



# ADRP Conference Summary

## Review No. 133 A4 Copy Paper exported from the People's Republic of China

Panel Member	Leora Blumberg
Review type	Review of Minister's decision
Date	21 June 2021
Participants	John Cosgrove, Kirinda Bakker (UPM Representatives)
Time opened	2:00 pm AEST
Time closed	3:30 pm AEST

### Purpose

The purpose of this conference was to obtain further information from UPM Asia Pacific Pte Ltd ("UPM") in relation to the review before the Anti-Dumping Review Panel ("Review Panel") regarding the anti-circumvention inquiry of A4 Copy Paper exported from the People's Republic of China ("China") and to provide UPM with an opportunity to comment on the conference summary of the conference held with the Anti-Dumping Commission ("ADC") on 8 June 2021 ("the ADC Conference").

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* ("the Act").

In the course of the conference, I provided UPM with the opportunity to comment on the conference summary of the ADC Conference was also able to ask UPM to clarify any argument, claim or specific detail contained in its application for review, s.269ZZJ submission, REP 552 or other documents relating to the anti-circumvention inquiry or this review. The conference was not a formal hearing of the review and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference to the extent that it relates to relevant information within the meaning of section 269ZZK of the Act. Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the Review Panel may have regard to and, therefore, is not reflected in this conference summary.

At the time of the conference, I advised the participants:



## Australian Government

### Anti-Dumping Review Panel

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.
- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel's website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.

Prior to the conference, participants were provided with a copy of the Review Panel's Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel's website [here](#). The participants indicated that they understood the Privacy Statement and consented to:

- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

## Discussion

The specific information that the Review Panel sought in this conference and the information provided was as follows:

1. **Discussion Item 1:** *In REP 552 it is stated in Section 4.3.2.1 that UPM claims that it has never supplied COS with the goods the subject of the original notice, and its only supply of such goods was to [REDACTED] which commenced [REDACTED] after the first shipment of the alleged circumvention goods. In its application for review UPM states, when setting out the background information, that UPM had supplied 80 gsm A4 copy paper ex China to COS in the period [REDACTED] when the customer terminated the contract.<sup>1</sup>*

*Please could UPM clarify this apparent discrepancy.*

The UPM Representative ("UR") clarified that there was no actual discrepancy since the original dumping duty notice was published on 19 April 2017 and UPM has never supplied goods the subject of that notice to COS. UR stated further that the only

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<sup>1</sup> See page 1 of Attachment C1 to UPM's application for review.



**Australian Government**

**Anti-Dumping Review Panel**

supply of goods subject to that notice to Australia by UPM was sales of 80 gsm A4 copy paper ex China [REDACTED] which commenced on [REDACTED]. UR stated that the 80 gsm A4 copy paper supplied ex China by UPM [REDACTED] to COS and other customers was not the subject of any dumping duty notice.

2. **Discussion Item 2:** UPM stated in its application for review that:

- a. supply to COS resumed [REDACTED] with UPM supplying [REDACTED] tonnes of 80 gsm A4 copy paper produced in Germany in [REDACTED]  
[REDACTED]
- b. In [REDACTED] supply by UPM of 68gsm copy paper to COS ex China was substituted for shipments from Germany and in [REDACTED]  
[REDACTED] the total sales volume was [REDACTED] tonnes.
- c. COS continued and continues to import 80 gsm A4 copy paper from other exporters.

*Please can UPM advise which countries it was referring to in respect of the statement in 2c above that COS “continued and continues” to import from other exporters (after switching to 68 gsm A4 copy paper).*

UR stated that based on the company's website and market intelligence, UPM understands that COS imports 80 gsm A4 Double A brand from Thailand and COS Premium brand 80gsm A4 from Indonesia.

The Reviewing Member (“RM”) requested further clarification relating to the statement in Item 2b where it is stated that in [REDACTED] that supply by UPM of the 68 gsm copy paper to COS from China was substituted for the shipments from Germany, and the statement on page 20 of REP 552 that, “COS claimed that discussions with UPM on alternative sources of supply to existing exports from a particular country commenced in 2018 and eventually led to the signing of a sales agreement in August 2019 in respect of the circumvention goods exported from China.”

UR confirmed that the sales agreement between UPM and COS was signed in August 2019, which was after the first shipment of 68 gsm product from China which was in [REDACTED].



3. **Discussion Item 3:** UPM states when setting out the facts in its application for review that UPM ceased exports of 80 gsm product from China in [REDACTED].<sup>2</sup> Later in its application for review UPM states that prior to commencing exports of 68 gsm copy paper to Australia in [REDACTED] the last export from China by UPM of 80 gsm product subject to the notice occurred [REDACTED].<sup>3</sup> Please could UPM clarify this discrepancy (see two underlined dates) and advise which date correctly reflects the last exports of 80 gsm product from China prior to the relevant notice being published.

UR apologised for the confusion and confirmed that the date on page 4 of the application is a typographical error and should read [REDACTED].

