

## PARTICULAR MARKET SITUATION—A PECULIAR ACCUSATION: A CASE STUDY OF THE DS529 CASE BETWEEN INDONESIA AND AUSTRALIA BEFORE THE WTO

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### ABSTRACT

*Trade practices between states have long existed, and have always been complicated. One of the issues that arise with the practice of international trade is the act of dumping; committed by the exporting party, dumping refers to a price manipulation that allows the exporting price of the goods to be significantly cheaper than the goods' domestic price in the exporter's state, which disrupts the importer's domestic market in the process. The process of dumping is generally frowned upon and also allowed to be retaliated by the importer through the imposition of anti-dumping duties towards the goods at hand. In the case of Australia v. Indonesia before the WTO, Australia as the importer accused Indonesia of committing the act of dumping in their practice of exporting the A4 copy paper to Australia. Australia argued that Indonesia had what is perceived to be a "Particular Market Situation" due to the government's intervention on the price of the raw materials used to make the paper. The term Particular Market Situation, however, has yet to be defined concretely by any international agreements, and thus does not have clear boundaries to properly delineate its elements. This paper discusses on whether Australia's accusation was done properly, with proper investigation to support it, and whether Indonesia's internal market situation for the A4 Copy Paper befall under the Particular Market Situation category.*

**Keywords:** Indonesia, Australia, A4 Copy Paper, Anti-Dumping, Particular Market Situation

### INTRODUCTION

One of the oldest relations established between states is the relation of trade; as states are unable to completely fulfill every single one of their needs, they are required to import goods from other states. Simultaneously, states are also able to produce goods that will be able to supply more than just its domestic demands, and thus able to export products to other states as well. In fact, it is necessary to maintain an international trade relation in order to create a more prosperous, well-fared nation (Adolf, Hukum Perdagangan Internasional, 2006). As globalization grows, the needs for trade relations expands and diversifies, creating an urgent need for a tangible legal regime that allows international trade relations to be governed accordingly and to minimize abuse of powers and positions that might happen. The modern international trade legal regime first emerged in the form of General Agreement on Tariffs and Trade (GATT) on 1947, only 2 years after World War II, and is intended to create sustainable free-trade environment that are legally ensured and economically beneficial (Kartadjoemana, 1998). The regulation becomes a stepping stone that would lead to the creation of World Trade Organization (henceforth 'WTO')—an organization aiming to maintain the sustainability and fairness of the practices relating to international trade laws. Most importantly, considering the different powers, influences, and standings that various nations wield that might allow an imbalanced trade relation, the WTO aims to create a non-discriminating environment for all states while paying special attention to developing nations and their issues. (Adolf, Hukum Perdagangan Internasional, 2006)

Among one of its quest for creating a fair system for trade relations is the regulation in relation to the practice of dumping. Dumping itself is generally frowned upon, and is strictly regulated by various governments to be allowed only in very specific circumstances that does not injure the domestic market of the importer. To accuse a country of practicing an act of dumping in their exports is not something to be done lightly; an importer making the accusation must be able to provide proper evidence that the dumping occurred and a link of causality that it had caused disruption in its internal market.

One of the motives of the act of dumping was the Particular Market Situation, or PMS, which—while does not have a very concrete definition in the international regime that allows it to be dissected of its element—refers to an unusual market situation in the exporter's state that bars its domestic price and production expenses from being accounted in the process of determining the goods' normal value. Due to the very vague definition, it is quite difficult to determine when and in which situation is a market situation deemed particular, and thus, the term has a very large loophole that could potentially be abused by an importer state.

This, in fact, is the case of Indonesia and Australia; Australia had imposed anti-dumping duties to Indonesia's export of A4 Copy Paper, and had drawn a normal price based not on the producer's accountings, but on a third-party's exporting price. Their dispute centered around the term "Particular Market Situation," which Australia accused Indonesia had in their domestic market, and therefore cannot provide proper pricing to the goods they were exporting.

The paper trade dispute between Indonesia and Australia circles around the presumption of dumping practices and the Particular Market Situation, or PMS. A first of its kind, the dispute between Indonesia and Australia is chosen because it reflects the imbalanced nature in the trading practices between developing state (Indonesia) and developed state (Australia). Furthermore, the case reflects how, in crafting legally ambiguous regulations, WTO might instead create loopholes that can be exploited by one of the parties during their trade practices.

