

PUBLIC



Australian Government
Anti-Dumping Review Panel

ADRP Report No. 153

A4 Copy Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand

July 2022

<https://www.adreviewpanel.gov.au>

Contents

Contents	2
Abbreviations.....	3
Summary.....	5
Introduction	5
Background.....	6
Conduct of the Review	7
Grounds of Review.....	8
The legal standard.....	9
The Australian market for A4 copy paper.....	11
Consideration of Grounds.....	13
APRIL	13
What is the “export price”?	20
Sylvamo de Brasil Ltda	29
UPM Asia Pacific Pte Ltd	38
Recommendations and Conclusions	49
Conferences.....	50
Submissions.....	50

Abbreviations

Term	Meaning
Act	<i>Customs Act 1901</i>
Agreement	World Trade Organisation's <i>Anti-Dumping Agreement</i>
Australian Paper	Paper Australia Pty Ltd
APRIL	ARRIL Far East (Malaysia) Sdn. Bhd and PT Riau Andalan Kertas
Appellate Body	Appellate Body of the World Trade Organisation
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CTMS	Cost to Make and Sell
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
Goods	A4 copy paper, the goods the subject of the application for the continuation of the measures (also referred to as the goods under consideration)
IDD	Interim dumping duty
Jackaroo	Jackaroo Pty Ltd
NIP	Non-injurious price
Original Investigation	Investigation 341 into the alleged dumping and subsidisation of A4 Copy Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand
Manual	Dumping and Subsidy Manual November 2018
Minister	Minister for Industry, Energy and Emissions Reduction (now the Minister for Industry and Science)

NIP	Non-injurious price
RAK	PT Riau Andalan Kertas
REP 588	The report published by the Commission in relation to A4 copy paper and dated 4 March 2022
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister made on 30 March 2022, pursuant to s.269ZH(1)(b) of the <i>Customs Act 1901</i> , to secure the continuation of anti-dumping measures in respect of A4 copy paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand
SEF 588	Statement of Essential Facts 588
SG&A	Selling, general and administration expenses
Sylvamo	Sylvamo do Brasil Ltda.
The subject countries	Collectively, Brazil, China, Indonesia and Thailand
UPM	UPM Asia Pacific Pte Ltd.
USP	Unsuppressed selling price
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry, Energy and Emissions Reduction (the Minister), made pursuant to s.269ZHG(1)(b) of the *Customs Act 1901 (Act)*, to secure the continuation of anti-dumping measures in respect of A4 copy paper (the goods) exported from the Federative Republic of Brazil (Brazil), the People's Republic of China (China), the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand) (Reviewable Decision).
2. Paper Australia Pty Ltd (Australian Paper) was the applicant to the Commissioner of the Anti-Dumping Commission (Commissioner) for the continuation of the anti-dumping measures and is the sole Australian producer of the goods.
3. APRIL Far East (Malaysia) Sdn. Bhd. (AFEM) and PT Riau Andalan Kertas (RAK), collectively referred to as APRIL, lodged with the Anti-Dumping Review Panel (Review Panel) what was described as a joint and severable application. Sylvamo do Brasil Ltda (Sylvamo), a Brazilian producer and exporter of the goods; and UPM Asia Pacific Pte Ltd (UPM), a Chinese producer and exporter of the goods, each lodged separate applications for review.
4. For the reasons set out in this report, and pursuant to s 269ZZK(1)(b) of the Act, I recommend that the Minister revoke the Reviewable Decision and substitute a specified new decision, in the same terms, except that the Minister:
 - Declare pursuant to s.269ZHG(1)(b) of the Act that he has decided to secure the continuation of the anti-dumping measures applying to A4 copy paper exported to Australia from China; and
 - Determine pursuant to s.269ZHG(4)(a)(ii) of the Act that the notice continues in force after 19 April 2022 but that, after that day, the notice ceases to apply in relation to UPM.

Introduction

5. The applicants applied under s.269ZZC of the Act for a review of the Reviewable Decision.

6. In accordance with s.269ZYA of the Act, the Senior Member of the Review Panel directed in writing that the Review Panel be constituted by me.
7. The applications were accepted and notice of the proposed review, as required by s.269ZZI, was published on 26 May 2022.

Background

8. The anti-dumping measures, in the form of a dumping duty notice and a countervailing duty notice, were initially imposed on 19 April 2017 by the then Assistant Minister for Industry, Innovation and Science following consideration of *Anti-Dumping Commission Report No. 341* (REP 341). Following the imposition of those measures, the volume of exports from the subject exporters declined significantly.
9. In July 2021, the Minister altered the anti-dumping and countervailing measures to have effect as if different variable factors had been fixed in respect of exporters generally. The variable factors were altered following consideration of *Anti-Dumping Commission Report No 551* (REP 551). The investigation period for REP 551 was from 1 January to 31 December 2019.
10. The Commissioner initiated Continuation Inquiry No. 588 on 2 July 2021 following consideration of an application by Australian Paper seeking the continuation of the anti-dumping measures. The notice of initiation advised of the Commissioner's proposal to rely upon the variable factors established in Review 551. The Anti-Dumping Commission (Commission) nevertheless made questionnaires available to interested parties. With the exception of RAK from Indonesia, the Commission did not receive any other questionnaire responses.
11. Accordingly, with the exception of RAK, the variable factors which determine dumping i.e. export price and normal value established in REP 551 were adopted in *Anti-Dumping Commission Report No. 588* (REP 588) and formed the basis of the Commissioner's finding and recommendation, accepted by the Minister, that expiry of the measures would lead to, or would be likely to lead, to a continuation of or recurrence of, the dumping and material injury the measure is intended to prevent and which forms part of the Reviewable Decision.

Conduct of the Review

12. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, or revoke it and substitute a new specified decision.
13. In undertaking the review, s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
14. Subject to certain exceptions,¹ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the Commission had regard or ought to have had regard when making its findings and recommendations to the Minister.
15. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information.
16. Conferences were held with representatives of the Commissioner and each applicant pursuant to s.269ZZHA of the Act. The purpose of these conferences was to seek clarification from the Commissioner as to aspects of REP 588 and its supporting documentation and from the applicants on aspects of their claims and arguments. A non-confidential summary of the information obtained at each conference was made publicly available in accordance with s.269ZZX(1) of the Act. A list of the conferences held during the course of this review is available at Appendix A.
17. In conducting this review I have had regard to:
 - REP 588 together with its Confidential Attachments;

¹ See s.269ZZK(4).

- REP 551;²
- Other documentation before the Commissioner at the time of the formulation of the findings and recommendations forming part of REP 588;
- Information provided by the Commissioner and the applicants in the course of the conferences convened under s.269ZZHA;
- Submissions received from each of the applicants pursuant to s.269ZZJ of the Act, details of which can be found in Appendix A; and
- A submission from the Ministry of Trade, Republic of Indonesia dated 24 June 2022.

Grounds of Review

18. The grounds of review relied upon by the applicants, which the Review Panel accepted, are as follows:

a. APRIL:

- 1) That the Commissioner erred in his recommendation to the Minister to continue the anti-dumping measures applying to the goods exported to Australia from Indonesia by APRIL, and all other exporters, as there is no or insufficient evidence that the expiry of the measures would lead to a continuation or recurrence of material injury caused by dumping of future exports by APRIL and/or or other exporters.
- 2) The Commissioner erred in the recommendations to the Minister with respect to the determination of variable factors: the export price determined has no nexus with the importation and introduction into the commerce of Australia of the goods; the normal value did not accurately reflect the domestic selling price of the goods by RAK; and the Commissioner ought to have determined the non-injurious price to have

² Anti-Dumping Commission Report, *Review of Anti-Dumping Measures Applying to A4 Copy Paper Exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand*, 7 June 2021.

been RAK's normal value or the landed duty inclusive price of RAK's exports as determined by the Commissioner, whichever is the lesser.

b. Sylvamo de Brasil Ltda:

1) The Commissioner's report (REP 588), accepted by the Minister, overlooked or downplayed critical factors demonstrating that exports from Brazil continue to represent a minuscule fraction of the total Australian market, and that this negligible volume, through its limited distribution channel, is primarily focused on products with unique characteristics, that do not and would not, contribute to material injury suffered by the Australian industry.

c. UPM Asia Pacific Pte Ltd:

1) The Commissioner's findings, accepted by the Minister, regarding the application of the statutory test fails to establish that in the event of the expiry of anti-dumping measures UPM's exports of the subject goods are more likely than not to continue or recur and are more likely than not to be at dumped prices causing material injury to the local industry.

The legal standard

19. Each of the review applications challenges the Commissioner's recommendations made pursuant to s.269ZHF of the Act that the measures be continued. Under that section, the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping (and/or subsidisation) and the material injury that the anti-dumping measures are intended to prevent.
20. Section 269ZHF gives effect to Australia's obligations under Article 11.3 of the World Trade Organisation's (WTO) *Anti-Dumping Agreement* (Agreement) which relevantly provides that definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition unless the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

21. The scope of s.269ZHG was examined by the Federal Court of Australia in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2)*³ (Siam). The Federal Court noted the section required the evaluation of a number of scenarios being the probable result of changes to the present position following the expiration of the measures. The Commissioner in REP 558 correctly noted “the assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation.”⁴
22. The Federal Court cited with approval the observations of the WTO Appellate Body in *Corrosion Resistant Carbon Steel* that “in view of the use of the word ‘likely’ in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated - and not simply if the evidence suggests that such a result might be possible or plausible.”⁵
23. In a similar vein, in a more recent decision, a WTO Panel considered,
- that a member may not rely solely on assumption or speculation when conducting a likelihood analysis ... but must, instead, conduct its examination on the basis of positive evidence so as to arrive at a reasoned determination, resting on a sufficient factual basis, that dumping and injury are ‘likely’ - i.e. probable and not merely possible - to continue or recur.*⁶
24. The Federal Court in Siam also observed that a material injury determination was “essentially a practical exercise” which was dependent upon the facts of the particular case and invariably involves a question of degree, balancing all considerations and integers.⁷
25. As to whether the Commissioner’s “likelihood determination” is subject to a temporal limitation, REP 588 referenced UPM’s submission in support of the proposition “that neither the [Act] nor the [Agreement] specifies a timeframe to assess the potential

³ [2009] FCA 838 at paras. 42 and 46-49.

