Australian Paper
a member of the Nippon Paper Group

307 Ferntree Gully Road Locked Bag 87
Mt Waverley Victoria 3149 Australia
Telephone +61 3 8540 2300
Facsimile +61 3 8540 2280
ABN 63 061 583 533
www.australianpaper.com.au

30 November 2016

Mr Tim King
Case Manager
Dumping Operations
Anti-Dumping Authority
Level 35, 55 Collins Street
Melbourne Victoria 3000

Public File

Dear Mr King

Investigation No. 341 – A4 Copy Paper exported from Brazil, P R China, Indonesia and Thailand – APRIl Submission dated 17 November 2016

I. Background

I refer to the submission of 17 November 2016 on behalf of APRIL Fine Paper Trading Pte Ltd and PT Riau Andalan Kertas ("APRIL") concerning the Anti-Dumping Commission's ("the Commission") assessment that sales by APRIL's Australian importer BJ Ball Pty Ltd ("BJ Ball") were not at arms length.

Australian Paper Pty Ltd ("AP") considers the treatment of sales of imported A4 copy paper sourced from APRIL at a loss by BJ Ball is correct and in accordance with the provisions of subsection 269TAA(2) of the Customs Act.

II. APRIL's claims

It is strenuously argued on behalf of APRIL that it disagrees with the Commission's assessment that the sales at a loss by BJ Ball have nothing to do with APRIL as they operate as independent entities. APRIL further questions:

- On the basis of the sampled transactions at BJ Ball, it is not "appropriate" for the Commission to infer all sales by the importer were at a loss;
- Whether any "cost to import" costs were excluded from BJ Ball's S,G&A costs to ensure there is no over allocation;
- Whether a simple 'line averaging' of BJ Ball's S,G&A costs which may include higher cost sales that are disproportionately represented;
- Whether S,G&A costs have been properly allocated according to "sales effort";
- If BJ Ball's prices reflected purchases from different sources of supply;
- If the Commission had regard to the recoverability of losses on sales by BJ Ball; and
- Whether BJ Ball's sales of all A4 copy paper (whether like goods or otherwise) were profitable.

III. Non-arms length sales

The Commission verified the selected 10 shipment transactions of BJ Ball. The Commission confirmed:

Australian Paper
a member of the Nippon Paper Group

307 Ferntree Gully Road Locked Bag 87
Mt Waverley Victoria 3149 Australia
Telephone +61 3 8540 2300
Facsimile +61 3 8540 2280
ABN 63 061 583 533
www.australianpaper.com.au

> "The verification team calculated profit for the 10 selected shipments, all of which were imported from APRIL, and found that ***all 10 shipments were unprofitable*** and the ***losses were significant***. (emphasis added)"

AP rejects APRIL's assertions that "BJ Ball's loss-making sales give no support to a proposition that APRIL's sales to BJ Ball were not at arm's length". Subsection 269TAA(2) provides:

> "*without limiting the generality of subsection (1), where:*
>
> *(a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and*
> *(b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;*
>
> *the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.*"

The intent of subsection 269TAA(2) enables the Minister to determine the export price for the goods sold to Australia based upon the final selling price of the goods (in this case A4 copy paper sales at a loss) so that an export price reflecting the sales at a loss may be calculated. The determination of the calculated export prices from the final selling price for the imported goods is an important fundamental of the anti-dumping provisions to ensure that the correct dumping assessments are made.

AP does not agree with APRIL's assertion that the application of the provision is 'not mandatory'. Where all sales have been made at a loss – and the loss is 'significant' – it is available for the Minister to conclude that the importer will be subsequently compensated or reimbursed for the losses incurred. To do otherwise would amount to a disregard of the provision.

It is not clear from APRIL's representations what additional facts the Commission must have regard to if "*it is not enough to base a non-arm's length finding simply a determination that an importer's sales of the goods under consideration were made at a loss.*" APRIL does not state what "other acts, matters or things" to which it is referring. AP would re-emphasize that the Commission has determined that all of the sales were made at a loss by BJ Ball, and the loss was 'significant'. This assessment is sufficient for the purposes of s.269TAA(2).

AP would highlight that BJ Ball's sales at a loss are not inconsistent with the Commission's assessment of another large importer's sales of imported A4 copy paper in Australia – *[importer]*. The Commission has similarly concluded the imported A4 copy paper was "sold at substantial losses by *[importer]* and those losses are not recoverable within a reasonable

Australian Paper
a member of the Nippon Paper Group

307 Ferntree Gully Road Locked Bag 87
Mt Waverley Victoria 3149 Australia
Telephone +61 3 8540 2300
Facsimile +61 3 8540 2280
ABN 63 061 583 533
www.australianpaper.com.au

period of time[1]". The Commission has been consistent in its approach in its treatment of sales of imported A4 copy paper at a loss, including for sales by BJ Ball.

The provisions of s.269TAA(2) apply irrespective of the relationship between the exporter and importer. The claims that APRIL has "nothing to do with the business decisions of BJ Ball" are irrelevant in the Minister's consideration of the subsection.

IV. Sale of BJ Ball

AP is concerned by the inferences made on behalf of APRIL that *"It is not beyond the realms of business strategy to consider that BJ Ball would seek to add value to the sale of the EDOP division itself by trying to "buy" as much market share as it could in the lead up to the negotiations"* that are completely unfounded. These claims are fictitious and are not supported in any way. AP is further concerned by the additional inferences that the BJ Ball behaviour was *"in the best commercial interests of Paper Australia"*. Again, these assertions are without foundation.

APRIL's representations further accuse BJ Ball and AP as being "linked arm-in-arm" in this investigation. These claims are mere speculation and lack any foundation whatsoever. In the BJ Ball Verification Report, the Commission noted general comments from company representatives during the verification visit. The comments included a statement that in the view of the representatives *"The company believed that there was no dumping in the market for A4 Copy Paper;"*.[2] This statement evidences the fact that BJ Ball has not acted in a manner befitting of the assertions by APRIL.

V. Conclusion

The Commission has correctly concluded that sales by BJ Ball during the investigation period were at a loss and that the export price for goods supplied by APRIL must be based upon the final selling prices of BJ Ball.

In the current circumstances, the determination of export prices by the Commission in accordance with subsection 269TAA(2) despite the assertions of APRIL is correct.

If you have any questions concerning this submission, please do not hesitate to contact me on (03) 8540 2451 or AP's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

Matt Decarne
Trade Affairs Manager

---

[1] PAD No. 341A, P. 33.
[2] A4 Copy Paper – Investigation 341– Importer Verification Report – BJ Ball Pty Ltd, P 8.