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Public File

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The Director
Investigations 2
Anti-Dumping Commission
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Dear Sir/Madam

Continuation Inquiry 588 - Opal Australian Paper response to UPM Asia Pacific Pte Ltd submission

I. Introduction

Paper Australia Pty Ltd (hereafter referred to as “Opal Australian Paper”, or “OAP”) has reviewed recent interested party submissions in response to Statement of Essential Facts No. 588 (“SEF 588”) and responds to the Electronic Public Record (“EPR”) submission No. 24 made on behalf of UPM Asia Pacific Pte Ltd (“UPM”) and published on 12 January 2022.

Opal Australian Paper rejects UPM’s contentions in its submissions that SEF 588 published by the Anti-Dumping Commission (“the Commission”) has failed to demonstrate that there is a likelihood of continuation or recurrence of material injury.

OAP seeks to reiterate its support for the Commission’s analysis contained within SEF 588 insofar as it relates to UPM’s contentions, and more broadly the exports from China. Whilst OAP notes that it has previously discredited the repeated claims made by UPM, and that the Commission’s analysis in SEF 588 also deals with many of the issues raised in great detail, OAP also recognises the importance of correcting new misrepresentations.

II. Reasonable grounds

UPM restates its previously held conviction that the Commission initiated the continuation inquiry without reasonable grounds, and in the absence of a correctly submitted application form by OAP. This claim is of course without basis, and was analysed and dealt with specifically in SEF 588 where the Commission correctly summarised:

“The commission’s continuation inquiry application form B600 requests certain information from applicants. The Commissioner considered Paper Australia provided the required information. Paper Australia fully completed the application form by answering every question, providing source data for the figures in its application and acquiring third party data to inform its responses. The data presented by Paper Australia spanned the period 2016 to 2020. Following initiation of the inquiry Paper Australia provided further sales and cost information for the March quarter of 2021. The commission raised the matter of UP AP’s submission with Paper Australia during verification of its economic condition. After ascertaining the agreement is relevant information it has been relied on to formulate the proposed

*recommendations to the Minister outlined in this report. The commission considers its investigative processes have addressed the matter the subject of UPM AP's submissions."*¹

It is OAP's position that the repetition of UPM's claim is made without the contribution of any new information, and thus has been adequately addressed by the Commission within SEF 588.

III. [Customer] contract

In its submission UPM correctly states that the Commission must form a position from its analysis that the expiry of measures would likely lead to the continuation or recurrence of dumping and injury. However, UPM claims that the Commission's consideration of export volumes, market share, pricing and likelihood of future injury and materiality of injury, was insufficient in the context of sales to [customer] by OAP and UPM.

UPM suggests that even if a sales agreement is 'non-binding', the relevant parties cannot reasonably discontinue the relationship at their discretion. OAP finds this statement to be an illogical contradiction to the evidence provided to the Commission by OAP during the course of the inquiry, namely the supply arrangement between [customer] and OAP. As confirmed during the industry verification the agreement between the parties expressly stipulates in clause 2(e) Addendum that; "[customer] is under no obligation to order any minimum quantity of Goods from the Supplier". Price reviews by negotiation are also a feature of the agreement, which in effect means that should [customer] not agree to a required price increase, there is no obligation or exclusivity within the agreement which prevents them from ordering zero tonnes from OAP, nor preventing them from purchasing like goods from UPM or any other exporter to Australia. In seeking to counter this fact, UPM provides no evidence to support its claims.

The submission subsequently claims that there are "a range of practical constraints in establishing new supply lines that can delay the timing and implementation of changes in sourcing to a degree that goes beyond the periods specified in an agreement." However, UPM does not state what these 'practical constraints' may be, let alone provide any evidence in support of same.

UPM further asserts that it attempted to pass on a price increase to [customer] in 2021, and appears to further the claim that this should, for an unstated reason, ensure the absence of any recurrence of dumping and injury in contradiction to the Commission's analysis.

Notwithstanding whether or not this is true or correct, OAP is able to quickly and simply negate any notion that UPM intends to trade fairly in the market and cease its continued dumping and undercutting. A search on the [customer] website reveals that UPM continues to trade with [customer] and continues to price product at a level which undercuts the domestic industry. Further, UPM employs a tactic of offering lower GSM paper (70gsm) for sale at a lower price point in order to reduce the dumping margin per tonne sold (given that there will be less tonnes imported per container, pallet, box, and ream by virtue of the fact that the paper is lighter). The lower GSM allows UPM to justify a lower price point, which undercuts the Australian market prices.

UPM's continued sales to [customer] as evidenced below clearly discredit any notion that OAP's supply to [customer] prevents UPM from selling to [customer] now or in the future. This continued trade at prices which undercut OAP represent unequivocal evidence that there is a continued likelihood of dumping and recurrence of material injury. See below screen capture.

[Screen capture from customer website showing UPM product priced significantly below OAP product]

IV. Future Exports

¹ SEF 588, Section 2.1.1, page 13.

UPM claims that it ceased exports from China in October 2021, however, as demonstrated above, this is simply not correct. Furthermore, the import statistics available to OAP (and to the Commission) support an estimate that UPM has exported between 1,000 – 330 tonnes per month since October 2021. Given that the export of dumped goods continues, it is clear that the likelihood of future injury being 'reasonably foreseeable' from future exports is satisfied.

V. Material injury

UPM's submission borders on the farcical when it suggests that OAP has "*achieved an unquestioned market share of around 95%*". In fact, UPM's repeated misrepresentation of OAP's market share has been repeatedly discredited in several submissions by OAP to the Commission, not to mention via verified data supplied during the Australian Industry verification process, all of which has been analysed at length by the Commission in SEF 588. Most recent data available to OAP tells a very different story, namely that OAP's market share on a 12 month rolling average basis is approximately 69 per cent, substantially less than the 95 per cent claimed in UPM's misguided or misrepresented line of argument.

In addition to UPM's main line of argument relating to OAP's market share being based on a false premise, its claim that high shipping costs will necessarily and indefinitely render exports to Australia null/void is also unrealistic to say the least. Swings in exchange rates and global shipping costs move with relative volatility and it is not unusual for these costs to fluctuate in a cyclical nature. Therefore, any rise in costs is just as likely to be eroded or reversed by other external factors, including exchange rate movements etc. There is no guarantee whatsoever that shipping rates will remain high and UPM has not submitted any evidence to confirm that this will be the case, nor could they. Furthermore, if history is anything to go by, rates will fall precipitately once international borders reopen and global trade tensions are relieved. Notwithstanding these likely scenarios, shipping cost do not in any way relate to OAP's material injury, or the extent to which UPM is exporting at dumped prices.

Again, the evidence provided in this submission (and previous submissions) shows that UPM continues to export the goods to Australia at prices which undercut OAP despite existing dumping margins and despite its claims that "*the barriers are almost insurmountable*". It is therefore abundantly clear that the claims made by UPM are misrepresented and should be considered unconvincing by the Commission.

VI. Conclusion

Opal Australian Paper rejects aforementioned claims made by UPM that the Commission has erred in its analysis outlined in SEF 588 in relation to the exports from China. Given the lack of relevant evidence or logic in support of UPM's claims, it is OAP's contention that UPM seeks to distract and delay the Commission from making its final recommendation to the Minister in a timely manner.

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

Yours sincerely



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