PUBLIC RECORD

Australian Government
Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 552

ANTI-CIRCUMVENTION INQUIRY INTO THE SLIGHT MODIFICATION OF GOODS

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CONTENTS

ABBREVIATIONS

Abbreviation	Full title
ABF	Australian Border Force
the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
Australian Paper	Paper Australia Pty Ltd, the applicant
Brazil	the Federative Republic of Brazil
China	the People's Republic of China
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
COS	Complete Office Supplies Pty Ltd
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
EPR	electronic public record
Finland	the Republic of Finland
the goods	the goods the subject of the notices published under section 269TG(2) and 269TJ(2), ADN Nos. 2017/39 and 2017/40 respectively
gsm or g/m^2	grams per square metre
ICD	interim countervailing duty
IDD	interim dumping duty
Indonesia	the Republic of Indonesia
the Minister	Minister for Industry, Science and Technology
original notices, or notices	the notices published under section 269TG(2) and 269TJ(2), ADN Nos. 2017/39 and 2017/40 respectively
the Regulation	*Customs (International Obligations) Regulation 2015*
REP 341	*Anti-Dumping Commission Report No. 341*
SEF	statement of essential facts
Thailand	the Kingdom of Thailand
UPM	collectively, UPM Asia Pacific Pte Ltd, UPM (China) Co., Ltd and UPM-Kymmene Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendation to the Minister for Industry, Science and Technology (the Minister) concerning an anti-circumvention inquiry in relation to the dumping duty notice and countervailing duty notice (the 'original notices' or the 'notices'[1]) in respect of A4 copy paper (the goods) exported to Australia from the People's Republic of China (China).

The anti-circumvention inquiry follows an application[2] lodged by Paper Australia Pty Ltd (Australian Paper, or the applicant), a producer of like goods in Australia, requesting that the Commissioner conduct an anti-circumvention inquiry in relation to the notices.

Australian Paper alleges that circumvention activity in relation to the original notices occurred in circumstances prescribed by section 48 of the *Customs (International Obligations) Regulation 2015* (the Regulation) through the slight modification of goods exported to Australia from China.

1.2 Legislative framework

Division 5A of Part XVB of the *Customs Act 1901* (the Act)[3] sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting an anti-circumvention inquiry. In particular:

- Section 269ZDBB sets out when circumvention activity occurs in relation to a notice published under sections 269TG(2) or 269TJ(2).
- Section 269ZDBB(6) provides that a circumvention activity occurs in the circumstances prescribed by the Regulation for the purposes of that section.
- Section 48 of the Regulation prescribes the slight modification of goods exported to Australia as a circumvention activity for the purposes of section 269ZDBB(6).
- Section 269ZDBF(1)(a) requires that the Commissioner place a SEF on the public record within 110 days after publication of the notice initiating the inquiry (or such longer period as allowed). This SEF sets out the essential facts on which the Commissioner proposes to base a recommendation to the Minister.
- Section 269ZDBG requires, for current purposes[4], that the Commissioner give the Minister a recommendation within 155 days after publication of the notice

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[1] The original notices (Anti-Dumping Notice (ADN) Nos. 2017/39 and 2017/40) were published under sections 269TG(2) and 269TJ(2) of the *Customs Act 1901*, following consideration of *Anti-Dumping Commission Report No. 341* (REP 341) by the relevant Minister.

[2] Item no. 1 on electronic public record (EPR) 552.

[3] All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

[4] See section 269ZDBG(1)(a); section 269ZDBG(1)(b) provides for a different period for the circumvention activity described in section 269ZDBB(5A).

initiating the anti-circumvention inquiry (or such longer period as allowed). In making his recommendation to the Minister the Commissioner must, for current purposes[5], have regard to the application, the SEF and submissions received prior to and following the SEF (section 269ZDBG(2)(a)).

- Section 269ZDBH(1) provides that, after considering the Commissioner's report and any other information that the Minister considers relevant, the Minister must declare that:
  - the original notice is to remain unaltered;[6] or
  - the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.[7]

1.3 Preliminary findings

The Commissioner's preliminary findings are as follows:

- the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies, namely China;
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are slightly modified;
- had the circumvention goods not been so slightly modified, they would have been subject of the dumping duty notice; and
- section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) does not apply to the export of the circumvention goods to Australia.

Accordingly, the Commissioner considers a circumvention activity in relation to the original notices has occurred in the circumstances prescribed by section 48 of the Regulation.

1.4 Proposed recommendation

Based on the findings outlined in this SEF, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend to the Minister that the original notices be altered to specify different goods that are to be the subject of the notices. The Commissioner also proposes to recommend to the Minister that the alteration to the notices should apply from the date of initiation of this inquiry, being 28 April 2020.

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[5] See section 269ZDBG(2)(a); section 269ZDBG(2)(b) provides for the Commissioner to have regard to different matters for the circumvention activity described in section 269ZDBB(5A).

[6] Section 269ZDBH(1)(a).

[7] Section 269ZDBH(1)(b).

2 BACKGROUND

2.1 Application and initiation of inquiry

On 30 March 2020, Australian Paper, a member of the Australian industry producing like goods, lodged an application requesting the conduct of an anti-circumvention inquiry in relation to the original notices applying to A4 copy paper exported to Australia from Brazil, China, Indonesia and Thailand.

In its application, Australian Paper alleges that an exporter and manufacturer of the goods, UPM (China) Co., Ltd, has slightly modified the goods exported to Australia from China in order to circumvent the applicable anti-dumping measures.

Pursuant to section 269ZDBE(1), the Commissioner examined the application and was satisfied of the matters in section 269ZDBE(2). Accordingly, the Commissioner did not reject the application and initiated an anti-circumvention inquiry into the alleged slight modification of A4 copy paper exported to Australia from China.[8]

Particulars of the reasons for the decision to initiate this inquiry are outlined in *Anti-Dumping Commission Consideration Report No. 552*, which is available on the Commission's EPR.

2.2 Original notices

The anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, were initially imposed on 19 April 2017 by the relevant Minister after consideration of *Anti-Dumping Commission Report No. 341* (REP 341).[9] The dumping duty notice applies to all exporters of A4 copy paper from the subject countries except PT. Pabrik Kertas Tjiwi Kimia Tbk, whereas the countervailing duty notice applies to all exporters of A4 copy paper from China except Asia Symbol (Guangdong) Paper Co., Ltd and Greenpoint Global Trading (Macao Commercial Offshore) Ltd, and UPM (China) Co., Ltd and UPM Asia Pacific Pte Ltd.

