

24 June 2020

BY EMAIL – investigations2@adcommission.gov.au; jasna.halilovic@adcommission.gov.au

Mr Dale Seymour
Commissioner
Anti-Dumping Commission
Level 35,
55 Collins Street
Melbourne VIC 3000

Dear Sir

Inquiry 552 – Anti-Circumvention - A4 copy paper: Termination of Inquiry.

We act for the UPM group of companies in relation to the above matter.

We refer to our email of 8 May 2020 requesting that you exercise the power vested in you under s.269ZDBEA(1) of the *Customs Act 1901* (**Act**) to terminate the above inquiry. The basis for our request was that your decision of 28 April 2020 published in ADN No. 2020/045 not to reject the application for the conduct of that inquiry was materially influenced by an inaccurate and incomplete presentation of the alleged circumstances involved in the groundless assertion that UPM had engaged in the circumvention activity specified in s.48 of *Customs (International Obligations) Regulation 2015* (**Regulation**).

Our submission set out detailed new information that was not available to you when you made your decision of 28 April 2020 and identified inaccurate information contained in EPR 552 and relied upon by you when deciding not to reject the application for a circumvention inquiry. Our submission concluded that after taking account of all available relevant and accurate information there were no longer any reasonable grounds on which you could claim to be satisfied that a circumvention activity had occurred.

Apart from an acknowledgement of receipt we have not received any response to our submission in the intervening seven weeks. In that period our client has been obliged to devote extensive resources to the costly process of providing responses to EQR 552. Those responses, particularly to section B6, and associated spreadsheets provide further substantive evidence in support of our client's request that you terminate the inquiry. In particular that evidence confirms that the goods have not been modified and that no circumvention activity has been undertaken and it also demonstrates that no duties have been avoided.

Our client's responses also pointed out that the applicant had admitted that it had discontinued production of lower grade gsm due to poor sales and had also observed that historically the Australian market acceptance of lower gsm grades has been 'minimal'. Obviously, these observations informed the decision of the applicant, when lodging the original application for a dumping duty notice, to set a lower limit of 70gsm in the goods description. It is not the purpose of the Regulation to allow the revision of a goods description originally authored by the applicant.

Level 3 Minter Ellison Building 25 National Circuit Forrest
GPO Box 369 Canberra ACT 2601 Australia DX 5601 Canberra
T +61 2 6225 3000 F +61 2 6225 1000 minterellison.com

Mail correspondence to GPO Box or DX

ME_173013774_1



PUBLIC RECORD

Subsection 269ZDBEA(1) (**Subsection**) of the Act relevantly provides:

(1) *If*

(a) *the Commissioner publishes a notice under subsection 269ZDBE(4); and*

(b) *.....*

(c) *before the Commissioner would otherwise be required to place on the public record a statement referred to in subsection 269ZDBF(1), the Commissioner becomes satisfied that no circumvention activity in relation to the original notice has occurred;*

the Commissioner may terminate the anti-circumvention inquiry concerned.

The subsection authorises you to terminate an anti-circumvention inquiry when you become satisfied that no circumvention activity has occurred and the terms of the subsection within the overall context of Division 5A of Part XVB of the Act clearly envisage a situation in which the evidence garnered since the initiation of the inquiry is of a character and quality that no longer supports the original decision taken by you under s269ZDBE(4). The subsection recognises that circumstances will arise in which during an inquiry it will become patently clear that the acceptance of an original application was unsound and that the inquiry should be terminated by you rather than prolong the costs and uncertainty associated with doing nothing until the publication of an SEF.

The present matter is just such a case and now that all relevant material is available to you any failure to make a decision promptly would subvert the purpose of the subsection.

We look forward to the early publication of your decision pursuant to s269ZDBEA to terminate Inquiry 552.

Yours faithfully
MinterEllison



Contact: John Cosgrave T: +61 2 6225 3781
john.cosgrave@minterellison.com
Partner: Michael Brennan T: +61 2 6225 3043
OUR REF: CJPC 778010852