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Commissioner
Australia Anti-Dumping Commission
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For the attention of: Gavin Crooks, Assistant Director, Investigations

Anti-dumping investigation No. 583 under ADN 2021/072 in respect of alleged dumping of A4 copy paper exported to Australia from the Republic of Indonesia by PT. Pabrik Kertas Tjiwi Kimia Tbk ('Tjiwi Kimia').

I refer to above-described Investigation No 583 initiated under ADN 2021/72.

A The Exporter's Questionnaire

During the last 1 ½ months, my team and I have been trying to put together a response to the Questionnaire provided by ADC with regards to this investigation. The Questionnaire itself is quite unique. We have been involved with several AD cases in the past 20 years and we have never seen a Questionnaire which asks so many questions which have nothing to do with the Dumping Margin but entirely focus on Tjiwi Kimia's business plan and management thinking both over the past 5 years and going into the future.

Normally, AD Questionnaires focus on the export price, domestic price and the cost of production along with Sections on corporate structure and other legalities as you well know, however, the questionnaire provided by ADC was 11 sections long and focused on a plethora of other unrelated information.

Suffice it to say that although we tried our hardest, we could not complete the response to the Questionnaire in time. In this time of Pandemic, all individuals remain where they are and cannot move around. Indonesia has been going through a severe second wave which has resulted in record breaking case numbers and deaths, so this was a very inopportune time to launch an investigation, where even in normal practice, a lot of detail is required and several people have to get involved to put all the information together. But with the expanded questionnaire provided by ADC, this work increases several fold and involves an army of other personnel who due to the pandemic were difficult to find, did not normally have the required information handy and were not allowed access to their offices to search for the information, due to covid restrictions.

Finally, we just have to admit that it has not been possible for us to put together all the information requested by ADC and hence we will not be able to submit the Questionnaire response on time. Even now we feel that the investigation should be relaunched once things return to normal and then Tjiwi Kimia will be able to defend its position and, I am sure, provide a response to whatever questionnaire is thrown at it. In an investigation launched at a later time, we would be in a better position to look after the interests of our stakeholders, especially employees at the Tjiwi Kimia mill. If the Australian government is concerned about the families depending on Paper Australia's mill for

their livelihood in these COVID disrupted times, we have some sympathy for that concern. However, we believe that the Australian government could take measures other than dumping duties to provide for the welfare of those workers and their families which would inflict less damage on this Indonesian business and its workers and would avoid having any detrimental impact on Australia and Indonesia maintaining their harmonious relationship as our two countries work through the difficulties of the pandemic together.

B The Likelihood of any injury to Paper Australia Pty Ltd having been caused by factors other than the alleged dumped imports and the required non-attribution analysis

In order to issue any preliminary affirmative determination ('PAD') under section 269TD(1), the Commissioner must be satisfied that there are or will be sufficient grounds for issue of a "dumping duty notice" under section 269TG(1). Australia has an obligation under international law not to make a PAD other than in accordance with the WTO Anti-Dumping Agreement. Under Australian law, section 269TD(1) must be interpreted in accordance with the ADA unless an interpretation consistent with Australia's international legal obligation is not possible under the terms of the statute (as held by the High Court in *Polites* and subsequent High Court authorities).¹

In order to issue a "dumping duty notice" under section 269TG(1), the Minister would have to be satisfied that there is dumping and that the dumping has caused or is causing or threatening to cause material injury to the Australian industry producing the like product. Australia has an obligation not to make such decision to impose dumping duties in any way that is inconsistent with the WTO Anti-Dumping Agreement, and under Australian law, section 269TG(1) and related sections of the Act must be interpreted in accordance with the ADA unless an interpretation consistent with Australia's international legal obligation is not possible under the terms of the statute.

I do not think that it is contentious that in this investigation the relevant Australian industry consists of one firm, Paper Australia Pty Ltd., the wholly owned subsidiary of the Japanese company, Nippon Paper Industries Co., Ltd. which is listed on the Tokyo Stock Exchange.

Any determination that dumped imports have caused or are causing injury or threatening to cause injury must be made in accordance with section 269TAE(1). Australia has an international legal obligation under the WTO to ensure that any decision under section 269TAE(1) is made in accordance with the WTO Anti-dumping Agreement, in particular with Article 3 of the ADA. Under Australian law, section 269TAE must be interpreted in a manner that is not inconsistent with Australia's international law obligations under Article 3 of the ADA. We do not see anything in section 269 which could be interpreted as authorising the authorities to make determinations of causation of injury in any way inconsistent with Article 3 of the ADA. In fact, the drafting of section 269TAE demonstrates that it was intended to implement the obligations under Article 3.

Under section 269TAE(2A), any determination as to causation of injury or threat of causation of injury must be "based on facts and not merely on allegations, conjecture or remote possibilities." Australia has an obligation under Article 3.5, 2nd sentence, of the ADA to ensure that demonstration of a causal relationship decision between any imports found to be dumped and any injury found to Paper Australia found to exist must be based "on an examination of all relevant evidence before the authorities" and an obligation under Article 3.7 not to make any determination of threat of material injury unless the determination is based on facts and not merely on allegation, conjecture or remote possibility".

Under section 269TAE(2A), in making a determination under section 269TAE(1) whether dumped goods have caused or are causing injury, the Minister is obliged to "consider whether any injury to an industry is being caused or threatened by a factor other than the exportation of [the dumped] goods" and further provides, "any such injury .. must not be attributed to the exportation of [the dumped] goods". This obligation under section 269TAE(2A) implements Australia's international law obligation under the third sentence of Article 3.5 which provides that:

¹ *Polites v Commonwealth* (1945) 70 CLR 60, especially per Latham CJ at 68-69; per Dixon J at p77, and per McTiernan at p79. Also see *Minister of State for Immigration and Ethnic Affairs* (1992) 176 CLR 1, per Mason CJ and Deane at pp287-288 and *Al-Kateb v Godwin* (2004) 219 CLR 562, per McHugh J at [63] and [65].

“the authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the *injuries caused by these other factors must not be attributed to the dumped imports.*” (emphasis added)

Section 269TAC(2A) of the *Customs Act* and Article 3.5 of the ADA contain an identical list of factors other than the dumped goods which can be taken into account. The listed factors are:

- The volume and prices of imports not sold at dumping prices,
- Contraction in demand
- Changes in the pattern of consumption
- Trade-restrictive practices of and competition between the foreign and domestic producers,
- Developments in technology,
- The export performance of the domestic industry, and
- The productivity of the domestic industry.

