

Public File

7 September 2021

Mr Gavin Crooks
Assistant Director
Investigations
Australian Anti-Dumping Commission
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Dear Mr Crooks

Investigation No. 583 – Response to submission made on behalf of Tjiwi Kimia.

I. Executive Summary

The Indonesian exporter PT Pabrik Kertas Tjiwi Kimia Tbk (“Tjiwi Kimia”) claims that it “*could not complete the response to the [exporter] questionnaire in time*”. In the absence of a completed exporter questionnaire response (“EQR”), Tjiwi Kimia has argued that the Australian Government should seek ‘other means’ by which to assist the Australian industry manufacturing A4 copy paper. Tjiwi Kimia’s representations suggest that the injury sustained by the Australian industry is due to a range of other causes including mis-management by Paper Australia, the decline in paper consumption in Australia, and exports from other countries to Australia to name a few.

In its submission, Tjiwi Kimia has argued a range of matters except the central issue to Investigation 583 – whether its exports to Australia during 2020 were at dumped prices.

Respectfully, Opal Australian Paper (“OAP” or “Paper Australia”) contends that the issues raised in Tjiwi Kimia’s submission do not address the relevant matters that are required by the exporter questionnaire nor those matters which are under investigation. On this basis and in the absence of a completed EQR, Tjiwi Kimia must be considered an uncooperative exporter for the purposes of Investigation 583.

II. Exporter Questionnaire

Tjiwi Kimia’s submission (EPR Document No. 11) is dated 12 August 2021. The Anti-Dumping Commission (“the Commission”) commenced Investigation 583 on 2 June 2021 (refer ADN 2021/072) when the exporter questionnaire was forwarded to Tjiwi Kimia for completion.

Tjiwi Kimia was provided with a similar exporter questionnaire in Investigation No. 341. The Commission commenced Investigation No. 341 on 12 April 2016. Tjiwi Kimia completed the exporter questionnaire response and forwarded to the Commission dated 26 May 2016. The Commission afforded Tjiwi Kimia a short extension and it was able to provide the Commission with a compliant EQR.

In Investigation 583, Tjiwi Kimia was granted an extension by the Commission from the original deadline of 9 July 2021 to 6 August 2021. Even with the generous 27-day extension to the original 37 day deadline, Tjiwi Kimia has not completed or submitted an EQR to the Commission.

OAP submits that in the absence of a compliant EQR, Tjiwi Kimia must be considered an “uncooperative exporter” in Investigation 583 in accordance with ADN 2015/126 of the definition of uncooperative exporter in subsection 269T(1), and subsection 269TAACA(1)(b)(i) of the Customs Act.

III. Material injury to the Australian industry

In the absence of completing the exporter questionnaire, Tjiwi Kimia has elected to challenge OAP’s application for Anti-Dumping measures on the basis that the injury experienced by the Australian industry can be attributed to a range of other factors including:

- over-capacity of the Australian industry;
- decline in demand in the Australian market;
- the impact of the Covid 19 pandemic on demand;
- competition from other imports;
- import competition from the Thai exporter Phoenix Pulp & Paper Corporation that is partly owned by OAP’s parent company;
- competition from non-dumped imports;
- structural changes to the distribution channel for copy paper;
- the loss of a key contract by OAP to supply;
- the loss of a large volume of export sales; and
- the “inadequate quality of management” at OAP.