Following a review by the Anti-Dumping Review Panel (ADRP) of certain findings in REP 341,[10] on 9 March 2018, the then Minister revoked the reviewable decision in so far as it relates to Asia Symbol Paper (Guangdong) Co., Ltd, PT. Indah Kiat Pulp & Paper Tbk, and PT. Pindo Deli Pulp & Paper Mills and substituted new decisions as recommended by the ADRP. As a result, the normal values and dumping margins were revised for each of the three exporters.

The ADRP recommenced the review following orders from the Federal Court that the decision made by the relevant Minister following recommendations by the ADRP in relation to UPM Asia Pacific Pte Ltd be set aside and the matter be remitted to the

[8] ADN No. 2020/045.

[9] Anti-Dumping Notice (ADN) Nos. 2017/39 and 2017/40 refer. REP 341 is available on the Commission's website.

[10] ADRP Report No. 55.

ADRP. Following the ADRP's reconsideration,[11] on 12 March 2019, the Minister for Industry, Science and Technology revoked the reviewable decision in so far as it relates to UPM Asia Pacific Pte Ltd and substituted a new decision as recommended by the ADRP.[12] As a result, the export price (and dumping margin) was revised for exports of A4 copy paper from China by UPM Asia Pacific Pte Ltd.

Following a review of the anti-dumping measures applying to exports of the goods from Indonesia by PT. Indah Kiat Pulp & Paper Tbk, and PT. Pindo Deli Pulp & Paper Mills, the original notice under section 269TG(2) was revoked in relation to these two exporters.[13]

2.3 The goods the subject of the notice

The goods the subject of the original notices are:

> uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm [grams per square metre] and cut to sheets of metric size A4 (210 mm x 297 mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

The applicant at the time of the original investigation (Investigation 341) supplied the following additional information to clarify the scope of the goods description:

> The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*.

Tariff Subheading	Statistical Code	Description
4802	UNCOATED PAPER AND PAPERBOARD, OF A KIND USED FOR WRITING, PRINTING OR OTHER GRAPHIC PURPOSES, AND NON PERFORATED PUNCH-CARDS AND PUNCH TAPE PAPER, IN ROLLS OR RECTANGULAR (INCLUDING SQUARE) SHEETS, OF ANY SIZE, OTHER THAN PAPER OF 4801 OR 4803; HAND-MADE PAPER AND PAPERBOARD:	
4802.56	Weighing 40 g/m^2 or more but not more than 150 g/m^2, in sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm, in the unfolded state:	
4802.56.10	*Printing and writing paper, 297 mm x 210 mm (A4 paper): Weighing 40 g/m^2 or more but less than 90 g/m^2:*	
	03	*White*
	09	*Weighing 90 g/m^2 or more but not more than 150 g/m^2*

Table 1: General tariff classification for the goods

These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for reference only and do not form part of the goods description.

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[11] ADRP Report No. 55A.

[12] Notice under section 269ZZM(4), available on the ADRP's website.

[13] ADN No. 2020/090.

2.4 Conduct of the inquiry

2.4.1 Questionnaires

Following the initiation of the inquiry, the Commission forwarded an exporter and importer questionnaire to UPM Asia Pacific Pte Ltd, UPM (China) Co., Ltd and UPM-Kymmene Pty Ltd (collectively, 'UPM'),[14] given that UPM was identified in the application as the exporter of the circumvention goods from China. The Commission also identified UPM as the importer of the circumvention goods. Copies of the questionnaires are available on the Commission's website.

The Commission also forwarded a questionnaire to Complete Office Supplies Pty Ltd (COS), given that COS was identified and verified to be the sole customer of the circumvention goods exported to Australia from China by UPM.

Public versions of UPM's response to the importer and exporter questionnaire are available on the public record.[15] A public version of COS' response to the Commission's questionnaire is also available on the public record.[16]

2.4.2 Verification of questionnaire responses

The Commission conducted a remote verification of UPM's information and data provided in response to the exporter questionnaire.

The Commission's verification report is available on the public record.[17]

2.4.3 Submissions received from interested parties

The Commission received the following submissions prior to publishing this SEF. Non-confidential versions of these submissions are available on the EPR.

Interested party	Date published on EPR	EPR document no.
UPM	11 May 2020	4
UPM	24 June 2020	7

Table 2: Submissions received from interested parties

The submissions listed in table 2 were considered by the Commissioner in preparing this SEF.

[14] Throughout this report, UPM Asia Pacific Pte Ltd, UPM (China) Co., Ltd and UPM-Kymmene Pty Ltd, are collectively referred to as 'UPM', unless otherwise stated.

[15] Item nos. 5 and 6 respectively on EPR 552.

[16] Item no. 8 on EPR 552.

[17] Item no. 11 on EPR 552.

2.5 Responding to this SEF

This SEF states the facts on which the Commissioner proposes to base his recommendation to the Minister. The SEF may not represent the final views of the Commissioner.

In making his recommendations to the Minister, the Commissioner must have regard to submissions made in response to the SEF that is received by the Commissioner within 20 days after the placing of the SEF on the public record.

As a result of the date of publication of the SEF, the 20 day period set out in the initiation notice puts the due date for submissions at 7 January 2021. As the 20 day period coincides with the Australian public holidays for the Christmas and New Year period, the Commissioner considers it is necessary to specify a further period (an additional 8 days) for interested parties to lodge a submission in response to the SEF.[18]

The Commissioner is not obliged to have regard to a submission made in response to the SEF that is received after **15 January 2021** if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

Submissions should preferably be emailed to investigations2@adcommission.gov.au. Alternatively, submissions may be posted to:

The Director, Operations 2
Anti-Dumping Commission
GPO Box 2013
Canberra, ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record. A guide for making submissions is available at the Commission's website.

[18] Section 269SMG.

3 THE CIRCUMVENTION GOODS

The goods the subject of the anti-circumvention inquiry (the circumvention goods) have a weight of 68gsm but otherwise meet the description of the goods the subject of the original notice.

The Commission found that the circumvention goods are imported into Australia under tariff subheading 4802.56.10, statistical code 03, of Schedule 3 to the *Customs Tariff Act 1995*, which is the tariff subheading and statistical code that the goods the subject of the original notices are generally classified to.

