

24 May 2021

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



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Dear Sir/Madam

**Opal Paper Australia responses to interested party responses to Statement of Essential Facts ('SEF') No. 551**

I. Introduction

Paper Australia Pty Ltd (hereafter referred to as "Opal Australian Paper", or "OAP") has reviewed recent interested party submissions in response to Statement of Essential Facts No. 551 ("SEF 551") and make recommendations for the Anti-Dumping Commission's ("the Commission") further consideration where applicable.

In its 14 April 2021 submission (EPR Document 042) Opal Australian Paper indicated it broadly agrees with the Commission's proposed recommendation to the Minister. Interested parties have made submissions in response to SEF 551 that Opal Australian Paper seeks to address.

Opal Australian Paper would again highlight with the Commission that proposed recommendations relating to Model Control Codes, Chinese and Indonesian exporter's export price and normal value methodology and exporters adjustments require reconsideration as per OAP's 14 April submission.

The following submissions require responses from Opal Australian Paper for the purposes of this review.

II. APRIL Submissions

*(a) Submission dated 6 April 2021*

The submission on behalf of April Far East (Malaysia) Sdn Bhd and PT Riau Andalan Kertas (collectively "APRIL"). The APRIL submission does not challenge the Commission's finding that its exports to Australia during the investigation period (i.e. 1 January 2019 to 31 December 2019) were at dumped prices of 14.7 per cent. The APRIL submission seeks to contend that as APRIL's selling prices were above the Australian industry's selling prices during the investigation period and that APRIL's export prices were not injurious to the Australian industry.

Review of measures Investigation No. 551 is a review of the variable factors only. The investigation is not examining the revocation of the measures. It is concerned with the re-assessment of the variable factors. APRIL's comments concerning injury from its exports are therefore irrelevant to the conduct of Investigation 551.

APRIL's comments concerning Opal Australian Paper holding a "monopoly or near-monopoly market share of less than 85% in the Australian A4 Copy Paper market" have been presented mischievously

to suggest that Opal Australian Paper exerts influence in the Australian market<sup>1</sup>. The Australian industry continues to be significantly influenced by dumped import prices – as reflected in the profit and profitability outcomes in Investigation 463. Opal Australian Paper rejects APRIL’s assertions about its position in the Australian market as “monopolistic” as this is not reflected in the Australian industry’s economic performance.

Opal Australian Paper welcomes the Commission’s assessment in SEF 551 to apply new variable factors to APRIL’s future exports to Australia.

*(b) Submission dated 15 April 2021*

Opal Australian Paper does not consider that APRIL’s submission asserting “errors and issues” with the Commission’s assessment of normal values and export prices from which the dumping margin has been derived can be relied upon. The submission provides no detail as to the apparent errors that exist in the normal value calculations.

Opal Australian Paper notes APRIL’s concerns about the Commissions’ statements in SEF 551 relative pricing of participants in the Australian market. Opal Australian Paper further notes that similar statements were reflected in Report 341. The Commission is required to identify the exporter of the subject goods and RAK was identified in Report 341 as the manufacturer and exporter of the goods. The APRIL submission has not identified (or presented) information to demonstrate RAK is no longer the exporter of the subject goods.

It is argued that the export price of the exporter is not the price at which the goods enter the commerce of Australia. The export price is that determined as the first sale by the producer for the goods that are exported to Australia – and not a subsequent sale between intermediaries for importation into Australia.

Opal Australian Paper does not consider that the APRIL submission provides any grounds upon which the Commission can consider findings in Report 341 concerning the determination of a particular market situation in Indonesia for A4 copy paper.

It is argued by APRIL that a non-injurious price (“NIP”) must be a price less than APRIL’s selling prices and it is contended that the NIP should be set at a price that is at the non-dumped level. Opal Australian Paper agrees with the Commission’s assessment of an unsuppressed selling price. The proposed USP (from which the NIP is derived) is based upon the normal value for each of the exporters to Australia. This approach ensures that each exporter does not export at dumped prices that would cause injury to the Australian industry.