It is Tjiwi Kimia’s contention that injury to the Australian industry that has occurred during the investigation period 1 April 2020 to 31 March 2021 has been due to factors other than the export of its A4 copy paper from Indonesia to Australia. OAP rejects these baseless claims. Tjiwi Kimia acknowledges that the demand for A4 copy paper during the investigation period had waned, and that there had been structural changes to the number of parties involved in the distribution channel. The practical implications of this, is that the Australian market for A4 copy paper is a lot smaller than the market in 2015 (when Tjiwi Kimia was previously involved in an Anti-Dumping investigation) and that the dumping has a greater impact in a smaller market. This fact has been noted by the Commission in review 547 where it stated: *“The Commission considers the declining size of the Australian market contributes to increased price competition and competition for market share”*¹

OAP rejects the assertions that the over-capacity of the Australian industry can be a cause of injury. Rather, it is the Australian industry’s inability to displace imports that are at dumped prices that has caused the underutilisation of the industry’s production capacity. The reduction in export volumes to the USA occurred more than six years ago and was a factor considered by the Commission in Investigation 341. Further, OAP has since directed exports to alternative markets in lieu of the US trade. The Commission concluded in Investigation 341 that the Australian industry had suffered material injury as a result of dumping.

Tjiwi Kimia’s claim that OAP’s parent company Nippon Paper Industries Limited (“Nippon Paper”) somehow influences “import competition’ due to Nippon Paper’s 30 per cent interest in Phoenix Pulp and Paper Corporation is purely speculative and is not supported by any evidence.

Similarly, the claimed impact of structural changes in the distribution channel for paper products in Australia (reduction in number of channel participants) is also speculative and not supported by evidence.

Tjiwi Kimia further contends that OAP is experiencing injury from non-dumped imports. Tjiwi Kimia has failed to demonstrate the volume of the non-dumped imports, where these are sold into the Australian market (if at all) and whether the non-dumped imports have contributed to lost sales by OAP. These suggestions are, again, mere speculation.

¹ Final Report, Review 547, Section 5.3.7 page 58.

The baseless statements attacking OAP's management are also unfounded and lack supporting evidence. OAP has continued to reinvest in its production facilities in Australia and is competitive with fairly priced imports of A4 copy paper. Tjiwi Kimia has not offered evidence in support of its baseless claims.

IV. Minister's discretion to impose measures

OAP does not disagree that the imposition of Anti-Dumping measures is at the Minister's discretion. Australia's Anti-Dumping System has an in-built mechanism (i.e. the lesser duty rule) to ensure that the measures applied by the Minister are sufficient to remove injury from dumping only. Tjiwi Kimia's claims about the Australian industry benefiting from profitability in excess of the level of measures applied has not been evident in the A4 copy paper industry where industry profit fell further following the imposition of measures post Investigation 341 and remained suppressed after Investigation 463.

Tjiwi Kimia's claims about an "increase in wealth" for the Australian industry is not borne out by the facts nor is relevant to this investigation. The submission goes on to include an array of speculative comments about the flow of wealth to parties and other sectors of the economy in a very broad and theoretical manner. Tjiwi Kimia has not supported any of these comments/assertions with evidence to back these claims, nor have they pointed to any requirement of the Commission to consider these matters.

Finally, Tjiwi Kimia debates the costs and benefits of applying Anti-Dumping measures on the broader Australian economy. Tjiwi Kimia is seeking to insert a national interest provision in the current investigation which is clearly outside the Commission's remit for this investigation in an attempt to divert the Commission away from the key consideration – Tjiwi Kimia's reluctance to complete an exporter questionnaire within the required timeframe for the purpose of this investigation.

V. Conclusion

Tjiwi Kimia's failure to complete an exporter questionnaire within the extended timeframe requires the Commissioner to rule the Indonesian exporter as "uncooperative" in the current investigation.

Tjiwi Kimia's 6 August 2021 submission is an attempt by the Indonesian exporter to deflect its non-cooperation with the Commission on to matters that are relevant for consideration by the Commissioner under subsection 269TAE(3) of the *Customs Act 1901*. However, the other factors raised by Tjiwi Kimia are not supported with any evidence demonstrating that one or more of the claims is material in nature, and therefore cannot be relied upon. Tjiwi Kimia's assertions therefore must be considered unsubstantiated and disregarded.

If you have any questions concerning this submission, please do not hesitate to contact me on 0425 619 677.

Yours sincerely



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