that Commerce will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce’s regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership. 22

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade

has upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.\(^{23}\)

In the *Final Determination*,\(^{24}\) we determined that the companies listed below are cross-owned:

- **AFPM** – exporter of subject merchandise;
- **AKU** – producer of subject merchandise;
- **RAK** – producer of subject merchandise;
- **PT Intígunta Primatama (IP)** – producer and supplier to AKU of pulp which AKU uses in the production of subject merchandise;
- **PT Riau Andalan Pulp & Paper (RAPP)** – harvester of standing timber and producer of woodchip and pulp; supplier of woodchip to IP and pulp to RAK; and
- **PT Esensindo Cipta Cemerlang (ECC)** – producer and supplier to AKU and RAK of filler, used in the production of subject merchandise.

The facts related to the cross-ownership of these companies present at the time of the *Final Determination* are unchanged in this review.\(^{25}\) Therefore, we continue to find these companies to be cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

Moreover, in this review, we find the following additional companies to be cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi):

- **PT ITCI Hutani Manunggal (IHM)** – harvester of standing timber and supplier to RAPP of pulpwood; and
- **PT Sateri Viscose International (SVI)** – producer of subject merchandise.

IHM is cross-owned through the ultimate majority ownership by Asia Pacific Resources International Holdings Limited (Bermuda), the same company which is the ultimate majority owner of the other cross-owned affiliates identified above (except ECC).\(^{26}\) Similarly, SVI is cross-owned through its controlling shareholder.\(^{27}\)

AKU, RAK, and SVI are producers of the subject merchandise. Therefore, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to the combined sales of these companies, net of intercompany sales.


\(^{25}\) *Id. at 3-4 and Attachments 1 and 2.*

\(^{26}\) *Id. at 3-4 and Attachments 1 and 2; and APRIL February 1, 2018, supplemental response (APRIL SQR2) at 1 and Exhibit 1.*

\(^{27}\) *See APRIL IQR at 9 and Exhibit 10. See also APRIL SQR2 at 2. APRIL has requested proprietary treatment for the specific details regarding SVI’s affiliation to the APRIL companies.*
IHM produced and sold pulpwood to RAPP, which in turn produced and supplied wood chips and pulp to IP, RAK, and SVI. IP used the inputs it received (i.e., woodchips) to produce an intermediate product (i.e., pulp), which in turn, AKU used to produce paper. RAK and SVI used the inputs they received (i.e., pulp) to produce paper. We preliminarily find that the inputs (i.e., pulpwood) which IHM supplied are primarily dedicated to the production of the downstream products, pursuant to 19 CFR 351.525(b)(6)(iv).28 Regarding attribution of the subsidies that IHM, RAPP and IP received, 19 CFR 351.525(b)(6)(iv) states the following:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Therefore, pursuant to 19 CFR 351.525(b)(6)(iv), we attributed subsidies received by IHM and RAPP to the combined sales of IHM, RAPP, IP, and the subject merchandise producers (i.e., AKU, RAK, and SVI), net of intercompany sales.29 We attributed subsidies received by IP to the combined sales of IP and the subject merchandise producers (AKU, RAK, and SVI), net of intercompany sales.30

ECC supplies virtually all of the filler used in the production of the subject merchandise by AKU, RAK, and SVI. Consistent with the Final Determination, we find that the input supplied by ECC to AKU, RAK, and SVI can be used, in whole or in part, in the production of subject merchandise or in intermediate goods that are subsequently used to make subject merchandise.31 Thus, we find that filler provided by ECC is primarily dedicated to the production of downstream products, pursuant to 19 CFR 351.525(b)(6)(iv). Accordingly, we are attributing subsidies received by ECC to the combined sales of ECC and the subject merchandise producers (AKU, RAK, and SVI), net of intercompany sales.

i. Entered Value Adjustment

APRIL reported that AKU’s affiliate, AFPM, issued invoices for AKU’s sales of subject merchandise to the United States.32 In the Final Determination, Commerce made an adjustment

29 SVI did not begin operations until October 2016. See APRIL Affiliation Response at 3. Accordingly, SVI is not included in the attribution of subsidies for 2015.
30 See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC), and accompanying IDM at 9-10, where we discuss the attribution methodology for cross-owned input suppliers under a similar corporate structure.
31 See Final Determination at 10.
32 See APRIL IQR at 2 and 13.
to the calculated subsidy rate to account for the mark-up between the export value from Indonesia and the entered value of subject merchandise into the United States.  