⁴ REP 558 at page 60.

⁵ Siam at para. 50.

⁶ *Pakistan – BOPP Film (UAE)* DS 538 at para. 7.543.

⁷ Refer Siam at para. 51.

likely future effects of the removal of measures”⁸ and the Commission expressed its view “that there is no statutory requirement in section 269ZHF(2) to specify a timeframe regarding its determination of the likely continuation or recurrence of dumping and injury.”⁹ I agree with this proposition but note the Appellate Body also expressed the following views:

- the continuation of measures is “an exception to the otherwise mandated expiry of the duty after five years;”¹⁰ and
- “an assessment whether injury is likely to recur that focuses too far in the future would be highly speculative, and that it might be very difficult to justify such an assessment.”¹¹

26. It is also convenient to note that the WTO Panel in *US – DRAMS* expressly rejected the proposition that Article 11 “precludes *a priori* the justification of continued imposition of anti-dumping duties when there is no present dumping.”¹²

The Australian market for A4 copy paper

27. By way of context, it is useful at this point to outline some of the relevant features of the Australian market for the goods.

28. I note that in Australian Paper’s application, dated 29 March 2021 for the imposition of measures against exports of A4 copy paper from Indonesia, stated, “Australian Paper has the capacity to supply the entire domestic demand for A4 copy paper with an installed capacity of approximately 200,000 tonnes per annum.”¹³ In its public submission to the Review Panel dated 24 June 2022 APRIL commented,

in a market with the current demand of approximately 130,000 TPA in 2020 ... this translates into Australian Paper supplying approximately 100,000 to 110,000 TPA to the market, with the balance of 30,000 TPA being met by

⁸ REP 588 at page 103.

⁹ Ibid.

¹⁰ Op. cit. at para. 7.543.

¹¹ Appellate Body Report DS 268 at para. 358.

¹² Panel Report, *US – DRAMS* DS 296 at para 6.29.

¹³ Australian Paper application dated 29 March 2021 for the publication of a dumping duty notice in Investigation 583.

*imports. This leaves the market with an excess of supply over demand of approximately 50% ... which excess production [Australian Paper] sells into less lucrative export markets at a loss.*¹⁴

29. REP 588 referenced the following:

- Australian Paper is the only Australian producer of cut sheet paper that is in A4 in size and of 80 GSM in weight. Although Australian Paper does produce A4 copy paper with varying ranges of recycled content, the majority of its sales are of 0% recycled content and Australian Paper's economic condition is most sensitive to sales of this variant. Australian Paper's production of A4 paper of other weights is insignificant.
- Imports are supplied from a variety of sources with the highest volumes historically originating from China and Indonesia.
- The size of the Australian market for A4 copy paper has decreased since 2015 which Australian Paper attributes to increased levels of digitisation of communications and records, a trend which it anticipates will continue.
- The Australian market is supplied through a limited number of national resellers and retailers, who all source product from either Australian Paper or through importing agents/exporters.
- Officeworks is the largest retail outlet.
- Australian Paper's products compete directly with imports in each of the following three broad categories or segments:
 - Manufacturers' brands e.g. Australian Paper's *Reflex* brand;
 - private-label/customer brands nominated by the purchaser e.g. Officeworks' *J Burrows* brand; and
 - plain or generic labelled brands.

¹⁴ APRIL submission to the Review Panel at pages 17-18.

- Australian Paper maintains that price negotiation power resides with a handful of resellers and retailers who supply the market and as a result considers itself to be a “price taker” and that its prices are often set having regard to price offers in the market for goods sourced from subject exporters.
- A comparison of Australian Paper’s weighted average selling price and weighted average cost to make and sell (CTMS) for all sales of like goods in each calendar year during the period from 1 January 2015 to 31 December 2020 revealed that unit CTMS have increased since 2017. Over this period Australian Paper has been unable to increase unit selling prices. The result has been that over the period 2018 through to the quarter ending 31 March 2021 Australian Paper’s selling prices were not sufficient to recover its CTMS and on that basis its sales of A4 copy paper have not been profitable.
- The market for A4 copy paper is price sensitive and price appears to be the most important consideration in purchasing decisions with customer loyalty regarded as being at low levels. Australian Paper describes “switching” behaviour amongst its customers to be a common feature whereby customers will source product from both Australian Paper and subject exporters, often concurrently, driven by the search for the lowest price.

Consideration of Grounds

APRIL

- 1) **That the Commissioner erred in his recommendation to the Minister to continue the anti-dumping measures applying to the goods exported to Australia from Indonesia by APRIL, and all other exporters, as there is no or insufficient evidence that the expiry of the measures would lead to a continuation or recurrence of material injury caused by dumping of future exports by APRIL and/or or other exporters.**

National interest

30. In support of the first ground of review APRIL argued that securing the continuation of the anti-dumping measures was not in the national interest as it does not address

or remedy the systemic, structural issues confronting the Australian industry. On the contrary, it suggests that the national interests would only be served by allowing the measures to expire.

31. In order to exercise the power in relation to the continuation of measures, s.269ZH(1) requires the Minister to consider two matters. The first is the report and recommendations made by the Commissioner under s.269ZH(1). The second is “any other information that the Minister considers relevant.” APRIL argues that the second matter empowers the Minister to take into account the national interest as a relevant consideration and one consistent with the Minister’s ministerial responsibility in, amongst other things, exercising statutory discretions. APRIL argues “it is a matter of ministerial responsibility for the Minister of the Crown to take into account and act in the national interest.”¹⁵
32. APRIL correctly notes that there was no statutory obligation on the Commissioner to address the national interest in his report to the Minister. I note this is consistent with the government’s response of June 2011 to the Productivity Commission Report “*Streamlining Australia’s Anti-Dumping System*” in which it stated “a public interest test could unfairly remove the remedy available to ... manufacturers and producers.”¹⁶
33. The national interest is a broad concept which invariably requires a balance between potentially conflicting interests. In the present case, by not expressly legislating for the application of a public interest test, it would appear the government has suggested that it would be appropriate to have regard to industry policy objectives in preference to other competing economic or financial outcomes which are said to be in the national interest. As there is was no express requirement that the Minister address national interest considerations it cannot be said that the Minister erred in that regard.
34. I find that APRIL has not demonstrated that a correct and preferable decision required that the Minister give consideration to the national interest issues as

¹⁵ APRIL’s application to the Review Panel at page 5.

¹⁶ Government response to Productivity Commission’s Report “*Streamlining Australia’s Anti-Dumping System*”, June 2011 at page 26.

argued by APRIL. Accordingly, APRIL's argument with respect to the Minister's consideration or otherwise of the national interest is rejected.

Material injury

35. APRIL argues,

*the reviewable decision is not the correct and preferable decision because the expiry of the anti-dumping measures will not lead to or be likely to lead to the continuation of the material injury that the anti-dumping measures are intended to prevent. This is because the injury that the Australian industry has incurred and is continuing to incur since the anti-dumping measures were imposed on 19 APRIL 2017 was not and is not being caused by exports of A4 Copy Paper ... at dumped export prices. It is being caused by other economic factors, which other economic factors anti-dumping measures can neither address nor remedy.*¹⁷

APRIL suggests that such other factors include contractions in demand or changes in patterns of consumption, developments in technology and the export performance and productivity of the Australian industry.

36. APRIL argues "the last time the Australian industry was profitable was **before** the anti-dumping measures were imposed" and has "operated at a loss each year notwithstanding the imposition of the anti-dumping measures."¹⁸ APRIL notes "Australian Paper's cost to make and sell A4 copy paper has exceeded its revenues from the sale of A4 copy paper in both domestic and export sales, with the latter being less lucrative than the former."¹⁹ APRIL argues that this injury i.e. unprofitability was caused by other economic factors, including the normal ebb and flow of business in a market contracting due to technological change.

37. In a submission to the Review Panel, dated the 24 June 2022, APRIL posed the question,

¹⁷ APRIL's application at page 9.

¹⁸ Ibid. at page 10.

¹⁹ Ibid. at page 12.

why the sole domestic producer of A4 Copy Paper has been unprofitable throughout this period despite having a dominant market share of 85% or more, and despite relatively stable A4 copy prices and maintaining and increasing its sales volume during a progressively contracting Australian A4 Copy Paper market in tonnage per annum in 2020/21 of approximately half (50%) of what it was in 2015 without reducing its prices.²⁰

APRIL's submission went on to suggest that this question had not been sufficiently addressed by the Commissioner in REP 588.

38. The question posed by APRIL invites consideration of the nature of “the material injury that the anti-dumping measure is intended to prevent”, and which is referred to in s.269ZHF(2). The term “material injury” is neither defined in the Act nor in the Agreement. That said, Article 3.1 of the Agreement stipulates that a determination of injury,

shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market ..., and (b) the consequent impact of those imports on domestic producers of such products.