In both section 269TAE(2A) and in Article 3.5, the list is an inclusive list, not an exhaustive list, of factors other than the dumped imports which may be taken into account in determinations as to causation of injury. The WTO Appellate Body has said that anti-dumping authorities are obliged “to conduct a non-attribution analysis under Article 3.5 when the factor at issue (a) is “known” to the investigating authority, (b) is a factor “other than dumped imports”, and (c) is injuring the domestic industry at the same time as the dumped imports.”²

The WTO Appellate Body has held that ensuring that the injuries caused by other factors is not attributed to the dumped imports:

must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the *Anti-Dumping Agreement*, justifies the imposition of anti-dumping duties.³

There have been some changes having effects of varying magnitude over recent years in the Australian market for copy paper affecting the position of the Australian industry, constituted by Paper Australia. ADN 2021/072 indicates that the ADC is assessing whether the alleged dumped imports have caused injury considering the four year period from 1 April 2017 to 31 March 2021. Some changes in Paper Australia’s position flow from trends that have occurred over a longer period of time and some events occurring prior to 1 April 2017 have continued to impact on the business of Paper Australia after 1 April 2017.

We submit that the ADC and the Minister must take account, inter alia, of the following factors which appear to be causing injury to Paper Australia:

1. Over-capacity in relation to the size of the domestic market and utilization of capacity

² *European Communities – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil*, Report of the AB, WT/DS219/AB/R, adopted 18 August 2003 (‘*EC - Tube or Pipe Fittings*’) at para 175. The quote in the text above is from para 7.327 of *Morocco – Definitive Anti-Dumping Measures on Exercise Books from Tunisia*, report of the panel, WT/DS578/R, issued 27 July 2021 which cites *EC – Tube or Pipe Fittings* at para 175.

³ *United States – Anti-Dumping e Measures on Certain Hot-Rolled Steel Products from Japan*, report of the AB, WT/DS183/AB/R, adopted 23 August 2001 (‘*US – Hot-Rolled Steel*’), para 223.

Since the Applicant has referred in its Application to a decrease in capacity utilisation as an indicator of injury that it is suffering,⁴ we submit that the ADC must consider Paper Australia's production capacity and any under-utilization of its production capacity in the context of Paper Australia's management decisions. While Paper Australia argues that the decrease in utilization of production capacity should be regarded as one of the indicators of injury caused by alleged dumping, we submit that Paper Australia's management decisions about establishing and installing production capacity, utilization of capacity and about adopting strategies in response to unsatisfactory utilisation of capacity must be considered as causes of injury which have injured Paper Australia at the same time as the alleged dumping.

In essence, Paper Australia has a capacity that is larger than the entire size of the Australian A4 copy market.⁵ Any analysis of the causes of any injury that Paper Australia may be suffering from any aspects of the competition in the Australian market cannot be separated from the management decisions of Paper Australia to instal the capacity that exists in its Maryvale paper mill and from the management decisions of Paper Australia to respond to the ongoing reduction in the size of the Australian A4 copy market.

In items 2 and 3 below, we stress the reduction in the size of the Australian market particularly in the time of COVID. Having such a large installed capacity relative to the Australian market, it is obvious that Paper Australia's per unit fixed costs and total average costs are sensitive to volume and sensitive to the extent of capacity utilization. However, it is self-evident that a company maintaining this capacity in the Australian market will have difficulty maintaining profitability unless it can compete in the world market. Paper Australia has not met the challenge of making itself competitive on the world market or the challenge of establishing sustainable market positions in offshore markets.

Instead, the main strategy for responding to its position has been to rely on repeat applications for dumping duties to eliminate sources of imports so as to increase its market share in Australia to enable it to and give it sufficient market to charge above world prices in the Australian market.

2. Gradual reduction of the Quantity of Copy Paper demanded by Consumers in Australia.

The Applicant has indicated in the Application that there has been a gradual reduction of the size of the Australian copy paper market over the past 10 to 13 years. The applicant refers to its estimates of a decrease of approximately 3 per cent per year between 2008 and 2016, a decrease of approximately 2.4 per cent between 2009 and 2019, and a decrease of approximately 1.3 per cent per annum between 2016 and 2019.⁶

As there have been numerous dumping actions on A4 copy paper in the last 5 years, we expect that the Commission will be fully informed by previous submissions. We refer to the Commission's SEF 463 which contains significant detail about the Australian market.⁷ We estimate that the size of the Australian copy paper market pre COVID was approximately 175,000 tonnes per annum and that Paper Australia supplies about 75% of the market.

The trend of decreasing market size arises from various changes in utilization of technology. Consumers can send soft copies instead of hard copies of documents. It has gradually become less and less common for documents to be printed and sent in hard copies. In particular, where previously consumers had to print multiple copies to be sent to separate users, now the same soft

⁴ Application by Paper Australia Pty Ltd in Investigation 583, at page 47 (EPR doc 583-001).

⁵ For capacity, see "Response to Questionnaire by Paper Australia", EPR 583 doc 583-003 at C-1.f on page 36.

⁶ Application EPR 583-001 at A-4-1 and A-4.2 on pp21-23. See also the answer to B-1.1 in Paper Australia's Response to the Questionnaire EPR583-004.

⁷ REP463 from 5.1 to 5.33 on pp18-28

copy is sent to all making it unnecessary for any printing or photocopying. Consumers can store soft copies instead of hard copies and it has gradually become less and less common for businesses and households to print documents to store them in hard copies. The shift to cloud storage has given businesses and households more choices in the way they can store documents. These changes are ongoing as further technological change occurs and utilisation of newer technologies occurs.

All sellers in the Australian market are detrimentally affected by the decrease in the size of the Australian market for copy paper, and the accompanying structural change in utilization of technology by consumers. Paper Australia has the largest market share and the largest volume of sales, so the impact of this factor on Paper Australia is larger in absolute volumes than its impact on other sellers in the Australian market. The changes in technology and utilisation of technology leading to the reduction in the size of the Australian market cause a reduction in the absolute volume of sales by Paper Australia to the Australian market.

The Application itself has indicated that its business is capital intensive.⁸ The capital intensity of the business means that its profitability is sensitive to the volume of sales. To say that a business is capital intensive means that it has very significant fixed costs. The volume of sales over which fixed costs are spread has a direct impact on profitability. Some variable costs can be reduced in response to reducing sales volumes but for a capital intensive business, there are very significant fixed costs which cannot be reduced easily. A reduction in volume increases the total per unit costs of production. Therefore, the reduction in the size of the Australian market for copy paper has injured Paper Australia at the same time as the alleged dumping by Tjiwi Kimia.

