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Date: 6 September 2021

By Email

Dr Bradley Armstrong PSM
Anti-Dumping Commissioner
Anti-Dumping Commission
Melbourne VIC 3000

Received: 7 September 2021

Dear Commissioner,

RE: Continuation Inquiry No. 588 – Exports of A4 Copy Paper from the Republic of Indonesia – Submission – Australian Paper Application

As you would be aware, I act for APRIL Far East (Malaysia) Sdn. Bhd and PT Riau Andalan Kertas (**RAK**) (collectively, **APRIL**), who produce and export A4 Copy Paper from Indonesia to Australia.

I refer to Anti-Dumping Notice (ADN) No. 2021/082 (**ADN 2021/82**) notifying the initiation of an inquiry (**Inquiry 588**) into the continued imposition of, amongst others, anti-dumping duties on exports of A4 Copy Paper from the Federative Republic of Brazil (**Brazil**), the People's Republic of China (**China**), the Republic of Indonesia (**Indonesia**) and the Kingdom of Thailand (**Thailand**).

On behalf of my clients, the following submissions and observations are made in relation to this inquiry and, specifically, the application made by Paper Australia Pty Ltd (**Australian Paper**) for the continuation of the anti-dumping measures applying to exports of A4 Copy Paper from the countries in question(**Application**).

1. Scope of continuation inquiry

As you would be aware, the purpose of a continuation inquiry is to ascertain whether existing anti-dumping measures due to expire, in this case, on 19 April 2022, should be continued for a further five (5) years.

As noted in ADN No. 2021/082, the test that had to be satisfied in your not rejecting the Application was, amongst other matters:

“whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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”. (section 269ZHD(2) of the Customs Act 1901)

This is similar to the statutory requirement in section 269ZHF(2) of the *Customs Act 1901* governing your recommendation to the Minister for Industry, Science and Technology (**Minister**) as to whether the anti-dumping measures should be continued. That statutory provision expressly prohibits you from recommending the continuation of the anti-dumping measures unless you are satisfied that:

“the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent”. (section 269ZHF(2) of the *Customs Act 1901*)

For the reasons set out below, it is submitted that the Application provided neither the grounds nor supporting evidence for Australian Paper’s assertion that the expiration of the anti-dumping measures in question might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that these measures are intended to prevent and that such measures should therefore be continued.

2. Legal test for the phrases “... would lead, or would be likely to lead ...” in statutory the provision – Siam Polyethylene

In *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No. 2)* [2009] FCA 838 (**Siam Polyethylene**) the Federal Court considered the above-mentioned statutory provision for the continuation of anti-dumping measures and, specifically, the words “... would lead, or would be likely to lead”.

His Honour, Rares J., determined that:

- (i) there is a distinction between the phrases ‘*would lead*’ and ‘*would be likely to lead*’ with the former being a prediction of something definite (‘*would lead*’) as opposed to something less definite (‘*would be likely to lead*’); and
- (ii) the word ‘*likely*’ in the phrase ‘*would be likely to lead*’ used in section 269ZHF(2) of the *Customs Act 1901* should be interpreted as meaning more probable than not (see paras 48 & 49).

Consequently, Australian Paper in its Application is required to have provided grounds supported by evidence that the expiration of the anti-dumping measures on 19 April 2022 would lead to ‘... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’, or that the expiration of the measures would more probably than not (that is, likely) lead to ‘... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’.

Australian Paper in its Application failed to satisfy these requirements. No grounds supported by evidence were advanced by Australian Paper in the Application as to how the expiration of the measures on 19 April 2022 would lead to ‘... a continuation of, or a

recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent' or would more probably than not lead to that consequence. Hence, the Application should have been rejected.