Article 3.4 goes on to provide a non-exhaustive list of factors that must be taken into account when assessing whether the domestic industry has experienced material injury. These provisions are reflected in s.269TAE of the Act and s.269TAE(2A) requires that the Minister must consider whether any injury to an industry is being caused by a factor other than the exportation of the goods and any such injury must not be attributed to the exportation of those goods. I note, other such factors include:

- contraction in demand or changes in patterns of consumption;
- developments in technology; and
- the export performance and productivity of the Australian industry.

²⁰ APRIL Submission dated 24 June 2022 at page 3.

39. I note that a Ministerial Direction issued on 17 APRIL 2012 is also relevant to the Commissioner's findings and recommendations with respect to material injury. That Direction relevantly provides:

- injury caused by dumping must be greater than that likely to occur in the normal ebb and flow of business;
- dumping need not be the sole cause of injury to the industry;
- there is no threshold amount of injury that is capable of general application such that identifying new material injury will depend upon the circumstances of each case; and
- a judgement as to the materiality of injury caused by dumping is dependent on the current economic condition of the Australian industry suffering the injury such that an industry which at one point in time is healthy and could shrug off the effects of the presence of dumped products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.

40. To assess the likely effect on prices if the measures were to expire, the Commissioner had regard to a price undercutting analysis undertaken over the 2019 to 2021 calendar years. The analysis compared Australian Paper's selling prices to a 'landed' price or cost of imports both inclusive and exclusive of interim dumping duties for which the importers were responsible. This analysis confirmed that Australian Paper has had to set its prices at levels comparable to the price of dumped goods and on this basis the Commission concluded that,

*the continued availability of dumped goods from the subject exporters will likely prevent Australian Paper increasing its prices if the measures were to expire ... [and] if the measures expired, the commission considers this would likely lead to further price reductions offered by those suppliers.*²¹

41. The Commissioner also assessed the likely impact of the expiration of the measures on Australian Paper's sales volume noting the price sensitive nature of the Australian market for the goods. It was noted that following the imposition of

²¹ REP 588 at page 93.

measures import volumes decreased and Australian Paper was able to increase sales volume notwithstanding a diminishing demand within the market. Were the measures to expire this would render imports from the subject countries “duty-free” thereby providing a viable and cheaper alternative to Australian Paper’s prices. Accordingly, volumes from the subject exporters would likely increase at the expense of Australian Paper’s sales volume.

42. The Commissioner therefore concluded that the likely price and volume effects following from the expiration of the measures would cause material injury to Australian Paper. This conclusion was reached notwithstanding that Australian Paper’s financial prospects were impacted by the following factors:

- Australian Paper’s production capacity exceeded total domestic demand for A4 copy paper;
- Australian Paper’s excess production being sold into export markets at “less lucrative” prices than those obtained in the Australian market;
- the price sensitive nature of the market and, as a price taker, Australian Paper’s difficulty in demanding price increases;
- notwithstanding the imposition of measures, Australian Paper had been unable to increase its sales revenue beyond that of its CTMS since 2017; and
- demand within the market would continue to decline.

43. The Commissioner’s findings and recommendations recognised that these factors would continue to adversely impact upon Australian Paper’s financial position and could of themselves be viewed as a source of injury. For example, the factors could be the source of the loss of additional sales volume and/or the continuation of the inability to command price increases. Such factors were not however the basis of the Commissioner’s determination. The Commissioner determined that the likely loss of additional sales and revenue increases due to the continued presence of the subject exports, even of relatively small volumes, in the absence of measures, would independently exacerbate Australian Paper’s financial position and it was the extent of this likely exacerbation which constituted the requisite material injury.

44. In conclusion, I find such reasoning to be consistent with both the Act and the Ministerial Direction and accordingly reject this Ground of Review.

‘Other exporters’

45. Anti-Dumping Notice (ADN) 2017/39, which imposed the initial measures, imposed a separate dumping margin to apply to any future exports of A4 copy paper from Indonesian exporters,²² other than those specifically nominated in the Notice. Such future exporters are referred to as ‘other exporters’.

46. APRIL’s application to the Review Panel seeks to challenge the continuation of the measures against these ‘other exporters’ from Indonesia on the basis that:

- *there was no finding of fact supported by evidence in Report 588 of exports of A4 Copy Paper Indonesia by an exporter falling within the category of ‘all other exporters’ either during the investigation period or beforehand; and*
- *consequently, ‘dumping’ of exports by such exporters could not continue or recur on the expiry of the anti-dumping measures in the absence of exports by such exporters at any time and no evidence that they would or could occur in the future or when or what export prices ... to suggest otherwise is mere speculation.*²³

47. The context in which the legislation provides for the imposition of measures against ‘other exporters’ is relevant. Such measures can only be imposed following a finding that another named exporter, referred to as a “cooperative exporter”, had dumped during the earlier investigation period which had caused injury to the Australian industry. The rationale for allowing the imposition of additional measures against ‘other exporters’ is a precautionary one. It seeks to avoid a situation in which an Australian industry is found to have sustained material injury due to dumped imports from a particular country but remains exposed to further dumped imports from a new exporter commencing exports subsequent to the imposition of the measures. In such circumstances, the only avenue open to the Australian industry would be to endure

²² Except for exports from Indonesia by PT Indah Kiat Pulp & Paper Tbk, PT Pindo Deli Pulp & Paper and PT Kertas Tjiwi Kimia Tbk, which earlier reviews of these Indonesian exporters either revoked measures (ADN 2020/090) or found dumping was not occurring (ADN 2017/34).

²³ APRIL’s application at pages 38-39.

the ongoing impact of the dumped imports pending the preparation of a new application for the imposition of measures. Pending the investigation of that application, up to the point at which provisional measures could be put in place, the Australian industry would be left vulnerable to further material injury. The facility afforded by the legislation to impose measures against 'other exporters' not the subject of an investigation therefore provides certainty to the Australian industry regarding the effectiveness of measures.

48. I note the legislation and the Agreement also acknowledge the impact of the measures on an "other exporter" who may commence exporting. Such exporters are able to make application for an expedited review in which their individual normal values, export prices and, if applicable, dumping margins may be assessed.

49. I do not discern any error on the part of the Commissioner in recommending the continuation of the measures against 'other exporters'. Accordingly, APRIL's arguments with respect to this issue are rejected.

2) The Commissioner erred in the recommendations to the Minister with respect to the determination of variable factors: the export price determined has no nexus with the importation and introduction into the commerce of Australia of the goods; the normal value did not accurately reflect the domestic selling price of the goods by RAK; and the Commissioner ought to have determined the non-injurious price to have been RAK's normal value or the landed duty inclusive price of RAK's exports as determined by the Commissioner, whichever is the lesser.

The role of "export price" in an injury determination

50. REP 588 made the following findings:

- RAK is the Indonesian producer of the goods exported to Australia;
- RAK sold the goods to Australian customers through its Malaysian based related entity AFEM;
- APRIL is the ultimate holding company to which RAK and AFEM are subsidiaries;
- RAK was aware that AFEM on sells the goods to Australia;

- RAK was responsible for delivering the goods at FOB terms;
- AFEM did not take physical possession of the goods; and
- RAK is the exporter of the goods exported to Australia.

51. In a submission to the Review Panel, dated 24 June 2022, APRIL asserts that it remains 'unconvinced' by the Commissioner's reasoning that RAK, not AFEM, is the exporter. However, the submission confirmed that APRIL was not pressing that issue in this review.

52. APRIL considers,

the more fundamental issue is what is the 'export price' of APRIL's exports from Indonesia to Australia? ... APRIL's contention is that the 'export price' is the price payable by AFEM's Australian customers to AFEM for the purchase and delivery of A4 copy paper to customers in Australia. This is the 'price' and the only 'price' at which the A4 copy paper in question is introduced into the commerce of Australia.²⁴

53. For the majority of the goods exported to Australia by RAK, the Commission found that the importer (AFEM's Australian customer) had not purchased the goods from the exporter. In this circumstance, an export price could not be determined under s.269TAB(1)(a) or s.269TAB(1)(b). The Commission therefore determined RAK's export price pursuant to s.269TAB(1)(c) having regard to all the circumstances of the exportation. That export price reflects the price at which the goods were sold by AFEM to its Australian customer, less amounts for overseas freight and marine insurance (where applicable), and an amount for AFEM's profit.²⁵

54. APRIL argues that as s.269TAB(1)(c) incorporates the phrase 'all the circumstances of the exportation' this,

confers a wide discretion on the Minister in determining an 'export price', it nevertheless requires the Minister to exercise that discretion to determine the price payable for A4 copy paper, being a 'price' payable by an importer for the importation into Australia of A4 copy paper ... it is only this price, being the

²⁴ APRIL Submission dated 24 June 2022 at page 37.

²⁵ Refer REP 588 at page 46.

price at which APRIL's exports are introduced into the commerce of Australia, can cause injury to the Australian industry. This is because it is only this price ... [that] competes with the domestic industry's products and on price.²⁶

55. APRIL's submission notes that notwithstanding the determination of the export price under s.269TAB(1)(c) the Commissioner's price undercutting analysis in Section 8.6.1 of REP 588, used to assess the likely effect on prices of the expiration of the measures, did not adopt the determined export price but rather 'landed' prices, being the 'prices' paid by AFEM's Australian customer both inclusive and exclusive of interim dumping duty. The rationale for this approach was to enable the Commissioner to compare,

the prices at which the Australian industry sold like goods on delivered terms and the landed export prices paid by importers at an appropriate level of trade. The landed price of exports is relevant because this reflects the total cost an importer would incur to have those goods delivered to its destination from the port of arrival in Australia ... The price undercutting analysis reflects the point in the supply chain, i.e. the level of trade, where Australian buyers of A4 copy paper exercise the option of sourcing from the Australian industry or an overseas producer.²⁷

56. APRIL is critical of the Commissioner's approach commenting, with respect to the price undercutting analysis,

it would seem that the commission has, on the one hand, one approach to the 'export price' in the determination of dumping for APRIL's exports and on the other hand, a different approach in the determination of the 'price' at which APRIL's exports are introduced into the commerce of Australia and compete with Australian Paper's products on 'price' for the purposes of its price undercutting analysis to assess the likely effect the expiry of the anti-dumping measures would have on prices in the Australian A4 copy market. They are, of course, different 'prices' and unrelated to one another how each is determined.²⁸

²⁶ APRIL's Submission dated 24 June 2022 at page 39.