Commerce has a practice of making an adjustment to the calculated subsidy rate when the sales value used to calculate that subsidy rate does not match the entered value of the merchandise, e.g., where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can provide data to demonstrate that certain criteria are met. In the instant review, the same distribution and sales channel APRIL used in the Final Determination were used during the POR, and the information also permits an accurate calculation of the adjustment. Therefore, we made this adjustment in these preliminary results.

C. Benchmark Interest Rates

Short-Term Loan Interest Rate Benchmark

19 CFR 351.509(a)(2) states that when a program provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Consistent with 19 CFR 351.505(a)(2)(iv), we used the Indonesian short-term monthly lending rates in foreign currency, as compiled by the International Monetary Fund in its International Financial Statistics.

V. ANALYSIS OF PROGRAMS

Based on our analysis of the record information, we preliminarily find the following:

A. Programs Preliminarily Determined To Be Countervailable

1. Provision of Standing Timber for Less Than Adequate Remuneration (LTAR)

In the Final Determination, Commerce found that the GOI controls nearly all of Indonesia’s harvestable forest land and leases logging rights to companies, charging a royalty (stumpage rate) for the right to harvest roundwood (i.e., logs). In the instant review, Commerce is examining whether APRIL was provided with standing timber for LTAR during the POR. No information has been provided on the record of the instant review that would cause us to reach a different determination from the Final Determination. We therefore preliminarily find that the provision of standing timber constitutes a financial contribution provided to producers of uncoated paper within the meaning of section 771(5)(D)(iii) of the Act.

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33 See Final Determination, and accompanying IDM at 12.
34 See Multilayered Wood Flooring from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 64313 (October 18, 2011), and accompanying IDM at 7-8.
35 See APRIL IQR at 2 and 13, and Exhibits 45 and 49.
36 See Memorandum to the File “Preliminary Results Benefit Calculations for APRIL,” dated concurrently with this memorandum (Preliminary Calculation Memorandum).
Further, we preliminarily determine that the provision of stumpage is specific in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipient industries are limited in number.

APRIL reported that, during the POR, RAPP and IHM were the only companies that harvested standing timber from public land to be used as a fiber source for the production of subject merchandise. We preliminarily determine that the provision of standing timber provides a benefit as described in section 771(5)(E)(iv) of the Act, to the extent that the GOI received less than adequate remuneration when measured against a market benchmark for stumpage. Commerce’s regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying benchmarks to determine whether a government good or service is provided for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) prices consistent with market principles based on an assessment by Commerce of the government-set price (tier three). This hierarchy reflects a logical preference for achieving the objectives of the statute. The most direct means of determining whether the government required adequate remuneration is by comparison with private transactions for a comparable good or service in the country. Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier (or, in some cases, from a competitive government auction) located either within the country or outside the country (the latter transaction would be in the form of an import). This preference is because such prices generally would be expected to reflect most closely the commercial environment of the purchaser under investigation.

In accordance with a “tier one” benchmark, to determine the existence and extent of the benefit, we would need to identify an observed market stumpage price from a private supplier in Indonesia. Neither the GOI nor APRIL provided any domestic private prices that could be used as a “tier one” benchmark. The GOI reported private forests accounted for only 12 percent of the total harvest during each year of the POR (5,254,240 m³ out of a total of 45,453,117 m³ in 2015 and 5,119,567 m³ out of a total of 44,094,403 m³ in 2016). Moreover, the GOI owns the vast majority of harvestable forest land in Indonesia. Thus, we preliminarily find that the GOI continues to play a predominant role in the market for standing timber. As such, we preliminarily determine that there are no market-determined stumpage fees in Indonesia upon which to base a “tier one” benchmark. Furthermore, because the GOI dominates the Indonesian stumpage market and because the stumpage and pulpwood markets are inextricably intertwined,

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37 See APRIL IQR at 14.
38 See Final Determination, and accompanying IDM at 13-16.
39 See GOI IQR at 5 and 13, and Exhibit 5.
40 See id.
we preliminarily find it is inappropriate to use import prices into Indonesia for pulpwood as a starting point to determine whether Indonesian stumpage prices reflect market prices.\(^{41}\)

