

MinterEllison

3 September 2021

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

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

Received 3 September 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 this submission in reply to the publication on 24 August 2021 of a submission by Paper Australia Pty Ltd (**OAP**)¹ responding to our earlier submission to you published on 10 August 2021².

Irrelevant Considerations

The central element of that earlier submission was that OAP's success in securing a long term contract to supply Officeworks, if revealed in its application, would have been a relevant factor in your consideration under s269ZHD of the Act to reject or accept the application. OAP's response does not engage with this issue but instead focuses on an irrelevant consideration of an "inquiry period" in the following terms:

It has been made clear that the negotiations between relevant parties were confidential and ongoing at the time of drafting OAP's application for the continuation of measures, and took place outside of the inquiry period and related to a period of supply which was far removed from the inquiry period.

OAP rejects in the strongest terms the assertions made by UPM that it omitted any information relating to the inquiry period in its application for the continuation of measures. OAP seeks to correct UPM's incorrect assertions relating to future sales by OAP and claimed market share holdings as not being supported by reliable information.³

There is no requirement for the specification of an inquiry period in Division 6A of the *Customs Act 1901 (Act)*, in *Form B600* nor in the *Guidelines for Preparing an Application for Continuation of Measures*. As a matter of common sense historical export data providing information on past variable factors has to be limited to a time period when considering the likelihood of continuation or recurrence of dumping in the future. By contrast evidence relevant to consideration of the likelihood of the continuation or recurrence of material injury is to be assembled from the latest available information, unconstrained by any inquiry period used to assess variable factors.

That information was omitted from OAP's application.

¹ EPR No.5

² EPR No.4

³ EPR No.5 – p.3

Public Record

Attempting to rely on an informal inquiry period established for a different purpose cannot avoid the incontestable fact that OAP was aware that it had secured the Officeworks contract during the preparation of its application that was lodged on 7 June 2021. At a meeting on 7 April 2021 UPM was advised by Officeworks that it was moving its copy paper supply to OAP and our client received formal notification of that decision by letter dated 15 April 2021.

The other excuse proffered by OAP for its failure to disclose the contract with Officeworks is that the negotiations were confidential. However a claim of confidentiality under s269ZJ of the Act was obviously available and would undoubtedly have been accepted by the Commission.

Other Matters

Other matters raised in OAP's submission require brief attention:

- The submission asserts that the breached law is 'unnamed' but then proceeds, as UPM did, to name it as s269ZHC(1)(c) of the Act
- The applicant alleges that UPM has omitted "inconvenient and unsupportive" information but fails to identify any such information. By contrast the public record demonstrates that OAP chose to omit inconvenient and unsupportive information from its application for a continuation inquiry.
- OAP contends that its claimed compliance with the law is supported by the Commission's initiation of the inquiry when it is that action, taken without benefit of all relevant information, that is at issue.
- The claim that prior to the conclusion of negotiations between OAP and Officeworks the drafters of the application were unaware of the new contract may be correct but they would have had approximately two months after conclusion to include the information in the draft application.
- The date for commencement of supply to Officeworks later this year does not absolve OAP from its responsibility to disclose in the application its new major contract of supply that patently impacts on a robust assessment of the likelihood of a continuation or recurrence of material injury.
- UPM has based its market share claims on ABS and Industry Edge data that estimates the Australian market in 2020 for UCWF cut reams at 176.7 kt with local production supplying 75% (133.2 kt) and imports accounting for 25% (43.5 kt). By contrast OAP estimates that the total Australian market in 2020 was only about 130 kt⁴ and that dumped exports accounted for 31.2 kt⁶. If the OAP numbers are correct UPM estimates that a very substantial proportion of dumped exports are to be replaced by local production and OAP's market share will approach 95%.
- Either way, for the foreseeable future, OAP has made a quantum leap forward in its domination of the Australian market for A4 copy paper.

Conclusion

In summary UPM submits that:

- the informal inquiry period introduced by the Commission for the purpose of assessing variable factors does not apply to the assembly of information relevant to consideration of the likelihood of future material injury

⁴ EPR No.5 – p2 – (58kt = 45% of the market)

⁵ EPR No.1 – p.12 – (650kt/5)

⁶ EPR No.1 – p.14

Public Record

- OAP's application did not include information required by *Form B600* and, absent access to that critical information, your decision to accept the application must be rescinded.
- Alternatively, we request that you promptly place on the public a statement of essential facts indicating that you propose to recommend to the Minister that he decide not to continue the anti-dumping measures concerned.

Yours faithfully
MinterEllison

A handwritten signature in black ink, appearing to read 'John Cosgrave', with a stylized flourish at the end.

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