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Director Operations 2
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Investigation into alleged dumping of A4 Copy Paper exported from Brazil

Dear Director,

This submission is made on behalf of International Paper do Brasil Ltda. ("IP Brasil") in response to the Anti-Dumping Commission's ("Commission") preliminary dumping findings outlined Preliminary Affirmative Determination report 314A (PAD 314A). IP Brasil welcomes the Commission's reconsideration and revision of its preliminary dumping margin following IP Brasil's submission of 16 September 2016.

Due allowance – Branded products

It is however noted that after reviewing the supplementary information provided, the Commission continues to hold the view that it is appropriate to determine normal values on the basis of domestic sales of like goods in the ordinary course of trade, without taking account of or making due allowance for the effect of branding on selling prices. The Commission notes in PAD 314A that its basis for rejecting such an adjustment is due to there being '*no difference in the cost to make different branded products (they have identical physical properties) and the difference in pricing cannot be accurately quantified (IP Brazil accepted that different brands only reflect a perceived difference in grade/quality)'.*

IP Brasil agrees that the costs of producing the different branded products do not differ. However, IP Brasil does not agree with the Commission's assessment that price differences cannot be accurately quantified. IP Brasil also does not accept the Commission's apparent view that the impact on prices from the customer's perceptions of linking quality to brands, need to be based on a real and quantifiable difference in quality.

On the first issue, it appears that the Commission considers that cost differences are a prerequisite to making an adjustment to normal values to ensure proper comparison with export prices. IP Brasil disagrees with this view as the primary objective of the due allowance provisions is to ensure that <u>any</u> differences which affect the comparison of normal values and export prices, are adjusted to remove the impact of the identified differences. This is confirmed

by the Appellate Body in *US — Hot-Rolled Steel*, which found that any differences affecting price comparability cannot be excluded:

> Article 2.4 of the Anti-Dumping Agreement provides that, where there are 'differences' between export price and normal value, which affect the 'comparability' of these prices, '[d]ue allowance shall be made' for those differences. The text of that provision gives certain examples of factors which may affect the comparability of prices: 'differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences'. However, Article 2.4 expressly requires that 'allowances' be made for 'any other differences which are also demonstrated to affect price comparability.' (emphasis added) There are, therefore, no differences 'affect[ing] price comparability' which are precluded, as such, from being the object of an 'allowance'.(116)

Therefore, it is not open to the Commission to disregard an adjustment for differences that are found to affect price comparability, simply on the basis that such differences do not affect costs.

On the following contested issue of accurately quantifying the adjustment, IP Brasil considers that it has provided sufficient evidence and analysis to demonstrate the very real impact that branding has on domestic selling prices and which would impact on price comparability of export prices and corresponding normal values. If the Commission considers that additional analysis is required demonstrating the actual effect of branding on prices, IP Brasil requests the Commission to inform and indicate what further information or analysis is required to assist with its assessment.

IP Brasil also reminds the Commission that it has access to the verified listing of all domestic sales of like goods made during the investigation period, and with sufficient detail to identify products according to the different brand types. This information would enable the Commission to undertake further price comparisons and would support the view that differences in branding affect prices and price comparability.

On the issue of customer perceptions, the Commission's point is unclear although it appears that it is suggesting that in order to make an adjustment for a factor that causes differences in prices, that factor must possess a tangible attribute that can be measured. This seems to relate to the Commission's view that the observed differences in branding do not reflect observed differences in production costs, notwithstanding that the actual selling prices reflect the quality and performance differences attributed by customers to each of the different brands.

To this point, IP Brasil reiterates its earlier view that differences found to affect price comparability must be adjusted for, irrespective of whether those differences stem from production costs, terms and conditions of sale or branding.

Due allowance – Export credit

IP Brasil notes that the Commission's preliminary dumping margin calculations continue to base the adjustments for cost of credit on a single common interest rate for both domestic and export sales. The approach adopted by the Commission in no way reflects the actual differences of extending credit to IP Brasil's customers in the domestic and export markets.

As confirmed by the Commission during its verification visit, IP Brasil [redacted]. **[Confidential borrowing information]**

The Commission has correctly calculated the cost of extending credit on domestic sales using the prevailing interest rates applying to IP Brasil's [redacted]. However, in the [redacted], the Commission has erroneously relied on [redacted] in calculating the cost of credit on export sales. This is inconsistent with the Commission's stated practice of calculating credit term adjustment '*having regard to the interest rates and terms applying in each markets*'.