4 CIRCUMVENTION ACTIVITY

4.1 Preliminary finding

Having regard to the circumstances outlined in section 48(2) of the Regulation, the Commissioner finds that circumvention activity occurred in relation to the notices as they apply to China.

4.2 Legislative provisions

For the purpose of section 269ZDBB(6), a circumvention activity involving the slight modification of goods requires a circumstance in which all of the following apply (section 48(2) of the Regulation):

a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;
b) before that export, the circumvention goods are slightly modified;
c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

Section 48(3) provides that, for the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:

a) each good's general physical characteristics;
b) each good's end use;
c) the interchangeability of each good;
d) differences in the processes used to produce each good;
e) differences in the cost to produce each good;
f) the cost of modification;
g) customer preferences and expectations relating to each good;
h) the way in which each good is marketed;
i) channels of trade and distribution for each good;
j) patterns of trade for each good;
k) changes in the pricing of each good;
l) changes in the export volumes for each good;
m) tariff classifications and statistical codes for each good.

4.3 Assessment of the circumstances prescribed by section 48(2) of the Regulation

4.3.1 Are circumvention goods exported to Australia from a foreign country in respect of which the notice applies?

In accordance with section 48(2)(a) of the Regulation, the Commission assessed whether the circumvention goods are exported to Australia from a foreign country in respect of which the notice applies.

The Commission reviewed import consignments in the Australian Border Force (ABF) import database dating from 1 January 2015, and verified information provided by UPM in its response to the exporter and importer questionnaires. The Commission also assessed information provided by COS in its response to the Commission's questionnaire.

Based on this information, the Commission found that UPM commenced exporting the circumvention goods in commercial quantities to Australia from China in May 2019. Therefore, pursuant to section 48(2)(a) of the Regulation, the Commissioner is satisfied that the circumvention goods are exported to Australia from a foreign country (China) in respect of which the notice applies.

4.3.2 Before that export, are the circumvention goods slightly modified?

Australian Paper alleges that UPM is exporting slightly modified A4 copy paper to Australia from China. Specifically, the slightly modified A4 copy paper exported to Australia from China has a weight of 68gsm (the circumvention goods), which is not within the weight range of goods covered by the original notice (70 to 100gsm).[19]

As required by section 48(2)(b) of the Regulation, the Commission assessed whether the circumvention goods are slightly modified before export.

In evaluating whether the circumvention goods are slightly modified, the Commission compared the circumvention goods and the goods the subject of the notice in the following assessment, having regard to the factors listed in section 48(3) of the Regulation. The factors outlined in section 48(3) of the Regulation are not an exhaustive list of factors that may be considered, and the Commissioner can have regard to any factor he considers relevant.

While the following assessment is based on a consideration of all the factors listed in section 48(3) of the Regulation, the Commission considers the Commissioner does not have to be satisfied that all factors indicate that the circumvention goods are slightly modified.

The confidential summary and details relating to the following assessment is at **Confidential Attachment 1**.

4.3.2.1 Factors relevant to determining whether a circumvention good is slightly modified

Each goods' general physical characteristics (section 48(3)(a) of the Regulation)

In its application, Australian Paper claims that the circumvention goods are alike to 70gsm and 80gsm A4 copy paper sourced from China and other exporting countries the subject of the original notices. Australian Paper further claims that the goods and the circumvention goods have the same general physical characteristics, with the only difference being the weight (in gsm) of the paper.[20]

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[19] Item no. 1 on EPR 552.

[20] Item no. 1 on EPR 552, page 10.

UPM claimed that the circumvention goods are packaged in a biodegradable and plastic-free ream wrapper that is recyclable, and claimed that the circumvention goods are the 'first and only fully recyclable offering in the [Australian] market'.[21]

The Commission reviewed exports of the goods the subject of the original notice, including by UPM, and product specification sheets relevant to the goods and the circumvention goods.

The following table distinguishes the physical characteristics (product specifications) of the circumvention goods and the goods exported to Australia from China by UPM.

	Test method	The circumvention goods	Material code 1 (the goods)	Material code 2 (the goods)
Substance or basis weight, gsm	ISO 536	68	80	80
Thickness, µm	ISO 534	97	108	109
CIE whiteness	ISO 11475	165	155	167
Opacity, %	ISO 2471	90	95	95
Surface roughness bendtsen, ml/min	ISO 8791-2	230	220	220

Table 3: Product specifications and characteristics of the circumvention goods and the goods

The Commission found that there are differences in physical characteristics (other than the weight or substance in gsm) such as thickness, level of whiteness, opacity and roughness between the circumvention goods and the goods the subject of the original notice exported by UPM, and by other exporters subject to the notices. These differences and variations are not confined to differences between the circumvention goods and the goods the subject of the notices—there are also differences and variations in these characteristics between the goods themselves.

However, and as noted in *Anti-Dumping Commission Report No. 483*,[22] the Commission does not consider that a comparison of physical characteristics should be made at a greater level of specificity than the description of the goods the subject of the original notice (refer section 2.3 in this SEF). The description of the goods the subject of the original notices refers to characteristics including the nominal basis weight (in gsm), shade (white), coating (uncoated) and size or dimensions (210mm x 297mm). It is these characteristics that the Commission considers are the *general* physical characteristics of the circumvention goods and the goods.

The Commission considers that other characteristics, such as thickness, the level of whiteness, opacity and roughness are secondary to the *general* physical characteristics of each good. Unless placed side by side, the average end user or consumer would unlikely notice any differences in the goods based on these particular characteristics or specifications.

[21] Item no. 5 on EPR 552, page 4.

[22] *Anti-Dumping Commission Report No. 483* concerning the anti-circumvention inquiry into the slight modification of wire rope exported to Australia from the Republic of South Africa - item no. 31 on EPR 483, page 14.

With respect to the differences in packaging highlighted by COS and UPM, the Commission believes that, in relation to this section of the Regulation, it is only required to compare the circumvention goods and the goods, not packaging which is ancillary to each good. Therefore, the Commission does not consider that the purported difference in packaging is indicative of any difference in each good's general physical characteristics.

Based on the general physical characteristics of the circumvention goods and the goods, being the standard dimensions of A4 copy paper (210mm x 297mm) and the nominal whiteness of the paper, the Commission considers that the general physical characteristics are the same for each good except for the weight (in gsm), and most end users or consumers are unlikely to perceive any significant difference in the general physical characteristics between the circumvention goods and the goods. The Commissioner considers that this indicates that the circumvention goods are slightly modified.