3. Legal test for the phrase 'material injury that the anti-dumping measure is intended to prevent'

As you also would be aware, the objective of imposing anti-dumping measures is not to prevent 'dumping'. 'Dumping' of itself is unobjectionable, nor a ground for the imposition of anti-dumping measures. 'Dumping' is a ground for imposing anti-dumping measures only when it causes or threatens to cause material injury to a domestic industry in the importing country producing 'like goods'. The objective in imposing anti-dumping measures, therefore, is to offset (i.e., prevent) material injury, if any, and only to the extent caused or threatened to be caused by 'dumping'.

Consequently, the statutory test in section 269ZHF(2) of the *Customs Act 1901* requires not only that the expiration of the anti-dumping measures would lead, or would likely lead, to a continuation or recurrence of 'dumping' but also that such dumping would lead, or would likely lead, to the continuation or recurrence of the material injury being so caused or threatened that the measures are intended to prevent.

In this context, while it was found in Investigation 341 that the Australian industry producing 'like goods' had incurred material injury during the relevant injury period caused by 'dumping' of the exports of A4 Copy Paper in question, there has been no finding of fact since then that:

- (i) the Australian industry has incurred any injury, let alone injury caused or threatened to be caused by exports of the A4 Copy Paper in question being exported to Australia at 'dumped' export prices, since the measures were imposed ; and
- (ii) the anti-dumping measures have or have not been effective in preventing the material injury that they are intended to prevent following their imposition and, if not, when they ceased to be so effective and why.

Australian Paper, in Review 551, did not assert, or provide any evidence, that it was suffering material injury caused by exports of the A4 Copy Paper in question at 'dumped' export prices due to changes in the variable factors, nor was this considered in that review. This gives rise to questions as to why Australian Paper sought a review of the anti-dumping measures in such circumstances. That is, why apply for an alteration to the anti-dumping measures based upon changes to the variable factors if the existing measures were effective in preventing the material injury they were intended to prevent. Further, why would the anti-dumping measures require alteration if there was no evidence that those measures had ceased to be effective in achieving their intended objective and Australian Paper was incurring material injury as a result?

In the absence of evidence to the contrary, it is reasonable to assume that either the existing anti-dumping measures were and remain effective in preventing the material injury they were intended to prevent or that exports of A4 Copy Paper in question had ceased to cause injury from 'dumping'.

As it is not known whether the Australian domestic industry is incurring material injury at this time and, if it is, what is or may be causing that injury, it is not known and cannot be known at this time whether the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the measures are intended to prevent.

While Australian Paper may have incurred material injury five (5) years ago from the injurious effects of exports of the A4 Copy Paper in question, as was determined in Investigation 341, it does not follow, whether logically or legally, that Australian Paper would now incur material injury from the injurious effects of exports of the A4 Copy Paper in question at 'dumped' export prices if the measures were allowed to expire. The mere expiration of the measures would not necessarily lead or be likely to lead to a recurrence of 'dumping' but, even if it did, it does not follow automatically that this would or could cause material injury to the Australian industry.¹

This is because, amongst other things, there have been changes in the Australian market since the measures were originally imposed, including:

- Australian Paper's increasing excess production of A4 Copy Paper in a progressively declining Australian A4 Copy Paper market with the acknowledged inability of Australian Paper to obtain the premium prices in export markets that it obtains in the high-priced Australian market as you found in Review 551;
- any injury that Australian Paper may be incurring clearly was due to its approximately 50% excess production capacity with the associated high cost to make and sell, as compared with such costs in other jurisdictions, as you determined in Review 551, and Australian Paper's consequent inability to compete with and obtain the premium prices in the global A4 Copy Paper export market;
- since the original investigation, Australian Paper's market share has increased to not less than 85% of the Australian A4 Copy Paper market due in part to its acquisition of major Australian distributors of A4 Copy Paper such as BJ Ball and Edward Dunlop and, as was submitted recently by UPM Asia Pacific Pte. Ltd. in a submission in this inquiry, Australian Paper's market share may have grown further to 90%, and consideration must be given to the consequent market power that such market share confers, especially in a high-priced market protected by tariffs;
- any injury incurred by Australian Paper caused by exports of the A4 Copy Paper here in question can only be due to the un-competitiveness of Australian Paper in the Australian A4 Copy Paper market, being a market unaffected by dumping due to the