A “tier two” benchmark, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving the particular producer. In selecting a world market price under this second approach, Commerce examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As discussed in the *CVD Preamble*, Commerce will consider whether the market conditions in the country are such that it is reasonable to conclude that a purchaser in the country could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.\(^{42}\)

APRIL suggested that the most accurate and preferred methodology for calculating the stumpage benchmark under tier two would be to compare Indonesian stumpage fees with the stumpage fees in another country, such as Malaysia.\(^{43}\) However, standing timber (and stumpage fees) in one country are not available to users in another country because standing timber cannot be traded across borders; only the logs produced from the standing timber can be traded. Thus, there are no world market prices for stumpage, and, therefore, we cannot apply stumpage fees in another country as a “tier two” benchmark.\(^{44}\)

Because we are not able to conduct our analysis under section 351.511(a)(2)(ii) of the regulations, consistent with the hierarchy, we are measuring the adequacy of remuneration by assessing whether the government price is consistent with market principles (*i.e.*, “tier three” as described in Commerce’s regulations). This approach is set forth in 19 CFR 351.511(a)(2)(iii) and is explained further in the *CVD Preamble*:

Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy,

\(^{41}\) See Final Determination, and accompanying IDM at 15. See also Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination, 72 FR 60642 (October 25, 2007) (CFS Final) and accompanying IDM at 33, and CCP Final, and accompanying IDM at 8.

\(^{42}\) See CVD Preamble, 63 FR at 65377.

\(^{43}\) See APRIL’s November 1, 2017, submission (APRIL Benchmark Submission), at Exhibit 1.

\(^{44}\) See Final Determination, and accompanying IDM at 14 and Comment 5. See also CCP Final, and accompanying IDM at 8.
costs (including rates of return sufficient to ensure future operations), or possible price discrimination.\textsuperscript{45}

The regulations do not specify how Commerce is to conduct such a market principles analysis. By its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis.

The GOI did not provide information or documentation to demonstrate that the stumpage fees it charges (Provisi Sumber Daya Hutan (PSDH), Dana Reboisasi (DR), and Penggantian Nilai Tegakan (PNT)) are established in accordance with market principles. Although the PSDH, DR, and PNT\textsuperscript{46} fees are established as percentages of the reference price of forest products, we cannot conclude that the reference price is reflective of market principles or is a market-determined price. However, because a log export ban is in place (see further discussion below), the reference price is determined solely from administratively-set percentages of domestic prices for forest products.\textsuperscript{47} Through its ownership of a large majority of Indonesia's harvestable forests, the GOI has almost complete control over access to the timber supply. In addition, the ban on the export of logs affects the price for logs.\textsuperscript{48} As such, the reference prices for logs cannot be considered to be market-based. Furthermore, the percentage that is applied to the reference price to calculate the PSDH, DR, and PNT fees is administratively set by the GOI. Thus, we preliminarily determine that the stumpage fees, charged by the GOI as a percentage of a non-market-determined reference price, are not based on market principles.\textsuperscript{49}

Because the government price is not set in accordance with market principles, we looked for an appropriate proxy to determine a market-based stumpage benchmark. It is generally accepted that the market value of timber is derivative of the value of the downstream products. The species, dimension, and growing condition of a tree largely determine the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is, in turn, derived from the demand for the products produced from those logs.\textsuperscript{50}

Both the petitioners and APRIL made recommendations for the appropriate basis for calculating benchmark prices. The petitioners provided Malaysian pulp log export prices from Global Trade Atlas (GTA) for various species of pulpwood, including acacia mangium and certain species of mixed hardwood reported as harvested or purchased by APRIL.\textsuperscript{51} The petitioners’ GTA data did