3. The response to the COVID pandemic from February/March 2020 accelerated the reduction in the quantity of copy paper demanded in Australia

The market was severely affected by the COVID pandemic. A very large majority of public sector and private sector offices shifted from having employees working in the office to having them work from home. This caused a massive decrease in the volume of paper used in the offices. Working at home, employees could still print on home printers but it appears that reliance on soft copies increased during this time.

While there had been an ongoing trend for some years of reducing size of the Australian market, the structural changes which occurred in 2020 due to COVID lockdowns was unprecedented. The greatest impact was in the Government, Education and Business Sector (work from home). To stress the impact on the Government sector, an article in The Age on 1 November 2020 sets out the situation in the Victorian government alone, stating:

“The [Victorian] Department of Treasury and Finance’s annual report, released last week, reveals it used just 12,500 sheets of A4 paper from April to June in 2020. That is still a lot of paper but much less than the 850,000 sheets it consumed during the same period last year.”

and

In total, the Treasury department used about 22 per cent less paper in the 2020 financial year. Across a series of large departments that also revealed their paper usage, the average drop was nearer to 30 per cent, or more than 25 million sheets of paper.”⁹

⁸ The Application, EPR 583-001.

⁹ <https://www.theage.com.au/national/victoria/paper-cuts-how-covid-19-did-away-with-more-than-20-million-sheets-of-paper-20201031-p56acu.html>

Therefore, while there had already been a gradual shrinkage of the Australian consumer market for copy paper over a period of time, the advent of COVID has accelerated both the structural change in the utilization of technology by consumers and the shrinkage in the size of the market during the period March 2020 to March 2021. Given the Paper Australia's market share, Paper Australia suffered a loss of volume larger than that of other suppliers and given the capital intensity of its Business and the need to spread significant fixed costs over volumes, Paper Australia's profitability suffered amounting to a significant injury to Paper Australia over the same period as the alleged dumping by Tjiwi Kimia.

4. Competition from other imports

Over the injury investigation period, there have been some non-dumped and dumped imports. Some of the importers have continued to import subject to dumping duties. The main feature of the market is that when any importer has been importing copy paper into Australia for over one year, Paper Australia files an application for dumping duties and sometimes for both dumping duties and countervailing duties.

Previous ADC investigations have considered imports from multiple exporters in multiples countries and in almost every instance, the Australian government has imposed dumping duties as is shown by the following table:

Investigation 341 initiated 12 April 2016

REP341 dated 17 March 2017 on Alleged Dumping of A4 Copy Paper exported from Brazil, China, Indonesia and Thailand and alleged subsidisation of A4 copy paper from China and Indonesia

Country	Exporter	Dumping Margin
Brazil	IP Brasil	2.9%
	Uncooperative and all other exporters	2.9%
China	UPM China	34.4%
	Asia Symbol	3.1%
	Uncooperative and all other exporters	34.4%
Indonesia	Indah Kiat	35.4%
	Pindo Deli	38.6%
	Tjiwi Kimia	-2.18%
	RAK	12.6%
	Uncooperative and all other exporters	45.1%
Thailand	Double A	13.4%
	PPPC	18.1%
	Uncooperative and all other exporters	23.2%

ADRP 341 amended three of these rates to:

Country	Exporter	Dumping Margin
China	Asia Symbol	3.0%
Indonesia	Indah Kiat	30.0%
	Pindo Deli	33.0%

Investigation 463 initiated 19 March 2018

REP463 dated 15 March 2019 on Alleged Dumping of A4 Copy Paper exported from Austria, Finland, the Republic of Korea, the Russian Federation, and the Slovak Republic

Country	Exporter	Dumping Margin
Austria	Mondi Neuseidler Gmbh	1.7%
	Uncooperative and all other exporters	4.2%
Finland		
	Uncooperative and all other exporters	14.3%
Republic of Korea	Hankuk Manufacturing Co	3.8%
	Uncooperative and all other exporters	16.4%
Russian Federation	Uncooperative and all other exporters	14.4%
Slovak Republic	Mondi SCP s.a.	5.8%
	Uncooperative and all other exporters	14.6%

Review Investigation 547 initiated consequent on WTO Report in WT/DS529/R

REP547 on Review of ADD from Investigation 341 from Indonesia from PT Indah Kiat and PT Pindo Deli found these dumping margins but recommended revocation of the duties on these two exporters.

Country	Exporter	Dumping Margin
Indonesia	PT Indah Kiat	0.1%
	PT Pindo Deli	17.5%

Review 551 dated 7 June 2021 of ADD under REP563

Country	Exporter	Dumping Margin	Current Combined fixed rate	Proposed combined fixed rate
Brazil	IP Brasil	25.7%	2.9%	8.1%
	Uncooperative and all other exporters	29.2%	2.9%	8.1%
China	UPM China	3.2%	4.0%	3.2%
	Green Point Global Trading (Macao)	15.1%	3.0%	10.0%
	Uncooperative and all other exporters	19.8%	41.4%	10.0%
Indonesia	RAK	14.7%	12.6%	14.7%
	Uncooperative and all other exporters	25.7%	45.1%	19.2%
Thailand	Double A	30.8%	13.4%	0.9%
	Uncooperative and all other exporters	43.3%	23.2%	0.9%

In many instances, the size of the dumping duties discouraged the relevant exporters and importers and exporters from supplying the Australian market. Therefore, a significant feature of the Australian market for A4 copy paper is that high dumping duties have frequently removed specific exporters from the market so that they cease to be a source of competitive constraint or a possible cause of injury to Paper Australia.

5. Import competition from a Thai company within the group of companies owned or partly owned by Paper Australia's the parent company Nippon Industries Limited

Paper Australia Pty Ltd is a wholly owned subsidiary of the Japanese company, Nippon Paper Industries Limited. One of the sources of import competition affecting the position of Paper Australia has been the imports made by Central National Australia Pty Ltd from Phoenix Pulp & Paper

Corporation in Thailand. Nippon Paper Industries Limited owns 30% of the share in Phoenix Pulp & Paper Corporation.

It is noteworthy that until the imposition of the duties following Investigation 341, imports from Phoenix Pulp & Paper, the company part owned by Paper Australia's parent company was one of the sources of constraint on Paper Australia and one contributor to the injury found to exist in Investigation 341. It is our understanding that they ceased supply to the Australian market after the imposition of the anti-dumping duty at the rate of 18.1%.

