

Non-Confidential

Telephone: +61(0) 425 221 036

Email: andrew.percival@percivallegal.com.au

Date: 16 December 2021

By Email

Anti-Dumping Commissioner
Anti-Dumping Commission
Melbourne

Received 16 December 2021

Attention: Mr Gavin Crooks
Assistant Director, Anti-Dumping Commission Investigations 1

Dear Mr Crooks,

RE: Continuation Inquiry 588 – Exports of A4 Copy Paper from Indonesia – Submission - APRIL

I refer to the Anti-Dumping Commissioner's (**Commissioner**) Anti-Dumping Notice No 2021/082 of 2 July 2021 notifying the initiation of this continuation inquiry (**Continuation Inquiry 588**) into the continuation of the anti-dumping measures applying to certain exports of A4 Copy Paper to Australia for a further five years.

As you would be aware, the statutory requirement for the continuation of the anti-dumping measures is whether the expiry of the measures would lead or be likely to lead to the continuation or recurrence of dumping and the material injury to the Australian industry that these measures are intended to prevent.

These issues are the focus of this submission. Specifically, for the reasons set out below, the expiration of the anti-dumping measures will neither prevent nor remedy the continuation or recurrence of the material injury that the Australian industry has incurred since these measures were imposed in April 2017.

Based on publicly available information and evidence, the position regarding the Australian A4 Copy Paper market relevant to this inquiry and the Australian industry incurring material injury since the anti-dumping measures were imposed would appear to be as follows:

- (i) as submitted by Australian Paper in its application for the continuation of the anti-dumping measures (**Application**), the Australian A4 Copy Paper market has been declining progressively by approximately 2% to 3% per annum from a high of 223,544 tpa in 2009 to 134,096 tpa in 2020¹ due to technological change²;

¹ See [APPLICATION \(industry.gov.au\)](#), Graph A-4.1, pages 21 -22

² [588 - 001 - application - australian industry - paper australia Pty Ltd.pdf](#)

- (ii) Australian Paper has an annual production capacity of 200,000 tpa and, due to operational requirements, Australian Paper produces approximately 200,000 tpa, resulting in an excess of approximately 100,000 tpa of production by the Australian industry over demand in Australia³;
- (iii) the Australian A4 Copy Paper market has been protected by dumping duty tariff barriers since April 2017, which originally applied to exports from China, Indonesia, Thailand and Brazil, and was extended in 2019 to cover exports from Finland, Russia, South Korea and Slovakia⁴;
- (iv) Australian Paper's market share of the Australian A4 Copy Paper market was found by the Commission in Investigation 463, which finding was not contested by Australian Paper, to be approximately 85% in 2018, having increased from 57% in 2016, which increase coincided with Australian Paper's acquisition of APRIL's major distributor of A4 Copy Paper in the Australian market, namely, Edwards Dunlop Office Products, a division of BJ Ball Pty Ltd, in 2016;⁵
- (v) further, according to submissions filed by an interested party in this inquiry, that market share held by Australian Paper could now even be up to or exceed 90%⁶;
- (vi) if imports account for between approximately 30,000 tpa and 45,000 tpa in the Australian A4 Copy Paper market, as contended by Australian Paper⁷, this leaves Australian Paper with approximately 100,000 tpa or more of excess production of A4 Copy Paper. Even if Australian Paper held 100% of the Australian A4 Copy Paper market, it still would have excess production capacity of approximately 70,000 tpa;
- (vii) Australian Paper sells its excess production into '*less lucrative export markets*'⁸, meaning that it is 'marginally costing' into those '*less lucrative export markets*', also known as 'dumping', which Australian Paper was found to be doing in exports to the USA market at dumping margins in excess of 200%, as it reported in its application in Investigation 341⁹;
- (viii) however, Australian Paper disagrees that it holds the market share referred to in subparagraph (v) above and asserts that its market share is less¹⁰, which, if correct, means that Australian Paper's excess production is greater than that referred to above and that additional excess production it is selling into its '*less lucrative*' export markets, which would adversely impact on its A4 Copy Paper business – that is, it would be selling less into the high priced Australian A4 Copy Paper market and more into the '*less lucrative*' export market and, as a volume based commodity product business, this could only increase its unprofitability;

³ [Microsoft Word - 20160407 AP A4 Copy Paper Application Public File Revised Final V2 \(2\) \(industry.gov.au\)](#) (see page 15) and [APPLICATION \(industry.gov.au\)](#) (see pages 17 and 26).