APRIL has sought to examine the impacts of the dumping duty as imposed following publication of Report 341 and whether the measure applied by the Minister have been effective. This ignores the fact that a review of measures investigation does not examine the effectiveness of the measures in addressing the injury sustained by the Australian industry, and the remit is solely to assess the new variable factors to be applied.

Opal Australian Paper does not consider that APRIL has contributed any matters of substance in its 15 April 2021 submission that would warrant the Commissioner altering its variable factors as identified in SEF 551.

*(c) Submission dated 26 April 2021*

It is noted that this APRIL submission persists in referencing Opal Australian Paper as engaging in monopolistic behaviours that is completely unsubstantiated. Additionally, the submission again

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<sup>1</sup> Investigation 463 reflected an investigation period of 2017 and reflected a short-term change in supply in the market following the outcomes of Investigation 341.

contends that the Australian industry is not suffering injury from imports and the measures are no longer warranted.

APRIL has not introduced any new information in this 26 April 2021 submission that it has not already argued.

*(d) Submission dated 10 May 2021*

This APRIL submission further persists with arguments seeking the revocation of the anti-dumping measures applicable to APRIL.

It is contended through OPAL Australian Paper financial statements lodged with ASIC for 2019 that the company has not been impacted by dumping.

APRIL would be aware that the subject goods are a business within the broader OPAL Australian Paper's total paper manufacturing and sales operations. The A4 copy paper financial information is a component of this broader, total entity information.

The current review of measures investigation is limited to the determination of revised variable factors (and not the revocation of the measures).

### III. Phoenix Pulp & Paper Submissions

#### *a. Uncooperative exporter*

Phoenix Pulp & Paper PLC. ("PPPC") claims in its submission No 43. on the EPR dated 14 April 2021, that it has cooperated with the investigation by having "submit completed spreadsheet", stating that it is their belief that the data is useful for the review.

In SEF 551, the Commission stated its position that PPPC had not cooperated with the review in accordance with Section 269T(1), since it had provided only an "*incomplete response to the exporter questionnaire*", specifically to sections A to G of the questionnaire.<sup>2</sup>

Opal Australian Paper supports the Commission's view that the deficiencies were extensive and that more than sufficient time was granted to PPPC to complete the responses (in excess of 100 days). It is therefore correct for the Commission to have deemed PPPC uncooperative and apply the uncooperative exporter rate of 43.3 per cent as per section 4.7.2 of SEF 551.

### IV. UPM-AP Submissions

#### *a. Form of Measures*

UPM Asia Pacific Pte Ltd ("UPM-AP") claims in its 15 April 2021 submission (EPR Document 044) that the Commission has incorrectly determined that the form of measures to be applied is based on the combination method (i.e. a fixed and variable combination duty method).

UPM-AP appears to claim that variable market prices of raw materials should justify the non-use of the combination method for reasons which are not made entirely clear.

Opal AP supports the Commission's interpretation of the *Guidelines on the Application of the Forms of Dumping Duty*, which states that the "*combination duty method is appropriate where circumvention behaviour is likely (particularly because of related party dealings), where complex company structures exist between related parties, and where there has been a proven case of price manipulation in the*

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<sup>2</sup> SEF 551, Section 4.2.2, page 18.

market.” Opal Australian Paper contends that circumstances related to UPM-AP’s trade historically, and currently justifies a combination method for the following reasons;

- UPM-AP’s history of circumvention activity relating to the like goods as demonstrated in Anti-Circumvention inquiry No 552, relating to the slight modification of goods.
- The close relationship between UPM-AP (the exporter), and UPM-China (the toll manufacturer) and the complex related company structures.
- Opal AP also notes the sustained nature of the dumping and undercutting by UPM-AP in the Australian market since 2015 and continuing in the 2019 period analysed by the Commission in SEF 551, and continuing to this day. This further demonstrates a continued desire of the exporter to engage in unfair trade within Australia.