¹ Refer to the Ministerial Direction on Material Injury (copy **attached**).

operation of the existing anti-dumping measures and consequent payment of interim dumping duty on such exports on importation at the combined fixed and variable rate of duty, which would or should address any change in the variable factors since the imposition of the measures;

- the imposition anti-dumping measures on exports of A4 Copy Paper from countries other than the countries here in question; and
- changes in the global prices of inputs to manufacture such as pulp and A4 Copy Paper prices as evidenced by reports by RISI, whose reports are regularly relied upon by the Commission and the consequent global prices of A4 Copy Paper.

These issues, which should have been addressed, were not addressed in Australian Paper's Application for the continuation of the anti-dumping measures and these omissions rendered the Application deficient and non-compliant. Such issues are required to be addressed in this continuation inquiry, including pursuant to section 269TAE(2A) of the *Customs Act 1901*.

It is unclear why you accepted Australian Paper's Application notwithstanding these deficiencies.

4. Additional Deficiencies in the Application

In addition, the Application is also deficient because it failed to set out the grounds and the supporting evidence showing why the expiration of the anti-dumping measures on 19 April 2022 would lead, or would more probably than not lead, to '*... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent*'.

In its response to Question 4(i) of the Application, Australian Paper merely asserted certain claims, unsupported by any evidence, as the basis for the continuation of the anti-dumping measures. We reproduce below those bare assertions with our corresponding comments on each:

- (a) **(measures in other jurisdictions)**: reference was made to the imposition of anti-dumping measures on exports of A4 Copy Paper from the Subject Countries in other jurisdictions, notably:
- (i) in Mexico in 2013 against Brazilian exports, which was subsequently renewed,
 - (ii) in the USA in 2016 against Australian, Brazilian, Indonesian, Chinese, and Portuguese exports, which were subsequently extended, and
 - (iii) in Pakistan in 2018 against uncoated printing/writing papers exported from Brazil, China, Japan, Indonesia, and Thailand.

However, Australian Paper provided no explanation as to how the imposition of such measures in those countries in any way demonstrated that the expiration of the anti-dumping measures in Australia would lead, or would more probably than not lead, to '*...*

a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’.

No explanation was given as to how the imposition of measures in other countries at various prior periods in time in respect of exports from a number of the countries here in question by unspecified exporters are relevant to satisfying the legal test for the continuation of the anti-dumping measures.

Australian Paper also did not mention any countries to which A4 Copy Paper was exported from the countries here in question and in which no anti-dumping measures had been imposed. If it is relevant to cite the countries in which anti-dumping measures have been imposed on like goods exported from the countries the subject of this inquiry, it should be equally relevant to cite the countries in which like goods were exported from those countries and in which no anti-dumping measures have been imposed.

Australian Paper also did not mention any new instance of imposition of anti-dumping measures in any other country since such measures were imposed in the countries mentioned above. that is, since 2018. While past action is not determinative of future action, that no anti-dumping measure has been imposed in any other jurisdiction since 2018 is, we submit, a better indicator and more contemporaneous evidence of future performance than the three (3) historical instances referred to by Australian Paper in the Application.

Finally, as you would be aware, past performance in unrelated jurisdictions, is not an adequate or proper indicator of future performance in relation to exports from the countries the subject of this inquiry;

- (b) (**Review 551**): Australian Paper referred to the finding in Review 551 that the variable factors comprised in the anti-dumping measures had changed since the measures were first imposed but failed to explain why or how that established that removal of the anti-dumping measures in Australia would lead, or would more probably than not lead, to ‘... *a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’.*

A change in the variable factors in and of itself has no relevance. It is only relevant if it results in dumping and that dumping causes material injury to the domestic industry. However, the report for Review 551 (**Report 551**) contained no evidence that a change in the variable factors caused or threatened to cause material injury to the Australian industry or, indeed, that the Australian industry had suffered any injury during the review period. Nor did Australian Paper make any such claim in its application for that review, which, as noted earlier above, raises the question why Australian Paper applied for that review when the anti-dumping measures were presumably achieving their intended purpose. At least there was no evidence or claim to the contrary.