6. Competition from non-dumped imports

The main competitive constraint on Paper Australia would be UPM China. After Investigation 341, the dumping duty imposed on imports from UPM China was quite small, only 4%. (This has been reduced further to 3.2% in Review 551 of the anti-dumping measures imposed in Investigation 341). Since these imports are entering the Australian market after payment of dumping duties, then they can also be regarded as undumped imports. These undumped imports would be a significant constraint on pricing behaviour of Paper Australia and could be a cause of any injury to Paper Australia.

There are also some continuing imports from Brazil upon which small dumping duties are paid. These can also be regarded as a source of competition from undumped imports.

There are some other minor sources of undumped imports which have not been the subject of any application for dumping duties.

7. Structural change to the distribution channels in the Australian copy paper market

Previous ADC reports have recognised the structural change in distribution channels due to consolidation of Contract Stationers (WINC, Office Choice, Office Brands, Fuji Xerox, and COS) and the emergence of Officeworks as the leading retail stationery channel. This structural change over the last 15 years has shifted the competitive dynamics in the market for wholesale supply to the retail sector as buyers seek to provide Australian consumers with a cost-effective quality product. The changes in the retail market flow on to impact on the wholesale market, so these developments affect the prices Paper Australia can charge in the retail segment and the wholesale segment.

As evidenced in SEF 551, Officeworks is a strong and vigorous competitor in the retail market for copy paper and rightly so as they look to meet their customer's expectations. Their use of sophisticated FMCG supply chain and marketing is leading edge. With the advent of COVID, Officeworks had the ideal channel to assist consumers and also small businesses who were choosing between sourcing from a wholesale supplier and a retailer like Office works (from which they could buy in 5 ream boxes or single reams).

The post-consolidation six leading distributors (the five Contract Stationers and Officeworks) are to varying degrees in a strong position in their price negotiations with suppliers, whether that be Paper Australia or any importer of copy paper. The strength that they may have in price negotiations with suppliers depends upon them having a choice of suppliers so that while imports are allowed to enter the market, they can have some market strength but when sources of imports are excluded by the repeated imposition of dumping duties, their position in negotiations with suppliers is much weaker. Officework's strong position in providing consumers with choice both on quality and price naturally exerts a downward pressure on prices in the retail sector. Prices in the retail sector influence the prices in the wholesale sector.

A natural outcome of consolidation in the distribution channels is that key players have the resources and expertise to seek out sources of imports of copy paper. The number and range of

exporters and countries subject to Investigation 463 demonstrates the ability of the six leading distribution channels to seek out copy paper from suppliers in Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic.

Therefore, the existence of varying degrees of market strength of the main players in the distribution channels is a factor which causes the economic position of Paper Australia to be weaker than it would be in the absence of the market strength of those distributors. In that sense, the market strength of the six main distributors and their keenly competitive approach to providing choice and low prices to consumers needs to be considered as a factor other than the alleged dumping as a possible cause of any injury to Paper Australia.

8. The failure of Paper Australia’s strategies to increase profitability by increasing volume: the loss of the contract to supply copy paper under the Keji brand to Office works.

One of the ways that Paper Australia has attempted to improve its profitability has been by increasing volume so that its fixed costs could be spread across a larger volume. In particular, Paper Australia gained a significant contract to supply copy paper to the leading retail stationery chain, Officeworks, under the brand Keji. This would have been supplied at a lower price than the price of its leading brand Reflex. It indicates a strategy to sell larger volumes at lower prices.

During 2020, Paper Australia lost the contract to supply paper to Officeworks for the Keji brand. Office works awarded the contract to UPM in China. This event damaged Paper Australia’s efforts to increase volume so as to be able to help it cover its fixed costs. It caused injury to Paper Australia over the same period as the alleged dumping by Tjiwi Kimia.

9. The failure of Paper Australia’s strategies to increase profitability by increasing volume: the loss of a large volume of sales to the United States because of anti-dumping duties in response to Paper Australia’s dumping in the United States market

The ADC REP341 records that in January 2016, the US Department of Commerce made a final determination that Paper Australia Pty Ltd had been dumping copy paper into the US market and that the margin of dumping was 222.46%. The verification in investigation 341 of the Questionnaire Response by Paper Australia does say that Paper Australia lost sales to the United States between the 2014 and 2015 years but does not mention the volume or value of the lost exports by Paper Australia to the United States, nor does it assess the continuing loss of exports to the US in the following years. It does mention that the sales by Paper Australia of domestic sales were steady over the period 2014 to 2015.

The volume of Australian exports to the US in the period leading up to the US Imposing anti-dumping duties was significant in comparison to the total size of the Australian consumer market.

The volume and value of Australian exports is set out in the following table drawn from the Fact Sheet issued by the International Trade Administration of the Department of Commerce.¹⁰

US Import Statistics			
From Australia	2012	2013	2014
Volume (metric tons)	46,300	48,700	75,800
Value (USD)	\$37,164,000	\$38, 994,000	\$61,359,000

Therefore, it appears that Paper Australia was exporting a volume of copy paper to the US equal to about one quarter to a third of the total size of the Australia market.

¹⁰ US DOC, ITA, Fact Sheet “[Commerce Finds Dumping of Imports of Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal and Countervailable Subsidization of Imports of Certain Uncoated Paper from China and Indonesia \(trade.gov\)](https://www.trade.gov/commerce-finds-dumping-of-imports-of-certain-uncoated-paper-from-australia-brazil-china-indonesia-and-portugal-and-countervailable-subsidization-of-imports-of-certain-uncoated-paper-from-china-and-indonesia)”, January 2016.

Paper Australia Pty Ltd declined to supply the US investigating authorities with any information about the prices of sales by Paper Australia Pty Ltd in the Australian domestic market. Relying on the information about normal value in the Australian market supplied by the petitioner, the Department of Commerce determined that the margin between the price of Paper Australia's exports to the US and the price of Paper Australia's domestic sales in Australia was 224.46%..

Therefore, the findings in the US investigation indicate that not only was Paper Australia Pty Ltd exporting to the US a volume off copy paper equivalent to between a quarter and a third of the total volume of the Australian market but that it was exporting that paper at a price which was only *one third of the price at which Paper Australia was selling copy paper in the Australian market.*

This behaviour indicates the strategy that Paper Australia Pty Ltd had adopted in response to the gradual reduction in the size of the Australian market and to its difficulty in getting total average costs including the allocation of its fixed capital costs in Australia down to a level that enabled it to make a profit on sales in Australia. It is submitted that Paper Australia's strategy was to make sales in the US market at a price above marginal cost but below average total cost. It was a strategy that enabled it to make low price sales to help cover its fixed costs without undermining its high pricing in the Australian market.