⁴ [A4 COPY PAPER \(industry.gov.au\)](#)

⁵ [Microsoft Word - ATT A REP 463 \(industry.gov.au\)](#) (see Table 3, page 27)

⁶ See [Microsoft Word - 588 Continuation Submission.docx \(industry.gov.au\)](#) and [Microsoft Word - 588 Submission in response to AP..docx \(industry.gov.au\)](#)

⁷ [APPLICATION \(industry.gov.au\)](#) (see Table B-1.5, page, 54, where total amount of imports is estimated to be approximately 46,000 tpa for 2020)

⁸ [APPLICATION \(industry.gov.au\)](#) (see page 29)

⁹ [002 - non_confidential_attachment.pdf \(industry.gov.au\)](#)

¹⁰ [588 - 019 - submission - paper_australia_pty_ltd - rak_normal_value.pdf \(industry.gov.au\)](#)

- (ix) as was found in Review 551, the Australian industry's cost to make (CTM) A4 Copy Paper and prices of A4 Copy Paper in the Australian market are higher than those in Indonesia, thereby conferring a comparative advantage on Indonesian producers/exporters¹¹;
- (x) this is likely to be the case for the CTM A4 Copy Paper in other jurisdictions, including China, Thailand and Brazil, when compared with Australia given that it is known that Australia is a high-cost country;
- (xi) the Australian A4 Copy Paper market apparently either does not respond or has not responded to market forces as A4 Copy Paper prices have not fallen due to the contraction in the market since 2015 and the resultant over-supply of product in that market due to the excess production by Australian Paper but, instead, have increased over this period, although the Australian industry's prices apparently have remained constant at \$1,428 per tonne in 2015 and \$1,442 per tonne in 2020.¹²;
- (xii) this apparently is so notwithstanding that the Australian market is 'price sensitive' as is frequently claimed by Australian Paper¹³, which claim the Commission has agreed with, although in a market where market power apparently is vested in a number of resellers and retailers¹⁴ who have seen fit, strangely, not to require Australian Paper and other participants in the Australian A4 Copy Paper market to match their pricing with A4 Copy Prices prevailing globally, as available from RISI¹⁵ amongst others, nor apparently for Australian Paper not to match its domestic prices with its 'less lucrative' export prices, information concerning which could no doubt be obtained from the Australian Bureau of Statistics;
- (xiii) in this regard it must be noted that other interested parties, such as exporters and importers, would have no commercial interest in seeking lower prices in the Australian A4 Copy Paper as well as Australian Paper that would adversely affect their profitability. It would seem that only resellers and retailers with the requisite market power would have that commercial incentive, at least according to Australian Paper¹⁶;
- (xiv) also, as noted in sub-paragraph (iv) above, Australian Paper purchased APRIL's Australian distributor in 2016, Edwards Dunlop Office Products, who the Commission found was selling the A4 Copy Paper it purchased from APRIL into the Australian market at a loss, which gives rise to the question whether Edwards Dunlop Office Products, following its purchase by Australian Paper, continued to sell into the 'price sensitive' Australian A4 Copy Paper market at those loss making prices or whether its prices increased following the acquisition and, if it did, can the market be as 'price sensitive' as claimed and, if it did not, why did Australian Paper purchase a loss making business? No doubt a matter the Commission has investigated, although its findings do not seem to be on the public file;

¹¹ [551 - 055 - report - final report - rep 551.pdf \(industry.gov.au\)](#)

¹² Source: Refer to page 45 of Australian Paper's application for the imposition of anti-dumping measures resulting in the initiation of Investigation 583: [APPLICATION \(industry.gov.au\)](#)