²⁷ REP 588, Section 8.6.1 at page 88.

²⁸ APRIL's submission dated 24 June 2022 at page 38.

57. I agree with APRIL's analysis, in the sense that the export price determined under s.269TAB(1)(c) is a necessary component in the determination of whether goods have been dumped based upon the comparison of export price with normal value. On the other hand, the 'landed' price is used in the assessment of material injury, an indicator of which may be that Australian industry's prices may be undercut by imports, with consequential price and volume effects. As the 'landed' price will normally reflect costs and charges incurred post exportation it will therefore be greater than the export price noted above. APRIL does not take issue with the determination of RAK as the exporter. Having so determined, the Commissioner proceeded to then determine the export price and did so in a manner prescribed by s.269TAB, and in relation to which APRIL does not seek to challenge.
58. An assessment of the likely material injury consequential upon the expiration of measures may address issues referred to in s.269TAE, which in turn leads to consideration of likely price and volume trends. Although such trends may be considered, neither the Act nor the Agreement prescribe the form which such consideration is to take or the methodology which may be adopted. The Panel in *US - Corrosion-Resistant Steel Sunset Review* observed that Article 11 of the Agreement does not expressly prescribe any specific methodology for investigating authorities to use in making a likelihood determination in a continuation review.²⁹
59. The first step in the Commission's price undercutting analysis was to identify the point in the supply chain at which Australian Paper's and RAK's products were in competition. As Australian Paper's sales were generally made on a delivered basis, it was necessary to try and place RAK's exports on a similar basis. This required the Commission to add to the export price paid by the importer all other post exportation costs and charges for which the importer was liable. Such costs would include liability for interim dumping duty. This would then produce a total acquisition cost to the importer of RAK's exports which could then be compared to Australian Paper's delivered price. Any difference between the two could then be assessed by the Commission having regard to the fact that price drives sales and that Australian Paper sets its prices having regard to price offers in the market for goods sourced from subject exporters.

²⁹ In *US - Corrosion-Resistant Steel Sunset Review* DS 244 at para. 7.166.

60. I have not discerned any error in the method adopted by the Commissioner in the undercutting analysis. This involved identifying the point in the supply chain at which RAK's exports were in competition with Australian Paper's products, recognising that such competition was driven by price. I therefore reject APRIL's criticism with respect to the Commissioner's price undercutting analysis.

Determination of normal value

61. APRIL lodged two submissions with the Commission dated 17 and 25 January 2022 in which it contended that "timing" adjustment to normal values determined for RAK gave rise to an erroneous dumping margin.
62. In REP 588 the Commission determined normal values for RAK having regard to domestic sales of like goods falling within specified model control codes (MCC). For two of those MCCs the Commissioner noted an absence of domestic sales for the December 2020 and the March 2021 quarters. APRIL acknowledges that RAK ceased to sell the goods in Indonesia on and from 1 January 2021. Thereafter two related bodies corporate in the APRIL group, referred to as AKU and APR, took over domestic sales and began selling product to the same customers as RAK, at the same level of trade and on similar terms and conditions.
63. In the submission to the Commission dated 25 January 2022, APRIL provided information relating to AKU's and APR's domestic sales for the two relevant codes for the period 1 January to 30 June 2021. APRIL argues this information provided the best information available to determine the normal value for the goods for the relevant quarters.
64. In determining normal value for the domestic sales falling within each of the two MCCs, the Commissioner did not place reliance upon AKU's and APR's domestic sales data and relied instead,

on the normal value of the relevant MCC sold in the quarter nearest to the relevant export quarter with an adjustment for timing differences applied pursuant to section 269TAC(8). The timing adjustments relied on the

*movement in the normal value of an MCC of the closest product specification or the relevant export MCC movement in cost of production.*³⁰

65. In a submission to the Review Panel, APRIL states,

*normal values based on [AKU's and APR's] factual data would have resulted in normal values that were substantially less than those determined by the Commissioner and accepted by the Minister. For example, in the case of 80 GSM paper the normal value determined by the Commissioner would have been lower by approximately 20%.*³¹

66. REP 588 conveniently summarises the Commissioner's reasoning for rejecting the AKU's and APR's domestic sales data as follows:

*publicly available information identifies AKU as a paper distributor. APR's website states the nature of its business is in the production of viscose rayon. APRIL's submission fails to identify where either entity sourced its copy paper inventory. Neither of the entities appears to be a copy paper producer. This means that the prices in the sales listing are likely not what a manufacturer such as RAK may have received. APRIL has not established the relevance of the AKU and APR information as it pertains to RAK. Even if APRIL explained why APR and Aku's data was relevant to RAK, not enough information was provided to calculate the movement in price and the effect on the timing adjustment.*³²

67. Neither APRIL's application or submissions to the Review Panel address the Commissioner's reasons for not adopting RK's and APR's domestic sales data. I find the Commissioner's reasoning, outlined in REP 588, to be persuasive and agree with that reasoning. APRIL has not substantiated its claim that its approach is preferable. Accordingly, I reject APRIL's arguments with respect to the determination of normal value.

³⁰ REP 588 at page 50.

³¹ APRIL Submission dated 24 June 2022 at page 43.

³² REP 588 at pages 57-58.

Application of a non-injurious price

68. APRIL's application to the Review Panel seeks to challenge what it describes as "the non-application of the 'lesser duty rule' (that is, non-injurious price (NIP)) ... The correct and preferable decision is that a lesser amount of duty apply and/or all other exporters pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*"³³ (Dumping Act).
69. The Review Panel's jurisdiction is limited to the reviewable decisions specified in s.269ZZA(1) of the Act. None of those decisions include decisions made under Dumping Act, such as a decision regarding the application of the lesser duty rule pursuant to s.8(5B) of that Act. Accordingly, on 26 May 2022, I wrote to the applicant's representative pointing out the limitations of the Review Panel's jurisdiction to address arguments with respect to the application of the lesser duty rule. Nevertheless, I can see some benefit in making the following observations in relation to the manner in which the NIP is determined.
70. The intent of imposing anti-dumping measures is to remove the injury caused by dumping. The Act mirrors obligations under the Agreement and provides that a 'lesser duty' (i.e. less than the full margin of duty) may be applied if it is sufficient to remove the injury caused by dumping. Section 269TACA relevantly provides that the NIP is the minimum price necessary to prevent the injury, or the recurrence of the injury referred to in s.269TG(1) or (2), i.e. the material injury identified at the time of the imposition of the measures.
71. To calculate the NIP, it is first necessary to identify a hypothetical 'price' in a market unaffected by dumping into which the Australian industry could sell its products.³⁴ This hypothetical price is referred to as an unsuppressed selling price (USP). The Federal Court has noted that:

this notion of the 'unsuppressed selling price' to ascertain the 'non-injurious' price is not one recognised, at least by that description, in the legislation, but

³³ APRIL's Application at pages 59 and 60.

³⁴ Manual at pages 130-140.

is basic to the calculation of the 'non-injurious' price. The 'unsuppressed' selling price of the price of the relevant item unaffected by dumping.³⁵

72. In the present case, Australian Paper's USP was based upon a constructed price comprising its costs to make and sell plus a reasonable amount of profit. APRIL has not challenged this method of determining the USP. Deductions were then made to the USP to bring it to a level that enabled its comparison with the export price, at the FOB level. Deductions from the USP normally include overseas freight, insurance, inter-store costs and amounts for importer expenses and profit. The resulting 'price' was then determined to be the NIP.
73. The rationale for the application of the lesser duty rule is, assuming goods are exported at a FOB price of not less than the NIP, the post-exportation costs incurred will ensure that the exports will not enter the commerce of Australia, in competition with the products of the Australian industry, at prices less than those of the Australian industry's USP.
74. APRIL's application argues that,

the reviewable decision concerning the non-application of the lesser duty rule (that is, the non-injurious price) was not the correct or preferable decision [because] the Commissioner's reasoning in Report 588 for recommending that the lesser duty rule not be applied was based on the assumption that a non-injurious price could not be less than the unsuppressed selling price (USP) of the Australian industry.³⁶

75. APRIL's application to the Review Panel argues that the Commissioner's reasoning for recommending that,

the lesser duty rule not be applied was based on an incorrect assumption that a non-injurious price could not be less than the unsuppressed selling price of the Australian industry. That is, any price less than the unsuppressed selling

³⁵ *Minister for Small Business and Consumer Affairs and Companhia Vidraria Santa Marina*, 29 October 1997 NG 355 of 1997, at page 7.

³⁶ APRIL's application at pages 59-60.