Paper Australia's management have fundamentally failed to recognise the change in both market channel & consumer demand and now seek Australian consumers to subsidise their unproductive capacity and pay exorbitant prices for their failed strategy. With a capacity more than domestic demand, they must logically seek export markets unless the Australian government believe a Monopoly manufacturer should hold a monopoly supply position and ask the Australian community to subsidise them. It would follow that if Dumping has been found by the ADC in multiple markets Paper Australia has a significant opportunity to export product at significantly higher prices – hence why would it give up a significant export market like the USA. More astounding is that being owned by a Japanese Company you would expect they have had sufficient time and resource to modify and create an export plan to the Japanese market. The ADC and Minister should not reward such a myopic approach which not only harms the Australian Consumer but Paper Australia's own employees.

10. The Continuing inadequate quality of the management of Paper Australia

These episodes demonstrate that there is a factor that continues to exist during the injury investigation period of this investigation 583 which is the continuing inability of Paper Australia to achieve the efficiencies necessary to reduce its total average costs to a level that would make it profitable in the evolving Australian market and in the world market. The specific events of losing the Keji contract and losing the export volumes to the US are evidence of this overarching and continuing factor, the inability of Paper Australia to increase the efficiency of its Australian paper mill and to create viable export markets. Instead of focussing on increasing efficiency and finding profitable export markets, Paper Australia concentrated on finding an easier way to cover its persistently high fixed costs by engaging in international price discrimination between the Australian market and the US market (i.e., dumping) and also engaging in price discrimination between branded product segments within the Australian market (not "dumping" in the international sense but possible predatory pricing in the sense of restrictive trade practices law).

During the period of the alleged dumping in this investigation, Paper Australia was injured by other changes in size of the Australian consumer market and by its own failures to adopt strategies to adjust to the way the market has developed. The track record of management at Paper Australia show that it has engaged in two failed strategies, the attempts to use dumping duties to gain market power and, first, to use that market power to increase prices in Australia at the same time as dumping in the United States and, secondly, to use that market power to maintain higher prices for its Reflex brand in Australia at the same time as selling the Keji brand at low prices. These strategies

have not worked and are not a substitute for creating a long term export strategy. That track record in the past is good evidence of the continuing quality of the management at Paper Australia and the inability of that management to make appropriate changes to costs to enable it to operate successfully in the modern market in Australia and to create a long term sustainable export strategy. These factors rather than alleged dumping by Tjiwi Kimia are the cause of Paper Australia's difficulties.

11. The Non-Attribution Analysis

The Minister must ensure that injury being caused by the above factors is not attributed to the alleged dumped imports. As explained above, that means that the Minister must separate and distinguish the injurious effects of the other factors from the injurious effects of the dumping. In the absence of the Minister adequately separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumping, it is not possible to be satisfied that the Minister has ensured that injury from other factors has not been attributed to the dumped imports.

In assessment of the causal effects of dumped imports on prices, and whether prices have caused price undercutting, depression of prices or prevented price increases, the ADC has performed the assessment by comparing factual situations with counterfactual situations. We submit that in ensuring that injury caused by other factors is not attributed to dumping, the ADC should also utilize a comparison between the factual situation and an appropriate counterfactual situation.

Ensuring non-attribution to the alleged dumped imports logically requires the Minister to compare the factual situation of Paper Australia suffering injury from all other factors and the alleged dumping with an appropriate counterfactual which is the situation of Paper Australia suffering injury from all of the factors other than the alleged dumping to determine whether the difference could constitute a material injury to Paper Australia Pty Ltd. We submit that the ADC and the Minister should find that upon an examination of all relevant factors, and diligently excluding the effects of other causal factors, the dumped imports are not causing any injury which has any meaningful significance to the position of Paper Australia, that is, any material injury to the Australian Industry, Paper Australia.

A fortiori, we submit that the Minister could not possibly be satisfied that there is sufficient evidence to establish that any dumping found to exist is causing or threatening material injury to the domestic industry. In deciding on that point as the investigation proceeds, the ADC and the Minister will need to evaluate many causal factors and evaluate the impact of ensuring non-attribution of injury to any of those other causal factors. Therefore, we submit that the ADC cannot make a preliminary affirmative finding under section 269TD(1).

C The Minister's discretion to decline to impose any dumping measures, if recommended by the ADC, on the basis that the proposed dumping measures would be contrary to the Australian public interest

The ADC and the Minister are aware that after the ADC provides a recommendation under section 269 TEA (1)- to the Minister, the Minister may decide to issue a dumping notice under section 269 TG(1). The Minister's receipt of a recommendation that there is dumping and the dumping is causing injury means that the Minister is permitted to issue a dumping notice but does not mean that the Minister is obliged to issue a dumping notice. If the ADC recommends that one of the statutory pre-requisites to the making of a dumping duty notice is not satisfied then the statute prohibits the Minister from making a dumping notice. However, if the ADC recommends that all of the statutory pre-requisite to the making of a dumping duty notice are satisfied, the statute places an obligation on the Minister to decide whether to accept or reject the recommendation from the ADC and the statute does not place any constraints on the Minister's discretion to decide to either issue a dumping notice or to decline to issue a dumping notice.

We submit that the Minister is authorised to take into account, and should take into account, factors that are relevant to the impact that the Minister's decision would have on the nation of Australia, its economy, its people and their welfare.

We set out below some factors which would be relevant to a consideration of whether the imposition of dumping duties would be contrary to the Australian national interest.

1. The positive effect on the Australian Industry, Paper Australia

The imposition of dumping duties would increase the price at which Australian consumers can buy copy paper from Tjiwi Kimia. This price would increase by the amount of the ad valorem dumping duty. Instead of the pricing behaviour of Paper Australia being constrained by consumers being able to buy imports from Tjiwi Kimia at their import price, the pricing behaviour of Paper Australia would be constrained by consumers being able to buy imports from Tjiwi Kimia at their import price plus the dumping duty. With other things staying the same, this would allow Paper Australia to increase its price by the amount of the dumping duty. This causes an increase in wealth of Paper Australia (roughly) equal to the volume of Paper Australia's sales multiplied by the increase in its selling price.

