

Public File

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The Director
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Dear Sir/Madam

Continuation Inquiry 588 - Opal Australian Paper response to Jackaroo Paper Pty Ltd submissions

I. Introduction

Paper Australia Pty Ltd (hereafter referred to as “Opal Australian Paper”, or “OAP”) has reviewed recent interested party submissions in response to the initiation of Continuation Inquiry Notice (“Inquiry 588”) and responds to the Electronic Public Record (“EPR”) submissions No. 8 & 9 made on behalf of Jackaroo Paper Pty Ltd (“Jackaroo”) and published on 8 & 9 September 2021 respectively.

Opal Australian Paper rejects Jackaroo’s contention in its 8 September submission that the information available to the Anti-Dumping Commission (“the Commission”) provides grounds for the Commission to determine that existing measures applicable to exports from by International Paper do Brasil Ltda. (“IP Brasil”), are no longer warranted to prevent dumping and/or material injury from resuming.

Additionally OAP reiterates its position that it has to date adequately addressed the concerns raised again by Jackaroo in its 9 September submission which references the discredited claims made by UPM previously. OAP rejects in the strongest terms any claim that the Commission has initiated the inquiry without sufficient information; that the application must be rescinded; or the measures must be discontinued based on Jackaroo’s claims.

II. 8 September 2021 Submission

a. Volume of Imports

Jackaroo concedes that it is the primary importer of copy paper from Brazil, however it incorrectly deems these imports to have been immaterial over the past decade. This claim must be considered within the context of the Commission’s findings in Investigation 463 that following the imposition of Investigation 341 measures Jackaroo simply switched its supply source from IP Brasil to dumped supply IP Russia¹. The Commission correctly surmised the following:

“Since 2014, exports from International Paper’s Brazilian mill were the preferred supply source for importers, however when measures were imposed on dumped imports from Brazil in April 2017, supply changed to imports from Russia. Russian imports then became the preferred

¹ Final Report 463, Section 9.3.2.1, page 86.

supply source until securities (for this investigation) were imposed in May 2018, causing supply to return to Brazil at a higher export price”.

Instead of ceasing to import dumped goods, Jackaroo simply switched to a different source of dumped goods following the original measures, and then back again when measures were imposed on the new source. This intentional practice of shifting supply exclusively between dumped exports shows a complete disregard for the integrity of Australia’s domestic interests, and highlights their willingness to recommence supplying dumped goods if given the opportunity. It also evidences the fact that every single tonnes of copy paper supplied by Jackaroo into the Australian market since at least 2015 has been dumped – a fact that will not be lost on the Commission’s assessment on whether the dumping/injury is likely to recommence if measures are not continued.

Regarding Jackaroo’s claims that its import volumes since the original investigation have been immaterial and do not warrant the continuation of measures; OAP supports the Commission’s previous determination that the sustained exports to Australia by IP Brasil at dumped prices have contributed to the material injury incurred by OAP. The prevailing market dynamics described by the Commission in Investigation 463² confirmed that;

“the evidence before the Commission and advice from interested parties confirmed that there is significant pricing transparency of A4 copy paper, such that customers in various channels and segments of the market are aware of competitor prices and use these prices to negotiate with existing suppliers.”

The effect of this market dynamic led the Commission to note that³;

*“The Commission considers that the existence of the dumped prices influencing a price sensitive good, combined with price transparency in the Australian market, **regardless of volumes**, influenced Australian Paper’s pricing behaviour”* emphasis added.

Notwithstanding the materiality of the volume, subsection 269TAE(2C) of the Customs Act 1901 (“the Act”) states that the Commission may cumulatively assess the effects of imports when the margin of dumping or the amount of countervailable subsidy is not negligible; and the volume of imports from each country is not negligible; and cumulative assessment is appropriate in light of: the conditions of competition between the imported goods; and the conditions of competition between the imported goods and the like domestic goods.

The Commission therefore correctly determined that it was appropriate to assess the materiality of the injury on a cumulative basis, stating that⁴;

“In relation to the post SEF submissions from Jackaroo, the Commission considers that the conditions of competition between the imported Brazilian goods, other imports and Australian Paper’s sales are such that cumulating Brazilian imports with the imports from China, Indonesia and Thailand in the injury analysis is appropriate. It is noted that:

- *Brazilian sourced paper has been sold into a variety of channels, albeit in some circumstances in limited volumes. These are channels that other importers and Australian industry compete in;*
- *Whilst IP Brasil seeks to differentiate its product, it is noted that that both Australian industry and some exporters from the other nominated countries also commonly make similar claims to differentiate their products. The Commission considers this product differentiation is a sign of a highly competitive market; and*

² Final Report 463, Section 5.2.5, page 23

³ Final Report, Section 8.9.1, page 75

⁴ Final Report 341, Section 9.4.5, Page 100.