Each good's end use (section 48(3)(b) of the Regulation)

Australian Paper claims that the circumvention goods and the goods are used in the same end use applications (general office and home printing).[23]

In response to the importer questionnaire, UPM stated that the main distinguishing feature of the circumvention goods is that they are the 'first and only fully recyclable offering in the market',[24] given that the circumvention goods are packaged in a biodegradable and plastic-free ream wrapper that is recyclable. The Commission is aware that that other exporters the subject of the original notice have also claimed that their goods are packaged in recyclable ream wrappers.[25]

COS claims that for most applications, 68gsm and 80gsm copy paper are suitably equivalent goods however reiterated Australian Paper's claim and noted that historically, market acceptance of paper with a weight less than 80gsm has been minimal.[26]

The Commission found that each good is generally marketed and promoted for use in printing and copying applications, and marketed as suitable for use in all or most printers (inkjet and laser), photocopiers and fax machines.

The Commission does not consider UPM's claim that the circumvention goods are 'fully recyclable' (due to being packaged in a biodegradable and plastic-free ream wrapper) as indicative of their end use or purpose, and therefore does not consider that the recyclability of the packaging is indicative of any difference in each good's end use.

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[23] Item no. 1 on EPR 552, page 10.

[24] Item no. 5 on EPR 552, page 4.

[25] REP 341, pages 96 and 97.

[26] Item no. 8 on EPR 552, page 6.

Based on the available information, the Commissioner considers that the circumvention goods are used for the same purpose as the goods the subject of the original notice, which indicates that the circumvention goods are slightly modified.

The interchangeability of each good (section 48(3)(c) of the Regulation)

In its application, Australian Paper claims that the circumvention goods and the goods can be used interchangeably in the desired end use applications.[27]

UPM stated that both the circumvention goods and the goods can be used interchangeably for 'some purposes'[28] however, UPM has not identified those purposes.

COS stated that the circumvention goods and the goods are interchangeable in most applications however the relatively lower opacity of 68gsm copy paper may limit its adoption in double-sided printing processes.[29]

The Commission reviewed information relating to the marketing and promotion of the circumvention goods and the goods in the Australian market, and observes that in an article promoting the circumvention goods, it is stated that the circumvention goods have 'been tested by an independent testing facility and COS has performed blind tests with customers, who have reported no problems with using the paper'.[30] It is also stated that although the circumvention goods are 'a lighter option, it won't cause any problems with printing or copying'.[31]

Based on the available information, the Commissioner considers that the circumvention goods and the goods can be used interchangeably in copying and printing applications, which indicates that the circumvention goods have only been modified slightly.

Differences in the processes used to produce each good (section 48(3)(d) of the Regulation)

The Commission verified UPM's production records in respect of the circumvention goods and the goods.

The Commission found that UPM produces the circumvention goods and the goods the subject of the original notice on the same production line (paper machine) and using the same production processes. The Commission also found that generally the same raw materials are consumed in producing the circumvention goods and the goods, albeit the circumvention goods and the goods have separate bills of materials (recipes) which specify the standard mix and quantity of raw materials required to produce each good.

Based on UPM's verified information, the Commissioner considers that there are no significant differences in the processes used to produce the circumvention goods and

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[27] Item no. 1 on EPR 552, page 10.

[28] Item no. 6 on EPR 552, page 14.

[29] Item no. 8 on EPR 552, page 7.

[30] Published on the Office Products News website at https://www.officeproductsnews.com.au/newsitem/cos-sees-%E2%80%98future%E2%80%99-lighter-office-paper

[31] Ibid.

the goods the subject of the notice, which indicates that the circumvention goods are slightly modified.

Differences in the cost to produce each good (section 48(3)(e) of the Regulation)

The Commission verified UPM's cost to produce the circumvention goods and the goods the subject of the original notice, and compared the cost to produce each good (**Confidential Attachment 2** refers), noting that UPM produces a A4 copy paper with various weights that fit within the description of the goods the subject of the notices.

However, this comparison is affected by a number of factors, including that the circumvention goods and the goods do not have identical characteristics (characteristics other than gsm), and the fact that the circumvention goods are a relatively lighter sheet of paper. Due to the circumvention goods being a relatively lighter sheet of paper, the output (in terms of the number of sheets of paper and therefore reams comprising 500 sheets of paper) of the circumvention goods is relatively greater than the output of the goods the subject of the original notice for any given tonne of paper produced; therefore, the cost on a per ream basis would be lower for the circumvention goods and other goods with lower weights (in gsm) as more sheets and reams are produced on a per tonne basis.

Noting these limitations, the Commission compared the cost to produce the circumvention goods and the cost to produce the goods the subject of the original notice, and found that generally, the cost to produce the circumvention goods is not significantly different to the goods the subject of the original notice at the lower end of the gsm range (i.e. less than 80gsm) and within the same or similar paper whiteness category, albeit there is some variation across the products. Based on this, the Commission considers that the circumvention goods are slightly modified.

The cost of modification (section 48(3)(f) of the Regulation)

The Commission verified UPM's cost data and production records and found that there is a separate bill of materials (which UPM refers to as 'recipe') for the circumvention goods.

The 'recipe' dictates which copy paper product (and gsm) is produced in a particular production run. Therefore, the circumvention goods are manufactured in separate production runs to the goods and other copy paper products.

Given that the circumvention goods are produced in accordance with their own bill of materials, the Commission considers that it is not meaningful to assess the cost of modification for the purpose of determining whether the circumvention goods are modified slightly.

Customer preferences and expectations relating to each good (section 48(3)(g) of the Regulation)

In its application, Australian Paper contends that customer preferences and expectations are the same for the circumvention goods and the goods and that

customers would not be aware of the differences in gsm of the circumvention goods and the goods unless closer scrutiny was made of the labelling.[32]

COS claims that the features of the circumvention good that may attract a purchaser (end user) are the 'environmental factors'—the product is the 'first, fully recyclable product' in the Australian market, although the Commission is aware that other exporters the subject of the original notice have also claimed that their goods are recyclable and are packaged in recyclable ream wrappers.[33] COS also reiterated Australian Paper's claim that historically, market acceptance of copy paper with a weight less than 80gsm has been minimal.