\textsuperscript{45} See CVD Preamble, 63 FR at 65378.
\textsuperscript{46} The GOI stated that it did not collect PNT fees after December 22, 2015. See GOI IQR at 3.
\textsuperscript{47} See Final Determination, and accompanying IDM at 16. The GOI reported that the stumpage program is unchanged from the Final Determination. See GOI IQR at 3.
\textsuperscript{48} Id. The GOI reported that the log export ban program is unchanged from the Final Determination. See GOI IQR at 14.
\textsuperscript{49} See Final Determination IDM at 15-16. See also Coated Free Sheet Paper from Indonesia: Notice of Preliminary Affirmative Countervailing Determination, 71 FR 17498 (April 9, 2007), unchanged in CFS Final.
\textsuperscript{50} See, e.g., Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products from Canada, 69 FR 75917 (December 20, 2004), and accompanying IDM at 16-18.
\textsuperscript{51} See Petitioners’ November 1, 2017, submission (Petitioners Benchmark Submission), summarized in the Petitioners’ January 18, 2018, submission at Exhibit 2.
not include Malaysian export price data for eucalyptus, an acacia sub-species that APRIL also harvested. Because of the unavailability of appropriate Malaysian price data for eucalyptus in the Final Determination, we relied on GTA export statistics of eucalyptus woodchips from Thailand as the basis for calculating the stumpage rate benchmark for eucalyptus. The petitioners included these Thai GTA statistics in the Petitioners Benchmark Submission. APRIL provided log pricing data for the species of trees it harvested during the POR from a variety of sources, including the species-specific prices from a price survey of acacia pulpwood as reported in an independent market study of the pulpwood and woodchip industry in Malaysia (Pöyry Report), pulpwood price data from Philippine Forestry Statistics, published by Commerce of Environment and Natural Resources, and the Thai eucalyptus woodchips export statistics from GTA.

We preliminarily find that nothing on the record of the instant review would cause us to reach a different determination from the Final Determination. As a result of the geographic proximity and the similarities of forest conditions, climate, and tree species between Indonesia and Malaysia, and consistent with our determinations in the Final Determination, we find Malaysian log prices to be the most appropriate source to use in our benchmark analysis, where available. Therefore, for the preliminary results, we used the species-specific prices from the Pöyry Report as the starting price for the acacia stumpage rate benchmark. For calculating the stumpage rate benchmarks for mixed hardwood and eucalyptus timber, we relied on GTA export statistics for Malaysia and Thailand, respectively.

In order to derive a stumpage benchmark value, we adjusted the benchmark log prices to remove the Indonesian costs of extraction (harvesting) of the standing timber. To determine the Indonesian harvesting costs (including a reasonable amount for profit associated with extraction), we used IHM’s and RAPP’s reported harvesting costs. We also used profit information contained in “Addicted to Rent: Corporate and Spatial Distribution of Forest Resources in Indonesia; Implications of Forest Sustainability and Government Policy.” This study is an independent source on the record that provides information on profit in Indonesia. See Preliminary Results Calculation Memorandum for further discussion of benchmark price adjustments.

The deduction of the harvesting costs, and profit associated with harvesting, from the unit values results in a derived benchmark stumpage price for each species. We compared these derived benchmark prices for each type or species of standing timber to the Indonesian stumpage fees, and found the GOI’s stumpage fees to be lower than the market benchmark prices. Accordingly, we determine that a benefit is provided in accordance with section 771(5)(E)(iv) of the Act because the GOI provides standing timber for LTAR.

To calculate the benefit received under this program, we first multiplied the benchmark prices for each type of timber by the quantity harvested by APRIL during the POI. After multiplying

52 Id.
53 See APRIL Benchmark Submission, summarized at Exhibit 10a of APRIL’s February 1, 2018, submission.
54 See Final Determination, and accompanying IDM at Comment 7.
55 See Petitioners’ Benchmark Submission, at Exhibit 17.
each stumpage benchmark by the appropriate harvest quantity, we summed all the values to calculate the total amount of fees that should have been paid at the market-based benchmark stumpage rate. We then subtracted the total of the actual PSDH, DR and PNT fees\(^{56}\) paid by RAPP and IHM during the POR, from the total amount of stumpage fees that should have been paid.