Using normative-juridical methods, this paper shall examine the case of Indonesia v. Australia by applying textual interpretations in accordance to international legal principles of trade and previous applications of the term. It sought to find out whether Australia's determination regarding Indonesia's Particular Market Situation is correct, and whether they had adhered article 2.2. of the Anti-Dumping Agreement in their process of investigation.

## THE THEORIES AT GLANCE: DUMPING AND PMS IN INTERNATIONAL TRADE REGULATIONS

### a. Dumping and anti-dumping

Dumping itself refers to the practice of price manipulation which is generally frowned upon and regulated against by many states in the world (Johnson, 1992). According to Folsom, "Dumping involves selling abroad at a price that is less than the price used to sell the same goods at home (the normal or fair value). To be unlawful, dumping must threaten or cause material injury to an industry in the export market, the market where prices are low. Dumping is recognized by most of the trading world as an unfair practice against to price discrimination as an antitrust offense" (Folsom, 1995). Simply put; To 'dump' is to sell goods to the importer below the domestic price of the exporter, and this practice is perceived to have injuring effects on the importer's domestic market (Syahyu, 2004). The practice of dumping itself—while frowned upon—is not necessarily forbidden, so long as it does not cause a stir or trouble within international trade (Syahyu, 2004).

According to Article 4 of the Anti-Dumping Agreement (henceforth referred to as GATT 1994), an act of export may be categorized as dumping if such acts consists of; an exporter selling particular goods below the price of similar products in the exporter's domestic market, or the normal price; such determined price caused financial injury in the importer's domestic market in relation to the sale of similar goods at hand, and; the existence of a causal link between the price reduction practice and the financial injury (Sukarni, 2002).

Should an importer find that the act of an exporter injures their domestic market and fulfills all the three requirements listed above, then it may retaliate with anti-dumping policies, specifically anti-dumping duties in line with the loss they had suffered (Sukarni, 2002). The amount for the anti-dumping duties should be equal or smaller from the dumping margin to avoid manipulation from the importer (Jackson, 1991). Imposing an anti-dumping tariff itself, however, is no easy task; it only may be imposed when the importer making the accusation has evidences that resulted from anti-dumping investigations. In fact, exporters that feel that the accusation made against them is unjust may—in accordance to Article 16 of the Antidumping Code 1994—report their complaints and request for a written consultation to the *Committee on Antidumping Practices*. Their written consultation must contain the arguments in relation to the dispute and their legal basis (Adolf, Hukum Penyelesaian Sengketa Internasional, 2014). Should the exporter and importer find no amicable, satisfying conclusion to their dispute, the council of WTO are allowed to form a *Dispute Settlement Body* (henceforth referred to 'DSB') of which will be in charge of investigating the problem through the written statements from the disputing states, as well as the facts that had been laid out. According to the official commentary of the Indonesian Executive Order no. 39 year 1996, an investigation of an alleged anti-dumping practice may be initiated by the request of the domestic industry or the initiation of a government.

### b. Particular market situation

Regarding the matters of dumping, recent development in anti-dumping investigation has emerged from developed states such as the US and Australia. Subjected to certain developing countries that exports to these developed states, the investigation uses 'Particular Market Situation', or PMS, as a justification to ignore real-time data of the domestic sales of the goods in question within the exporter's country. The PMS itself does not have a clear definition within the Anti-Dumping Agreement. There is a consensus, however, that the existence of a PMS in the exporter's domestic market prevents a proper comparison between domestic sales and export sales within the exporting state. Situations that refer to PMS may include; the nonexistence of sales for the similar goods in the exporter's domestic market, or the small volume for the sale of the goods within the exporter's market (Adolf, Hukum Perdagangan Internasional, 2006, pg. 2). For that very reason, the investigating authority may use an alternative method to account for a normal value.