- *The Commission's pricing analysis indicates that the price interaction between importers and between importers and Australian Paper shows a reasonable level of correlation which would support a decision to cumulate.*

Jackaroo's claims of immaterial volumes are inaccurate given that they have imported an annual average of around XXXX tonnes per annum over the past decade. Additionally, the claim is also largely irrelevant considering that the Commission's determination that the existence of dumped prices in the market influence the price sensitive good and OAP's pricing due to price transparency regardless of volumes. Furthermore, the Brazilian export volumes in and of themselves need not be substantial as the Commission has correctly cumulated the volumes of dumped goods with other imports in assessing material injury.

b. Exclusivity of Supply

In its submission, Jackaroo correctly identifies the importance of the Commission's consideration of likelihood of material injury resumption should the measures be discontinued in respect of Brazilian exports to Australia. However, somewhat confoundingly, Jackaroo then suggests that an agreement between OAP's customer [customer] included an exclusivity clause which prevented it from supplying the like goods to [customer]. This is simply not true.

Through the conduct of Investigation 463 OAP provided the Commission with evidence in support of the fact that it had responded to [customer] tenders with supply options, and that it did in fact have the ability to supply [customer] with a range of brands. Furthermore, the contract in question expired in [date], more than [timeframe] years ago and was not renewed. For the sake of clarity, OAP does not have any exclusivity agreement with any customer and for Jackaroo to suggest otherwise is simply incorrect. Furthermore, any now long expired agreement that OAP had with a customer cannot be claimed to diminish the impact of or future likelihood of exports from IP Brasil to cause injury to the Australian industry. In fact, the expiration and non-renewal of this contract in particular substantially increases the exposure of OAP to future injury, given that sales to this customer are now made on [type of sales agreement] and are vulnerable to competitive price offers from dumped imports.

c. 'Atypical' Products

In regards to Jackaroo's claim that its ream wrap or any property of the copy paper it imports is substantially distinguishable from the domestically produced goods, OAP draws the Commission's attention to its finding in Investigation 341 which dealt with these claims specifically:

"Whilst Jackaroo claims that IP Brasil seeks to distinguish its products on the basis of its ethical and environmental claims, the Commission notes that Australian Paper and multiple exporters from the nominated countries also make a variety of claims in relation to the environmental, ethical, philanthropic and social benefits of their products. The Commission has observed that exporters and Australian Paper commonly seek to distinguish their products on the basis of these stated benefits.

In relation to the unique 100 % recyclable wrapper used on the [customer] private label product, it is noted that other exporters also make claims in relation to the recyclability of their wrappers. For instance, the packaging from another [customer] private label copy paper product sourced from Indonesia specifies that its wrapper is recyclable.

The Commission considers that the copy paper imported from Brazil has the same intrinsic physical characteristics and end uses to A4 copy paper manufactured by

Australian Paper and imported from the other nominated countries, and that all of these products compete vigorously with each other for market share.⁵ *Emphasis added.*

It is clear that Jackaroo simply seeks to distract the Commission from its role in conducting the Continuation Inquiry by reintroducing its past claims which have been debunked by the Commission's comprehensive analysis undertaken within the original investigation.

d. Undercutting and Competition

Jackaroo claims in its submission that "*Jackaroo did not compete against Australian Paper for direct sales, and has not done so since the imposition of measures*". OAP finds this to be in contradiction to the facts and the findings of the Commission in Investigation 341 where it stated that in relation to the conditions of competition between OAP and imports from Brazil that "*these products compete vigorously with each other for market share.*"⁶ The Commission went on to confirm that;

"Brazilian sourced paper has been sold into a variety of channels, albeit in some circumstances in limited volumes. These are channels that other importers and Australian industry compete in"

Contrary to Jackaroo's claims, not only does OAP compete directly with Jackaroo for supply at [customer], but the Jackaroo product sold through [customer] and other retailers also competes directly and indirectly with OAP produced goods in the downstream market. Evidence to confirm this fact was provided to the Commission who noted⁷;

*"Australian Paper provid(ed) direct evidence of a tender lost by [customer] in 2015 to [customer] and the pricing impact this tender had.*⁸

In order to further assess the submissions made by Jackaroo and Australian Paper, the Commission held meetings with both [customers] to gain a better understanding of the circumstances surrounding the awarding of the 2014 tender and the nature of competition between the two companies in the B2B market.