2. The fact that this dumping investigation occurs in the context of a series of dumping investigations.

In the market for copy paper in Australia, it is significant that there have been multiple dumping investigations and that dumping duties have been imposed on importers from Brazil, China, Indonesia, Thailand, Austria, Finland, South Korea, Russia and Slovakia. In each case the imposition of the dumping duty increases by the amount of the dumping duty price that Australian consumers can buy copy paper from the particular exporter subject to the particular rate of dumping duty.

It is almost too much of a coincidence that so many producers in so many countries would be engaging in price discrimination in their sales to the Australian market. It appears more realistic that Paper Australia is seeking protection against imports at the world price. It is seeking dumping duties to increase the effective world price at which copy paper can be imported into Australia. Regardless of whether the ADC agrees with this characterisation of the situation as one in which Paper Australia is seeking protection against the world price, it is still nevertheless true that if one considers the impact of all of the dumping duties imposed on all of the different exporters from all the different countries, the aggregate effect is to raise the price at which Australian consumers can purchase imported copy paper.

3. Governmental Revenue from collection of dumping duties

In cases where the dumping duty does not stop that exporter from exporting to Australia, then there would be a benefit to the government or taxpayers in the form of the dumping duty collected on importation of the volume that continues to be imported. That is a benefit to Australia.

4. The Benefits to Paper Australia flow partly to capital and partly to labour and partly to Australians and partly to foreigners.

As mentioned above, dumping duties make it possible for Paper Australia to charge higher prices in the Australian market. This means that the presence of the dumping duties increases the wealth of Paper Australia compared to the position without the dumping duties. The benefits of the improvement in the financial position of Paper Australia may flow partly to providers of capital and partly to labour.

4.1 Benefits to Paper Australia flowing to mostly non-Australian providers of capital

Paper Australia's improved financial position caused by the imposition of dumping duties may enable Paper Australia to distribute greater dividends to shareholders or may increase the value of the shares in Paper Australia.

Paper Australia is 100% owned by Nippon Paper Industries Limited, a company incorporated in Japan and listed on the Tokyo Stock Exchange. Australian investors may hold a very small proportion of the shares in Nippon Paper Industries Limited but it would be non-Australians that own almost all of the shares in Nippon Paper Industries Limited.

To the extent dumping duties cause benefits to Paper Australia to flow to owners of shares of Paper Australia, those benefits flow to outside of Australia to the non-Australian entity, Nippon Paper Industries Limited. Some part of that flow of benefits to Nippon Paper Industries Limited may flow on to Australian shareholders in Nippon Paper Industries Limited. However, benefits flowing from Paper Australia to Nippon Paper Industries Limited would almost entirely accrue to non-Australian shareholders in Nippon Paper Industries Limited. Therefore, to the extent that dumping duties improve the financial position of Paper Australia and that benefit flows through to the owners of capital, that flow of benefits would accrue almost entirely to non-Australians.

4.2 Benefits to Paper Australia flowing to their Australian labour force

As mentioned above, when dumping duties increase the sales prices that Paper Australia can charge in the Australian market, that may lead to an improvement in the financial position of Paper Australia which may in turn lead to an outcome in which the payments to employees and contractors are higher than they would be in the absence of the dumping duties. The increased flow of wealth to labour may be in the form of higher payments to individual persons or in larger numbers of employees. Assuming that the employees are all Australians, then this flow of increased wealth to employees could be regarded as a benefit to Australians.

Tjiwi Kimia appreciate that one of the reasons that Paper Australia may have applied for the imposition of dumping duties on imports from Tjiwi Kimia is to protect the jobs and wages of its workforce at its manufacturing and distribution sites, including the significant number of jobs at its Maryvale paper mill in the Latrobe Valley. Tjiwi Kimia is sympathetic with Paper Australia's concerns for the welfare of its employees. The persons employed by Paper Australia in most cases would be providing for their dependent families. Dumping duties imposed on imports may enable Paper Australia to charge higher prices and to be able to afford to pay higher wages to more employees. We can also see that the Minister in the Commonwealth government, in deciding whether imposition of dumping duties would be contrary to Australian public interest, would put some

weight on the impact that dumping duties could have on the level of wages and the number of jobs at Paper Australia's sites.

It is worthwhile examining some further questions:

Does achieving some jobs and wages outcomes for Paper Australia employees through the imposition of dumping duties necessarily means that some other sector of the Australian community must bear the cost of defending those wages and jobs?

Could the Commonwealth government (on its own or in cooperation with other levels of government) achieve those job and wage outcomes for Australian Paper's employees through measures other than dumping duties?

Could the size of the cost borne by the rest of the Australian community in achieving those jobs and wages outcomes for employees of Paper Australia be smaller if the Commonwealth government does so by using some measure other than dumping duties rather than by using dumping duties?

5. Net effect of transfers of wealth between sectors of the Australian community caused by an additional tariff in the form of an anti-dumping duty

Almost every basic or intermediate economics textbook uses a partial equilibrium diagram using Supply and Demand curves to represent the effects of an import tariff on the country imposing the tariff. (It is called partial because it is a tool for analysing just one market within an economy not the whole economy). Such diagrams are used to explain the transfers of wealth caused by an import tariff and also the net effect on wealth and welfare of the country imposing the tariff.

The analysis depends on the shape and position of the supply function (representing the behaviour of Australian suppliers) and the Demand function (representing the behaviour of Australian consumers). It is generally true that a market would be operating in a range where consumers, in aggregate, respond to price increases by buying a smaller quantity and to price decreases by buying a larger quantity; hence a downward sloping demand function. In analysing a particular market it is not necessary to have enough information to indicate the entire demand function but it is necessary to have some information to make an estimate of how much quantity demanded may go up or down in response to a change in price. It is generally true that a market would be operating in a range where Australian suppliers in aggregate respond to price increases by supplying more and to price decreases by supplying less: hence an upward sloping supply function. In analysing a particular Market, it is not necessary to have enough information to indicate the entire supply function but it is necessary to have some information to make an estimate of how much quantity supplied by Australian suppliers may go up or down in response to a change in price. In situations where changes in the aggregate quantity imported from the rests of the world do not have any significant impact on the price of imports, then the price at which Australian consumers can buy from foreigners is represented by a flat line at the level of the world price.

This standard analysis indicates that the effects of an import tariff are:

- The price to consumers of the product goes up by the amount of the duty;
- The price that local Suppliers can charge for the product goes up by the amount of the duty;
- The quantity supplied by local supplier increases;
- The quantity demanded by local consumers decreases; and
- The quantity of imports goes down.