According to Article 2.2 of the Anti-Dumping Agreement, in determining the margin of dumping within a country that is supposed to have a PMS, the importer shall examine through comparing the same exported goods with similar price range from a third country, provided that the price itself is representative or normal, accounting for the goods' administration fees, sales, and profit. However, while examples of situations for PMS are provided and methods to solve its accounting issues are presented, there are no concrete guide on how to determine when, where, or how a trade situation might be categorized as PMS; there are no elements to be compared to, no further perspective that can be used as a benchmark, or any concrete regulation of sorts. This allows the PMS to open doors for arbitrary determinations by the parties that made the claims.

Australian ADC itself has a Manual for Dumping and Subsidy (henceforth 'the Manual'), that provides them standard guidelines and approaches to determine whether a PMS occurs in the trade practices of their exporters. According to the Manual, in determining whether a trade practice has a PMS, one must notice; whether the low prices are artificially manufactured, and; whether there are other conditions within the market in question that disqualifies the market situation to be used as a benchmark for the pricing system. The Manual procure that a government intervention within the domestic market—be it in the form of pricing or raw material expenses—may be the cause of an artificially-manufactured low price.

The Manual also establishes that the determination of PMS can be interpreted in two methods. The first method is when the PMS will only appear if the disputed situation has caused a distortion to the object that is currently being investigated. This method allows to identify when should a government's intervention be deemed as part of the PMS (Percival, 2016). Furthermore, it establishes that a government's intervention which produces 'distorted prices' or 'distorted input prices' that amounts to PMS means that the domestic trade at that moment is not within a normal market situation. However, the term 'normal market situation' is not explicitly defined within the Anti-Dumping Agreement; Article 2.2.1 of the aforementioned agreement stated that the 'sale of the same or similar goods within the domestic market of the exporter, or the sale within a third state with price per unit (fixed or fluctuating) below the production cost plus administration fees, sales, and general fees, are categorized as an abnormal market situation' (Koesnaldi, 2019). The second method established by the manual is that the PMS will emerge only if the related situation proves to be a hindrance in comparing between the exported price and the normal value. This requires an assessment of whether the situation at hand has truly influenced the comparison between both prices. This interpretation is in accordance with Article 2.2 of the Anti-Dumping Agreement, that stated that the existence of PMS itself disallows a correct and proper comparison.

If PMS only affects the domestic price of the importer, then on the majority of cases, the institution that is authorized to investigate the matter will adjust the domestic price using a replacement value (for example, the decided price within the competitive market) or using the normal value that has been built (Yun, 2017). According to WTO jurisprudence, the absence of a disturbance in trade practices does not determine the existence of PMS, however it influences the ability of the investigation authority to draw a comparison using the alternative method regulated 2.4 Anti-Dumping Agreement. So far, the investigation authority only focuses on governmental intervention that distorts price or price input to determine whether a PMS exists in the exporter's domestic market. With that variable alone, the investigation authority can determine that the domestic price of the exporter's market is not in line with the competitive market or international standards that has been assessed by the authorized institutions.

### BRIEF SUMMARY OF AUSTRALIA V. INDONESIA TRADE DISPUTE

The conflict between Indonesia and Australia centers on the selling price of Indonesia's exported a4-sized copy paper. The exporters—namely *PT. Indah Kiat Pulp dan Paper Tbk* (Indah Kiat) and *PT. Pindo Deli Pabrik Pulp dan Kertas* (Pindo Deli)—were perceived by Australia to have committed the act of Dumping. The Australian importer assumed that the act was due to the existence of a Particular Market Situation in Indonesia—that is, among others, the Indonesian government intervening in the domestic raw material Input (Australian Anti-Dumping Commission, 2019). The Australian Anti-Dumping Commission (ADC), proclaimed that due to the market situation, the domestic sales that occurred under it were not suitable for use in determining normal value (Suri, 2020). Through Report No. 341, the ADC demanded that in accordance to the anti-Dumping policies, it shall apply anti-dumping duties towards the Papers imported from Indonesia, specifically; 35,4% for *Indah Kiat* and 38.6% for *Pindo Deli*.

Disputing this claim, Indonesia requested a consultation with Australia on the 1<sup>st</sup> of September, 2017, adhering to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (henceforth 'DSU'); Article XXII:1 of the GATT 1994, and Article 17 of the *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade* (henceforth 'the Anti-Dumping Agreement') relating to the events that had transpired and the claims that had been made. Despite the fact that the anti-dumping duties was reduced on March 9<sup>th</sup> 2018—33% for *Pindo Deli* and 30% for *Indah Kiat*—Indonesia remained within the opinion that their points of contention still stand, and thus requested the formation of a panel in accordance to Article 6 of DSU with the standard framework. (World Trade Organization, 2019, pg. 19)

Indonesia requested that the Panel find that the actions Australia had taken are against its obligations in accordance to the Anti-Dumping Agreements and GATT 1994, of which are;

- a. Article 2.2 of the Anti-Dumping agreement. Australia disregards the domestic sale price from the exporter's state, and calculates the normal value using their own presupposed PMS, a presupposition that is rooted on the misunderstanding of the term. In Indonesia's opinion, drawing comparison between the export price and the domestic price within the exporter's state is possible, and Australia has failed to determine the normal value in accordance with the production expenses of the object in Indonesia.
- b. Article 2.2.1.1 of the Anti-Dumping Agreement. In building the investigated normal value, Australia did not count the production expenses for A4 Copy Paper in accordance with the accountings provided by the producers. The accounting process was proven to be in line with the general principles of accountancy and properly reflects the production expenses for the A4 Copy paper, and thus Australia's ignorance to this information bars the state from being able to make a correct normal value for the object at hand.
- c. Chapeau of Article 9.3 of the Anti-Dumping Agreement as well as Article VI:2 of the GATT 1994. Australia calculated the margin of dumping for the producers from Indonesia with methods against Article 2 of the Anti-Dumping Agreement. Australia collects Anti-Dumping duties beyond from the actual dumping margin—if exists at all—from the Indonesian Producers.

Examining this, the panel finds that in determining the normal value of the A4 Copy Paper from Indonesia, Australia used comparisons from the pulp export prices of Brazil and South America to China and Korea, despite not having a concrete foundation or logical reasoning to do so. Secondly, Australia also did not exclude the profit from the pulp prices that they use as a benchmark. Furthermore, Australia also did not examine in prior if the domestic sale price of the A4 Copy Paper is indeed incomparable with the export sale prices as they had claimed in their reasonings, and did not use the accounting notes provided by the Producers despite the fact that their accounting method follows the Generally Accepted Accounting Principles (GAAP) and have reasonably

reflected expenses in relation to production (Kementerian Perdagangan RI, 2020, pg. 1). The panel did not, however, find a conclusive evidence to Indonesia's claim that Australian ADC had abused the term PMS in making their case against Indonesia. In its final Anti-Dumping Notification No. 2017/39 dated 18<sup>th</sup> of April 2017, the Panel underlined several important points that arise from this dispute, namely;

- a. Indonesia is yet to be able to determine that ADC acted against Australia's responsibility in accordance to Article 2.2 of the Anti-Dumping Agreement when finding a potential PMS in Indonesia's domestic market for the A4 Copy Paper;
- b. Australia's act is against Article 2.2, paragraph 1 of the Anti-Dumping Agreement when ADC ignored the domestic sales of the A4 Copy Paper from *Pindo Deli* and did not use it as a basis for their determination for the object's normal value. The ADC's claim that the domestic sales in question did not allow for a proper comparison lacks sufficient evidence to back the argument up.
- c. Australia's act is against Article 2.2.1.1, paragraph 1 of the Anti-Dumping Agreement, because ADC has yet to establish that the first and second requirement from the aforementioned Article are met when they refuse to calculate the pulp component from the accounts of *Indah Kiat* and *Pindo Deli* based on the term 'normal'. Their refusal has failed to provide impact towards all of the responsibilities and the requirements provided.

#### **DID AUSTRALIA ABUSE OF OBSCURE CRITERION?**

The act of dumping has several classifications, depending on the exporter's goal, market strength, and importer's market structure (Marceau, 1994). However, the A4 Copy Paper Anti-Dumping case between Indonesia and Australia (henceforth case DS529) is assumed to be an act of Strategic Dumping, an act of which causes injury for the importer's domestic company and is a part of a larger scheme from the exporter's government. The presupposed scheme in question refers to the discount for export prices and limitations imposed on the import of similar products towards the exporter's domestic market. If the portion is large enough, then the exporter may profit from the expenses their foreign competitions must put forth. The alleged practice in question is also classified by the ADC as Persistent Dumping—an act of which is permanent in nature, with a consistent goal to sell its goods with low prices in certain markets compared with similar products from other exporters (Suherman, 2005).

The imposition of anti-dumping duties from the Australian Anti-Dumping Committee against *Indah Kiat* and *Pindo Deli* is motivated to the assumption that the domestic trade activities of the A4 Copy Paper in Indonesia have a "Particular Market Situation" due to an extensive intervention from the Indonesian government. This section seeks to understand the term "Particular Market Situation" using Article VI of the GATT 1994. Furthermore, this article also sought to analyze whether Australia's claim that a Particular Market Situation exists in Indonesia is in line with Article 2.2 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

##### **a. Did the Domestic Normal Price Imposed by the Indonesian Government Falls under the Particular Market Situation Category?**

Indonesia has yet to conduct a thorough interpretation in accordance to the 1969 Vienna Convention on the Laws of Treaty (VCLT) regarding the term "Particular Market Situation." Due to the misunderstood narrative that the anti-dumping duties is a exclusion for Article I and Article II of GATT 1994, Indonesia misinterpreted the phrase "Particular Market Situation" as "a group of extraordinary circumstances that largely influences the comparability of the domestic sale price unilaterally (Yun, 2017), despite the fact that the term "extraordinary" and "unilaterally" is not in the aforementioned phrase, or the dictionary definition for the word "Particular" (Federal Register, 1996, C.3).

Furthermore, Indonesia's argument regarding the 'permit for a proper comparison' is also deemed incorrect, for it is based on a false statement that the domestic price may be excluded from the foundational calculation if the "Particular Market Situation" influences the domestic market but does not influence the exporting price. This argument is built on the false statement that the 'dumping' in the Anti-Dumping Agreement only refers to the 'international price discrimination.' However, the term 'international price discrimination' did not appear in GATT 1994 or the Anti-Dumping Agreement. The Appeals Body had referred to the phrase only with the context of when a "normal value" is based upon a "domestic price," and not when it is based on the construct enshrined in Article 2.2 of the Anti-Dumping Agreement.

Indonesia further incorrectly argued that "when there are no sales in a normal trade, and [...] when the sales volume is low" the "effects are unilateral and influencing the domestic market". It does not provide evidence to support their argument that the "low price input" equally influences the domestic price and the export price of the A4 Copy Paper (Zhou, 2018). Even if Indonesia is to provide such evidence, there are no mention within the GATT 1994 or the Anti-Dumping Agreement that shows that there needs to be some kind of an asymmetrical impact towards the domestic price vis-à-vis the export price to find that a proper comparison is not allowed in such conditions. Additionally, the *Anti-Dumping and Countervailing Duty* Dispute from China that Indonesia referred to does not relate or correlate to the case, and as such is irrelevant to the application of Article 2 of the Anti-Dumping Agreement (DIANE, 1995, pg. 4).

As mentioned, prior, the value of a normal or regular price where Anti-Dumping act attempts to increase the price of the imported product is higher compared to the domestic price and the full expenses of the product. According to the Anti-Dumping Agreement, the domestic market price is not necessarily obliged to be used as a basis to determine the product's normal value if there exists a "Particular Market Situation in the domestic market of the exporter (DIANE, 1995, pg. 4), or if the domestic market price of the exporter is below the production expenses of the goods. In any case, the full production expenses of the goods, added with the increase of profit, should be able to be used to calculate the normal value, not the domestic market price.

In Australia, the normal value is based on a Particular market situation—one that is higher than the domestic market price and the full production expenses of the product that the exporter had spent. Australia calculates the normal value using this method;

First, find the Particular Market Situation, with the reason that the exporter's input price is artificially low, and that the regulations or policies of the government is to blame for such situation. This allows the majority of the domestic market price to be ignored in calculating the normal value (Judith Czako, 2003, pg. 110).

Second, in disregarding the domestic market price, Australia then can use the full production expenses of the goods at hand—and since one of those expenses is the very reason for the presupposed existence of the Particular Market Situation (i.e. the expenses becoming artificially low), Australia calculates the full production expenses using a higher benchmark price. The so-called "replacement" price is borrowed from a third country or a mix of countries. This ignores the actual expenses coming from the exporter that Australia considered to be far too low, and replaces it with a higher price to obtain a higher normal value (Zhou, 2018, pg. 50).

Article VI of the GATT 1994 allows the imposition of an anti-dumping duty that exceeds the agreed tariff when the dumping in question threatens a major loss towards the importer's domestic industry, or significantly bars the development of the importer's domestic industry. Article VI GATT 1994 refers to the Anti-Dumping Agreement, which may be implemented by states in accordance to their needs so long as it adheres to the terms of the Agreement. Australia's implementation of the Agreement is integrated in the *Customs Act 1901* (henceforth referred to as the 'Act') and enlists two separate steps beginning with the injury investigation by one institution that covers public audience. If an injury were to be found, the next step would be calculating the level of dumping to sole the injury inflicted, and it is done by a separate institution (Derk Bienen, Guide to International Anti-Dumping Practice, 2013).

Obviously, states are worried their export to Australia will be treated with the regime at hand when an allegation of dumping practices arise. There are complaints from exporters that Australia's regime is unfair and not in accordance to the Anti-Dumping Agreement and the GATT 1994. Thankfully, like much of the WTO requirements, complaints regarding the regime in a state can be brought forth to the WTO Dispute Settlement Forum (Derk Bienen, Guide to International Anti-Dumping Practice, 2013). Utilizing this function, Indonesia objects Australia's findings of a Particular Market Situation in their domestic market in relation to the price of the A4 Copy Paper Sales in DS259 Case.

The WTO-formed-panel found a couple of findings, including that Australia had correctly found the existence of a Particular Market Situation in Indonesia's domestic market in the A4 Copy Paper trade situation. However, the panel also that Australia had inconsistently acted against the Anti-Dumping Agreement in various places. A general resume of the matter is as follows (Billa, 2019, pg. 156);

- That the Anti-Dumping Commission has falsely rejected the Indonesian normal value, despite the fact that the exporter's accounting report is correct and in accordance to the general accounting principles.
- That the Anti-Dumping Commission has falsely rejected the production expenses of the A4 copy paper from Indonesia as a foundation to determine the normal value, and instead used a previously rejected pulp expenses as a replacement for the production expenses without any proper reasoning. Panel found that the production value of the woodchips was actually proper as a benchmark to determine the goods' normal value.

Throughout the case, it is very evident that Australia had failed to perform their responsibilities in conducting a proper investigation of the anti-dumping allegations. They did not provide reasons for the rejection of Indonesia's A4 Copy Paper normal value or the production expenses of the goods, despite the fact that it passed the 5-percent rule in dumping practices. Additionally, Australia failed to argue why specifically the existence of the so-called "Particular Market Situation" in the form of government intervention is an adequate evidence of dumping practices, and did not provide a causal link and the direct injury caused by the alleged claim. The poorly-conducted investigation is comparable to the investigation Republic of Korea had conducted in a similar case back in 2007. The case, which also disputed over Indonesia's exported price of paper, was declared to be insufficiently investigated by the Republic of Korea due to similar reasons (WTO Dispute Settlement Body, 2007, pg. 6).

**b. Did Australia conduct a proper investigation towards their presumption in accordance to GATT 1994 and the Anti-Dumping Agreement?**

If we are to interpret the term "Particular Market Situation" from its ordinary meaning, contextual texts, and in relation to the object and purpose of the Anti-Dumping Agreement, then it will refer to the condition, circumstances, or a combination of both in relation with the trade practices of similar products (in this case, the A4 copy paper) from the exporter's state (in this case, Indonesia) that can be differentiated and is not general in nature. This interpretation is based on the findings of the EC – Cotton Yarn Case, where the GATT Panel found that the term "Particular Market Situation" refers to (Raju, 2008, pg. 102):

*" relevant insofar as it had the effect of rendering the sales themselves unfit to permit a proper comparison .... There must be something intrinsic to the nature of the sales themselves that dictates they cannot permit a proper comparison".*

In accordance to this definition, Australia had correctly defined that there exists a "Particular Market Situation" in Article 2.2. of the Anti-Dumping Agreement. In short, the Anti-Dumping Commission found that;

- The Government's programs and policies, including restrictions of cylindrical wood exports increases Indonesian wood supplies, decreases expenses, as well as the price of the cylindrical wood and hardwood pulps in Indonesia;
- The decrease of expenses of cylindrical wood prices and wood pulps in Indonesia caused and allowed the main producers of the A4 Copy Paper in Indonesia (namely SMG and APRIL Group) to supply more A4 Copy paper in each price points that they were supposed to have. These production facilities have their own integrated upstream pulp facilities to aid them in their endeavors;
- The resulting price of the A4 Copy Paper in Indonesia comes from the final product of the interactions between the sellers and the buyers of the A4 Copy Paper in Indonesia. The price was manufactured artificially to be significantly lower than the regional benchmark, that reflects the decrease of expenses and the price of the cylindrical woods and hard woods in Indonesia. This is indicated to be part of the result of the Indonesian government's program.

Overall, these factors do show the existence of a "Particular Market Situation" under Article 2.2 of the Anti-Dumping Agreement and fulfilled all of the elements listed in the aforementioned definition. The governmental intervention in the exporter's domestic pulp supplies qualifies as a "condition, circumstances, or a combination of both that can be differentiated and is not within the general norm," for these interventions directly influences the trade practices in relation to the A4 Copy Paper in the exporter's domestic market (Raju, 2008, pg. 102). However, the governmental intervention does not automatically translate negatively, for there is no exact limits of when and how can a government intervention be deemed as harmful to the impacting market. The term Particular Market Situation does not provide these elements nor boundaries, and thus it cannot be said that the Indonesian Government had directly contributed the act of dumping, or if even there exists a dumping that fulfills the requirements of an international trade at all. While intervention does exist and it may be classified as a unique situation in the market, for it to be directly linked to the allegations of dumping is excessive, especially given the fact that Australia had not conducted their investigations properly. As the lines of the term are blur, the results of the term consequently cannot be conclusive.

In Indonesia's opinion, the matters in dispute are the Australia's inconsistent application of Article 2.2 of the Anti-Dumping Agreement. Indonesia argued that Australia had falsely decided to conclude the normal price for the A4 Copy Paper without using the Indonesia's domestic price under the pretenses of the existence of a "Particular Market Situation" in the exporter's state that distorts the goods' domestic price. Australia wrongly assumed that such selling price was not allowed; in reality, such practices was allowed considering the fact that the exporting price of the A4 Copy Paper from Indonesia to Australia uses the same basic ingredients and same expenses to produce the A4 Copy Paper in Indonesia's own domestic market and other states that the state exports to. Meanwhile, a Particular Market Situation was not found by other states that imported their papers from Indonesia, rendering Australia's assessment as odd (World Trade Organization, 2019, pg. 19). Additionally, in dealing with their presumption, Australia also did not conduct proper research to prove that the accounting notes of the expenses provided by the exporters were incorrect, which they should have done if they were to adhere to Article 2.2 of the Anti-Dumping Agreement (Priyono, 2010, pg. 1). Had they done so, they would have realized that the accounting notes were pristinely proper and in accordance to the generally acceptable accounting principles. By not recognizing the circumstances at hand and adding it to their analysis, Australia had failed to act in accordance to Article 2.2 of the Anti-Dumping Agreement due to their lack of investigation regarding this matter.

## CONCLUSION

Two things must be drawn from this analysis; one, that Australia had essentially failed to properly conduct a sufficient investigation before imposing Indonesia with anti-dumping tariffs based on a poorly-proven allegations, and; two, that the term Particular Market Situation itself lacks proper definition and elements to be able to be concretized in real-life practices.

The lack of these boundaries and limitations can be damning; an importer with significantly stronger currency may impose accusations of dumping with the reason of a "Particular Market Situation" towards their financially weaker exporter and be able to carry on with such allegations. The author suggests that the Particular Market Situation be defined by the WHO, to determine the extent of its reach, and what type of market intervention and/or changes are deemed to befall under the category.

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