¹³ See, for example, Australian Paper's applications in Investigations 463 and 583: [Microsoft Word - AP Public File Application Final 11022018 .docx \(industry.gov.au\)](#) and [APPLICATION \(industry.gov.au\)](#)

¹⁴ [APPLICATION \(industry.gov.au\)](#) at page 23

¹⁵ [Pulp, Paper & Packaging | RISI \(risiinfo.com\)](#)

¹⁶ [APPLICATION \(industry.gov.au\)](#) at page 23

- (xv) the apparent lack of responsiveness in the Australian A4 Copy Paper market to market forces is to be contrasted with the position in the Indonesian A4 Copy Paper market where an (apparent) over supply of wood/wood chips/pulp has resulted in lower CTM A4 Copy Paper and, consequently, prices for A4 Copy Paper in the Indonesian market¹⁷;
- (xvi) since the imposition of anti-dumping measures in 2017, Australian Paper's A4 Copy Paper business has been unprofitable and with increasing unprofitability, coinciding with a period of progressive contraction in the Australian market: see **Attachment A**¹⁸;
- (xvii) this, apparently, is notwithstanding that some of Australian Paper's pulp requirements are sourced from VicForests,¹⁹ who has been reported to be unlawfully and unsustainably logging native forests to supply wood and wood products such as pulp as inputs to manufacture, presumably at 'artificially' lower prices than had these products been lawfully and sustainably obtained;²⁰
- (xviii) during this period, that is, since April 2017, exports from the countries subject to anti-dumping measures have continued to compete in the Australian market notwithstanding payment of interim dumping duties and increases in their export prices to Australia²¹; and
- (xix) such exports have remained profitable for the exporters the subject of this inquiry, as was found by the Commission in Review 551, no doubt due to the high prices available in Australia²².

What does this mean? Essentially the following;

"Notwithstanding the imposition of anti-dumping measures in 2017 and their extension in 2019, the Australian industry's A4 Copy Paper business has been unprofitable and increasingly unprofitable each year during this period coinciding with the progressive contraction of the Australian market despite the high A4 Copy Paper prices in Australia and less lucrative prices in export markets, but during this period:

- (i) *prices in the Australian A4 Copy Paper market have not fallen in response to market forces, namely, an over-supplied contracting market but (apparently) increased or, at least remained stable and higher than in other countries, including global export markets; and*

¹⁷ [221 - report - final report - rep 341.pdf \(industry.gov.au\)](#) and [551 - 055 - report - final report - rep 551.pdf \(industry.gov.au\)](#)

¹⁸ [588 - 015 - verification report - australian industry - paper australia Pty Ltd.pdf](#) (see page 12)

¹⁹ [Wood Supply | Opal. \(opalan.com\)](#)

²⁰ ['Outlaw' loggers VicForests and a regulator's 'charade' put drinking water at risk, data reveals - ABC News](#) and [VicForests accused of returning logged public forests as weed-infested fields - ABC News](#) and [Latest News \(vicforests.com.au\)](#)

²¹ Refer Report 551 ([551 - 055 - report - final report - rep 551.pdf \(industry.gov.au\)](#)) and Australian Paper's application in this continuation inquiry ([588 - 001 - application - australian industry - paper australia Pty Ltd.pdf](#)).

²² Refer Report 551 ([551 - 055 - report - final report - rep 551.pdf \(industry.gov.au\)](#)) and verification reports on the electronic public file in Review 551 ([551 | Review | Department of Industry, Science, Energy and Resources](#)).

- (ii) *exports from the countries the subject of this inquiry have continued to compete in the Australian A4 Copy Paper market along with exports from other countries the subject of measures and have done so profitably.”*

This has occurred at the cost of Australian businesses and consumers who are paying higher prices for A4 Copy Paper and the Australian economy generally. In other words, Australian businesses and consumers have been subsidising an increasingly unprofitable Australian industry and profitable exporters in a market that does not respond to market conditions protected by (high) tariff barriers.