4. **Discussion Item 4:** UPM submitted in its application for review that, in addition to the environmental credentials of the 68 gsm product and its packaging, the commercial justification for COS to change its source of supply from Germany to China included substantial reductions in delivery times and shipping costs as well as a reduction in ordinary customs duty on A4 copy paper from 5 per cent to zero.<sup>4</sup>

Please could UPM clarify the following:

- a. the reason why the reduction in ordinary customs duty would be a commercial justification for the switch to China from Germany or to 68 gsm from 80 gsm products, since the ordinary customs duty is the same whether exportations are from Germany or China and is also the same whether exportations are 68 gsm products or 80 gsm products.
- b. the reason why the reduction in delivery times and shipping costs (associated with exports from China, as opposed to Germany) would be a commercial justification to switch from 80 gsm product to 68 gsm product if both are exported from China.

With regard to Item 4a, UR stated that ordinary customs duty on A4 copy paper originating from Germany has been for many years and continues to be 5 per cent but as a result of the China-Australia Free Trade Agreement concluded in 2014 the ordinary duty under the Customs Tariff Act 1995 has been zero since 1 January 2019

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<sup>2</sup> See page 1 of Attachment C1 to UPM's application for review.

<sup>3</sup> See page 4 of Attachment C1 to UPM's application for review.

<sup>4</sup> See page 1 of Attachment C1 to UPM's application for review.



## Australian Government

### Anti-Dumping Review Panel

on all copy paper imported from China. Therefore, according to UR there was a commercial benefit in the sourcing switch to China from Germany but confirmed that the ordinary duty applying to 68 and 80 gsm copy paper is the same.

With regard to Item 4b, UR stated that UPM acknowledged that the reduction in delivery times [REDACTED] applies irrespective of grammage. However UR clarified that shipping rates per ream from China are over [REDACTED]  
[REDACTED]

5. **Discussion Item 5:** *In its application for review UPM made reference to statements in the Explanatory Memorandum to Schedule 2 to the Customs Amendment (Anti-dumping Improvements) Act (No 3) 2012 (No 196, 2012) and by the Review Panel in ADRP Report No. 37 and contended that, “These statements establish that the target of the Regulation is exportations of modified goods not the subject of a notice [circumvention goods] that have replaced exportations of goods that were the subject to a notice ..... that result in the modification of a previously exported product to which a dumping duty notice applied.” [emphasis added]<sup>5</sup>*

*Please could UPM clarify the following:*

- a. *support for its view in the statements referred to or in the Customs Act or in s.48 of the Regulation that there is a requirement that the circumvention goods must have “replaced” previous exportations of goods subject to the notice.*
- b. *support for its view that, this approach requires “specific, not general” comparisons of “each good” [emphasis added]<sup>6</sup> in the light of Paragraph 33 of Counsel’s Advice which is Attachment 2 to ADRP Report No. 38 (“Counsel’s Advice”) referred to by UPM for support of other arguments in its application for review, stating :*

*“..... the term “circumvention goods” is not used here with precision but serves as a general denotation for the goods that are to be subjected by the Commissioner to the comparison process mandated by s 48(3) ..... Rather, the conclusion as to “slightly modified” is reached through comparison of goods, a more generalised inquiry.” [emphasis added]*

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<sup>5</sup> See page 3 of Attachment C1 to UPM’s application for review.

<sup>6</sup> See page 3 of Attachment C1 to UPM’s application for review.



## Australian Government

### Anti-Dumping Review Panel

With regard to Item 5a, UR clarified that in statements that UPM has referred to that consider the purpose of Division 5A of *the Act* in general or the Regulation in particular, the commonly identified mischief is duty avoidance. UR stated that this focus was also adopted by the then Minister when introducing the *Customs Amendment (Anti-Dumping Improvements) Bill (No. 3) 2012* in the following terms:

As a result of these amendments, I will be able to extend the original notice imposing the anti-dumping measures to cover the circumvention activities of exporters or importers if I am satisfied that, as a result of the prescribed circumvention activity, the duties which would have otherwise been paid on imported goods have not been paid. [Emphasis added]

UR stated that in similar vein Counsel, commissioned for an advice by the Review Panel, observed that, based on provisions in Division 5 of Part XVB of the Act and extrinsic materials, the purpose of the Regulation is, "... to address activities responsive to notices that are aimed at ensuring that exportations that would have been the subject of the notices do not attract the intended duty".<sup>7</sup>

UR stated further that the focus on avoidance is also accepted by the Commissioner at page 4 of Attachment A to the ADC's s.269ZZJ submission to the Review Panel and that in the context of s.48 the avoidance of duty is achieved by modifying a product that before modification attracts a duty so that after modification no duty is applicable. Further UR stated that the objective of such an activity is to replace exportations of unmodified goods with exportations of modified goods – a situation that can be assessed by the Commissioner as a pattern of trade factor provided for in s48(3)(j). UR stated that in UPM's view it follows from acceptance that countering duty avoidance is the purpose or object of s.48 of the Regulation that it is displacement of unmodified goods with modified goods that establishes the circumvention activity. Further, UR stated that absent any such displacement there is no duty avoidance and hence no mischief to remedy.