It is therefore clear to Opal AP that there continues to be strong justification for the imposition of a combination duty method in the case of UPM-AP

#### *b. Adjustments*

The UPM-AP submission seeks to justify its claim for an adjustment to normal value for generic selling, general and administrative (“SG&A”) expenses. UPM-AP seeks to justify the claim for adjustment by asserting that whether the expense is “generic or specific” it nevertheless is an integral cost component and an adjustment is warranted.

Opal Australian Paper disagrees with UPM-AP’s contention. The Commission’s position is considered reasonable as otherwise it would quickly become the practice of exporters to load SG&A expenses with unrelated costs to secure a downward adjustment to normal value. The correct approach is to ensure any downward adjustment for SG&A relates to the subject goods and reflects differences in SG&A expenses between sales made on the domestic and export markets.

#### V. Jackaroo Submissions

##### *a. Unsuppressed Selling Price (“USP”)*

Jackaroo Paper Pty Ltd (“Jackaroo”), takes issue in its submission on the EPR No. 46 dated 15 April 2021, with the Commission departing “*from its original methodology for establishing the USP for the nominated review period*” in Investigation 341. Jackaroo does not state specifically why it disagrees with the Commission’s revised methodology which seeks to bring the USP and NIP calculations into alignment with modern prices given that the original prices that were calculated used data from July 2012 to June 2013, which is now more than seven years old, hence the need for the review of measures due to variable factors.

It is OAP’s view that the Commission has correctly revised the method of USP calculation to use the domestic industry’s cost to make and sell during the review period plus an amount for profit which represented the percentage mark-up achieved by OAP in 2012-2013 financial year which was the last period deemed to be unaffected by dumping. Jackaroo does not elaborate on why this method is not correct, other than to propose an alternate methodology, arguing that OAP’s USP should be linked to the temporary, and low volume of imports from South Africa which OAP engaged in the review period.

Opal Australian Paper agrees with the Commission’s analysis contained in SEF 551 related to Jackaroo’s preferred USP methodology and non-injury claims, which correctly summarises the issue:

*“The Commission reviewed Australian Paper’s importations of A4 copy paper from South Africa and observed that these goods were imported over a period of three months in 2019, albeit these goods were available and sold in the Australian market for most of 2019. The Commission did not find that Australian Paper continued to import copy paper from South Africa following*



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*this three-month period in 2019. This supports Australian Paper's claim that it imported this product as an interim measure to meet an unexpected increase in demand for certain grades of A4 copy paper while it ramped up production."*<sup>3</sup>

*b. Proper Comparison*

Jackaroo contends as part of its submission that there is no comparability between the Brazilian exports to Australia, and certain products manufactured by the domestic industry. Specifically mentioned in the submission is Jackaroo's belief that OAP's 'Reflex' brand, and recycled grades should be excluded from USP calculation despite the fact that the Commission has determined that all products compete directly in the market place and are physically, functionally and commercially alike. It is unclear on what legal basis Jackaroo seeks to have the Commission 'cherry pick' data which might artificially reduce the USP.

VI. Conclusion and Recommendations

OPAL Australian Paper affirms its overall support for the Commission's findings and recommendations in SEF 551.

Opal Australian Paper does not consider that the submissions on behalf of APRIL provide any further substantive information that would alter the determination of the variable factors as assessed by the Commission in review of measures Investigation 551. The repeated requests by APRIL seeking the revocation of the measures should be rejected.

The form of measures recommended for UPM-AP are appropriate in light of the historic practices of the exporter to circumvent measures and the nature of the relationships evident between the exporter and the importer. An adjustment of generic SG&A expenses is not warranted.

Finally, Opal Australian Paper concurs with the Commission's proposed NIP to be based upon the undumped normal values for each exporter the subject of measures.

If you have any questions concerning this submission please do not hesitate to contact me on 0425 619 667.

Yours sincerely

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<sup>3</sup> SEF 551, Section 6.4.2, page 52.