That would seem not to be in Australia’s national interest. Further, it would not seem to be in Australia’s national interest to provide tariff protection in the form of dumping duties in view of the economic consequences it has for Australia, especially when:

- (i) the anti-dumping measures have not been effective in preventing injury to the Australian industry because such injury was caused by factors other than dumping, namely, the progressive contraction of the Australian market and Australian paper’s consequent, excess production for that market; and
- (ii) Australian Paper appears to be likely exiting from the unprofitable A4 Copy Paper market given its recent acquisition of Orora Limited’s Australasian Fibre Packaging Business in April 2020 for \$1.72 billion²³ and apparent lack of recent substantive investments in its A4 Copy Paper business²⁴, which exit would be understandable financially.

In other words, the expiration of the anti-dumping measures will not lead to or be likely to lead to the continuation or recurrence of the material injury that the anti-dumping measures were intended to prevent because the material injury, being the unprofitability of its A4 Copy Paper businesses, both domestic and export, was caused by factors other than exports at ‘dumped’ export prices from the countries here in question. Rather, it was caused by factors other than dumping, that is, excess production by the Australian industry in a contracting market due to technological change.²⁵

It is clear that Australian Paper’s unprofitable A4 Copy Paper business is due to it being a high CTM commodity product business in a high priced domestic A4 Copy Paper market that is progressively contracting and a less lucrative export market. Consequently, the volume of sales at the high Australian prices is falling, while export sales at less lucrative prices presumably are increasing and, thereby, compounding the increasing the unprofitability of its A4 Copy Paper business. In such circumstances it would seem commercially sensible to exit the unprofitable A4 Copy Paper business and move into a more financially lucrative business such as fibre packaging.

It would seem not to be in Australian national interest for Australian businesses and consumers to subsidise an unprofitable and uncompetitive Australian industry, which industry continues to be

²³ [2924-02230829-3A540433 \(markitdigital.com\)](https://www.markitdigital.com/2924-02230829-3A540433)

²⁴ Refer Australian Paper Financial Statements for 2019 and 2020 (copies **attached**) and applications in Investigations 341 and 463, Review 551, Investigation 583 and this Continuation Inquiry.

²⁵ Refer section 269TAE(2A)(c) to (f) of the *Customs Act 1901* (inclusive)

unprofitable and uncompetitive despite the introduction of tariff protection in the form of dumping duties since April 2017 and which appears to be exiting from the Australian market due to technological changes resulting in the progressive decline in each year of demand for A4 Copy Paper in the Australian A4 Copy Paper market.²⁶

Moreover, it is self-evident based on the above evidence that the unprofitability of the Australian industry's A4 Copy Paper business was not caused by dumped imports but by other economic factors, namely, technological change affecting the Australian A4 Copy Paper market resulting in its progressive contraction, as well as it being unprofitable in its export markets as well as in the Australian market due, no doubt, due to it being a high-cost producer.²⁷

These views are not unique to APRIL. Similar views were expressed on behalf of PT. Pabrik Kertas Tjiwi Kimia Tbk in Investigation 583: see [583 - 018 - submission - exporter - pt. pabrik kertas tjiwi kimia tbk - second submission on causation of material injury including response to opal australia papers submission.pdf \(industry.gov.au\)](#). Further, had 'material injury' and 'causation' been investigated in Review 551, which ought to have been done, but the Commission and Commissioner elected not to do so notwithstanding submissions that they were required to do so in a review of anti-dumping measures, these matters would have been apparent then.

The foregoing recalls Adam Smith's question posed in his *'The Wealth of Nations'* (1776) that asks why would a family continue to produce clothing at considerable expense, when they could walk down the road and purchase it for far less? Or, in the case of A4 Copy Paper, in the global A4 Copy Paper market?

No doubt the Commission is fully apprised of these matters and that these matters will be fully addressed in the Statement of Essential Facts and, ultimately, in the Commissioner's report to the Minister to be issued in February 2022.

