

8 May 2020

BY EMAIL – investigations2@adcommission.gov.au; [REDACTED]

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 request 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 is 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)*. We submit that objective consideration of all information relevant to the export by UPM of the alleged circumvention goods compels a reasoned conclusion that no circumvention activity in relation to the original inquiry has occurred.

The facts are as follows:

- i. UPM began production of 68gsm copy paper in China in 2005 and prior to [REDACTED] all such production was exported by UPM-AP [REDACTED] for sale in Japan where the predominant demand is for sub-70 gsm copy paper. Annual metric tonnes of copy paper exports by UPM-AP to that market for the period [REDACTED] are:

[Commercially sensitive production and sales information]

- ii. UPM-AP had supplied 80 gsm A4 copy paper ex China to Complete Office Supplies (COS) in the period prior to [REDACTED] when the customer terminated the contract. Supply to COS resumed in [REDACTED] with UPM-AP supplying [REDACTED] tonnes of 80 gsm A4 copy [REDACTED] in the [REDACTED] period to [REDACTED].
- iii. In [REDACTED] supply by UPM-AP of 68gsm copy paper to COS ex China was substituted for shipments [REDACTED] and in the [REDACTED] period from [REDACTED] [REDACTED] the total sales volume was [REDACTED] tonnes.

[Commercially sensitive sales information]



PUBLIC RECORD

We submit that any assertion that the alleged circumvention goods exported by UPM-AP have been slightly modified as required by paragraph (2)(b) of the Regulation is clearly inconsistent with those facts.

The alleged circumvention goods have not been modified. They constitute an unaltered specification of UPM A4 copy paper that has been in production and available for purchase for fifteen years.

The facts do not disclose any activities, arrangements or conduct undertaken by UPM that defeat the purpose of the Regulation which has been described by the Anti-Dumping Review Panel (ADRP) in the following terms:

The purpose of the relevant Regulation is to prevent exporters avoiding the imposition of measures under the Act by means of arrangements or conduct which are artificial or do not have legitimate commercial justification.¹

All arrangements for the sales to COS are commercially justified and none are artificial.

The sales to COS of 68gsm copy paper did not replace sales of goods subject to the dumping duty notice. Central to the application of the Regulation is the comparison, mandated by the chapeau to paragraph 3, between ... *the circumvention good and the good the subject of the notice*. As the basis for this comparison does not exist in relation to UPM's sales to COS, the Regulation has no application.

Patterns of trade have been a major factor informing the decisions and recommendations of the Commission in the five inquiries undertaken to date under the Regulation. In Inquiry 291 you partially rejected an application under s.269ZDBE(1) on the ground that the pattern of import volumes of HSS from Taiwan did not ... *appear to correlate with the imposition of HSS anti-dumping measures*.² An identical conclusion on the complete absence of any chronological relationship applies in the current matter with security measures being applied from 29 September 2016 and interim dumping duties being imposed on 19 April 2017. Over [REDACTED] years elapsed before UPM commenced exporting the alleged circumvention goods to COS.

It must be noted that the graph at page 9 of the application for this inquiry is worthless as a guide to UPM's trade patterns and falsely implies that UPM's very modest exports of 68gsm A4 copy paper began in the second half of 2018 and that they have contributed materially to the 2019 increases in total imports of the goods from China. This egregious distortion of UPM's trade patterns is partially repeated in Figure 1 of the Commission's Consideration Report which incorrectly claims that UPM exported 68gsm copy paper to Australia in calendar year 2018.

We seek your urgent consideration and acceptance of this submission to avoid the substantial costs and time commitment that would attach to the continuation of a groundless inquiry.

Yours faithfully
MinterEllison



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¹ ADRP – Report 37 – Hollow Structural Sections from China, Korea and Malaysia: para 42

² EPR 291 – Consideration Report: p.13.