No argument was put forth nor explanation provided in the Application as to how the limited findings in Review 551 in any way assists Australian Paper in showing that removal of the anti-dumping measures in Australia would lead, or would more probably than not lead, to '*... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent*'.

Further, if Australian Paper has been incurring any material injury from exports of A4 Copy Paper from the countries in question since the imposition of measures in April 2017, then that is evidence that Australian Paper is uncompetitive in a competitive Australian A4 Copy Paper market where it enjoys a material advantage from its market power derived from its near monopoly market share of the Australia A4 Copy Paper market and control over distribution channels in that market;

- (b) (**excess production capacity**): Australian Paper in its Application claimed that the production capacity of some producers of A4 Copy Paper in the countries the subject of this inquiry during the review period individually and collectively exceed(s) the size of the Australian A4 Copy Paper market, which had been progressively shrinking year-on-year to around 134,000 tpa in 2020.

While interesting, the relevance of the production capacity of a number of producers in the countries in question is unclear. There was no estimate of the 'excess' production capacity that actually existed in each of the countries the subject of this inquiry, if any. In any event, while A4 Copy Paper had continued to be exported from each of these countries, there was no evidence of a 'flood' of exports from those countries.

Further, Australian Paper made no argument drawing the connection between the production capacity of those producers and the legal test that has to be satisfied for the continuation of the anti-dumping measures. Australian Paper also gave no explanation as to why export volumes from the countries the subject of this inquiry had not been significantly greater if, indeed, there existed excess production capacity, especially if exporters in those countries were continuing to export to Australia notwithstanding the anti-dumping measures.

Rather, arguably Australian Paper, with an at least 85% market share, or, as one interested party has submitted, 90% market share, and control over distribution networks in Australia, has itself effectively precluded greater export volumes from entering the Australian A4 Copy Paper market due to its excess production of A4 Copy Paper;

More importantly, not mentioned in the Application is Australian Paper's own excess production capacity. With a production capacity of 200,000 tpa and an Australian market of approximately 134,000 tpa in 2020, and with imports holding between 30,000 to 40,000 tpa according to Australian Paper, this leaves Australian Paper with approximately

100,000 tpa of excess capacity. Effectively, Australian Paper has an excess production capacity of 50% or more. Even if Australian Paper were to command 100% of the Australian A4 Copy Paper market, it still would have excess production capacity of approximately 70,000 tpa. Further, for its own internal reasons, Australian Paper produces A4 Copy Paper at or close to its maximum capacity of, 200,000 tpa, resulting in at least 100,000 tpa of excess products that it must sell offshore at less attractive prices than are available in Australia.

As was acknowledged by Australian Paper, returns on its investment on its A4 Copy Paper plant and equipment are low due to its excess production and less favourable returns on exports. This suggests that Australian Paper would likely seek to sell as much of its excess capacity in the Australian market as it can where, as found in Review 551, prices are substantially higher than in other countries.

We submit that continuation of the anti-dumping measures would simply 'prop up' Australian Paper's economic performance through artificially increased prices in the Australian market. As the dominant party in the Australian A4 Copy Paper market, this would benefit only Australian Paper with Australian businesses and consumers continuing to pay 'artificially' inflated higher prices as a result when compared with prices in other jurisdictions, as you had determined in Review 551.

Continuation of the anti-dumping measures would simply 'prop-up' an uncompetitive Australian industry in its domestic market because it had miscalculated the progressive decline in the size of the Australian market and its inability to obtain more remunerative returns in export markets where it is compelled to sell its excess production.