In addition, the Commissioner, no doubt, will obtain expert advice on these matters from the Department of Industry and the Productivity Commission consistent with Australian Government policy given the industry and economic implications of the continuation of the anti-dumping measures. If not, others are likely to do so.

In conclusion, as is evident from the foregoing the expiration of the anti-dumping measures will not and cannot lead to or be likely to lead to the material injury that the anti-dumping measures are intended to prevent. The injury, namely, the unprofitability that Australian Paper has incurred since 2017 will continue and likely increase as the Australian A4 Copy Paper market continues to progressively contract and Australian Paper is compelled to sell its excess production into '*less lucrative*' export markets.

²⁶ Refer Sections 6.1 and 6.2 of *'Streamlining Australia's anti-dumping system; An effective anti-dumping and countervailing system for Australia'*, (June 2011) (copy **attached**) regarding the Minister taking into account the national interest in the exercise of statutory discretions regarding dumping duty notices.

²⁷ Refer section 269TAE(2A)(c) to (f) of the *Customs Act 1901* (inclusive).

That injury has not been caused by import competition whose export prices have increased and whose exports have continued to profitably compete in the Australian A4 Copy Paper market notwithstanding payment of interim dumping duties and this is likely to continue to be the case regardless of whether the anti-dumping measures are allowed to expire or not.

Essentially the question for the Australian industry is whether or not it wishes to compete profitably in the global A4 Copy Paper market. Also, given it is evident that the expiration of the anti-dumping measure will not and cannot lead to the continuation of the injury that the anti-measures were intended to prevent, as there has been no such injury and the measures have not prevented injury to the Australian industry, the only question remaining for the Minister is whether Australian businesses and consumers should continue to subsidise an uncompetitive, unprofitable business and, if so, for whose benefit?

Please contact me if you have any queries or concerns.

Yours sincerely,

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

Andrew Percival

T: +61 (0) 425 221 036

E: andrew.percival@percivallegal.com.au

W: www.percivallegal.com.au

Attachment A

Continuation Inquiry 588 – Extract from Australian Paper Verification Report

PUBLIC RECORD

5.5 Profit and profitability

Figure 7 charts Paper Australia's profit and profitability for all like goods sales as a percentage of revenue across the period of analysis.

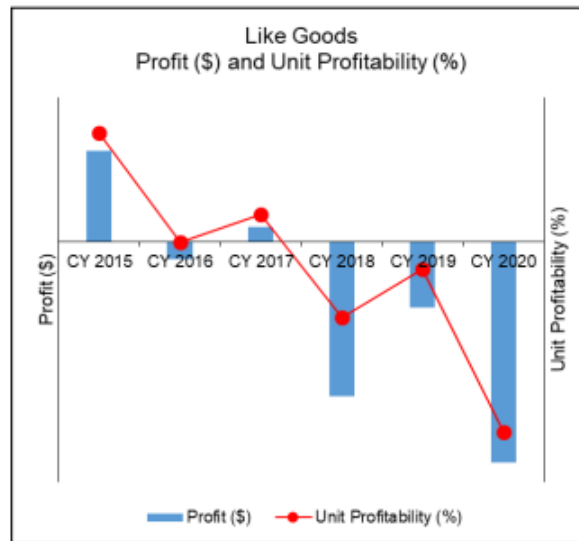


Figure 7 - Profit and profitability²⁹

The chart shows that in the period that was examined for the purpose of Investigation 341, Paper Australia was profitable, notwithstanding that it was found to have experienced injury caused by dumping in 2015.

In contrast, Paper Australia has experienced a significant deterioration of its profit and unit profitability since 2015, particularly in the period following the imposition of anti-dumping measures following Investigation 341 and Investigation 463. The data examined by the verification team for the quarter ending 31 March 2021 indicated that Paper Australia had reduced net losses by 50%.

5.5.1 Conclusion – profit effects

The verification team considers that Paper Australia has experienced a deterioration in its economic condition due to the overall decline in profit and profitability across the period of analysis.

Source: Continuation Inquiry 588, Australian Industry Verification Report, page 22