With regard to Item 5b, UR stated that the term "circumvention activity" suggests an action or undertaking by one or more parties to get around or avoid an outcome that would otherwise apply. UR stated further that in its application for a circumvention inquiry Paper Australia identified UPM and COS as the parties to the alleged

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<sup>7</sup> Reference was made to Footnote 7 of Attachment 2 to ADRP Report No. 38, page 11.



## Australian Government

### Anti-Dumping Review Panel

circumvention activity<sup>8</sup> and specifically identified the "circumvention goods" as the 68 gsm copy paper exported by UPM and sold to COS. UR referred to the previous cases dealing with the addition of alloys and involving numerous exporters and importers, where the Commissioner, in UPM's view, "correctly" undertook separate comparisons of "each good" by reference to, on the one hand, the specific circumvention goods exported by a particular exporter and, on the other, to the specific goods purchased by the Australian customer or customers of that exporter.<sup>9</sup>

UR stated that in UPM's view the Regulation requires a specific identification of certain goods falling within the description of the good the subject of the original notice when undertaking the comparative exercise. According to UR the goods description in a notice can, and frequently does, cover products of varying specifications including physical characteristics, prices, costs, uses and production processes. Further, according to UR, fair comparisons of such factors pertaining to each good can only be achieved by using data referable to the goods previously exported to the specific Australian customer. UR stated that this conclusion is also supported by the views expressed above that both the text of the Regulation and extraneous sources that help to illuminate that provision support a claim that an assessment of whether a circumvention activity has occurred must be conducted by reference to specific alleged circumvention goods and specific imported goods that were the subject of the dumping duty notice.

UR also stated that as to the quoted observation of Counsel concerning a "more generalised inquiry", UPM claims that he was making a comparison with the discounted proposition that the Regulation requires consideration of a subsequent modification of a particular pre-existing object. According to UPM there is nothing in Counsel's opinion to support the view that the phrase "the good the subject of the original notice" means all goods the subject of that notice.

- 6. Discussion Item 6:** *Clarification is requested as to why it is contended in UPM's application for review that the ADC's claim in Section 4.3.2.2 of SEF 552 that the broad category of "goods the subject of the original notice" are the relevant goods for the purposes of the comparison with the alleged circumvention goods is "untenable"*

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<sup>8</sup> Reference was made to EPR 552 – Item 1; p.4-5

<sup>9</sup> References were made to ADC Reports 291 and 298.



*[emphasis added]*<sup>10</sup> when Regulation 48(3) states that the comparison is with “the good the subject of the notice”.

UR referred to the immediately preceding response.

7. **Discussion Item 7:** Clarification is requested as to any differences in the 68 gsm product exported to Japan and the 68 gsm product exported to Australia, bearing in mind that, on the one hand (i) UPM has stated in its application for review that in REP 552 the ADC has, “ignored the significance of the fact that the alleged circumvention goods are a pre-existing product with a production and sales history extending over fifteen years” and that, “UPM only produces copy paper in response to orders but if it did produce for stock the alleged circumvention good could have been supplied ‘off the shelf’”<sup>11</sup> and on the other hand, the discussion in Section 4.3.2.4 of REP 552 on the differences in the 68 gsm products exported to Australia and the 68 gsm products exported to Japan and the ADC’s conclusion that that, “the circumvention goods, are not identical to 68 gsm copy paper exported to Japan”.<sup>12</sup>

UR stated that the Japanese and Australian products are identical if the comparison is made having regard to their "general physical characteristics" as defined by the ADC at page 15 of REP 552. UR further stated that if the comparison is made taking into account characteristics that the ADC has determined to be "secondary", there is a minor change to the dial-up product mix. UR stated that the product exported to

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<sup>10</sup> See page 3 of Attachment C1 to UPM’s application for review.

<sup>11</sup> See page 5 of Attachment C1 to UPM’s application for review.

<sup>12</sup> See REP 552, page 30 which states:

“...the Commission assessed UPM’s claim that the circumvention goods are an unaltered specification of UPM’s standard or ‘pre-existing’ product range and are therefore not modified goods. Based on verified data and records pertaining to UPM’s sales and production, the Commission found that:

- the circumvention goods exported to Australia, and 68gsm copy paper exported to Japan, are produced on the same production line (paper machine); however, the circumvention goods exported to Australia have a different material and grade code to the 68gsm copy paper exported to Japan;
- the circumvention goods exported to Australia have a separate bill of materials (or ‘recipe’, as referred to by UPM) to 68gsm copy paper exported to Japan and are produced or manufactured on separate production runs. The quantity and mix of raw materials (such as pulp or fibre and chemicals) consumed in producing the circumvention goods differs to the quantity and mix of materials consumed in manufacturing 68gsm copy paper exported to Japan;
- the circumvention goods exported to Australia are produced in accordance with a separate bill of materials and in separate production runs to all other copy paper products;
- the brand of the circumvention goods exported to Australia (‘New Future Opti’) is different to the brands of 68gsm copy paper exported to Japan; and .....





## **Australian Government**

### **Anti-Dumping Review Panel**

Australia also features a biodegradable, plastic free, recyclable ream wrapper which together with other environmental features of the product was identified by COS as its primary reason for purchasing the product.