Consequently, the Application does not address what effect Australian Paper's excess production capacity has on its economic performance, as well as its own sales of A4 Copy Paper in export markets at significantly lower prices than it obtains in the Australian market. These issues and the combined effect of at least 50% of excess production in a progressively declining Australian market with an associated high cost to make and sell, which excess production Australian Paper can only sell into global export markets at significantly less prices than it can obtain in the protected, high-priced Australian market must be thoroughly examined. The foregoing factors are, we would submit, the operative cause of any injury being caused to Australian Paper;

- (c) **(economic performance of Australian Paper)**: the data in the Application regarding Australian Paper's economic performance shows that it incurred no injury in the period leading up to 2020 as sales volumes and revenues were both above those in the base year, even though it had excess production in those years. It was only in 2020 that Australian Paper's economic performance declined. Inquiry must be made into why Australian Paper's economic performance declined only in 2020 and not beforehand.

You must also investigate why Australian Paper, with its significant market power, did not or was reluctant to increase its prices in the Australian market when exporters from the

countries the subject of this inquiry increased their export prices, as was acknowledged by Australian Paper in its Application. Exporters from the countries the subject of this inquiry increased their export prices, but Australian Paper did not do so. Why not?

It was found in Report 551 that APRIL was able to compete in the Australian market at prices higher than all other market participants, including those of Australian Paper, notwithstanding such Australian market being 'price sensitive'. The absence of price undercutting could not therefore have been due to price suppression from 'dumped' imports given the prevalence of existing anti-dumping measures to prevent such injurious effect.

Why then, in a market unaffected by dumping due to the operation of anti-dumping measures where the Australian industry possessed significant market power through its near monopoly market share, were exporters able to increase their export prices and continue to compete in that market but Australian Paper was seemingly unable to do so. In electing not to increase its prices, was Australian Paper seeking to suppress prices in the Australian A4 Copy Paper market?

(d) **(confidential information)**: in Section 4(a)(iii) of the Application, Australian Paper stated that:

"All of [Australian Paper's] confidential financial appendices for 2020 have been submitted with this application, and updated appendices for the first quarter 2021 will be submitted to the Commission once they have been completed." (square brackets added) (at page 15)

It is unclear what 'financial appendices' were submitted by Australian Paper, nor why they were claimed to be 'confidential'. For example, was it a copy of the financial statements filed by Australian Paper with the Australian Securities and Investments Commission (**ASIC**) for financial year 2020 financial year (copy **attached**) or extracts therefrom? If so, on what basis could such financial statements be claimed to be confidential when they are publicly available?

When regard is had to the financial statements Australian Paper filed with ASIC for financial years 2019 and 2020 (copies **attached**) and, in particular, the income statements and segment reporting, it is apparent that, while sales revenues increased marginally year-on-year, Australian Paper's cost to sell increased significantly more. For example, in financial year 2019, sales revenues increased by approximately \$6 million from the previous year but its cost to sell increased by over double that amount by \$15 million. Obviously, such an increase in costs to sell cannot be attributed to 'dumped' imports.

Further, it cannot be claimed that sales revenue could not be increased due to the price and volume effects of the presence of dumped exports in the Australian A4 Copy Paper market because there was no such presence. The Australian market was unaffected by

‘dumping’, at least not by exports from the countries the subject of this inquiry. This is because of the existence of the anti-dumping measures, which precluded the injurious effects of dumping from such exports. There is no evidence that the anti-dumping measures had ceased to be effective in preventing the injury that they are intended to prevent.

Rather, given the decline in the size of the Australian market, Australian Paper’s excess production and the less than favourable returns on sales of excess production into export markets, it is evident that the cause of Australian Paper’s reduced economic performance is not import competition and that such reduced economic performance is self-inflicted.

In short, there is no ground set out in the Application supported by evidence that the expiration of the anti-dumping measures *might lead, or might likely lead,* to Australian Paper incurring material injury that these measures were intended to prevent.