In accordance with 19 CFR 351.525(a), we then divided the benefit by the total external sales of AKU, IHM, IP, RAK, RAPP, and SVI (\textit{i.e.}, the total free, on-board (FOB) sales values of the pulp and paper producers minus any cross-owned inter-company sales) to preliminarily calculate net countervailable subsidy rates of 3.40 percent and 0.17 percent \textit{ad valorem}, in 2015 and 2016, respectively, for this program.\(^{57}\)

2. \textbf{Government Prohibition of Log Exports}

In the \textit{Final Determination}, Commerce found that the GOI provides a countervailable subsidy to pulp and paper producers through the GOI’s ban on log exports.\(^{58}\) The GOI stated that there was no change in this program during the POR.\(^{59}\) APRIL states that its suppliers of pulpwood logs are subject to the GOI’s log export ban.\(^{60}\)

No information has been provided on the record of the instant review that would cause us to reach a different determination from the \textit{Final Determination}. Therefore, we preliminarily determine that the log export ban provides a financial contribution in accordance with sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act. Specifically, we preliminarily find that the GOI, through the log export ban, entrusts or directs forestry/harvesting companies to provide lower-priced inputs (\textit{i.e.}, logs and chipwood) to companies in the pulp and paper producing industries. Further, we preliminarily determine that the log export ban provided a benefit in accordance with section 771(5)(E)(iv) of the Act. Specifically, the GOI’s log export ban allowed the cross-owned forestry companies in the respondent’s corporate group to purchase inputs (logs and chipwood) from unaffiliated forestry companies at below market prices.

Moreover, we preliminarily determine that the log export ban is specific under section 771(5A)(D)(i) of the Act. Specifically, we preliminarily find the GOI’s decree banning the exports of logs and chipwood to be \textit{de jure} specific within the meaning of section 771(5A)(D)(i) of the Act, because it was restricted by law to only a limited group of industries and because it covered only a small number of products within those industries.

We explain above what 19 CFR 351.511(a)(2) states regarding the basis for identifying comparative benchmarks for determining whether a government good or service is provided for LTAR. In this review, there are no usable private domestic prices for logs, because all domestically harvested logs are subject to the log export ban and, thus, the resulting comparison

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\(^{56}\) The GOI reported that the PNT was no longer collected after December 22, 2015. See GOI IQR at 3.

\(^{57}\) See Preliminary Calculation Memorandum.

\(^{58}\) See \textit{Final Determination}, and accompanying IDM at 17-19.

\(^{59}\) See GOI IQR at 14.

\(^{60}\) See APRIL IQR at 30.
Moreover, there are no meaningful import prices to evaluate for purposes of identifying a “tier one” benchmark (i.e., market prices from actual transactions within the country under investigation). As discussed above, the GOI reported that the harvest from privately-owned forest land is only 12 percent of the country’s total harvest, and the GOI owns the vast majority of harvestable forest land. Because the GOI dominates the Indonesian stumpage market and because stumpage and pulpwood markets are inextricably intertwined, Indonesian log import prices likewise would not reflect market prices.

As discussed above, both the petitioners and APRIL made recommendations for the appropriate basis for calculating benchmark prices. These recommendations for the log export ban benchmarks are the same as those made for the stumpage benchmarks, discussed above.

Because there are no market prices from actual transactions in the country to use as a benchmark, we next looked for a “tier two” benchmark which, according to the regulations, relies on world market prices that would be available to the purchasers in the country in question, though not necessarily reflecting prices of actual transactions involving that particular producer. In selecting a world market price under this second approach, Commerce examines the facts on the record regarding the nature and scope of the market for that good to determine if that market price would be available to an in-country purchaser. As noted in the Final Determination, Indonesia and Malaysia are geographically proximate and have similar forest conditions, climate, and tree species. We preliminarily find that nothing on the record of the instant review would cause us to reach a different determination from the Final Determination. Therefore, we relied on GTA export statistics for Malaysia for calculating the benchmark prices for acacia and mixed hardwood logs. In addition, during the POR, APRIL reported purchases of eucalyptus logs from unaffiliated suppliers. We relied on GTA export statistics for eucalyptus woodchips from Thailand as the basis for calculating the benchmark price for eucalyptus. These data were the only data on the record that represented world market prices available to purchasers in Indonesia. Under Commerce’s regulations, applicable delivery charges and import duties should be added to the benchmark price before determining whether the Indonesian price for pulpwood confers a benefit. We made the applicable adjustments to the benchmark price.