UR stated that the issue of whether or not the two products are identical or near identical is simply not relevant and that product comparisons under s.48 are limited to the circumvention good and the good the subject of the notice. According to UR the significance of the long-term supply of the product to Japan is that unlike previous anti-circumvention cases it was not specially developed for the Australian market in response to a recent publication of a dumping duty notice and it did not involve any alteration to general physical characteristics.

8. **Discussion Item 8:** *UPM is provided with the opportunity to comment on the summary of the ADC Conference, attached as Appendix 1.*

*See UPM's written comments, attached as Appendix 2.*<sup>13</sup>

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<sup>13</sup> These written comments were provided after the conference, as a summary of UPM's oral comments during the conference.



# ADRP Conference Summary

## Review No. 133 A4 Copy Paper exported from the People's Republic of China

Panel Member	Leora Blumberg
Review type	Review of Minister's decision
Date	8 June 2021
Participants	Evan Schnell, Vikki King, Jasna Halilovic (ADC Representatives)
Time opened	11:00am AEST
Time closed	12:40pm AEST

### Purpose

The purpose of this conference was to obtain further information from the Anti-Dumping Commission ("ADC") in relation to the review before the Anti-Dumping Review Panel ("Review Panel") in relation to the anti-circumvention inquiry of A4 Copy Paper exported from the People's Republic of China ("China").

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act).

In the course of the conference, I was able to ask the ADC to clarify any argument, claim or specific detail contained in their submission, REP 552 or other documents relating to the inquiry. The conference was not a formal hearing of the review, and was not an opportunity for parties to argue their case before me.

I have only had regard to information provided at this conference to the extent that it relates to relevant information within the meaning of section 269ZZK of the Act. Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the Review Panel may have regard to and, therefore, is not reflected in this conference summary.

At the time of the conference, I advised the participants:

- That the conference was being recorded and transcribed by Express Virtual Meetings Pty Ltd, and that the recording would capture everything said during the conference.



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- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

## Discussion

The specific information that the Review Panel sought in this conference was:

### UPM Ground 1

1. **Discussion Point 1:** *The Reviewing Member ("RM") referred firstly to REP 552 which states in Section 4.3.2.1 that UPM Asia Pacific Pte Ltd ("UPM") claims that it has never supplied Complete Office Supplies ("COS") with the goods the subject of the original notice, and its only supply of such goods was to [REDACTED] which commenced [REDACTED] after the first shipment of the alleged circumvention goods. RM then referred to the application for review of UPM which states, when setting out the background information, that UPM had supplied 80 gsm A4 copy paper ex China to COS in the period prior to [REDACTED] when the customer terminated the contract. RM requested clarification for this apparent discrepancy.*

The ADC Representative ("AR") stated that UPM's claim relating to Section 4.3.2.1 of REP 552 is a reference to UPM's claim made in a submission responding to SEF 552 dated 15 January 2021. AR stated that UPM probably meant that it never supplied the goods from China to COS in the original investigation period (which was the calendar year 2015) or following the imposition of the measures. AR advised that the ADC had no knowledge of whether UPM supplied COS with 80gsm copy paper from China prior to [REDACTED] as it was before the original investigation period, but found that



UPM did not supply the goods which range from 70gsm to 100gsm to COS from China in the original investigation period or following the imposition of the measures in April 2017. AR stated that UPM was best placed to address this discrepancy.

2. **Discussion Point 2:** UPM stated in its application for review that:

- a. supply to COS resumed [REDACTED] with UPM supplying [REDACTED] tonnes of 80 gsm A4 copy paper produced in Germany in [REDACTED]  
[REDACTED]
- b. In May 2019 supply by UPM of 68gsm copy paper to COS ex China was substituted for shipments from Germany and in [REDACTED]  
[REDACTED] the total sales volume was [REDACTED] tonnes.
- c. COS continued and continues to import 80gsm A4 copy paper from other exporters.

*Please can the ADC clarify the amounts of and countries of origin of the 80gsm A4 paper that COS says it “continued and continues” to import from other exporters (after switching to 68gsm A4 copy paper), as stated in 2c above.*

AR stated that the ADC did not know what information UPM relied upon in making this claim that COS continued and continues to import 80gsm A4 copy paper. AR stated that the ADC has knowledge of the following imports, from the ABF import database and also from information obtained in a review of measures that was conducted concurrently to this circumvention inquiry, being ADC Investigation No. 551:

- COS imports from [REDACTED] (a country subject to the original notice), [REDACTED] and [REDACTED] and was importing from [REDACTED] in the original investigation period (the calendar year 2015) and since the original investigation period, including in [REDACTED], when UPM commenced exporting the circumvention goods to COS.
- COS imports from [REDACTED] (another country subject to the original notice) but from [REDACTED]  
[REDACTED].



- In the calendar year 2019, COS sourced approximately [REDACTED] tonnes of 80gsm copy paper from [REDACTED] and approximately [REDACTED] tonnes of 80gsm copy paper from [REDACTED]

The RM requested clarification as to whether the volume imported from Indonesia reflected an increase in 2019 or whether it was in accordance with what it was previously importing. AR advised that the ADC would check this information and revert to the Review Panel with the information following the conference.<sup>1</sup>

3. **Discussion Point 3:** *Could the ADC clarify whether UPM is correct in its submission that a number of the s.48(3) comparisons were in relation UPM's exports of 80gsm copy paper in Investigation 551 which did not commence until [REDACTED] after the first shipment of the alleged circumvention goods. [my emphasis]*

a. *If so, were there also comparisons with other earlier exports (before the first shipment of the alleged circumvention goods) of 80gsm copy paper being good the subject of the notice?*

b. *If so, please indicate all the exports of 80gsm copy paper that were the subject of the s.48(3) comparison indicating in each case: (i) date/period of relevant exports (ii) volume and value of relevant exports (ii) country/countries of origin.*

AR pointed out that the comparisons were undertaken with goods the subject of the original notice which were exported to Australia in calendar year 2019 (because that is when UPM commenced exporting the circumvention goods and this period also includes UPM's exports to [REDACTED], which did not commence until [REDACTED]).

AR stated that for the factors relating to production, cost and some of the price comparisons, these comparisons were undertaken in relation to UPM's A4 copy paper exported in the [REDACTED] because this is the quarter in which UPM exported both the circumvention goods and the goods the subject to the original notice from China. AR pointed out that any such comparisons (relating to price and costs) would have related to exports at similar times (in the same quarter) and comparisons would not have been done, for example, between the circumvention goods exported in [REDACTED] and the notice good exported in [REDACTED]. AR stated that the cost comparisons were based on UPM's verified

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<sup>1</sup> The ADC subsequently provided this information to the Review Panel which indicates the volume imported from [REDACTED] by COS has risen each year since the original investigation period: [REDACTED] tonnes [2015]; [REDACTED] tonnes [2016]; [REDACTED] tonnes [2017]; [REDACTED] tonnes [2018].



information while only some of the price comparisons were undertaken using UPM's information since the ADC also had export prices relevant to some of the goods from the other countries that could also be used in the comparison.

According to AR, in terms of the other factors listed in s.48(3), such as: the end use, interchangeability, marketing, customer preferences, channels of trade and distribution, the ADC undertook the comparison at a general level and not on a specific consignment level, and for these factors generally compared the circumvention goods and the goods the subject of the original notice, which included goods imported from Thailand, Indonesia, and Brazil which fitted the description of the goods the subject of the dumping measures.

RM requested clarification as to whether s.48(3) comparisons could have been made without the goods that were exported to [REDACTED] in [REDACTED]. AR pointed out that with regard to comparisons relating to costs and (some) pricing, it was important to make the comparisons in the same quarter, and since UPM only commenced exporting the circumvention goods in [REDACTED], and the [REDACTED] 80gsm copy paper from [REDACTED], the ADC compared costs and prices in the [REDACTED] [REDACTED] as it had the relevant pricing and cost information to be compared.

AR pointed out that it would not have, however, made a difference when comparing general characteristics (other than price and costs), if the exports to [REDACTED] were excluded, as the ADC examined and compared the circumvention goods with the goods exported from other countries that were subject to the notice such as Thailand, Indonesia, and Brazil, and because the end use for all A4 copy paper is similar, regardless of where it comes from, which also applied to interchangeability, marketing and promotion and customer preferences. AR reiterated that it was only in respect of costing and some pricing that it was relevant to make a comparison with the [REDACTED] exports, using UPM's information. AR stated that in regard to pricing the ADC also compared export prices of the circumvention goods to other exportations of the goods subject to the original notice as the ADC also had export prices relevant to some of the goods from the other countries that could be used in the comparison as well, and in this regard it would not make a difference if the [REDACTED] exports were excluded. AR therefore concluded that the comparisons with the [REDACTED] exports were only significant in respect of costs but pointed out that costs on its own are not determinative of whether a circumvention activity occurred or not.



## Australian Government

### Anti-Dumping Review Panel

In response to a request for clarification relating to a statements in UPM's application for review that: (1) it ceased exports of 80gsm A4 copy paper, from China in [REDACTED], once the measures were imposed; and (2) it ceased exports of 80gsm A4 copy paper from China to COS in [REDACTED], AR confirmed that exports from China during this period were to customers other than COS. AR also confirmed that when the measures were imposed, UPM switched to exporting from Finland, and then when measures were imposed on goods from Finland (in a separate investigation), UPM switched to sourcing the goods from Germany (country not subject to measures). AR referred to the outline of UPM's trading behavior following the imposition of measures in Confidential Attachment 2 to REP 552 and in particular to the discussion of factors 48(3)(j) "patterns of trade" in Confidential Attachment 2 (pages 9 -13).

With regard to the response to Discussion Item 3(b) AR referred the Review Panel to the ADC folder provided to the Review Panel entitled, "Other relevant Information" and in particular the Excel Workbook entitled, "552, Volume and Prices" containing all the volumes from the different countries subject to the original notice, including Brazil, Indonesia, Thailand and China in 2019 and also volumes dating back to the original investigation period (Sheet 1 of Excel Workbook).

4. **Discussion Point 4:** *In its s.269ZZJ submission UPM referred to the ADC's conclusion that:*

*"Based on the available information, the Commission considers that the patterns of trade appear to support that the circumvention goods displaced the goods the subject of the notice at the time of the negotiations between COS and UPM, which suggests that the goods are interchangeable with the circumvention goods and indicates that the circumvention goods are slightly modified." [my emphasis]<sup>2</sup>*

*UPM submitted that at the time of the negotiations between COS and UPM there were no exports by UPM of the goods the subject of the notice and hence no possibility of displacement.*

*The ADC also repeated further on in REP 552 that:*

*"... the Commissioner does not agree that these are 'irrelevant considerations' in determining whether a circumvention activity occurred in relation to the notice, and maintains that the circumvention goods displaced the goods the subject of*

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<sup>2</sup> See REP 552, page 26



the notice at the time of the negotiations between COS and UPM for supply from the Asian region.” [my emphasis]

Could the ADC clarify the emphasised portions of the two statements with reference to UPM’s comment that at the time of the negotiations between COS and UPM there were no exports by UPM of the goods the subject of the notice and hence no possibility of displacement.

(Further clarification of ‘displacement’ will be sought under Ground 2 below, Item 7)

AR stated that it was correct that UPM did not export 80gsm A4 copy paper from China following the imposition of measures and during the time of the negotiations between COS and UPM in 2018, but as noted in COS’ response to the importer questionnaire and on page 12 of Confidential Attachment 2 to REP 552, it was apparent that [REDACTED] when UPM’s goods from China were subject to a dumping duty rate of 34.4 per cent. AR stated that it was noted in the SEF that this rate would have made the goods subject to the original notice very unattractive to COS in terms of the relative cost. AR noted that the reason for these discussions was that COS wanted an alternative supply source to its imports from Germany within the Asia region. AR also noted that COS accepted the supply of the circumvention goods in the end, noting that the circumvention goods were not subject to the measures at all. AR stated that COS mentions on page 5 of its questionnaire that the circumvention goods from China were [REDACTED].<sup>3</sup> AR noted that these negotiations were in 2018 before the rate of dumping duty was revised to 4 per cent (March 2019). AR stated that the 68gsm goods from China displaced the 80gsm that that [REDACTED]. AR stated that it was apparent to the ADC that [REDACTED] with 80gsm, from China and at that time the 80gsm copy paper from China was subject to a dumping duty rate of 34.4 per cent.

5. **Discussion Point 5:** Please could the ADC clarify paragraph 47 of its s.269ZZJ submission as follows:

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<sup>3</sup> Reference was made to COS’ confidential response to the importer questionnaire where it was noted that [REDACTED]. See confidential version of Document #8 of EPR 552 (ADC document file entitled, “Other Relevant Information”).





## Australian Government

### Anti-Dumping Review Panel

- a. *Is the reference to “these goods” a reference to the goods subject to the original notice?*
- b. *Does the bracketed phrase, “(including in 2019)” attach to the words, “imposition of measures” immediately preceding it as appears from the text, or was it meant to attach to the goods exported by UPM and should have been inserted after the words, “these goods were exported by UPM”.*
- c. *Do the words “in 2015” attach to both the exports by UPM and “other exporters to Australia from countries subject to the Original Notices”, or just to the “other exporters from countries subject to the Original Notices”.*

AR stated that paragraph 47 is really a condensed version of what is contained in a passage in Section 4.3.2.1 of REP 552 (page 14)<sup>4</sup> With regard to clarification requests, AR responded as follows:

- a. The reference to “these goods” is a reference to the goods subject to the original notices.
- b. The bracketed phrase, “(including in 2019)” attaches to the goods exported by UPM and should have been inserted after the words, “these goods were exported by UPM”.
- c. The words “in 2015” attach just to the “other exporters from countries subject to the Original Notices”.

AR again referred back to the relevant passage in REP 552 for a proper understanding of paragraph 47 of the ADC’s s.269ZZJ submission.

## UPM Ground 2

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<sup>4</sup> The relevant passage from REP 552 (page 14), referred to by AR is set out below:

“The Commission considers that the goods the subject of the original notices are relevant goods for the purpose of the comparison required by section 48(3) of the Regulation. These goods are described as follows:

uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm [grams per square metre] and cut to sheets of metric size A4 (210 mm x 297 mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

These goods were exported by UPM and other exporters to Australia from the countries subject to the original notices in 2015 (the original investigation period) and following the imposition of measures including in 2019. Therefore, the Commission does not agree with UPM’s contention that there is an absence of ‘relevant goods’.”



6. **Discussion Point 6:** UPM submits in its application for review, that part of its commercial justification for COS sourcing the alleged circumvention goods from China, is “the fact that the evidence before the ADC demonstrates that the company could have sourced 80gsm product from China at a landed into store cost not greater than the cost for the alleged circumvention goods.” [my emphasis]

Please could the ADC comment on the correctness of the emphasised part of UPM’s statement in light of “the evidence before the ADC”.

AR stated that the ADC’s understanding was that UPM based this claim on a comparison of prices on a per tonne basis, as outlined on page 13 of Confidential Attachment 2 to REP 552.<sup>5</sup> AR referred to COS’ response to the importer questionnaire where it is stated that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] AR pointed out that it was important to undertake the price comparison on a per ream basis because for any given tonne there are more sheets and therefore more reams of the circumvention goods given that the circumvention goods are a lighter sheet of paper and [REDACTED]

[REDACTED]. AR noted that on page 13 and 14 of Confidential Attachment 2, the ADC found that the circumvention goods have a [REDACTED] [REDACTED] than the goods subject to the notice exported from [REDACTED] when compared on a per ream basis.

RM requested further clarification as to whether these price comparisons took into account the anti-dumping duty, which was 34.4 per cent at that time. AR confirmed that the price comparison was undertaken exclusive of the anti-dumping duty.

RM also requested clarification concerning a statement made in UPM’s application for review relating to the commercial justification for switching from 80gsm product from Germany to 68gsm product from China, that the general duty for A4 copy paper was lower. AR confirmed that the general rate of duty was the same for all A4 copy paper and that there was no differences based on the weight of the paper.

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<sup>5</sup> AR made reference to the fact that UPM had a redacted version of Confidential Attachment 2 since some information that COS provided is confidential to COS.



7. **Discussion Point 7:** *In its discussion of “patterns of trade” pursuant to Section 48(3)(j) of the Regulation, the ADC concluded on page 6 of REP 552 that, “Based on the available information, the Commission considers that the patterns of trade appear to support that the circumvention goods displaced the goods the subject of the notice at the time of the negotiations between COS and UPM .....”*
- a. *Could the ADC please clarify which goods it considered were ‘displaced’ at that time, and if such displaced goods were goods subject to the original notice. If such goods being ‘displaced’ were not from a country / countries subject to the notice, please could the ADC explain its statement in light of this.*
  - b. *Could the ADC please clarify whether it considers that ‘displacement’ is a requirement of the legislation in determining whether a circumvention activity has occurred.*<sup>6</sup>

AR stated that the goods that were displaced were the 80gsm copy paper from China [REDACTED] at the time of the negotiations, which were conducted in 2018. AR stated further that COS agreed to the supply of the circumvention goods and the ADC noted in REP 552 that the circumvention goods were not subject to any dumping duty at the time of negotiation. AR stated that therefore the ADC considered that at the time of the negotiations the circumvention goods ‘displaced’ the 80gsm A4 copy paper from China [REDACTED]. AR also pointed out that the negotiations came about because [REDACTED].

There was some discussion of volume of product to COS of both 80gsm product from Germany and then subsequently 68gsm product from China. RM made reference to the volumes referred to in UPM’s application for review (see Discussion Item 2a and 2b) and AR stated that the ADC assessed the volume in the 2019 Calendar year because that is when UPM started exporting the alleged circumvention goods, with the volume being about [REDACTED] tonnes in the calendar year 2019. RM pointed out that this was a different period to that referred to in Discussion Item 2b, which was stated to be [REDACTED]. AR also confirmed that [REDACTED] never imported

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<sup>6</sup> UPM contends in its application for review that consideration of the issues of displacement and substitution has played a major role in determining whether a circumvention activity has occurred in the ADC’s conduct of all its past inquiries into allegations of slight modification of goods, and further submitted that, that consideration has formed part of the patterns of trade analysis referred to in s.48(3)(j).

**Australian Government****Anti-Dumping Review Panel**

80gsm from China, even after the dumping duties were reduced to 4 per cent in March 2019.

With regard to Discussion Item 7b, AR stated that the ADC's view is that displacement is not a requirement of the legislation, with reference to both the anti-circumvention provisions of the Customs Act and s.48 of the Regulation. AR emphasised that 'displacement' is not an express term that is used at all in the legislation. AR stated further that there had been about seven anti-circumvention inquiries that have been conducted by the ADC and they all follow a very similar approach in how they determine whether a circumvention activity has occurred. AR stated that where there is a reference to displacement it is typically within the confines of considering the factors of the pattern of trade analysis under s.48(3)(j), pointing out that it does not typically form a major part of those considerations. AR concluded that the ADC did not consider that displacement is an express requirement of the legislation.

RM also requested clarification on any differences in the 68gsm product exported to Japan and the 68 gsm product exported to Australia, bearing in mind that, on the one hand UPM stated it had been manufacturing and selling the 68gsm product to the Japanese market for 15 years and that it could have been sold to COS out of existing stock, if UPM did not manufacture to order, and on the other hand there is reference in REP 552 to the fact that the 68gsm products exported to Australia, to COS, differed from those exported to Japan.

AR confirmed that the products have different bills of materials or 'recipes' (the quantity and the materials used to produce each product). AR clarified that the ADC's understanding of these differences was not so much relating to Australian and Japanese standards, but rather to different characteristics that were preferred, such as, brightness, whiteness and density of the paper, that are manufactured to order in accordance with that particular recipe, with the ADC's understanding being that the Japanese market prefers certain characteristics that are different to characteristics of copy paper that are preferred and consumed in the Australian market.

# MinterEllison

## **Review No. 133 A4 Copy Paper exported from the People's Republic of China**

### **UPM's Observations on ADRP Conference Summary of 8 June 2021**

#### **Discussion Point 1.**

UPM has clarified the issue in the course of its conference with the Panel on 21 June 2021.

#### **Discussion Point 2**

The fact but not the volume of COS' continuing imports of 80gsm copy paper from Thailand and Indonesia was apparent to UPM from COS' website and market intelligence.

The revelation in footnote 1 of the summary that COS' imports of 80 gsm A4 copy paper continue to grow supports the contention that sourcing 68gsm paper from UPM was designed to expand COS' product range, and was not a stratagem to avoid the application of the dumping duty notice.

#### **Discussion Point 3**

Contrary to the Commission's claim that in most cases it conducted the comparative exercise at a "general level" there is no indication in the extensive analysis over 14 pages in section 4.3.2.2 of Report 552 of anything other than specific comparisons between the alleged circumvention goods and UPM's exports to [REDACTED]. Similarly in the very detailed comparative assessment set out in Confidential Attachment 1 to the Report all assessments are specific to UPM and COS. The same approach can be seen in earlier circumvention cases and in UPM's view that is a reflection of the fact that in relation to most of the factors listed in s48(3) cogent comparisons with "each goods" of other parties would be impractical and unsound

UPM notes that the Commission has provided the Panel with a folder that records the export volumes of all countries nominated in the dumping duty notice. There is no reference to the folder in Report 552. The question arises whether the information in the folder was before the Commissioner when he made the findings set out in Report 552.

#### **Discussion Point 4**

The Commission observed at page 10 of Confidential Attachment 2 to Report 552 that exports of the alleged circumvention goods displaced earlier exports of 80gsm copy paper from Germany. That logical conclusion has now been replaced by the bizarre claim that the alleged circumvention goods have displaced phantom goods [REDACTED] never

## Non-CONFIDENTIAL

produced. However displacement or substitution or switching are real world concepts involving actual goods that cannot be invoked in this case to refer to goods that never existed. As the Commission acknowledged in Report 552 the goods displaced by the alleged circumvention goods were exports from Germany that were not goods the subject of the dumping duty notice,

The Commission continues to imply that because the dumping duty applicable to UPM's exports was not reduced from 34.4% to 4% until March 2019 that price negotiations commencing before that time must have been directed at circumventing the dumping duty notice. However as early as 18 March 2018 with the publication of ADRP Report 55 and the related reinvestigation report it was apparent to UPM and its legal advisers that a denial of procedural fairness had occurred. This view was vindicated by the Federal Court's decision of 8 October 2018 to set aside the decision and the Panel's recommendation to the Minister in Report 55A of February 2019 to reduce the interim duty rate to 4%. Consequently during the period of negotiations between COS and UPM the prospect of a continuing barrier of 34.4% was not a factor in the decision to replace exports from Germany with 68gsm copy paper from China. The Commission's claim that avoidance of the 34.4% duty was the reason for commencing exports of 68gsm copy paper is not supported by either the relevant timelines or the continuing trade in that paper over a two year period.

We also note that the sources cited by the Commission relating to its assertion that it was apparent [REDACTED] do not appear to support that assertion. Furthermore UPM does not have any record [REDACTED]

**Discussion Point 6**

UPM's selling price to COS is an amount per tonne not per ream. As acknowledged by the Commission at page 15 of Confidential Appendix 1 to Report 552 the price per tonne of the circumvention goods was [REDACTED] higher than the price of 80gsm copy paper sold by UPM to [REDACTED]

UPM has clarified the issue of the applicable ordinary customs duty in the course of its conference with the Panel on 21 June 2021.

**Discussion Point 7**

a. The Commission's assertion that non-existent goods are the object of displacement is dealt with in Point 4 above.

b. The Commission asserts, incorrectly, that displacement "does not typically form a major part" of its consideration of whether a circumvention activity has occurred. The fact is that whether it

Non-**CONFIDENTIAL**

is called displacement, substitution, switching or some similar term it has been a fundamental factor shaping the conclusions reached in 'slightly modified' circumvention inquiries (eg, Reports 291, 290/298c, 479 and 483) conducted to date.

Each finding in those inquiries that the circumvention goods had been slightly modified was supported by a conclusion that the evidence demonstrated a chronologically proximate "switch" from exporting goods the subject of a dumping duty notice to slightly modified circumvention goods. Furthermore, in no case has the Commission concluded that circumvention goods have been slightly modified in the absence of evidence that circumvention goods have been substituted for goods the subject of the notice.

Report 291 illustrates this approach. In the analyses of the patterns of trade five exporters, found to have replaced exports to Australia of non-alloyed HSS with exports of alloyed HSS soon after the publication of a dumping duty notice applying to the former product, were determined to have engaged in a circumvention activity. By contrast in relation to one exporter whose export activities did not demonstrate a switch from non-alloyed to alloyed HSS, the Commission concluded that there was no circumvention activity even though comparisons of each good revealed that costs, prices, sales, marketing and distribution were the same or similar and there was also a degree of interchangeability.