The next step in the standard economic analysis is to estimate the size of the wealth gained or lost by different sectors of the country imposing the tariff. The standard results are:

- Local consumers suffer a loss in that they pay a higher price for the quantity that they would buy with or without the tariff and they also suffer a loss because the alteration to the price leads to consumers reducing their purchases of the product at issue and swapping to something else which would not have been their preference in the absence of the import tariff;
- The government receives a gain which is the size of the revenue from per unit import duty on the volume of imports;
- the Local suppliers receive a gain which is the size of the additional revenue on the profitable units which they would supply with or without the import tariff; and they also make a gain from the sales of the extra units that would not have been profitable in the absence of the price increasing as a result of the tariff.

The next important conclusion of the standard analysis of a tariff is that the aggregate losses to some in the community are bigger than the aggregate gains to others in the community, so there is a net loss to the importing country imposing an import duty.

The standard analysis concludes that out of the total loss to local consumers, a part of that loss becomes a transfer to the government in the form of revenue, and a part of that loss becomes a transfer to the local suppliers in the form of the increase in profit on the units they supply. However, there are two parts of the loss to consumers that do not become a gain to anyone else.

- For the additional quantity that local suppliers sell to local consumers, the whole of price increase is a loss to the consumer but the gain to the producer is only the part of that extra revenue that exceeds the cost of producing the extra units. In simple terms, there is a net loss arising from the way that the increase in the price caused by the imposition of the tariff induces the local suppliers to supply some units which without the increase in price could only have been supplied at a loss.
- For the quantity that the local consumers do not buy at the higher price as they switch to something that at the original price they would have preferred less than the foregone units of the product at issue, their loss is equal to the difference in the value they place on having the extra units of the substitute product compared to the value they would place on having the foregone units of the product at issue. In simple terms, there is a net loss arising from the way that the increase in the price induces the local consumers to buy their second preference product instead of their first preference product.

We can conclude that imposition of dumping duties does provide benefits to local suppliers. Those benefits may pass through to capital and labour. The dumping duties also provide a benefit to the government collecting the revenue. However, first, those benefits do come at a cost to local consumers. Second, the size of the cost to local consumers is larger than the size of the benefits to local suppliers and the government. Third, the achievement of those benefits does necessarily impose a net cost on the Australian community, which is borne by other sectors of the Australian community.

6. The size of the net cost of achieving jobs and wages outcomes through the use of dumping duties

Before considering whether the jobs and wages outcomes could be achieved using measures other than dumping duties, it is useful to make some observations about the size of the net cost of achieving those outcomes. We have explained that the imposition of an import tariff, like a dumping duty, causes transfers between segments of the Australian community and also causes a deadweight loss. The deadweight loss consists of two components, one arising from a change in behaviour by consumers and another arising from a change in behaviour by suppliers. The size of the deadweight loss depends on the size of the import duty and the size of the consequence change in price and the extent to which the quantity supplied by Australian suppliers and the quantity demanded by

Australian consumers changes in response to the change in price. If the changes of volume are very small then the size of the net loss to the Australian community is also very small.

However, there are several reasons why this standard analysis of the net cost of the imposition of an import duty can substantially understate the size of the net cost of the imposition of an import duty on the country imposing the import duty. These can be summarised as follows:

- The price may rise by more than the size of the dumping duty if the presence of the dumping duty facilitates the exercise of market power
- In the transfer of wealth from local consumers to local suppliers, the wealth of the local suppliers does not increase by the full amount of the transfer because some of the wealth transfer is expended in non-productive activity
- Some of the transfers of wealth to suppliers are transfers to foreigners not to anyone within the Australian community
- The losses to consumers caused by the dumping duty may continue for many future periods but some or all of the gains to local suppliers caused by the dumping duty may not continue for as long into the future.

6.1 The standard analysis of the loss from the imposition of an import duty understates the net loss to the country imposing the import duty if the presence of the import duty makes it more likely that a supplier or group of suppliers in the importing country can exercise market power.

Market power could be exercised if a single supplier or more than one supplier acting in concert could restrict supply so that competition from consumers causes the price to increase. If a reduction in supply by one supplier is met with an increase in supply from another supplier then there will not be an exercise of market power. But if the import duty or other import barriers limit the capacity of importers to increase supply then it may be possible for a local supplier to exercise market power. In that situation, the increase in price arising from the import tariff would be larger than the amount of the import duty. The size of all of the transfers of wealth and net welfare losses would be larger.

This could occur in situations where dumping duties are so high that a foreign exporter leaves the market completely so that it is not in a position to increase supply of exports. It could also occur if a foreign exporter is supplying to the local market but the foreign exporter is already operating near its production capacity and has no excess inventories, therefore, preventing it from increasing the volume of its exports.

6.2 The standard analysis of the loss from imposition of an import duty understates the net loss if some of the gains are dissipated in rent seeking costs

The standard analysis finds that the increased price results in a gain to local suppliers. The local suppliers gain higher profits over the volume that they supply. Over that volume of supply, consumers are paying a higher price and suffering a loss. The gain to local suppliers is a transfer of wealth from local consumers. However, it is not a net loss, just offsetting gains and losses.

If, however, some part of the gain to local suppliers does not lead to any increase in wealth of the local suppliers, then the situation is that the loss to consumers remains and is not offset by a matching gain to local suppliers. This is what happens when local suppliers expend a part of their gain accruing from the import duty in engaging in legal or political activity to encourage the government to maintain or reimpose the import duty. Such expenses could include fees for legal or accounting services, lobbying, public relations or other relationship building expenses.

In those situations, the gain to the local suppliers accruing from the import duty is reduced to the amount of the gain that is left after all of the expenditure on rent seeking. Therefore, a part of the corresponding loss to consumers is not just a simple transfer of wealth from local Australian consumers to local Australian suppliers. The part of the loss to consumers which is dissipated in rent seeking is another deadweight loss to the Australian community in addition to the deadweight losses, identified above, arising from changes in behaviour of consumers and suppliers.

6.3 The standard analysis of the loss from imposition of an import duty understates the net loss to the country imposing the import duty if some of the gains from the import duty flow to foreigners instead of to Australians

The standard analysis indicates that the imposition of a tariff causes a gain to local suppliers, in this case to Paper Australia. They gain because they can charge a higher price for the quantity that they would supply with or without the higher price and they also make a profit on an additional quantity that would not have been profitable in the absence of the import duty.

