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The Director - Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Review of measures into A4 Copy Paper exported from Brazil

Dear Director,

This submission is made on behalf of Jackaroo Paper Pty Ltd ("Jackaroo") to the current review of measures into A4 copy paper exported from Brazil (Review 551). Jackaroo wishes to address some key points made by Paper Australia Pty Ltd (AP) in its recent submissions of 31 July 2020 and 27 August 2020.

First, AP confirms that its imports from South Africa were '*brief and temporary*' and '*of a small volume of copy paper from South Africa.*' Both of these statements appear to be refuted by the evidence available to the Commission. In terms of the duration, Jackaroo notes that AP's customers confirmed that AP offered South African imported copy paper as early as [REDACTED] and continued to offer the imported products in [REDACTED]. Email correspondence provided to the Commission confirms that AP's customers purchased the imported paper from South Africa in [REDACTED]. This evidence clearly refutes the view that these were brief, as they appeared to be offered for the majority of the review period.

With regards to the size of the imported volume, it is incorrect to suggest that these imports were of a small volume when compared to corresponding imports from Brazil. Based on the import data submitted to the Commission, AP's imports were substantially greater than imports from Brazil, and sufficiently large for AP to be considered a major importer of the goods during the review period. To be clear, the volume of imports by AP during the review period, which it considers to be a "small volume", is approximately [REDACTED] times greater than the volume of imports from Brazil during the same period, and greater than the total import volume from Brazil over the past decade.

Second, if indeed AP views the South African imports as being brief, temporary and of a small volume, it appears that AP has engaged in the classic form of dumping into the market which it also claims requires protection in the form of dumping duties. Dumping in the

traditional and classic sense involved the practice of importers and/or exporters selling surplus or unwanted inventory at below cost, thereby unfairly hurting competing domestic producers.

In its response to the Commission's follow-up questions, AP confirms that certain '*products were discontinued ranges which are no longer offered by AP. The stock was also aged, and considering the very low volume of the inventory (~X tonnes) AP made the decision to [pricing] to clear stocks from inventory.*' It does appear to Jackaroo that AP has engaged in classical dumping and the consequences being injury to all local competition including importers sourcing from countries subject to measures, and the local industry itself. Consider the reaction by AP if an importer sought to justify a dumping finding on the basis of unwanted stock being briefly and temporarily sold in the Australian market at a loss.

Third, AP attempts to dismiss Jackaroo's estimate of South African imports holding █% share of the Australian market, by simply confirming '*that the relevant volume is grossly overstated in the import statistics due to a large portion of the import supply being damaged, refunded and repatriated to South Africa as a result.*' This confirms that AP had intended to sell the original import volume into the Australian market, and the only reason it was unable to do so, was due to quality issues.

This circumstance does not refute Jackaroo's market share estimate. In assessing market share, the Commission cannot be expected to determine individual market shares based on volume of goods imported less volume of goods held in inventory, returned or disposed. The Commission uses the Australian Border Force import database to accurately estimate individual market share of imports. The fact that some of the imported goods were defective does not diminish the fact that AP purchased the original volume with full expectation of supplying the market.

Fourth, AP now makes clear that it '*does not consider that the small volume of imports from South Africa have influenced the selling prices across the entire Australian market...*'. This is an astonishing admission by the monopoly local manufacturer in light of its claims and arguments during the original investigations, that Jackaroo's smaller import volumes from Brazil and Russia, had caused material injury to the Australian industry.

If it is the case that small import volumes cannot influence selling prices in the Australian market, then it is clear that the original causal link claims made by AP against imports from Brazil were bogus. Those self-serving claims in its original application appear to be part of its strategy to becoming the dominant monopoly supplier by introducing barriers to entry against legitimate import competition from sources such as Brazil which had no material impact on local prices.

Reliability of AP data

As we have previously noted in our earlier submissions, it has become known that AP was importing substantial volumes of subject goods from South Africa, and at prices well below the prevailing market price. As far as Jackaroo is aware, this information only become known after AP's customers informed of the low prices being offered by AP. It does not

appear that AP disclosed the sales of imports to the Commission prior to the issue being raised by Jackaroo.

It also appears that these import price offers by AP were not in response to other competing import offers given the known import prices being offered from various sources. This suggests that AP has caused itself injury by undercutting selling prices of its own produced goods, and possibly at prices that are themselves unprofitable. Jackaroo understands that

[REDACTED]
[REDACTED]
[REDACTED] [AP price comparisons].

There may be a reasonable explanation for AP selling imported subject goods below the fully absorbed cost and undercutting its own production. However, given the apparent unwillingness of AP to immediately disclose its imported sales, the Commission is urged to investigate further.

Jackaroo also brought to the Commission's attention information which identified AP's imports of subject goods from Malaysia. These imports stem from a Malaysian manufacturer converting AP's own jumbo rolls into cut-size A4 copy paper. Again, these imports do not appear to have been disclosed to the Commission by AP prior to the issue being raised.

It is also noted that in AP's response to the Commission's queries, it has reported supplementary sales of subject imports from Austria. Information relevant to these Austrian imports appears to have only been disclosed by AP following Jackaroo's identification of the South African and Malaysian imports, and only in response to the Commission's supplementary questioning.

The apparent non-disclosure of AP's imports was either inadvertent or deliberate. As noted in our earlier submission, a key question on the approved application form for this review requested details of AP's interests, including whether it was concerned with the exportation, importation or local production of the goods. AP appeared to only confirm that it was a local producer of the goods, and did not disclose that it was also a substantial importer of the goods.

