Subject: Anti-Dumping investigation. A4 Copy Paper from Brazil.

The Embassy of the Federative Republic of Brazil presents its compliments to the Australian Anti-Dumping Commission (the Commission) and has the honour to submit herewith additional comments on the ongoing anti-dumping investigation for A4 paper:

2. The Government of the Federative Republic of Brazil wishes to thank the Government of Australia for the opportunity to present its comments on the Statement of Essential Facts (SEF N. 341) issued by the Australian Anti-Dumping Commission on December 9, 2016, regarding the antidumping investigation on Brazilian exports of A4 Copy Paper, usually classified under item 4802.56.10/03 of the Australian Tariff Code.

3. According to article 6.9 of the Antidumping Agreement, the investigating authority shall, before a final determination is made, 'inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests'. Nonetheless, not all submissions, including the latest from Brazil, were considered in the statement of essential facts, as reported in item 2.5 of the document:

> 'The Commissioner notes that he has had insufficient time to consider six submissions received from Australian Paper, the Government of Brazil, IP Brazil, Jackaroo Paper Pty Ltd (Jackaroo), PPPC, and Indah Kiat, Pindo Deli and Tjiwi Kimia. These submissions will be examined in close detail in the next stage of the investigation. It is also noted one of these submissions is in relation to a submission from Complete Office Supplies (COS) and a subsequent submission from Australian Paper. As a consequence, the Commission has not had sufficient time to fully consider the COS and Australian Paper submission in light of this subsequent submission.'

4. The Brazilian Government understands that, once the statement of essential facts does not contain all the elements which will form the basis for the final decision on the case, the parties did not have the opportunity to properly defend their interests pursuant to the above-mentioned rule. Brazil therefore kindly requests the Australian authorities to take into consideration all submissions from the Brazilian Government, exporters and their clients, when issuing a final decision.

5. In respect of the causality between the allegedly dumped Brazilian exports and the supposed injury suffered by the Australian domestic industry, the Australian investigating authority concluded that the producer Australian Paper indirectly competes with imports originating in Brazil through its retailer Staples. On SEF N. 341, it reads that 'the Commission is of the view that Australian Paper is indirectly facing downstream competition in B2B market through its aligned customer in this segment'.

6. This modality of competition 'business to business' (B2B) would be established between Staples and Complete Office Supplies (COS), a retailer of Jackaroo, which, on its turn, imports the investigated product from Brazil, more specifically, paper produced by International Paper do Brasil.

7. The investigating authority, however, acknowledges in its SEF that the competing price in B2B contracts is not necessarily related to the price of the Brazilian imports: 'However, the Commission notes that based on information supplied by COS, pricing used to compete for B2B contracts during the investigation is not necessarily based on pricing related to imports from Brazil'.

8. It is thus clear for the Brazilian Government that the supposed injury suffered by Australian Paper does not derive from the effects of the alleged dumped exports from the Brazilian producer/exporter, as prescribes article 3.5 of the Antidumping Agreement, since the price practiced in the competition that directly affects the Australian producer is not linked to the price of imports originating in Brazil.

9. As for the 'tender' won by Jackaroo in 2014, the Brazilian Government understands that in sales resulting from this type of contract-based competition, the injury is materialized at the moment of the competition, when the buying company

decides which company will be its provider. From then on, the acquisitions deriving from this competition will have fixed provider and, thus, the losses in sales incurred by the losing companies will already have been materialized. Therefore, the supposed injury suffered in 2015 cannot be attributed to the competition won in 2014 by Jackaroo, even if in this last period it has provided the product under investigation.

10. Even if the Australian Government continues to consider that there is a connection between the imports originating in Brazil and the supposed injury suffered by the domestic industry, it shall still take into account the interference of other pricing sources that influence the competition within the B2B Australian market. As reported on the SEF:

> 'However, the Commission undertook further analysis of the volume of imports from the alternative pricing source for the B2B tenders. This analysis indicates that this pricing source accounts for approximately half the volume of Brazilian imports.'

11. In the Brazilian Government's view, half the volume of Brazilian imports does not represent an insignificant share of the volume of imports from the alternative pricing source for the B2B tenders.

12. Therefore, should the Australian Government conclude, in its final decision, that there is casual link between the imports originating in Brazil and the supposed injury to the domestic industry, the Brazilian Government requests to separate and distinguish the effects on the Australian industry deriving from other factors beyond the alleged dumped imports, including the price practiced by the Australian retailers in the B2B market (which, according to the investigating authority, is unlinked from the price of the Brazilian imports) and the other pricing sources that influence the competition in this sector.

13. According to the Appellate Body ruling in US - Antidumping Measures on Certain Hot Rolled Steel Products from Japan,

> 'Para. 223. [.] In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the

other known factors are not "attributed" to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Antidumping Agreement, justifies the imposition of antidumping duties.'

14. Finally, thanks to the Commission's Electronic Public Record (EPR), the Brazilian Government has been able to follow the proceedings of the present investigation. It has not, however, been notified about the verification visit to International Paper Exportadora and about the preliminary decisions issued by the investigating authority, as required by Annex I, item 4, and article 12.2 of the Antidumping Agreement.

15. The Brazilian Government expects the arguments presented herein will be taken into account by the Australian investigating authority and is confident of the observance of all pertinent WTO rules in the final phase of this investigation.

16. The Embassy of the Federative Republic of Brazil avails itself of this opportunity to renew to the Australian Anti-Dumping Commission the assurances of its highest consideration.

Canberra, 29 December 2016.

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