We have identified that the gains to local suppliers may flow to capital or to labour, and that the part of the gain flowing to labour would be a gain to a part of the Australian community. However, the gain to capital would flow to Nippon Paper Industries Ltd which owns all of the shares in Paper Australia. This part of the benefit to Paper Australia is not a benefit to the Australian community. Therefore, some of this part of the loss to consumers is not part of a simple transfer of wealth from local Australian consumers to local Australian suppliers. The part of the loss to consumers which is transferred to entities outside of Australia rather than to anyone within the Australian community is another deadweight loss to the Australian community in addition to the deadweight losses, identified above, arising from changes in behaviour of consumers and suppliers.

6.4 The standard analysis of the loss from imposition of an import duty may understate the net loss to the country imposing the import duty if the losses to consumers last longer than the gains to local suppliers

The standard analysis which indicates that imposition of an import duty results in a net loss for the country imposing the duty is based on a simple comparison of two situations, with and without the import duty. If this analysis is extended to consider the situation existing over many time periods into the future, then the conclusion can change if the durability over time of the gains to winners and losses to losers is different.

Typically, the losses to consumers will continue into the future for so long as there is a demand for the product.

The durability of the gain to local suppliers over future period depends on whether they are still dependent for their earnings on the industry producing the particular product. For employees, it is possible that over time other job or earnings opportunities arise and in future period they would choose some other job in preference to the job at the firm which accrues benefits from the import duty. Since they have chosen a better paying alternative, they are no longer in a position of accruing a benefit from the imposition of the tariff on imports of the product made by their former employer. To the extent that occurs, then the situation changes from one in which there is a loss to domestic consumers which is being transferred to domestic suppliers into a situation in which at least part of the loss to domestic consumers is a deadweight loss.

Therefore, it may frequently be the case that the losses to consumers are more durable than at least some components of the gain to local suppliers, in this case the gain flowing through to employees of Paper Australia Pty Ltd.

7. Providing protection for local employers or local suppliers in alternative less costly ways

Could the Commonwealth government (on its own or in cooperation with other levels of government) achieve those job and wage outcomes for Australian Paper's employees through measures other than dumping duties?

It is not our place to make suggestions to the Commonwealth government about other governmental measures that could be utilized to achieve the government's jobs and wages outcomes for Paper Australia's employees. We do believe that the Commonwealth government could engage in an analysis of alternative measures that could be implemented instead of dumping duties.

We believe that the Australian government would be able to embrace within that analysis the consideration of at least some governmental measures which would achieve the government's objectives regarding jobs and wages for the employees of Paper Australia which would impose a lower cost on the rest of the Australian community than would be imposed by dumping duties.

The government could be able to come up with policy alternatives to dumping measures which would not have any impact on the price of copy paper to consumers or the behaviour of consumers. Any such alternative policies would have a lower cost for the Australian community than dumping duties because dumping duties change prices to consumer and behaviour of consumers in addition to having effects on production decisions.

8. The undesirability of the Commonwealth using its powers to impose dumping duties to facilitate the exercise of market power in any markets in Australia, and especially not to facilitate the misuse of market power in any market in Australia

When the behaviour of Paper Australia is considered in the context of the multiple applications for dumping duties on multiple exporters from multiples countries, it becomes apparent that Paper Australia is using dumping duties to protect its capacity to exercise market power in the Australian market for A4 copy paper.

Normally in Australian competition policy and Australian restrictive trade practices law, the presence of competition from imports is regarded as a good thing because it is a constraint on any domestic competitor exercising unilateral market power and a constraint on any group of Australian competitors exercising expressly or tacitly coordinated market power. What we have seen in the market for copy paper in Australia is that Paper Australia tries to set a higher price so that it can make a profit taking into account its high fixed costs. Each time a new source of imports enters the market, Paper Australia files an application for dumping duties. The Minister has imposed dumping duties on various exporters from Brazil, China, Indonesia, Thailand, Austria, Finland, South Korea, Russia and Slovakia. By persuading the Minister to apply dumping duties to any source of imports, Paper Australia has increased its market share and diminished the constraint on its pricing behaviour that imports would otherwise provide.

By using dumping duties to increase market share and eliminate some sources of constraint on its behaviour, it is arguable that Paper Australia achieves a substantial degree of market power in the wholesale market for copy paper and that it is misusing that substantial degree of market power. Paper Australia is able to use that substantial degree of market power in price negotiations with the leading Contract Stationers and the leading retailer, Officeworks, when it seeks higher copy paper prices. In doing so, Paper Australia's conduct is largely insulated from the usual consequences that would apply if it did not have a substantial degree of market power because the Contract Stationers and Officeworks have difficulty switching to buying from a supplier other than Paper Australia, since dumping duties have eliminated some alternative sources of supply from the market and rendered

some other sources of supply less competitive. Paper Australia's conduct has the purpose of raising the price of copy paper and preventing any of the Contract Stationers or Officeworks from being able to offer lower prices to consumers in the retail market. Paper Australia would frequently achieve the effect of raising the price in the wholesale market and damaging or lessening competition in the retail market for copy paper.

The Minister should regard it as contrary to the Australian public interest for dumping duties to be imposed repeatedly and in a manner which works in the opposite direction to national competition policy. The Minister should also regard it as contrary to the Australian public interest for dumping duties to be imposed repeatedly and in a manner which facilitates the possible misuse of market power. As indicated above, the government could still achieve any desired jobs and wages outcomes for the employees of Paper Australia without imposing dumping duties.

9. Conclusions

A dumping duty will provide some benefits in the form of jobs and wages to the employees of Paper Australia. These jobs and wages outcomes may be a benefit which is valued highly by the Australian community.

Providing those jobs and wages outcomes to the employees of Paper Australia imposes a cost on the rest of the Australian community. There are other ways for the Australian government to achieve those jobs and wages outcome for the employees of Paper Australia which impose a smaller cost on the rest of the Australian community. For the Australian government to choose a more costly policy instrument over a less costly policy instrument to achieve these objectives in the areas of jobs and wages amounts to a waste of resources of the Australian community.

The Minister should assess whether it wants to achieve any objectives in the area of jobs and wages of the employees of Paper Australia and if it does, then it should make preparations for using a less costly policy instrument to achieve those chosen objectives. Even if the Minister may be satisfied that the legal pre-requisites to the imposition of an anti-dumping duty are met, the Minister should find that it would be contrary to the interests of Australia to impose dumping duties instead of a less costly policy instrument and, for that reason, the Minister should exercise the Minister's discretion to decide not to issue a dumping duty notice under section 269TG(1).

Public Submission

This submission may be placed on the public record for Investigation 583.

Yours Faithfully,



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