*price would cause injury to the Australian industry and, consequently, would not be recommended.*³⁷

76. APRIL argues that “the *correct and preferable decision* is that a lesser amount of duty apply to the goods exported to Australia from Indonesia by [RAK] and/or [all other exporters] ... based on a non-injurious price of the lesser amounts of:

- a) the normal value of [RAK’s] exports of A4 copy paper to Australia from Indonesia; and
- b) the landed duty paid price determined by the Commissioner for [RAK’s] exports of A4 copy paper to Australia from Indonesia.³⁸

77. The following example illustrates the application of the NIP. If normal value is determined to be 100 and the export price is determined to be 80, the maximum amount of duty that could be imposed would be 20. If the NIP was then determined to be 90, the application of the lesser duty rule would require that only a duty of 10 be levied, as the sum of the export price (80) and the duty (10) cannot exceed the NIP (90). Adding to this example, if the level of NIP was set at a level above the normal value (say 120), the lesser duty rule would have no application and the dumping duty would remain as the difference between the normal value and the export price (i.e. $100-80 = 20$). In this example, it could be argued that the local industry was being injured by factors other than dumping. In that case, the investigating authority would need to determine if dumping, of itself, was nevertheless a cause of material injury.

78. Contrary to APRIL’s claims, in REP 588, the Commissioner recommended that the Minister have regard to the desirability of specifying a lesser amount of duty but need not do so³⁹ as the determined **NIP was greater than the normal value** of RAK’s goods and therefore the NIP was not operative.

³⁷ APRIL’s Application at page 60.

³⁸ Ibid. at page 61.

³⁹ REP 588 at pages 108-109.

Erroneous application of the Reviewable Decision in working out interim dumping duty

79. APRIL's application to the Review Panel seeks to challenge the basis upon which interim duty is to be imposed in giving effect to the Reviewable Decision. As such matters are not within the range of reviewable decisions detailed in s.269ZZA, and in relation to which the Review Panel has jurisdiction, on 26 May 2022 I wrote to APRIL's representative and rejected that part of the application which alleged errors in the calculation of the interim dumping duty.
80. In conclusion, for the reasons detailed above I reject APRIL's second Ground of Review.

Sylvamo de Brasil Ltda

1) The Commissioner's report (REP 588), accepted by the Minister, overlooked or downplayed critical factors demonstrating that exports from Brazil continue to represent a minuscule fraction of the total Australian market, and that this negligible volume, through its limited distribution channel, is primarily focused on products with unique characteristics, that do not and would not, contribute to material injury suffered by the Australian industry.

81. REP 588 assessed Sylvamo's dumping margin at 8.1%.
82. Sylvamo's application to the Review Panel asserts that,

*REP 588 either overlooks or downplays critical factors demonstrating that exports from Brazil continue to represent a minuscule fraction of the total Australian market, and that this negligible volume is primarily focused on products with unique characteristics, that do not and would not, contribute to material injury suffered by the Australian industry.*⁴⁰

83. Sylvamo's application goes on to state that its products possess "unique characteristics" which are "non-standard" compared to imports from other subject

⁴⁰ Sylvamo's Application at pages 8-9.

countries and locally manufactured products offered in the Australian market. Such “non-standard” products are comprised of the following three product types;

- exclusive 80 GSM Hewlett-Packard [HP] branded copy paper with patented⁴¹ technology optimised for use with HP printers;
- copy paper in non-standard weights of 90 GSM; and
- fully recyclable copy paper including a 100% recyclable wrapper.

84. HP is said to recommend that its printer users use HP branded paper as it has been specifically designed and manufactured to work best with HP laser printers. Accordingly, Sylvamo argues that HP printer users will take into account this recommendation such that HP branded products are able to command a price premium above that of comparable copy paper manufactured by Australian Paper. Accordingly, HP branded product marketed to HP printer users is a differentiated product to that offered by Australian Paper and therefore ought not to be considered to be a cause of material injury to Australian Paper.

Sylvamo’s negligible export volumes to Australia

85. REP 588 states that in relation to exports of the goods from Brazil “over 90% of the volume exported in the period 1 January 2015 to 30 September 2021 originated from one supplier, Sylvamo.”⁴² Sylvamo has been exporting to Australia since “at least [REDACTED]”⁴³ and argues that, since that time, its export volumes have never been more than negligible, that is less than [REDACTED]% of the total Australian market and that its exports were last at this level in the 2016 calendar year. Sylvamo also states that its exports to Australia have always “represented less than [REDACTED]% of its total production capacity.”⁴⁴ Sylvamo’s application refers to “the insignificant demand in the Australian market for the unique products”⁴⁵ which it supplies (i.e. HP brand paper).

⁴¹ The patented technology is said to provide “bolder Blacks, richer colours and faster drying time, improves the recyclability of paper, reduces paper jam and extends the life of print devices when used with laser printers”, Sylvamo’s Application at page 9.

⁴² REP 588 at page 61.

⁴³ Sylvamo Application at page 9.

⁴⁴ Ibid. at page 11.

⁴⁵ Sylvamo’s application at page 11.

86. Whilst negligible volume thresholds exist and apply to decisions to impose measures, they do not similarly impose limitations on the continuation of measures. Australian Paper correctly notes in its submission to the Review Panel “the Brazilian export volumes in and of themselves need not be substantial and the Commission has correctly cumulated the volumes of dumped goods with other imports in assessing material injury.”⁴⁶ Nevertheless, Sylvamo’s past practice with regard to export volumes may therefore be relevant to an assessment of its likely future conduct.

87. REP 588 included “**Table 8 Index of change in sales volume**⁴⁷” which is reproduced below:

Country of origin	2015	2016	2017	2018	2019	2020
Australian Industry	100	108	141	152	150	108
Brazil	100	78	41	26	9	22
China	100	48	2	2	11	38
Indonesia	100	115	73	36	32	33
Thailand	100	53	24	16	15	10
Other Subject Countries (463)	100	11	698	382	0	0
All Other Countries	100	52	98	96	197	67
Total Market	100	84	86	81	80	64

Drawing on that table, the Commissioner stated “Australian Paper secured higher sales volumes following the imposition of measures on the subject countries” in the form of provisional measures in 2016 and when final measures were imposed in April 2017. REP 588 went on to note that despite the imposition of these measures,

⁴⁶ Australia Paper submission to the Review Panel dated 16 June 2022 at page 2.

⁴⁷ REP 588 at page 30.

exporters from Brazil have continued to sell the goods into the Australian market, notwithstanding that the volume of those goods is now much lower than the levels observed for 2015 and 2016” and concluded “exports from Brazil are likely to continue.⁴⁸

88. I agree with the Commissioner’s assessment that exports from Sylvamo are likely to continue, an assessment which Sylvamo’s application confirms. That said, whilst the Commissioner views such continued source of imports as likely to contribute to material injury to Australian Paper, Sylvamo argues that its exports will not do so due to their small volume and the price premium that its products command.
89. In a submission to the Commission dated 7 September 2021, Sylvamo attempted to place in context the reason for the increase in the volume of its sales following the imposition of provisional measures in 2016 and interim dumping duties in 2017. Sylvamo acknowledged that “the import volumes in 2015 and 2016 were greater than other periods”⁴⁹ but claims such volumes were due to a contract it had secured to supply “virgin private label copy paper” to Complete Office Supplies, “Australia’s largest office supply reseller at the time” and which was labelled and sold not as a HP branded product but as a Complete Office Supplies branded product.
90. Sylvamo claims that Australian Paper was not able to bid for the Complete Office Supplies tender “due to their agreed exclusive arrangements” with another company. Sylvamo claims that this fact was verified by the Commission in another investigation and that Australian Paper is no longer bound by that constraint. Sylvamo would appear to be arguing that there is little likelihood that following the expiration of measures it would be able to reacquire its 2015 and 2016 sales volumes. It would be unable to do so as Australian Paper is no longer bound by its earlier exclusive arrangements and more importantly, Jackaroo Pty Ltd’s (Jackaroo) business model is to focus upon the much smaller demand for premium priced HP branded product. Sylvamo also highlighted that Australian Paper’s securing of the Officeworks’ contract from late 2021 will further diminish the opportunity for imports

⁴⁸ REP 588 at pages 61 and 62.

⁴⁹ Sylvamo submission to the Commission dated 7 September 2021 at page 3.

to increase sales volumes as that contract “represents by far the largest part of all imported copy paper.”⁵⁰

The distribution of Sylvamo’s exports in Australia

91. Sylvamo’s sole Australian customer has been Jackaroo, a specialty paper and packaging distributor. In a submission to the Commission Jackaroo stated its “focus is on offering distinctive paper products that can be differentiated more clearly on their characteristics, and/or products which other parties choose not to or cannot supply into the market. That is, Jackaroo has focused on product and market segments which were and are ignored by Australian industry.”⁵¹ Jackaroo maintains that “there is an insignificant segment of the retail market, where customers that own HP printers are willing to overlook the cheaper prices on offer for other branded paper, and instead follow HP’s advice that printing performance is upheld by using the recommended HP copy paper.”⁵²
92. Jackaroo claims that its main focus is upon the sale and distribution of products other than the goods. Further, it does not have staff engaged in achieving sales of the goods and accordingly estimated that its sales of the goods from Brazil represented a negligible fraction (between [REDACTED]%) of its total consolidated revenue over the past 10 years. Jackaroo also claims that “irrespective of the pricing behaviour of Australian Paper and its customers, Jackaroo continues to set its prices based on its fully absorbed cost to import and sell, plus a margin reflecting the characteristics and nature of the HP product.”⁵³ I infer that Jackaroo believes that “the characteristics and nature” of HP branded A4 copy paper will command a price premium over other comparable A4 copy paper brands. I note that Jackaroo’s approach to pricing will not impact upon a dumping margin (i.e. the difference between export prices and normal values) but may be relevant to material injury to Australian Paper.
93. Jackaroo noted that its sales data assessed by the Commission in REP 551, revealed that all of its 80 GSM products sold during the 2019 calendar year were of HP branded copy paper. Of these, the vast majority ([REDACTED]%) were made to

⁵⁰ Ibid.at page 5.