4. **Observations on ADN 2021/082**

At Section 6 of ADN 2021/08, you set out in summary certain of Australian Paper’s claims in the Application, which I have extracted below. I have added my comments on those claims in **red font** below.

- exporters of the goods from the countries the subject of this inquiry have maintained distribution networks in the Australian market and exports have continued since the imposition of the measures *[We query the relevance of this claim as showing that removal of the anti-dumping measures would lead, or would more probably than not, lead to ‘... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’. The nature and extent of such ‘distribution networks’, if they can be correctly characterized as such as opposed to ‘customers’, is not identified, nor compared with the extensive ‘distribution networks’ held by Australian Paper at all levels in the Australian A4 Copy Paper market. Further, the maintenance of ‘distribution networks’ (i.e., customers) in a market is consistent with exporters maintaining a commercial interest in the market, but it does not follow that this would or could lead to a continuation or recurrence of dumping causing material injury or that it would be in the commercial interests of exporters for this to occur..];*
- the goods are dumped at significantly greater margins than the margins established in the original investigation period (2015), noting the Commission’s findings in the Statement of Essential Facts for Review 551, and that domestic selling prices have increased in the 12-month period ended 31 December 2020 compared with the domestic selling prices in 2015 *[Again, we query the relevance of this claim to showing that removal of the anti-dumping measures would lead, or would more probably than not, lead to ‘... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent’. Anti-dumping measures are imposed to prevent material injury caused by dumping, not to prevent dumping per se.*

Review 551 was a review of the variable factors. It did not inquire into injury and causation. It, therefore, made no findings on whether any changes in the variable factors resulting in dumping caused material injury during the review period. In the absence of any findings that any changes in the variable factors resulting in dumping caused material injury, it can only be assumed that the then existing measures were effective. Any dumping resulting from a change in the variable factors was not causing material injury whether because of the measures or regardless of those measures. In any event, the findings in Report 551 do not support the Application.];

- following the imposition of measures, export prices of the goods increased and peaked in September 2019, before declining significantly in 2020 as exporters ‘aggressively’ sought to maintain or increase market share in the Australian market *[Use of emotive terms such as ‘aggressively’, in the absence of evidence, reflects more on the entity using the term than those at whom it is directed and must be disregarded in any event. This does not satisfy the statutory test set out above. Furthermore, what is not addressed is Australian Paper’s ‘aggressive’ increase in market share to at least 85% during this period and its apparent poor economic performance in terms of profits and profitability despite increased sales volumes and values over the period. That economic performance would seem to be due to other economic factors unrelated to import competition from the GUC otherwise it would be reflected in the sales volumes and values. This raises the question as to whether the culprit could be Australian Paper’s excess production capacity.];*
- Australian Paper’s domestic sales of A4 copy paper increased in 2017 and 2018 due to the imposition of the anti-dumping measures in April 2017 but decreased in 2020 due to the impact of the COVID-19 pandemic *[No evidence was put forth to show that increased sales in 2017 and 2018 were due to the imposition of the anti-dumping measures. This is mere speculation by Australian Paper. Also, it fails to take into account Australian Paper’s significant acquisitions of distributors in the Australian A4 Copy Paper market during this period, resulting in its increased sales volumes and market share as is self-evident. Further, there has been no inquiry as to the effectiveness of the anti-dumping measure, whether when imposed or subsequently. Consequently, the effectiveness or otherwise of the anti-dumping measures is mere speculation. In addition, as stated above, this claim does not address the statutory test required of an application for the continuation of anti-dumping measures, nor is its relevance otherwise explained.];*
- a contracting A4 copy paper market creates a situation where market share can only be retained or increased by ‘winning’ sales volume at competitive prices; therefore, the contraction in apparent consumption in 2020 increased the importance of volume retention and has further increased competition in terms of pricing *[This claim is mere speculation unsupported by evidence and is factually incorrect. There is a variety of methods whereby increased sales volumes and values can be obtained, including in a contracting market as anyone experienced in marketing will advise. Further, it is arguable that such a situation would apply equally to Australian Paper, especially given its excess production capacity for which it can obtain only lower prices in export markets.*