When we compare the benchmark prices to the prices that RAPP paid to the unaffiliated pulpwood suppliers on a per-unit basis, we preliminarily find that there is a benefit conferred through the GOI’s log export ban and, thus, entrustment or direction to forestry/harvesting

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61 See Final Determination, and accompanying IDM at 19. The GOI states that there has been no change to this program during the POR. See GOI IQR at 14.
62 We note that the record does not contain information regarding the level of import penetration in the Indonesian pulpwood market during the POR. In prior proceedings analyzing this issue, the percentage of log imports has been negligible. See CCP Final, and accompanying IDM at 31 (stating that imports were less than one percent of the timber produced domestically).
63 See Final Determination, and accompanying IDM at Comment 7.
64 We adjusted this benchmark price for chipping costs in the same manner as we adjusted the eucalyptus benchmark price for the stumpage program. See Preliminary Results Calculation Memorandum.
65 See 19 CFR 351.511(a)(2); see also U.S. Steel Corp. v. United States, No. 08-00239, Slip Op. 09-152, at 17-18 (CIT 2009).
66 See Preliminary Results Calculation Memorandum. See also Final Determination, and accompanying IDM at Comments 8 and 9 (regarding adjustments to log benchmark values, and APRIL’s log harvesting and purchase data).
companies to provide logs to pulp and paper producers for LTAR. To calculate the subsidy, we first calculated a per-cubic meter benefit for each species of logs. We then multiplied the volume of each species purchased by RAPP from unaffiliated forestry/harvesting companies to calculate the total benefit for each species.

We then summed the benefit for each species and divided this amount by the total FOB external sales values of APRIL’s pulp and paper producers (i.e., RAPP, IP, RAK, AKU, and SVI). We did not include in this log export ban calculation any of IHM’s or RAPP’s harvested pulpwood because we captured any log export ban benefit these companies received on that wood in the stumpage benefit calculation. On this basis, we preliminarily calculated net countervailable subsidy rates of 11.68 percent and 3.95 percent *ad valorem* in 2015 and 2016, respectively, for this program.67

3. Exemption from Import Income Tax Withholding for Companies in Bonded Zone Locations

In our *Final Determination*, we stated that the purpose of bonded zones is to facilitate processing goods for export under duty free conditions. The GOI reported that up to 50 percent of a company’s prior year’s export value of goods processed in a bonded zone may be sold for domestic consumption. The GOI indicated that any company from any industry can apply for a bonded zone facility provided it can fulfill all the requirements in the bonded zone regulations. Moreover, when a company that is not located in a bonded zone imports merchandise, that company is required to pay a “withholding” amount for “import income tax” upon importation of capital goods, equipment, or raw materials. Any import income tax collected (or prepaid) through this withholding is credited towards the company’s total income tax payable at the end of the tax year. However, when a company imports into a bonded zone, that company is not required to pay any import income tax withholding upon entry.69

In the instant review, certain of APRIL’s cross-owned affiliates (i.e., RAPP, IP, RAK, AKU, and ECC) report that they are exempt from a tax withholding requirement for imported capital goods.70

No information has been provided on the record of the instant review that would cause us to reach a different determination from the *Final Determination*. We therefore preliminarily determine that this import income tax program provides a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act. We preliminarily find that the import income tax withholding exemptions are contingent upon export performance and, thus, specific pursuant to section 771(5A)(B) of the Act. Consistent with 19 CFR 351.509(a)(2), we are preliminary treating the import income tax otherwise subject to withholding, *i.e.*, the tax amount deferred, as a government-provided loan that provides a benefit in the form of uncollected interest charges.

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67 See Preliminary Results Calculation Memorandum.
68 See *Final Determination*, and accompanying IDM at 20 -22.
69 Id.
70 See APRIL IQR at 34 and Exhibit 61.
To calculate the benefit from this program, we summed the import income tax withholding exempted for each of APRIL’s cross-owned affiliates during 2015 and 2016, respectively, applied the monthly short-term interest benchmarks discussed above in the “Subsidies Valuation” section, and summed the uncollected interest for 2015 and 2016, respectively. We next summed the benefits to AKU, RAK, and SVI, producers of subject merchandise, and divided the summed amount by the combined export sales of AKU and RAK, net of intercompany sales. We also summed the benefits for the input suppliers, ECC, RAPP, IP, and divided the total amount by the combined export sales of ECC, RAPP, IP, and the subject merchandise producers (i.e., AKU, RAK, and SVI), net of intercompany sales. Then, we added the resulting percentages to obtain the overall subsidy rate. On this basis, we preliminarily find that APRIL received countervailable subsidies of 0.01 percent and 0.01 percent ad valorem in 2015 and 2016, respectively.\footnote{See Preliminary Results Calculation Memorandum.}