Jackaroo does not make any allegation as to whether AP *'has hidden imports from the Commission'*. It has simply highlighted that sales information received from AP's customers and presented to the Commission, appears to have not been disclosed to the Commission. This seems to be supported by the Commission's request for information and follow-up queries regarding AP's imports.

Ultimately, it is the Commission's responsibility as the investigating authority to determine whether AP's apparent non-disclosure was a deliberate attempt to mislead the investigation or an inadvertent omission. In considering this issue, it is essential that the Commission have regard to the nature of the information and its direct relevance to the review inquiry. That is, it is understood that AP's imports far exceeded Jackaroo's own import volumes during the review period, and the evidenced selling prices also substantially undercut Jackaroo's own selling prices to existing customers. Therefore, the extremely low selling

prices being offered by AP for the significant import volumes, would be relevant to the Commission's consideration of the unsuppressed selling price and corresponding non-injurious price.

In addition and equally important, the disclosure of AP's imports would undoubtedly generate overall competition questions arising from a circumstance where the monopoly local producer was also a substantial importer from countries which were not subject to dumping duties. Especially in a period where legitimate importers were seeking to source subject imports from countries subject to measures, but were prevented due to the imposition of the minimum ascertained export price, the fixed interim dumping duty and the low undercutting selling prices by the monopoly player. It would appear to Jackaroo, that if AP had indeed misled the Commission by concealing its imports, that this would be a clear instance of a local producer misusing the dumping system.

To this point, we note the concerns about the integrity of the dumping process and the Commission's efforts to address such concerns, which were addressed in the Joint Study of the Administration of Australia's Anti-Dumping System¹. The whole consideration of that issues is outlined below:

3.2.8 Integrity of the application process

Several submissions refer to the importance of maintaining the integrity of the anti-dumping process, especially when initiating investigations. There is concern about the high cost of investigations to all affected parties, the potential for vexatious use of anti-dumping applications or for investigations to be used as an anti-competitive weapon, and the chilling effect on legitimate import suppliers and third country producers and exporters.

Collectively, these submissions call for greater attention to be given to the substance of the evidence provided in an application, consistent with the requirements of the WTO Anti-dumping Agreement. One submission suggested that Customs give careful consideration to using statutory penalties in relation to false or misleading information to ensure the initial application and follow-up submissions by all parties are accurate and do not omit or misrepresent relevant information.

Evaluation

The provision of correct and complete information in the initial application process is central to maintaining and ensuring the integrity of all subsequent verification and investigative processes and the credibility of the entire antidumping system. The integrity of the application process is necessary to comply with Australia's international obligations under the WTO Anti-Dumping Agreement and the requirements of domestic legislation. Vexatious or tactical use of the anti-dumping system would impose considerable commercial costs on industry, undermine confidence in the legitimate use of

¹ Joint Study of the Administration of Australia's Anti-Dumping System – Report to the Minister for Justice and Customs and the Minister for Industry, Tourism and Resources, August 2006, page 18.

anti-dumping measures and impair the commitment to open and competitive market arrangements.

Under subsection 234(1) of the Customs Act 1901, it is an offence to make a false or misleading statement to a Customs officer. Making potential parties aware of the offence would add to the integrity of the process. A warning could be inserted into the anti-dumping application forms and other relevant documents to make parties aware of this offence. Customs could also ensure that the forms are signed in a manner that would allow Customs to prosecute under subsection 234(1) where a party makes a false or misleading statement.

Recommendation 7: *That the anti-dumping application form and other relevant documents be amended to provide a warning of and indicate the penalty applicable to the offence of making a false or misleading statement to a Customs officer and require that application forms and documents are signed in a manner to allow prosecution where an offence is committed.*

Jackaroo urges the Commission to carefully consider the evidence presented and determine whether AP has indeed misled the investigation, and used the dumping system ‘*as an anti-competitive weapon, and the chilling effect on legitimate import suppliers*’. This is particularly relevant to Jackaroo and its imports from Brazil, which have never been substantial relative to the total Australian market and total imports. Jackaroo’s smaller import volumes are more susceptible to the effects of dumping measures, in a commoditised market where the lowest prices drive sales volumes and the monopoly local producer has approximately 85% of the Australian market and the dominant share of imports.

If AP is found to have misled the investigation, Jackaroo considers that the penalty should aim to redress the chilling effect on Jackaroo’s import trade. To this end, Jackaroo notes that Article 6.8 of the Anti-Dumping Agreement provides:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

Jackaroo submits that AP has significantly impeded the investigation if found by the Commission to have misled the inquiry, and its information should be disregarded for the purposes of ascertaining the variable factors. In relying on facts available, Jackaroo contends that the submitted pricing information from AP’s customers is the best facts available for establishing the unsuppressed selling prices.

In relying on AP’s import selling prices, Jackaroo submits that the unsuppressed selling price for Brazilian imports should be referenced to the lowest delivered duty paid price of A\$ [REDACTED] per ream. This is reasonable and appropriate for the following reasons:

- the imported goods sold by AP were generic/private label products similar to

PUBLIC VERSION

Jackaroo's imports;

- the customer contacted Jackaroo seeking price offers for similar products;
- the price offer occurred during the review period; and
- most importantly, it would send a clear and strong message to local producers that *'vexatious or tactical use of the anti-dumping system'* will not be tolerated, as it would *'undermine confidence in the legitimate use of anti-dumping measures and impair the commitment to open and competitive market arrangements'*.

Yours sincerely

John Bracic