In terms of end user preferences and expectations, the Commission observes that the circumvention goods are marketed as having a biodegradable and recyclable ream wrapper which might appeal to certain end users and consumers that have a preference for products that are packaged using recyclable materials. The Commission however considers that packaging is ancillary to the goods and does not relate to the characteristics or qualities of the circumvention goods themselves.

Based on the information contained in the article promoting the circumvention goods on the Office Products News website, the Commission considers that it is more likely than not that end user preferences and expectations relating to the circumvention goods and the goods are the same, albeit the majority of A4 copy paper exported to, and sold in, the Australian market has a basis weight of 80gsm.

Given that COS is the sole Australian customer of the circumvention goods exported to Australia from China by UPM, the Commission also considered COS' preferences and expectations in respect of the circumvention goods, and the factors influencing COS' decision to source the circumvention goods from UPM.

UPM stated that a combination of factors led to the sale of the circumvention goods to Australia. UPM stated that, from COS' perspective, the 'sourcing of the first, fully recyclable product delivering optimal performance while minimising environmental impact represented an attractive marketing opportunity'.[34] UPM also stated that further advantages included a substantial reduction in the gap between order and delivery of shipments from a particular country, and a significant reduction in shipping costs given the increase in the amount of product (the circumvention goods) per container.[35]

COS claimed that discussions with UPM on alternative sources of supply to existing exports from a particular country commenced in 2018 and eventually led to the signing of a sales agreement in August 2019 in respect of the circumvention goods exported from China.[36] COS further elaborated that discussions originally arose out of its concern at the substantial delay between order and delivery of consignments from a particular

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[32] Item no. 1 on EPR 552, page 11.

[33] REP 341, pages 96 and 97.

[34] Item no. 5 on EPR 552, page 3.

[35] Ibid.

[36] Item no. 8 on EPR 552, page 5.

country and its interest in the potential for reduced freight costs for exports sourced from within the Asian region.

COS claimed that in the course of discussions with UPM, it emerged that for some years UPM had been producing 68gsm copy paper in China for other export markets that was available for shipment to Australia. COS' confidential claims concerning prices are summarised at **Confidential Attachment 1**.

While COS identified factors such as 'pricing, costs, the supply chain and reliability of the supplier'[37] as factors influencing its sourcing decisions generally, in relation to the decision to source the circumvention goods, COS stated that the major factor contributing to this decision was the recognition that this product presented a 'unique marketing opportunity'.[38]

COS provided some information when requested by the Commission to substantiate its claim that the major factor influencing its decision to source the circumvention goods was the opportunity to market a 'fully recyclable product' in the Australian market. However, the information provided does not adequately demonstrate that this was the main factor influencing its decision, although the Commission observes that COS promotes the circumvention goods as being 'fully recyclable' given the plastic-free ream wrapper.

Nevertheless, the Commission considers that while COS stated the main factor influencing its decision to source the circumvention goods from China was the opportunity to market a 'fully recyclable' product in the Australian market, it is not the *sole* reason for sourcing these goods. In addition, the opportunity to market a 'fully recyclable' product relates mostly to the packaging of the circumvention goods, rather than the features or characteristics of the circumvention goods themselves. In relation to the goods and the circumvention goods, COS took into consideration other factors including costs and price when considering alternative sources of supply and countries, but has not provided evidence that it had particular preferences or expectations relating to the features or characteristics of the 68gsm copy paper in comparison to the 80gsm copy paper. Therefore, the Commissioner considers that customer preferences and expectations relating to each good are generally the same, which indicates that the circumvention goods have been modified slightly.

The way in which each good is marketed (section 48(3)(h) of the Regulation)

Australian Paper claims that the circumvention goods and the goods the subject of the notices are marketed in the same manner, with no differences in marketing approach, form or targeting.[39]

The Commission found that COS distributes, sells and markets the circumvention goods in the Australian market. The circumvention goods are branded as UPM's product and marketed using UPM's proprietary brand 'New Future Opti'.

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[37] Item no. 8 on EPR 552, page 6.

[38] Ibid, page 5.

[39] Item no. 1 on EPR 552, page 11.

COS also markets on its website the goods the subject of the original notices, which it sourced from a country subject to the measures.

COS provided examples of its promotion and marketing of the circumvention goods in the Australian market, including examples of the circumvention goods being promoted on its website.

Based on the available information, the Commission found that the circumvention goods and the goods are marketed using similar promotional or marketing channels (mostly on the Australian seller's website), and are targeted at the same consumers and end users, depending on whether the seller is a retailer selling directly to end users or businesses, or business-to-business office supplier selling directly to businesses, educational institutions and government. Therefore, the Commission considers that there is no significant difference in the way each good is marketed in the Australian market, which indicates that the circumvention goods are slightly modified.

Channels of trade and distribution for each good (section 48(3)(i) of the Regulation)

Australian Paper claims that the channels to market, including trading and distribution channels, are the same for the circumvention goods and the goods the subject of the notices.[40]

UPM stated that COS is the sole customer of the circumvention goods exported to Australia from China, and that UPM is not involved with sales in the Australian market.[41] UPM also stated that it has never sold the goods the subject of the notice to COS.

The Commission found that UPM sells the circumvention goods to COS in accordance with a sales agreement, and the circumvention goods are solely distributed and sold in Australia by COS. The Commission understands that COS is a business-to-business supplier of office products that has sales offices, warehouses and distribution centres across Australia.

COS stated that it sources a mix of copy paper products ranging from 68 to 300gsm, and that it has formal supply agreements with certain suppliers.[42]

The Commission found that while COS purchases and sells the circumvention goods exported from China by UPM, it does not purchase and sell the goods the subject of the original notice from UPM. However, the Commission found that COS purchases the goods the subject of the notices from another exporter, and sells both the goods and the circumvention goods to the same types of customers. Based on this, the Commissioner considers that the channels of trade and distribution for each good in the Australian market are the same, which indicates that the circumvention goods are slightly modified.

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[40] Item no. 1 on EPR 552, page 11.

[41] Item no. 5 on EPR 552, page 4.

[42] Item no. 8 on EPR 552, page 6.

Confidential details relating to trade and distribution of the circumvention goods and the goods are at **Confidential Attachment 1**.

Patterns of trade for each good (section 48(3)(j) of the Regulation)

Australian Paper claims that the circumvention goods emerged as a result of Investigation 341 and potentially also Investigation 463,[43] and that the pattern of trade is indicative of the circumvention goods displacing the goods the subject of the original notices.[44]

In its submission dated 8 May 2020, UPM stated that the sales to COS of the circumvention goods did not replace sales of goods subject to the dumping duty notice.[45] UPM further stated that there is an 'absence of any chronological relationship'[46] in this case with security measures being applied from 29 September 2016, and interim dumping duty (IDD) being imposed on 19 April 2017, and the fact that two years lapsed before UPM commenced exporting the circumvention goods to COS. UPM argues that the facts do not disclose any activities, arrangements or conduct undertaken by UPM that defeat the purpose of the Regulation.

The Commission found no evidence that UPM exported the goods the subject of the original notices to Australia from China from March 2017,[47] and found no evidence that UPM exported the goods subject to the original notice to Australia from China in 2018. This is most likely because UPM's exports of the goods the subject of the dumping duty notice were subject to 34.4 per cent at that time.

As noted in section 2.2 of this SEF, following the ADRP's review and reconsideration of its recommendations to the Minister as a result of a Federal Court order, on 12 March 2019, the Minister revoked the reviewable decision in so far as it relates to UPM and substituted a new decision. As a result, the export price (and dumping margin) was revised in relation to exports of the goods subject to the original notice from China by UPM Asia Pacific Pte Ltd. The fixed rate of IDD applicable to exports of the goods from UPM Asia Pacific Pte Ltd was revised from 34.4 per cent to 4.0 per cent.

The Commission found that UPM commenced exporting the circumvention goods in May 2019 following negotiations with COS for the supply of the circumvention goods. Prior to this, UPM had supplied A4 copy paper to COS, which UPM exported from a country not subject to anti-dumping measures. UPM ceased exporting A4 copy paper exported from this country to COS in mid-2019.

The Commission also found that UPM re-commenced exporting the goods the subject of the original notices to Australia from China in late 2019. This occurred after UPM's rate of IDD was revised from a fixed rate of 34.4 per cent to 4.0 per cent. Confidential

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[43] Investigation into the dumping of A4 copy paper exported to Australia from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic.

[44] Item no. 1 on EPR 552.

[45] Item no. 4 on EPR 552, page 2.

[46] Ibid.

[47] Anti-dumping measures were imposed on the goods exported to Australia from Brazil, China, Indonesia and Thailand on 19 April 2017.

details relating to UPM's supply of the goods the subject of the notice is at **Confidential Attachment 1**.

Based on the events outlined above, it does not appear that there is a chronological relationship or correlation between the exportation of the circumvention goods and the imposition of the anti-dumping measures (the original notices). However, it is important to consider UPM's alternative supply options and the network of UPM's paper production mills located in different regions and countries from which UPM has exported A4 copy paper to Australia since the imposition of measures.

While UPM has ceased exporting the goods from China from when the measures were imposed, and had not exported the goods for over two years since the imposition of the measures (most likely due to the relatively high fixed rate of IDD UPM's exports of the goods were subject to over the two year period since the imposition of measures), it commenced exporting A4 copy paper to Australia from the Republic of Finland (Finland) immediately prior to the imposition of measures on the goods exported from China. However, UPM also ceased exporting from Finland once the preliminary affirmative determination was published in relation to A4 copy paper exported to Australia from Finland.[48] UPM has then commenced exporting A4 copy paper to COS from a country not subject to anti-dumping measures.

This suggests that UPM sought to maintain trade to Australia by exporting goods sourced from countries not subject to anti-dumping measures, or not subject to measures at the time of exportation in the case of exports from Finland.

Further, based on COS' and UPM's explanation of the discussions in 2018 concerning 'alternative supply sources' which led to the signing of the sales agreement for the circumvention goods, it is apparent that COS was seeking to source goods from within the Asian region in order to reduce the gap between order and delivery, and reduce shipping costs, associated with exports from the country not subject to anti-dumping measures.[49]

The Commission observes that at the time of the negotiations between COS and UPM for supply of the circumvention goods, the fixed rate of IDD applicable to UPM's exports of the goods from China was 34.4 per cent, which would have made the goods the subject of the notice considerably costly relative to the circumvention goods at that time.

COS indicated that the main factor influencing its decision to source the circumvention goods was the opportunity to market a 'fully recyclable product' in the Australian market, however, COS has not demonstrated or evidenced this sufficiently, although the Commission observes that COS heavily promotes the circumvention goods in the Australian market as being 'fully recyclable'. Nevertheless, even if this was a significant factor influencing COS' decision, it is not the sole factor that COS took into consideration in its decision to source the circumvention goods.

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[48] The preliminary affirmative determination was published on 18 May 2018, and securities were taken from 21 May 2018 in respect of exports to Australia from Finland, the Republic of Korea, the Russian Federation and the Slovak Republic.

[49] Item nos. 5 and 8 on EPR 552.

Based on the available information, the Commission considers that the patterns of trade appear to support that the circumvention goods displaced the goods the subject of the notice at the time of the negotiations between COS and UPM, which suggests that the goods are interchangeable with the circumvention goods and indicates that the circumvention goods are slightly modified.

Confidential details relating to the patterns of trade are at **Confidential Attachment 1**.

Changes in the pricing of each good (section 48(3)(k) of the Regulation)

Australian Paper claims that, as the circumvention goods do not attract IDD or interim countervailing duty (ICD), the circumvention goods are priced below the goods the subject of the original notices and therefore the circumvention goods have a 'price advantage' in the marketplace.[50]

The Commission compared the export prices of the circumvention goods to the prices of the goods the subject of the notices as recorded in the ABF import database. The Commission conducted this analysis by having regard to all exportations of the goods in 2019 from the countries the subject of the notices. Based on this comparison of prices on a per tonne basis, the Commission found no consistent difference in the pricing of each good. The price of the circumvention goods was higher relative to the prices of goods exported from certain countries, and lower than the prices of goods exported from other countries.

However, the Commission considers that it is not meaningful to compare the price of the circumvention goods to the price of the goods on a per tonne basis given that the circumvention goods are a relatively lighter sheet of paper (in terms of weight) relative to the goods with a basis weight of 80gsm.[51] Given that the circumvention goods have a lower weight (gsm), for any given tonne, there are more sheets, and therefore more reams comprising 500 sheets, of the circumvention goods than there are sheets of the goods with a weight of 80gsm. In deciding whether to source the circumvention goods, COS most likely took this into consideration when assessing the purchase price, given that it sells the circumvention goods in cartons comprising 5 reams (or 2,500 sheets).

While the Commission does not have information relating to the actual prices that UPM has quoted COS during negotiations conducted in 2018 (other than the claims made by COS in the questionnaire, which have been redacted in the public version of its questionnaire response), the Commission observes that at the time of the negotiations, the fixed rate of interim dumping duty applicable to UPM's exports of the goods from China was 34.4 per cent, which would have made the goods prohibitively more expensive relative to the circumvention goods.

The Commission's analysis of UPM's verified prices of the circumvention goods and the goods exported to Australia from China is at **Confidential Attachment 3**. The Commission has undertaken a comparison of prices on a per tonne and per ream basis, and a confidential summary of this assessment is at **Confidential Attachment 1**.

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[50] Item no. 1 on EPR 552, pages 11-12.

[51] The majority of A4 copy paper exported to, and sold in, the Australian market has a basis weight of 80gsm.

Changes in the export volumes for each good (section 48(3)(l) of the Regulation)

The Commission considered this factor in the discussion regarding patterns of trade for each good at section 48(3)(j) above.

Tariff classifications and statistical codes for each good (section 48(3)(m) of the Regulation)

Australian Paper claims that the circumvention goods and the goods the subject of the notices are classified to the same tariff subheading and statistical code, being 4802.56.10 and 03 respectively.[52]

The Commission reviewed the import consignments of the circumvention goods recorded in the ABF import database, including UPM's verified export sales information. The Commission observes that the circumvention goods and the goods were classified to the same tariff subheading and statistical code, being 4802.56.10 and 03 respectively.

Therefore, the Commissioner considers that the circumvention goods and the goods the subject of the notices appear to be classified to the same tariff subheading and statistical code, which indicates that the circumvention goods are slightly modified.

4.3.2.2 Summary of findings – are the circumvention goods slightly modified?

Having considered the factors in section 48(3) of the Regulation, the Commissioner found that:

- the circumvention goods and the goods have the same general physical characteristics;
- the circumvention goods and the goods have the same end use;
- the circumvention goods and the goods are interchangeable in most printing and copying applications;
- the processes used to produce the circumvention goods and the goods are similar;
- the way in which the circumvention goods and the goods are marketed in the Australian market is similar;
- the channels of trade and distribution for the circumvention goods and the goods in the Australian market are similar;
- the patterns of trade for the circumvention goods and the goods indicate a high degree of interchangeability between each good; and
- the circumvention goods and the goods appear to be classified to the same tariff subheading and statistical code.

Accordingly, the Commissioner considers that the circumvention goods have been slightly modified before exportation, and therefore the requirements of section 48(2)(b) of the Regulation are satisfied.

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[52] Item no. 1 on EPR 552, page 12.

4.3.2.3 UPM's submissions

In its submission of 8 May 2020, and reiterated in its submission of 24 June 2020, UPM contends that the circumvention goods have not been modified, given that these goods 'constitute an unaltered specification of UPM A4 copy paper that has been in production and available for purchase for fifteen years'.[53] UPM claims that this unaltered specification of A4 copy paper is exported to Japan where the predominant demand is for sub-70gsm copy paper.

Based on verified data and records pertaining to UPM's sales and production, the Commission found that:

- the circumvention goods exported to Australia, and 68gsm copy paper exported to Japan, are produced on the same production line (paper machine); however, the circumvention goods exported to Australia have a different material and grade code to the 68gsm copy paper exported to Japan;
- the circumvention goods exported to Australia have a separate bill of materials (or 'recipe', as referred to by UPM) to 68gsm copy paper exported to Japan. The quantity and mix of raw materials (such as pulp or fibre) consumed in producing the circumvention goods differs to the quantity and mix of materials consumed in manufacturing 68gsm copy paper exported to Japan; and
- the brand of the circumvention goods exported to Australia ('New Future Opti') is different to the brands of 68gsm copy paper exported to Japan.

Based on these findings, the Commission considers that the circumvention goods are not identical to the 68gsm copy paper exported to Japan. Therefore, the Commission does not agree that the circumvention goods are an 'unaltered specification' of UPM's standard A4 copy paper range.

Irrespective of these findings, in determining whether a circumvention good is slightly modified for the purposes of section 48(2)(b), the Commissioner **must** compare the circumvention good and the good the subject of the notice, in accordance with section 48(3) of the Regulation.

The comparison required by section 48(3) of the Regulation requires a comparison between two different goods—the circumvention good and the good the subject of the notice. It does not require a comparison between a particular good before and after it underwent modification or a comparison between goods at different stages of modification.

In evaluating whether the circumvention goods are slightly modified, the Commission compared the circumvention goods and the goods the subject of the notice in accordance with section 48(3) of the Regulation. Based on this assessment outlined in section 4.3.2.1 of this SEF, the Commission does not agree with UPM's contention that the circumvention goods have not been modified.

[53] Item no. 4 on EPR 552, page 2.

4.3.3 Is the use or purpose of the circumvention goods the same before, and after, they are so slightly modified?

Having established that the circumvention goods are slightly modified, the Commission assessed whether the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified (section 48(2)(c) of the Regulation).

As noted in section 4.3.2 of this SEF, the Commission found that the circumvention goods are used for the same purpose as the goods the subject of the original notice, and that the circumvention goods and the goods can be used interchangeably in most copying and printing applications.

Therefore, the Commissioner considers that the end use or purpose of the circumvention goods is the same before, and after, they are so slightly modified.

4.3.4 Had the circumvention goods not been so slightly modified, would they have been the subject of the notice?

The Commission considered whether the circumvention goods would have been the subject of the notice had they not been so slightly modified (section 48(2)(d) of the Regulation).

As per the goods description outlined in section 2.3 of this SEF, the goods the subject of the original notices encompass A4 copy paper with nominal weights ranging from 70gsm to 100gsm. The circumvention goods do not fall within this range.

The Commissioner considers that, had the circumvention goods not been so slightly modified, they would have been the subject of the notice under section 269TG(2).[54] Accordingly, the requirement of section 48(2)(d) of this the Regulation is satisfied.

4.3.5 Do sections 8 and 10 of the Dumping Duty Act apply to the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to the imposition of dumping duties and countervailing duties, respectively. The Commission is satisfied that the circumvention goods are not subject to the dumping duty notice under section 269TG(2), and is satisfied that section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

4.4 Conclusion

Based on the available information, the Commissioner found that:

- the circumvention goods are exported to Australia from a foreign country (China) in respect of which the notice applies;
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- had the circumvention goods not been so slightly modified, they would have been the subject of the notice under section 269TG(2);

[54] The countervailing duty notice (section 269TJ(2)) does not apply to exports of the goods from China by UPM Asia Pacific Pte Ltd and UPM (China) Co., Ltd.

- section 8 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

Accordingly, the Commissioner considers that a circumvention activity, in relation to the notices, occurred in the circumstances prescribed in section 48(2) of the Regulation.

5 PROPOSED ALTERATION TO NOTICES

5.1 Legislative provisions

Section 269ZDBG(1) specifies that the Commissioner must, after conducting an anti-circumvention inquiry in relation to the original notice, give the Minister a report recommending:

(a) the original notice remain unaltered;[55] or
(b) the following:
    (i) the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred;[56]
    (ii) the alterations to be made to the notice.[57]

Section 269ZDBH(1) specifies that, after considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with section 269ZDBH(9), that for the purposes of the Act and the Dumping Duty Act:

(a) the original notice is to remain unaltered;[58] or
(b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.[59]

Without limiting section 269ZDBH(1), section 269ZDBH(2) specifies that the alterations may be of the following kind:

- the specification of different goods that are to be the subject of the original notice;[60]
- the specification of different foreign countries that are to be the subject of the original notice;[61]
- the specification of different exporters that are to be the subject of the original notice;[62]
- in relation to existing exporters that are the subject of the original notice—the specification of different variable factors in respect of one or more of those exporters;[63]
- in relation to exporters that are to be the subject of the original notice—the specification of variable factors in respect of those exporters.[64]

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[55] Section 269ZDBG(1)(c).

[56] Section 269ZDBG(1)(d)(i).

[57] Section 269ZDBG(1)(d)(ii).

[58] Section 269ZDBH(1)(a).

[59] Section 269ZDBG(1)(b).

[60] Section 269ZDBH(2)(a).

[61] Section 269ZDBH(2)(b).

[62] Section 269ZDBH(2)(c).

[63] Section 269ZDBH(2)(d).

[64] Section 269ZDBH(2)(e).

5.2 Applicant's proposed alterations to the original notices

In its application, Australian Paper proposes that the description of the goods the subject of the original notice should be extended to include A4 copy paper to a lower gsm range (40gsm), thereby bringing the goods description into alignment with the applicable tariff subheadings and statistical codes. Specifically, Australian Paper proposes that the original notices be expanded as following:

> Uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of **40 to 100 gsm** and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

At the time of the original investigation, Australian Paper supplied additional information to clarify the scope of the goods, however, Australian Paper has not proposed any alterations to this description in its application in respect of this inquiry.

5.3 Commissioner's proposed recommendation

Based on the preliminary finding outlined in chapter 4 of this SEF, namely that a circumvention activity has occurred, and subject to any submissions received in response to this SEF, the Commissioner proposes to recommend that the Minister alter the original notices under section 269ZDBH(1) to specify different goods (the circumvention goods) that are to be the subject of the original notices.

In response to Australian Paper's proposal to alter the goods description to encompass weights of A4 copy paper ranging from 40 to 100gsm, it is the Commission's position that, once satisfied that a circumvention activity has occurred, the Minister should take the action required to remedy the circumvention activities that have been found. Therefore, the Commissioner considers it is appropriate and proposes to recommend that the Minister make alterations to the original notice to address the circumvention activity that has been found to have occurred. Further, based on information obtained for the purposes of Review 551,[65] the Commission did not find that exporters the subject of the original notices produce or sell copy paper weighing less than 67gsm. Given this, the Commissioner does not consider it appropriate to recommend that the goods description be altered to encompass paper weighing less than 67gsm. To do so would likely capture paper that is not like (in terms of the end use and interchangeability in certain applications) to the goods the subject of the original notices.

As outlined in chapter 4 of this SEF, the Commissioner found that a circumvention activity in relation to the original notices occurred through the slight modification of goods exported to Australia. As per the description of the goods outlined in section 2.3 of this SEF, the goods the subject of the original notices encompass A4 copy paper with nominal weights ranging from 70 to 100gsm. The circumvention goods do not fall within this range because they have a nominal weight of 68gsm.

The Commissioner considers that, had the circumvention goods not been so slightly modified, they would have been the subject of the notice. Therefore, the Commissioner

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[65] Review of anti-dumping measures applying to A4 copy paper exported to Australia from Brazil, China, Indonesia (except by PT. Indah Kiat Pulp & Paper Tbk, PT. Pabrik Kertas Tjiwi Kimia Tbk and PT. Pindo Deli Pulp & Paper Mills) and Thailand.

proposes to recommend that the description of the goods exported to Australia from China, which are the subject of the original notices made under sections 269TG(2) and 269TJ(2), be altered to read as follows:

> Uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 67 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

In respect of the goods exported to Australia from Brazil, Indonesia and Thailand, the description of the goods the subject of the notice made under section 269TG(2) would remain unaltered.

6 PROPOSED DATE OF EFFECT

6.1 Legislative provisions

Section 269ZDBH(1) specifies that, after considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with section 269ZDBH(9), that for the purposes of the Act and the Dumping Duty Act:

(a) the original notice is to remain unaltered; or
(b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

Section 269ZDBH(8) requires that, when specifying a date in the declaration under section 269ZDBH(1)(b), the Minister must not specify a date earlier than the date of publication of the notice under section 269ZDBE(4).

6.2 Proposed date of effect of changes to original notices

The Commissioner proposes to recommend that the proposed alterations, in terms of the specification of different goods (the circumvention goods) that are to be the subject of the original notices, have effect on and after the date of publication of the notice under section 269ZDBE(4), being 28 April 2020.[66]

The proposed date of effect of the alteration to the notices recognises that a circumvention activity was found to have been occurring since at least 2019. Applying the notice retrospectively ensures that anti-dumping duty is collected in relation to goods which would have been the subject of the notice had it not been the case that these goods were slightly modified to avoid payment of such duty.

As a result of this proposed recommendation, importers of the circumvention goods would be subject to IDD and ICD in respect of the circumvention goods entered for home consumption on and after 28 April 2020.

[66] ADN No. 2020/045.

7 ATTACHMENTS

Confidential Attachment 1	Summary of assessment in accordance with section 48(3) of the Regulation
Confidential Attachment 2	Cost to produce the circumvention goods and the goods the subject of the notice
Confidential Attachment 3	Price comparison