⁵¹ Jackaroo Submission dated 7 September 2021, EPR No. 8 at page 6.

⁵² Ibid at page 11.

⁵³ Ibid at page 13.

Officeworks, the largest retailer of A4 copy paper, with the remainder to [REDACTED]. REP 588 acknowledges that Sylvamo no longer supplies Jackaroo with private label brands,⁵⁴ which I take as confirmation that Sylvamo's most recent exports were only of HP branded product and that this will likely continue.

94. Sylvamo's application to the Review Panel notes that it has been exporting to Australia since [REDACTED] and since that time has maintained "a stable and exclusive distribution link" with Jackaroo. Sylvamo also claims that it has not sought to acquire new customers in the Australian market, given its exclusive trading arrangement with Jackaroo.

Excess production capacity of the subject exporters

95. One of the factors that the Commissioner examined in the assessment of whether exports from the subject countries are likely to continue beyond the expiration of the measures was the excess production capacity of the subject exporters. REP 588 noted that Sylvamo has an installed production capacity three times that of Australian Paper. By compiling the production capacity data reported by exporters and comparing this to their reported production volumes, the Commission estimates the subject exporters achieved production capacity utilisation of between 65% and 95%. The Commission noted "the spare production volume capacity for any of the subject exporters was sufficient to supply between 37% and 208% of the Australian market in the 12 months ending 31 March 2021."⁵⁵

Will dumping and subsidisation continue or recur?

96. The Commissioner undertook a comparative analysis of Sylvamo's export prices over the period 2019 to 2021 and noted that its export prices in 2021 were lower than its export prices which had formed the basis of its current dumping margin, as determined in REP 551, and which was adopted or carried over into REP 588. This therefore suggests that Sylvamo's 2021 export prices would have attracted a higher dumping margin.

⁵⁴ REP 588 at page 62.

⁵⁵ REP 588 at pages 71-72.

97. To test this suggestion, the Commission looked to movements in the price of pulp, the major input to the production of the goods. REP 588 observes that Sylvamo's domestic prices followed movements in its price for pulp such that the Commissioner estimated that Sylvamo's domestic selling prices in 2020 and 2021 would reflect higher pulp prices whilst Sylvamo's export prices reduced after 2019. The Commissioner concluded that "the divergences observed between Sylvamo's domestic and export prices since 2019 indicates dumping of its exports is likely."⁵⁶ I agree with this conclusion.
98. The Commissioner also undertook a price undercutting analysis which demonstrated Sylvamo's 2021 export prices calculated at the "fully landed" level, both inclusive and exclusive of a dumping duty, "undercut the Australian industry's price". Further, such prices were found to have been "comparable to the price payable on imports from other subject countries."⁵⁷
99. Of course, Sylvamo could eliminate its dumping margins either by reducing its domestic prices (i.e. normal value) or by increasing its export prices. The Commission noted that Sylvamo's sales of uncoated paper generated significant levels of profit and that "domestic A4 copy paper sales in 2019 appeared to be materially relevant to Sylvamo's economic performance." The Commission therefore concluded that Sylvamo was unlikely to reduce its domestic prices (and therefore normal value) given their contribution to sales revenue. I note an increase in export prices could also be considered unlikely as any such increase would render Sylvamo's export prices uncompetitive on the Australian market.
100. Accordingly, REP 588 concluded,

*the long-term prevailing price of A4 copy paper in the Australian market supports that exporters from Brazil will be required to set their prices to below that of their domestic markets. Since the commission considers the necessary changes in either export price or domestic prices are unlikely to occur, it is likely that dumping of the goods from Brazil will continue.*⁵⁸

⁵⁶ Ibid at page 74.

⁵⁷ REP 588 at page 76.

⁵⁸ Ibid.

101. As noted above, Sylvamo does not challenge the Commissioner's findings and recommendations regarding the likelihood that its future exports will continue to be dumped. I have addressed the significance of those domestic sales, specifically their profitability, as those sales are relevant to the likely volume of its dumped imports and their consequential impact upon Australian Paper. Given the profitability of Sylvamo's domestic sales, it is unlikely that Sylvamo will seek to divert a greater proportion of its production away from profitable domestic sales and towards less profitable exports to Australia. Therefore, Sylvamo is unlikely to increase the volume of its exports to Australia. Given this outcome, the issue then becomes the extent, if any, of what Sylvamo describes as its insignificant export volumes to Australia will cause material injury to Australian Paper.

Will future exports by Sylvamo likely cause material injury?

102. Sylvamo's application to the Review Panel does not directly address the Commissioner's reasoning and conclusions with respect to the price undercutting analysis. Rather than focus upon its own pricing decisions, Sylvamo prefers to focus upon Jackaroo's business model. In a submission to the Commission, Sylvamo noted that Jackaroo,

*does not utilise a selling priced strategy as it simply cannot compete against the low prices offered by Australian Paper. Instead, its selling prices are determined by reference to the total cost to import and sell plus a margin which includes a slight price premium for the differentiated characteristics of its imports.*⁵⁹

This argument suggests that as Jackaroo's sales to its customers of the goods, sourced from Sylvamo, are profitable they therefore cannot be injurious to Australian Paper. This argument must be rejected as Jackaroo's profit on such sales cannot absolve Sylvamo of its dumping margin.

103. In addition to the dumping margin, it is the sales and volume effects of Sylvamo's exports that are also relevant. Sylvamo's application argues that as its exports are differentiated products attracting a price premium, it cannot be said that its exports undercut Australian Paper's prices. I note that Figure 10 of REP 588 depicts

⁵⁹ Sylvamo's submission to the commission dated 7 September 2021 at page 9.

Officeworks' price offers as at 20 October 2021 for a range of the goods including Sylvamo's "HP Everyday Paper" and Australian Paper's "Reflex Ultra". Such offers indicate that the HP branded product commands a price premium above that of "Reflex Ultra". Although this instance reflects no price undercutting, at a retail level, by Sylvamo's product, it must be viewed in the context of the Commissioner's findings that the "evidence supports that the availability of dumped and subsidised exports from the subject countries continues to prevent the Australian industry from being able to increase its prices⁶⁰" and that if the measures were to expire this "would likely lead to the Australian industry experiencing a material reduction in market share, sales volume and sales revenue."⁶¹

104. Section 269TAE(2C)(e) of the Act relevantly provides, in the context of an investigation to determine whether to impose measures, determining the effect of the exportations of dumped goods to Australia from different countries of export, the Minister should consider the cumulative effects of those exportations having regard to the conditions of competition between those goods and the condition of competition between those goods and like goods that are domestically produced. That section gives effect to obligations within Article 3 of the Agreement in relation to which the WTO Appellate Body noted as follows:

*a cumulative analysis logically is premised on a recognition that the domestic industry faces the impact of "dumped imports" as a whole and that it may be injured by the total impact of the dumped imports, even though those imports originate from various countries... and by expressly providing for cumulation in Article 3.3 of the Anti-Dumping Agreement, the negotiators appear to have recognized that a domestic industry confronted with dumped imports originating from several countries **may be injured by the cumulated effects of those imports, and that those effects may not be adequately taken into account in a country-specific analysis of the injurious effects of dumped imports**⁶² [emphasis added].*

⁶⁰ REP 588 at page 97.

⁶¹ Ibid.

⁶² Appellate Body Report DS 219, *Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* at page 47.

105. I note the Commissioner adopted a similar approach in REP 588 and cumulated the impact of Sylvamo's exports with those of the other subject exporters. As Australian Paper noted in its submission to the Review Panel, dated 16 June 2022, "the Brazilian export volumes in and of selves need not be substantial as the commission has correctly cumulated the volumes of dumped imports with other imports in assessing material injury."⁶³

106. In relation to Sylvamo's claims that due to the technical properties of its exports they ought to be regarded as a differentiated product to that produced by Australian Paper, the Commissioner noted that Australian Paper's products also lay claim to similar properties or features which were said to improve the performance of their products. The Commissioner also noted that "product data issued by Australian Paper and HP both identify their papers are suitable for use either in inkjet or laser printers."⁶⁴ The Commissioner therefore had regard to the conditions of competition between Sylvamo's and Australian Paper's products and was satisfied that exports from Brazil are like goods to those sold by the Australian industry and accordingly cumulated Sylvamo's exports with those from the other subject countries to assess the price and volume effect of such exports on Australian Paper.

107. As noted above, Sylvamo does not challenge the Commissioner's findings and recommendations with regard to the likely continuation of dumping. Having regard to the transparent nature of the market with regard to pricing and the cumulative effect of the likely future volume of exports from the subject exporters, I find that it was appropriate for the Commissioner to reject Sylvamo's arguments that due to the differentiated nature or unique characteristics of its products they have not and are unlikely to contribute to material injury sustained by Australian Paper.

108. Accordingly, I reject Sylvamo's Ground of Review.

UPM Asia Pacific Pte Ltd

1) The Commissioner's findings, accepted by the Minister, regarding the application of the statutory test fails to establish that in the event of the expiry of anti-dumping measures UPM's exports of the subject goods are more likely than not to continue or

⁶³ Australian Paper's Submission at page 2.

⁶⁴ REP 588 at page 105.

recur and are more likely than not to be at dumped prices causing material injury to the local industry.

109. The Reviewable Decision imposed a dumping margin of 3.2% on likely future exports of the goods from UPM.

110. UPM's application to the Review Panel states that it "ceased exports of the goods to Australia in October 2021" and that "in view of the dramatic cost increases impacting its export trade it considers that in the foreseeable future any recurrence of sales to Australia is most unlikely."⁶⁵ As noted in paragraph 26 above, the absence of exports is not determinative. However, it may inform the assessment of a potential exporter's likely pricing strategy with regard to a particular potential export market.

111. UPM's application to the Review Panel argues that s.269ZHF(2) creates a "qualified prohibition against continuing anti-dumping measures"⁶⁶ and that that the Federal Court decision in *Siam* established that the section requires "a consideration of future events based on an evaluation of the present position."⁶⁷ Accordingly, this in turn required consideration of "all relevant materials and information reasonably available to the Commissioner at or about the time of the formulation of his recommendation [outlined in REP 588] of 4 March 2022",⁶⁸ especially that pertaining to the date of UPM's unsuccessful price offer to supply Officeworks.

112. In support of this interpretation, UPM notes that Division 6A the Act, which contains s.269ZHF(2), does not prescribe an investigation period leaving it open for the Commissioner "to have regard to the very latest available factual material."⁶⁹

113. UPM alleges,

it is clear from REP 588 that much of the data most heavily relied upon by the Commissioner relates to the period from 2010 to 2019 or 2020, and relevant

⁶⁵ UPM Application at page 19.

⁶⁶ UPM Application at page 15.

⁶⁷ Ibid.

⁶⁸ UPM Application at page 16.

⁶⁹ Ibid.

*information arising after that time, and its significance, has been either ignored or given insufficient weight in the application of the statutory test.*⁷⁰

This criticism is directed to the Commissioner's assessment or consideration of the following factors:

- UPM's loss of the contract to supply Officeworks, as from late 2021;
- increasing international freight rates;
- increasing international pulp prices; and
- UPM's cessation of exports to Australia in October 2021 and its clear statement "that in view of the dramatic cost increases impacting its export trade it considers that in the foreseeable future any recurrence of sales to Australia is most unlikely."⁷¹

114. UPM's application describes the above factors as "seismic events" and that by "ignoring" them "REP 588 does not contain any credible forward looking hypothesis supporting a claim that injurious dumped imports by UPM are likely to recur in the foreseeable future."⁷² I note UPM advanced this argument in a submission to the Commissioner dated 11 January 2022. In response, REP 588 stated that UPM's

*submission seeks to introduce the concept of 'within a reasonably foreseeable timeframe' into the determination of dumping and injury under the statutory test in section 269ZHF(2) ... neither the Customs Act 1901 nor the Anti-Dumping Agreement specifies a timeframe to assess the potential likely future effects of the removal of measures. The commission is satisfied that there is no statutory requirement in section 269ZHF(2) to specify a timeframe regarding its determination of the likely continuation or recurrence of dumping and injury.*⁷³

115. Whilst I agree that the Act does not expressly reference a timeframe against which the probability of dumping and material injury must be assessed, it cannot be

⁷⁰ Ibid. at page 16.

⁷¹ Ibid. at page 19.

⁷² Ibid. at page 16.

⁷³ REP 588 at pages 102-103.

regarded as open ended. The Commission's dismissal of UPM's focus upon "a reasonably foreseeable timeframe" overstates the position. Indeed, I note the Appellate Body in *US - Oil Country Tubular Goods Sunset Review* cautioned that "an assessment regarding whether injury is likely to recur that focuses too far in the future would be highly speculative, and that it might be very difficult to justify such an assessment."

116. The Appellate Body went on to reject the argument that the requirement set out in Article 3 of the Agreement, that the threat of material injury be "imminent", is to be imported into Article 11 in the form of a temporal limitation on the timeframe within which injury must be determined to continue or recur. However, the Appellate Body went on to conclude that it "had no reason to believe that the standard of 'reasonably foreseeable time' ... is inconsistent with the requirements of Article 11."⁷⁴ In summary, and depending on the circumstances of the particular case, the probable future events relied upon in support of the continuation of the measures do not need to be imminent, they may be reasonably foreseeable but a timeframe beyond that may risk being speculative.

117. The legislative framework supports the need for caution in assessing the timeframe in which the likelihood of future events are foreseen. As noted above, the continuation power within s.269ZHG provides what is argued to be an exception to the expiration of the measures. If the criterion specified within s.269ZHF(2) are not met, the legislative framework does not leave the Australian industry without a remedy. At some future time, should dumping causing material injury again become manifest or threatened, the Australian industry can make a new application for relief. Admittedly, such action would be an inconvenience to the Australian industry, but the legislative framework suggests that such an outcome is considered preferable to a speculative extension of the measures for a further five year period.

The Officeworks contract

118. REP 588 noted that "from late 2019" until "late 2021" UPM had an "arrangement" for the supply of the goods to Officeworks, the largest Australian retailer of the goods. Under this arrangement UPM sold the goods to Officeworks on a FOB basis, with

⁷⁴ Appellate Body Report at para. 360.

Officeworks being liable for ocean freight and other post exportation costs which included liability for the anti-dumping measures.

119. In early March 2021, UPM submitted an offer to Officeworks “detailing substantially increased prices for the subject goods⁷⁵” to take effect from June 2021. UPM asserts that the price increase reflected, inter-alia, increasing pulp costs which were not “likely to be alleviated in the reasonably foreseeable future⁷⁶.” In April 2021, Officeworks declined UPM’s increased price offer and entered into a fixed term [REDACTED] contract or supply agreement with Australian Paper. Officeworks’ letter to UPM advising that the contract had been awarded to Australian Paper referenced increasing freight costs and the continuing anti-dumping duties, for which it was liable as the importer, as factors relevant to its decision.

120. UPM is critical of the Commissioner’s assessment of the significance of the Officeworks’ contract on two grounds. First, UPM infers that the Commissioner’s price undercutting analysis gave insufficient regard to UPM’s price offer of March 2021 and appeared to focus upon UPM’s prices in earlier years. Secondly, notwithstanding Australian Paper had secured the contract to supply Officeworks, the Commissioner nevertheless considered that for the duration of the contract term, Australian Paper was at risk that Officeworks could source imported the goods from UPM, or other importers, if the price/acquisition costs were more attractive. REP 588 observed “customers appear to have the ability to switch suppliers with relative ease.”⁷⁷

121. With respect to UPM’s first criticism, I note the Commissioner did include UPM’s and Australian Paper’s price offers to Officeworks in a price undercutting analysis⁷⁸ and REP 588 made the following observations:

- UPM’s increased price offer “undercut the Australian industry’s prices,”⁷⁹ on a landed and duty paid basis;

⁷⁵ UPM submission to ADC dated 11 January 2022 at page 3.

⁷⁶ Ibid.

⁷⁷ REP 588 at page 66.

⁷⁸ See Confidential Attachment 15 to REP 588.

⁷⁹ REP 588 at page 66.

- although “UPM’s pulp purchase price closely followed the trend in market prices for pulp imported from its major supplying countries” it’s March 2021 price increase “was materially lower than the 45% increase in pulp costs,”⁸⁰ and
- “UPM’s 2021 price offer reflected a dumped price.”⁸¹

122. In light of these observations, UPM’s criticism that the Commissioner did not have regard to its increased price offer to Officeworks in the price undercutting analysis is unfounded and therefore rejected.

123. It is apparent that UPM views Officeworks’ fixed term contract with Australian Paper as effectively locking in Australian Paper as Officeworks’ exclusive supplier for the duration of the contract term. The Commissioner however has taken a different view of the impact of the contract. REP 588 suggests that UPM “relies upon a presumption that Paper Australia’s customers have committed to sourcing their supply from paper Australia for a fixed period.”⁸² REP 588 notes that “where there was an agreement it appeared that customers were not obliged to purchase minimum volumes ... there was nothing that indicated exclusivity for Party A to Party B for a fixed term (by way of example)”⁸³ and that “agreements between parties in the Australian market provide customers with the ability to exit the relationship when suppliers offer goods at more attractive prices.”⁸⁴

124. In a submission to the Review Panel dated 23 June 2022, Australian Paper acknowledged that its contract with Officeworks “expressly states in clause 2(e) Addendum that:

‘Officeworks 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 Officeworks not agree to a required price increase, there is no obligation or exclusivity within the agreement which prevents them from ordering zero tons from [Australian

⁸⁰ REP 588 at page 92.

⁸¹ Ibid. at page 78.

⁸² Ibid. at page 65.

⁸³ Ibid.

⁸⁴ Ibid at page 66.

Paper], nor preventing them from purchasing like goods from UPM or any other exporter to Australia.⁸⁵

125. The Commissioner appears to have placed increased emphasis upon the nonexclusive nature of Australian Paper's contract with Officeworks in light of its observations of what it described as customers' "switching behaviour" whereby customers, regardless of any contractual arrangements, will periodically switch suppliers with relative ease dependent upon who offers the lowest price. REP 588 offers as an example of this switching behaviour the dynamic between Officeworks, UPM and Australian Paper.
126. UPM's application to the Review Panel goes some way to acknowledge, within the market for the goods although contracts may not guarantee exclusivity of supply for the duration of the contract, commercial practicalities ensure that supply will continue in the absence of exceptional or unexpected circumstances. UPM suggests that unexpected and substantial cost increases for a supplier would constitute such an exception and offers two examples to reinforce this point.
127. The first related to the termination in 2016 of a contract UPM held to supply a major customer and corporate stationery supplier. UPM's application to the Review Panel describes the termination as "the inevitable consequence of the overnight unlawful imposition by the Minister of a 30% increase in duties on UPM's exports of the subject goods. This seismic but unwarranted event in the market was no mere more attractive price offer."⁸⁶ The application goes on to note that in 2019, three years after the termination, UPM's dumping margin was reduced to 4% after a successful application to the Federal Court of Australia.
128. The second example of an exception to a supply contract was in fact the loss of the Officeworks contract in 2021. UPM represents this loss as being the result of Officeworks' reluctance to accept a price increase due to substantial and unanticipated increases in the purchase prices of pulp incurred by UPM.
129. UPM relies upon Officeworks' substantial investment in the operation of the contract as it had devoted nine months to the review of its supply arrangements before deciding to terminate its supply arrangement. UPM suggests such an investment

⁸⁵ Australian Paper submission to the Review Panel at page 4.