**B. Program Preliminarily Determined Not To Confer Benefits**

1. Preferential Lending to RAPP and RAK

As discussed above, Commerce initiated an investigation of a new subsidy allegation on preferential loans that APRIL’s subsidiaries RAPP and RAK obtained in restructuring debt with a syndicate of creditors led by state-owned lenders Bank Mandiri (BM) and Bank Negara Indonesia (BNI), but also including multiple private banks.\footnote{See NSA Memorandum.} The petitioners alleged that BM and BNI, in both of which the GOI owns a controlling sixty percent stake, provided these loans at interest rates that were lower than the interest rates for comparable commercial loans.\footnote{Id. at 4-8; see also APRIL IQR, at Exhibits 14 and 16.} In addition, the petitioners alleged that, because APRIL was financially unhealthy at the time these loans were made, Commerce should apply a risk premium for uncreditworthy companies to the benchmark interest rate when calculating a benefit.

Information on the record of the instant review shows that the private banks’ participation in the syndicate was free from the GOI’s influence and held a substantial portion of the debt at issue; therefore, the portion of the loans in the syndicate provided by private banks constitutes a “comparable commercial loan” that RAPP and RAK could actually obtain on the market, consistent with 19 CFR 351.505(a)(2).\footnote{See GOI NSA QR at 6-7, and APRIL NSA SQR at 1-3 and 6-13, and Exhibits NS-1 – NS-5c.} As a result, we preliminarily determine this lending program conferred no benefit because the loans APRIL obtained from commercial lending institutions carried the same interest rates as those provided by BM and BNI\footnote{See GOI NSA QR at Exhibit S-1.} in accordance with 19 CFR 351.505(a)(1). Given our finding of no benefit, we also preliminarily find that the issue of whether BM and BNI constitute authorities is moot. Finally, because we are preliminarily finding that this program provided no benefit, the issue of APRIL’s creditworthiness at the time these loans were made is also moot.

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\footnote{See Preliminary Results Calculation Memorandum.}
C. Program Preliminarily Determined To Not Be Countervailable

1. Tax Amnesty Program

APRIL and the GOI self-reported that APRIL received tax amnesty under this program. Under this tax amnesty program, an Indonesian taxpayer may declare assets not previously disclosed to Indonesian tax authorities or repatriate funds into Indonesia, and pay “Redemption Money” to the GOI, in exchange for the waiver of any possible sanctions for not having properly declared the assets to the GOI.\textsuperscript{76} According to the GOI, this program was available to every Indonesian individual or business taxpayer, except for those undergoing tax investigation or litigation.\textsuperscript{77}

Because the tax amnesty program was widely available to all companies and industries in Indonesia, we preliminarily find that this program is not specific under section 771(5A)(D) of the Act. Therefore, we preliminarily find that this program is not countervailable.

D. Programs Preliminarily Determined To Not Be Used

We preliminarily determine that APRIL did not apply for or receive benefits under these programs during the POR:

1. Debt Forgiveness through the Indonesian Government’s Acceptance of Financial Instruments with No Market Value
2. Debt Forgiveness through Asia Pulp and Paper/Sinar Mas Group’s (APP/SMG) Buyback of Its Own Debt from the GOI
3. Export Financing from Export-Import Bank of Indonesia
4. Export Credit Insurance
5. Export Credit Guarantees
6. Tax Incentives for Investment in Specified Business Lines and/or in Specified Regions by Indonesia’s Investment Coordinating Board (BKPM) – Corporate Income Tax Deduction
7. Tax Incentives for Investment in Specified Business Lines and or in Specified Regions by the BKPM – Accelerated Depreciation and Amortization
8. Tax Incentives for Investment in Specified Business Lines and or in Specified Regions by the BKPM – Extension of Loss Carry-Forwards
9. Preferential Treatment for Bonded Zone Locations
   a. Waiver of License and Fee Requirements
   b. Exemption from Sales Taxes for Capital Goods and Equipment Used to Produce Exports

\textsuperscript{76} See GOI SQR at Exhibit S2-3, and APRIL SQR at Exhibit S2-5.
\textsuperscript{77} Id.
VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the preliminary results of the review in the Federal Register.

☑   ☐

Agree        Disagree

4/3/2018

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance