

MinterEllison

9 August 2021

BY EMAIL – <investigations@adcommission.gov.au>

The Commissioner
C/- Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Received 9 August 2021

Dear Commissioner

Continuation Inquiry 588 – A4 Copy Paper exported from China by UPM Asia Pacific Pte Ltd (UPM-AP)

We represent UPM AP and associated UPM entities in relation to your current proposal to inquire whether the dumping measures applying to the above goods should be continued for a further five years. We make these submissions in response to the publication by you on 2 July 2021 of Anti-Dumping Notice No. 2021/082 (**Notice**) and the associated application for the continuation of dumping measures (**application**) dated 7 June 2021¹.

As you would be aware there is an obligation on a person giving information to a Commonwealth entity in compliance or purported compliance with a law of the Commonwealth to ensure that the submitted information does not omit any matter without which the information is misleading. In the context of the present inquiry there is also a further obligation on an applicant for the continuation of dumping measures to provide such information as the prescribed application form² requires

We submit that the application omits a matter that has caused you to be misled and, in breach of s269ZHC(1)(c) of *the Customs Act 1901 (Act)*, does not contain certain information required by the form.

Specifically, the application of 7 June 2021 fails to inform you that in April 2021 the applicant was successful in replacing imports by securing a long term contract to supply Australia's largest reseller of A4 copy paper with locally produced product. Based on published estimates of the size of the Australian market, our client estimates that as a result of this new contract the market share of the Australian industry is about to increase from around 75% to over 90%. This information, if made available to you, would clearly have been a relevant factor in your consideration under s269ZHD of the Act to reject or accept the application.

The requirements for a valid application in a form approved by you for continuation of anti-dumping measures are clearly expressed in Division 6A of the Act. and include the requirement that the application must contain such information as the form requires. Relevant to the present matter section 4 of the approved form requires that:

Applicants must provide evidence addressing whether, in the absence of measures, dumped or subsidised imports would cause material injury to the local industry producing like goods.

Elaborating on that requirement, section 4 of the *Guidelines for Preparing an Application for Continuation of Measures* published by the Commission states that:

¹ EPR 588. Item 1

² Form B600

Public Record

Applicants must provide evidence that in the absence of the measures, the dumped or subsidised goods would cause, or be likely to cause, material injury to the Australian industry producing the goods in question.

At page 19 of the application the only evidence purportedly relating to an assessment of the likelihood of continuing or recurring material injury concerns a summary of exports in prior years and there is no evidence advanced to support the essential requirement of s269ZHD(2)(b) that ... *there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures ... might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.* We stress that this requirement cannot be satisfied by mere assertion; there must appear to be reasonable grounds to support the claim and no such grounds have been advanced in the Application.

We submit that the application omits a matter without which the information required by the form is incomplete and misleading. As a result we contend that your finding that the application contains ... *such information as the form requires*ⁱ...and therefore complies with s269ZHC(1)(c) of the Act is, inadvertently, incorrect and must be set aside. In a situation where you have unwittingly reached certain erroneous conclusions based on an incomplete and misleading application, we maintain that, using the power conferred on you by s.33(3) of the *Acts Interpretation Act 1901*, you must rescind the Notice and abandon the inquiry.

Alternatively, if you do not rescind the notice, we submit that because the suppressed information now available to you is central to any informed consideration of whether, in the absence of measures, dumped goods would cause, or be likely to cause, material injury there are no reasonable grounds on which you could be satisfied under s269ZHF(2) that ... *the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measure is intended to prevent.* Accordingly we request that you proceed as promptly as the Division 6A process allows to recommend to the Minister that he decide not to secure the continuation of the anti-dumping measures.

Yours faithfully
MinterEllison



John Cosgrave
Director, Trade Measures

Contact: John Cosgrave T: +61 419 254 974
john.cosgrave@minterellison.com
Partner: Michael Brennan T: +61 2 6225 3043
OUR REF: MRB/JPC 778010852

ⁱ Notice: Section 5