*As a result of these discussions, the Commission has confirmed that both [customer] and [customer] are competing in the B2B market. Further, **advice from [customer] indicates that it has lost sales to [customer]. These lost sales are likely to have resulted on further pricing pressure on [customer] and consequently Australian Paper.***" *Emphasis added.*

Jackaroo's claim that it has never undercut the Australian market is also not based in any fact. Whilst OAP does not have access to data which could accurately calculate the degree to which it undercut the market since the 2015 investigation period, it is noted that the recently completed variable factors Review 551 indicated that exports from Brazil had increased the rate from the original 2.9 per cent in 2015 to 25.7 per cent in 2019. This provides an indication to the Commission that IP Brasil remains willing to export the like goods to Australian at injuriously low prices. Further contradicting Jackaroo's statement is the finding in Investigation 341 assessment "*The Commissioner is satisfied that there is positive evidence of price undercutting of Australian Paper's prices by exports from Brazil...*"⁹ and that "*...analysis of the trend in relation to A4 copy paper exported from Brazil indicates Australian Paper lowered its pricing, subsequent to being undercut by Brazilian imports.*"

Jackaroo goes on to describe what it claims to be evidence to indicate that it is not, and will not undercut the domestic market if the measures are withdrawn. Opal Australian Paper finds this analysis to be completely and fundamentally flawed given that it takes place in the presence of dumping duties which

⁵ Final Report 341, Section 9.4.4.2, Page 97.

⁶ Final Report 341, Section 9.4.4.2, page 97

⁷ Final Report 341, Section 9.4.3, page 95

⁸ EPR 341, No. 107, dated 28/10/2016

⁹ Final Report 341, Section 9.6.2, page 103

are designed to remove the impact of the injury. For Jackaroo to state that it is not undercutting in a market where it is literally being forced not to do so by the presence of the measures is ridiculous. Jackaroo claims that it prices its products at a fully absorbed costs, however, this again is irrelevant since Jackaroo is the importer and this does not stop the exporter from dumping, nor the importer from undercutting the domestic industry if measures are revoked.

At no point in its submission does it provide any compelling evidence to suggest that the Commission's prior analysis on this matter is no longer relevant or applicable, nor that it could not be considered likely to recommence undercutting after measures are discontinued given that it is still dumping by 25.7% according to most recent analysis.

III. 9 September 2021 Submission

Opal Australian Paper does not disagree with Jackaroo's position that the Commission will need to undertake detailed analysis of the likelihood of continuation/resumption of material injury if measures are discontinued. In fact, OAP encourages the Commission to conduct its inquiry process including full verification of all information contained within the application and follow up questionnaire responses free from the confusion and misdirection that Jackaroo seeks to introduce with its submission.

a. Available Information

OAP disagrees with the suggestion made by Jackaroo that OAP has not provided the Commission with sufficient information upon which it could initiate or continue the conduct of Continuation Inquiry No. 588. OAP notes that in addition to the information provided in its application, the Commission now has access to additional information in the form both OAP's 24 August submission, as well as full responses to two confidential follow up questionnaires as part of the industry verification process. The submission, questionnaire responses and confidential attachments address in great detail all of the confidential background relating to this matter and others raised by the Commission. Jackaroo's suggestion that there is a lack of sufficient or reliable information at the Commission's disposal is therefore not based in fact and is unsupported by evidence.

a. Disclosure of Information

OAP rejects in the strongest manner the incorrect and patently offensive claim made by Jackaroo that it has ever knowingly omitted information which it believed to be relevant to any investigation. The suggestion that OAP has not fully and completely cooperated with the Commission on any occasion is contradiction to the facts on the public record, and one has only to review the EPR's of Investigations 341, 463, & 583, as well as Reviews 547 & 551 as well as Inquiry 552 to ascertain OAP's level of engagement with the system.

Jackaroo references again references a supply agreement between OAP's customer [customer] dating back to the original investigation period being of 2015 (6 years ago), in a suggestion that OAP had not disclosed confidential details of the agreement to the Commission. OAP can confirm that it has provided the Commission with all information requested of it in the conduct of past investigations and invites the Commission to request any follow up information that it believes is necessary for this inquiry. However, its is unclear to OAP how an agreement which ceased being operative over [timeframe] years ago has any relevance to the likelihood of future injury.

Jackaroo goes on to claim that OAP intentionally did not disclose the fact that it had historically imported a small volume of copy paper from [country] on a temporary basis. This is again unsupported with evidence and is in contradiction to the fact that this information is on the public record, in the public domain, and was analysed in detail to the Commission's satisfaction in Review 551.



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IV. Conclusion

Opal Australian Paper rejects aforementioned claims made by Jackaroo that the Commission has initiated the inquiry in the absence of sufficient information; and that the application must therefore be rescinded; or that the measures must be discontinued on the basis of any of its claims. Given the lack of relevant evidence or logic in support of its claims, it is OAP's contention that Jackaroo seeks to distract the Commission from its role in conducting its inquiry process including full verification of all relevant information available to it.

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

Yours sincerely

A handwritten signature in black ink that reads "Matt Decarne".

Matt Decarne
Trade Affairs Manager