⁸⁶ UPM Application at page 20.

demonstrates that Officeworks was reluctant to move away from the contract and its decision could not be considered as acting on a whim in response to a lower price offer. Although UPM acknowledges,

Officeworks could legally refrain from purchasing the subject goods from [Australian Paper], no explanation is offered as to why the purchaser after undertaking a major change in sourcing would choose not to place any orders on [Australian Paper] or as to where else it could source its copy paper requirements at competitive prices. Purchases enter into agreements to ensure security of supply and do not, as implied by [Australian Paper], abandon such security capriciously.⁸⁷

130. I agree with UPM that the Commissioner has taken a narrow literal view of the nature of the contractual arrangements between Australian Paper and Officeworks, a view which does not give sufficient weight to the commercial reality which would attach to the relationship between Australia's largest retailer of the goods and its supplier. In my view, whilst Officeworks, at some point during its contract with Australian Paper, may seek to source the goods from alternative suppliers, due to exceptional circumstances, such an outcome only remained a possibility. There was no evidence before the Commission which suggests that such an outcome was probable than not in the absence of measures.

Increasing international freight rates

131. UPM is critical that the Commissioner gave insufficient regard to the dramatic rise in overseas freight rates since March 2020 and its consequential impact on UPM's ability to resume exports to Australia at a competitive price. As noted above, UPM's sales to Australia were made on a FOB basis with the Australian customer, as the importer, bearing the costs of overseas freight.

132. In a submission to the Commission dated 11 January 2022, UPM provided a table sourced from the Shanghai Shipping Exchange Index which detailed container freight rates from Shanghai to Australia, denominated in US dollars. UPM's application to the Review Panel also relied upon this table and noted that between

⁸⁷ UPM Application at page 21.

January 2020 and April 2021 freight rates had risen by 120% and that from January 2020 to February 2022 the rates had increased by 380%.

133. In a further submission to the Commission dated 22 February 2022 UPM referenced a Media Release from the Australian Competition & Consumer Commission dated that day which stated “COVID-19 has caused the supply chain disruptions the world is currently experiencing ... freight rates on key global trade routes are currently about seven times higher than they were two years ago”, i.e. February 2020.

134. UPM’s application to the Review Panel noted “that increasing freight rates were one of the factors acknowledged by [Officeworks] which contributed to its decision to move from UPM to Australian Paper as its supplier of the product from late 2021.” As a result of such increases, UPM argued freight costs were estimated to equate to more than one third of UPM’s FOB price offered to Australian Paper in March 2021. UPM contrasted such amounts with the 3.2% dumping duty which would apply to any of its future exports to Australia. In my view the disparity between future freight rates and dumping duty rates was likely reflective of the weight given to or the impact of each factor in Officeworks’ decision to move to Australian Paper as its supplier.

135. In a conference convened on 10 June 2022, Commission representatives were asked about UPM’s submission regarding the magnitude of the increases in overseas freight rates. The Commission representatives acknowledged that they were unable to validate the freight rates as they did not have access to the Shanghai Shipping Exchange Index subscription service.

136. However, the Commission representatives disclosed that during Review 551, the Commission had obtained and verified actual freight rates, denominated in US dollars, incurred by Officeworks in relation to the goods supplied by UPM. They noted those rates were lower than and “substantially different from UPM’s estimates.” They also acknowledged “that increasing freight rates were one of the factors acknowledged by [Officeworks] which contributed to its decision to move from UPM to Australian Paper as its supplier of the product from late 2021.”⁸⁸

⁸⁸ Conference Summary of conference convened with Commission representatives on 10 June 2022.

137. I note that the review period for REP 551 ended on 31 December 2019, prior to the onset of COVID. It is therefore unsurprising that the freight rates verified in Review 551 differed to those relied upon by UPM in the context of the continuation investigation. REP 588 outlined the methodology adopted by the Commissioner in undertaking the price undercutting analysis which

compares the prices at which the Australian industry sold like goods on delivered terms and the landed export prices paid by importers at an appropriate level of trade. The landed price of exports is relevant because this reflects the total costs an importer would incur to have those goods delivered to its destination from the port of arrival in Australia ... The price undercutting analysis reflects the point in the supply chain, i.e. the level of trade, where Australian buyers of A4 copy paper exercise the option of sourcing from the Australian industry or an overseas producer.⁸⁹

138. REP 588 report went on to note that the landed price for exports from the subject exporters was determined having regard to “CIF [cost insurance and freight] values of verified export sales examined in Review 551⁹⁰” i.e. freight costs incurred up to 31 December 2019. But UPM’s submission relied upon the significance of freight increases from January 2020 and which were projected through to the second quarter of 2022. The Commissioner appears not to have made any inquiry to test the veracity of UPM’s claim with respect to the impact of increased freight rates. Reliance upon 2019 freight rates when prospectively estimating the impact of freight rates upon Officeworks’ acquisition costs of A4 copy paper supplied by UPM beyond April 2022, the anticipated date of the expiration of the measures, cannot therefore be said to have provided “a sufficient factual basis” and therefore undermines a crucial factor upon which the Commissioner relied in formulating the recommendation to the Minister.

139. The Commissioner’s likelihood assessment had regard to UPM’s production capacity and to its likely domestic and export pricing. REP 588 noted UPM’s installed capacity was more than three times that of Australian Paper. The report “estimates the subject exporters achieved capacity utilisation of between 65 and 95%” and that “such spare production volume capacity for any of the subject

⁸⁹ REP 588 at page 88.

⁹⁰ Ibid. at page 89.

exporters was sufficient to supply between 37 and 208% of the Australian market in the 12 months ending 31 March 2021.”⁹¹ I note from Confidential Attachment 10 to REP 588 that the Commission estimated UPM’s capacity was [REDACTED] %.

140. REP 588 notes that “UPM’s FOB export price decreased in 2021 compared to 2019.” However, the report acknowledged that was the result of exchange rate movements. UPM’s export prices remained at a constant level throughout 2019 to 2021 but as they were the nominated in US dollars “when converted to AUD, UPM’s price was found to have reduced.”⁹²

141. REP 588 also relied upon findings made in Review 551 which found,

*that UPM’s domestic sales of A4 copy paper is one of its key markets. The Commission considers it unlikely that UPM would sacrifice profits in a key market by reducing domestic prices.*⁹³

142. Given UPM’s high capacity utilisation rate and profitable domestic sales, it is questionable what advantage UPM would derive by resuming exports to Australia at prices below that of those realised in its domestic market.

143. In summary, I find that the Commissioner’s recommendation with respect to UPM was made without a sufficient factual basis as to the impact of increased freight rates upon UPM’s likely future exports. UPM’s cessation of exports to Australia in late 2021 followed its realisation that customers in Australia were unwilling to bear the cost of the increased freight rates. The likelihood was therefore that there would continue to be an absence of UPM’s exports to Australia until such time as freight rates return to previous levels, with no certainty as to when this was likely. In the absence of such exports there was no likelihood of dumping or consequential material injury to the Australian industry. Accordingly, the correct and preferable decision ought to be that the dumping duty notice should cease to apply to UPM with effect from 19 April 2022.

⁹¹ Ibid. at pages 71-72.

⁹² REP 588 at page 77.

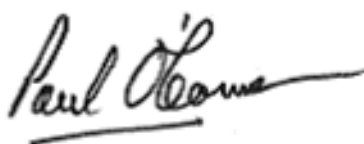
⁹³ REP 588 at page 78.

Recommendations and Conclusions

144. For the reasons given above, I have concluded that: the Reviewable Decision with respect to exports of the goods by APRIL and all other exporters from Indonesia, and by Sylvamo, was the correct or preferable decision, but was not so with respect to UPM.

145. Pursuant to s.269ZZK(1)(b) of the Act, I recommend that the Minister revoke the Reviewable Decision and substitute a specified new decision, in the same terms, except that the Minister:

- Declare pursuant to s.269ZHG(1)(b) of the Act that he has decided to secure the continuation of the anti-dumping measures applying to A4 copy paper exported to Australia from China; and
- Determine pursuant to s.269ZHG(4)(a)(ii) of the Act that the notice continues in force after 19 April 2022 but that, after that day, the notice ceases to apply in relation to UPM.



Paul O'Connor
Panel Member
Anti-Dumping Review Panel
25 July 2022

Conferences

Date of conference	Participants	Purpose of conference
10 May 2022	APRIL's Representative	Clarify aspects of Grounds of Review
12 May 2022	Sylvamo's Representative	Clarify aspects of Grounds of Review
10 June 2022	Anti-Dumping Commission	Clarify aspects of REP 588 and supporting documentation
17 June 2022	UPM's Representative	Clarify aspects of Grounds of Review
22 June 2022	Anti-Dumping Commission	Clarify aspects of REP 588 and supporting documentation

Submissions

Submission received	Party
16 June 2022	Australian Paper
22 June 2022	Australian Paper
24 June 2022	APRIL
24 June 2022	Ministry of Trade, Republic of Indonesia
27 June 2022	UPM
27 June 2022	Australian Paper
27 June 2022	APRIL