Importantly the Commission's Dumping & Subsidy Manual highlights that:

> *An adjustment is made for credit even if funds are not borrowed to finance the accounts receivable.*
>
> *The interest rate applied to domestic sales (in order of preference) is:*
>
> - *the rate, or average of rates, applying on actual short term borrowings by the company;*
> - *the prime interest rate prevailing for commercial loans in the country for credit terms that most closely approximate the credit terms on which the sales were made;*
> - *such other rate considered appropriate in the circumstances.*
>
> *The interest rate applied to export sales is:*
>
> - *where the exporter discounts a receivable, the bank discount rate;*
> - *where the exporter waits for the receivable to mature and borrows to finance the export sale, the rate, or average of rates, applying on actual borrowings;*
> - *the prime interest rate prevailing for commercial loans for that currency e.g. LIBOR + risk premium;*
> - *such other rate considered appropriate in the circumstances.*

IP Brasil contends that the Commission has not applied its own stated correct and preferable method for determining the appropriate rate of interest for calculating the cost of credit on export sales to Australia. Whilst it is agreed that there is no available information to apply an interest rate from either of the first two options in the order of preference, the Commission has clearly overlooked the next preferred option for assessing an appropriate rate of interest.

As explained to the Commission's verification team, the US investigating authority encountered this very same issue in its determination of dumping with respect to IP Brasil in its recent dumping investigation into certain uncoated paper from Brazil. The circumstances were identical with IP Brasil [redacted]. The US investigating authority in those circumstances determined that for credit on export sales, it was appropriate to apply the rate of interest on prevailing commercial loans in the country of the denominated currency. In the US investigation and this investigation, all of IP Brasil's exports were denominated in [redacted]. On that basis, the US investigating authority relied on the attached information from the Federal Reserve Bank, which has been updated for the 2015

investigation period, as it was considered to best reflect the applicable rates on the exported goods denominated in [redacted]. The applicable average rate for 2015 was 2.69% and significantly less than the prevailing domestic rates in Brazil.

The method adopted by the US investigating authority most closely resembles the alternate method outlined in the Commission's Dumping & Subsidy Manual which refers to '*the prime interest rate prevailing for commercial loans for that currency e.g. LIBOR + risk premium*'. Both methods are intended to estimate a prevailing commercial loan rate.

The US dollar average LIBOR rate for 3 month maturities during 2015 was 0.257%. The only remaining factor is identifying the relevant risk premium which predominantly takes into account the degree of default risk inherent in the loan. IP Brasil contends that its risk premium would be minimal given that it has [redacted] and is a highly profitable global company with strong revenues spread across both domestic and export markets.

To further highlight the clear difference that would reasonably be expected to affect the applicable rates of interest and therefore the relevant adjustment between export and domestic credit terms, the average official interest rates in Brazil, Australia and the USA during the investigation period was approximately 13.25%, 2.15% and 0.25% respectively.

IP Brasil therefore requests the Commission to reconsider and revise its preliminary dumping calculation by amending the rate of interest used to calculate the upwards adjustment for export credit to the prevailing commercial loan rate in the US during the investigation period of 2.69%.

Due allowance – Production

As the Commission is aware, IP Brasil operates three manufacturing facilities where A4 copy paper is produced: Mogi Guaçu mill, Luiz Antonio mill and the Tres Lagoas mill. During the verification visit, the Commission's verification team requested that IP Brasil update its domestic and export sales listings to identify the relevant mill used to produce the goods in each corresponding export and domestic transaction.

As is evident from the updated sales listings, [redacted] [manufacturing details], whereas domestic sales were produced from all three mills. As the information gathered by the Commission demonstrates, the raw material pulp costs are higher at the [redacted] compared to the [redacted]. This is due to the [redacted] not being an [redacted]. **[Confidential details of IP Brasil's manufacturing operations]**

Given the [redacted] and the [redacted] of the domestic like goods relative to the [redacted], IP Brasil considers that in these circumstances, it is appropriate to establish the normal value of the exported goods, on the basis of domestic sales of like goods produced only at the [redacted].

In the event that the Commission considers all domestic sales from all three mills to be relevant for the purposes of determining normal values, then IP Brasil requests the Commission to make

due allowance for the cost of production differences between the mills used for producing the exported goods ([redacted]) and the [redacted].

Given that production costs are the primary determinant and driver of prices, the identified production cost differences between the [redacted] affect price comparability between the normal value and export price. As such, domestic sales made from the [redacted] are required to be adjusted for these production cost differences to ensure proper comparison between the normal values and corresponding export prices.

Alternatively, as highlighted earlier, basing the normal values on only domestic sales made by IP Brasil from its [redacted] would address the need for any adjustment to individual domestic transactions.

Conclusion

IP Brasil submits that the issues raised in this submission are required to be addressed to ensure that the normal values can be properly compared to the corresponding export prices. IP Brasil therefore requests the Commission to have regard to the issues and points raised in this submission, and revise accordingly the preliminary dumping margin determined for IP Brasil.

Yours sincerely

John Bracic