- And, again, this claim does not address the statutory test required of an application for the continuation of anti-dumping measures, nor is its relevance otherwise explained.];*
- the low prices observed in 2020 demonstrate the exporters' willingness to undercut prices in the Australian market, and that without the continuation of the anti-dumping measures, injury will recur in the form of loss of sales volume and further 'price erosion' *[No evidence is provided of the factual reasons for the low prices observed in 2020. Also, no evidence is provided to support Australian Paper's claim that exporters have undercut prices in the Australian market'. What is more, this claim is diametrically opposed to the Commission's findings in Report 551, especially in relation to exports from Indonesia, that such exports did not undercut the prices of any participant in the Australian A4 Copy Paper market, including those of Australian Paper. Furthermore, the findings in Report 551 also show that exporters from the countries the subject of this inquiry increased their prices due to increased costs of inputs to manufacture. Finally, the relevance of this claim in establishing that expiration of the anti-dumping measures would lead, or would more probably than not, lead to '... a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent' can nowhere be found in the Application];* and
 - the continued exportation of the dumped goods, as well as the maintained distribution networks and the regional overcapacity, point to the fact that removal of the measures will impact the Australian industry 'demonstrably' *[What is meant by "impact the Australian industry 'demonstrably'"? As with the other claims made by Australian Paper that have been reproduced above, Australian Paper has made a bare claim without providing supporting evidence. The statement also reveals a fundamental misconception of the nature and scope of anti-dumping measures. Anti-dumping measures are imposed to prevent material injury to the domestic industry that has been caused by dumping and only to that extent. They are not imposed to prevent dumping per se, which is unobjectionable and consistent with WTO rules and Australian policy. 'Price discrimination' is neither unlawful under the Competition and Consumer Act 2010 (Cth), nor inconsistent with the principle of 'fair trade'. As a matter of ordinary business practice, businesses in Australia engage in price discrimination and legitimately so. As indicated by the references in the Application to its different price lists for different customers, it would appear that Australian Paper itself actively engages in price discrimination. Exports are no different unless the price discrimination (i.e., dumping) causes material injury, just as domestic price discrimination is unobjectionable unless it infringes a prohibition against anti-competitive conduct in the Competition and Consumer Act 2010 (Cth), such as the prohibition in section 46 of that Act against taking advantage of market power to substantially lessen competition.]*

Having regard to these claims and to other information identified in ADN 2021/082, you stated at Section 8 of ADN 2021/082 that:

"I am satisfied that, in accordance with section 269ZHD(2)(b), 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”.

This conclusion is surprising for the reasons stated above and further elaborated below.

In line with the statutory test that must be satisfied for an application of this nature, the following are critical questions:

- (i) were the anti-dumping measures effective in preventing the injurious effects of dumping since imposition and, if so, was this supported by evidence; and
- (ii) if the anti-dumping measures have not been effective or have ceased to be effective, then when, why and how did this occur; and
- (iii) if the anti-dumping measures have not been effective or have ceased to be effective, then how will their expiry make any difference?

These questions were not addressed in the Application or in ADN 2021/082.

In the absence of an inquiry into whether and to what extent the imposition of the anti-dumping measures was effective in preventing material injury to the domestic industry that was shown to be caused by dumping and have continued to remain effective, it is not possible to determine that the expiration of these measures would lead, or be likely to lead, to a continuation or recurrence of material injury caused by the injurious effects of dumping that the measures are intended to prevent. Any claim to the contrary is a simple assertion unsupported by evidence that must be disregarded. In such circumstances, the anti-dumping measures must be allowed to expire in the interests of ‘fair trade’.

5. Miscellaneous - Omissions from the Application

In addition to what is raised above, it is evident that the Application does not mention or address findings in investigations and reviews that are not favourable to Australian Paper’s contention that the anti-dumping measures on exports of the subject goods from the subject countries ought to be continued. While not unexpected, nevertheless this must be taken into account in evaluating the credibility of Australian Paper’s claims.

For example in Review 551, it was found, supported by evidence, that Australian producers of A4 Copy Paper were at a comparative disadvantage when compared with producers and exporters in other countries such as in Indonesia due to higher costs of inputs to manufacture in Australia and the consequent higher prices in the Australian A4 Copy Paper market: refer Sections 4.6.1 to 4.6.3 of Report 551. There was no evidence that exporters from the countries the subject of this inquiry, especially from Indonesia, took advantage of their comparative advantage.

In a declining Australian A4 Copy Paper market where Australian Paper, the sole producer of A4 Copy Paper in Australia, is in a dominant and near-monopolistic position, it is evident that Australian Paper’s poor economic performance in 2020 had nothing to do with import competition, and an obvious way that Australian Paper can address its poor economic

performance is by reducing its excess production, reducing its high cost to make and sell of A4 Copy Paper in Australia, and thereby become globally competitive. Anti-dumping measures cannot remedy self-inflicted economic inefficiencies, nor should they.

Another relevant factor for your consideration is given the finding of fact that prices for A4 Copy Paper are higher in Australia than in other jurisdictions, no explanation has been given as to what is or could be the commercial imperative and/or justification for exporters in the countries the subject of this inquiry to export A4 Copy Paper to Australia at 'dumped' export prices, particularly in view of the finding that costs of inputs to manufacture are lower in the exporting countries than in Australia. For exporters in those countries to export A4 Copy Paper to Australia at export prices that are less than prices in their domestic markets would mean that such exporters are not availing themselves of the higher prices in the Australian A4 Copy Paper market. Why exporters in these countries that are rational actors in a normal functioning commercial market would be motivated to export A4 Copy Paper to Australia at lower prices than could be obtained in the higher priced Australian A4 Copy Paper market has not been explained or addressed in any investigation or review. That it would be commercially illogical for exporters to engage in such behaviour should be a relevant consideration for the Minister in determining whether or not to continue the anti-dumping measures for a further five (5) years or to allow them to expire.

Finally, having regard to the imposition of anti-dumping measures on exports of A4 Copy Paper in the countries mentioned above, one might query if Australian Paper's objective in applying for the continuation of the anti-dumping measures consists of the following:

'to obtain protection from import competition through protectionist antidumping tariffs enabling it to charge high 'rents' for its product in the Australian A4 Copy Paper market, as evidenced in Review 551, where it holds at least an 85% market share, presumably enabling it to recover its fixed costs in Australia and enabling it to export, as acknowledged, to less lucrative export markets, presumably at 'dumped' export prices as found for its exports to the USA, so as to recover its variable costs (i.e., marginal costing).'

This is antithetical to the intent and purpose of anti-dumping regimes, which was originally to preclude predatory pricing through dumped exports. It raises the question of whether the continuation of the measures would be in Australia's national interest, this too being a relevant consideration for you and the Minister to take into account in determining whether the measures should be continued or be allowed to expire². This will need to be addressed in this Inquiry 588.

² *Streamlining Australia's anti-dumping system, An effective anti-dumping and countervailing system for Australia'* (June 2011)

5. Conclusion

Having regard to the foregoing and to all other unsubstantiated claims made in the Application, APRIL submits that the Application should have been rejected.

If you are of a different view, it would be appreciated if you would please identify from the Application what were the “*reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates 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*” and the supporting evidence as they are not apparent in the Application nor in Sections 6 to 8 of ADN 2021/082, especially having regard to the requirements of the statutory test, including as elaborated on in *Siam Polyethylene*.

I would be grateful if this submission and your response may be placed on the electronic public file for the benefit of interested parties.

Please let me know if you have any questions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Percival', with a large, stylized initial 'A' at the start.

Andrew Percival

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