



Opal Australian Paper

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Mr Paul O'Connor
Panel Member
Anti-Dumping Review Panel
c/o Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

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Public File

Dear Mr O'Connor

Application for review of a decision by Sylvamo de Brasil Ltda – A4 copy paper exported to Australia 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).

I. Introduction

We refer to the application for the review of a decision of the Minister Industry, Energy and Emissions Reduction ("the Minister") as published on the Anti-Dumping Commission ("the Commission") website on 31 March 2022 notifying of the continuation of the anti-dumping Under section 269ZH(1)(b) of the Customs Act 1901 (the Act) in respect of A4 copy paper ("the goods") exported from Brazil, China, Indonesia, and Thailand ("the Reviewable Decision").

Paper Australia Pty Ltd (trading as "Opal Australian Paper", and otherwise referred to as "Opal" or "OAP") is the applicant company that requested the continuation of anti-dumping measures and is therefore an interested party in respect of the reviewable decision.

The Brazilian A4 copy paper exporter Sylvamo de Brasil Ltda ("Sylvamo", formerly referred to as "International Paper Brazil" in previous inquiries) has alleged one ground for appeal in respect of the Reviewable Decision:

- The Reviewable Decision outlined in REP 588 was not correct or preferable in that it downplayed factors including Sylvamo's market share and sales channels, that Sylvamo sells unique products that would not contribute to material injury of the Australian industry.

In its application, Sylvamo goes on to further detail its claim that the Commission has erred in its analysis, summarised as follows:

- The basis of the Minister's reviewable decision does not meet the necessary threshold for concluding that the expiration of measures would result in the continuation of material injury, because;
 - a) Exports from Brazil are non-standard products
 - b) There are negligible export volumes from Brazil
 - c) Patterns of trade and distribution links
 - d) Impact of dumping cases in other jurisdictions
 - e) Capacity

OAP will address each of the claims made by Sylvamo but notes that the Commission has previously analysed and responded to similar claims made by this exporter and the Importer Jackaroo Paper Pty Ltd ("Jackaroo") through the conduct of the original Investigation No. 341, Review 551, as well as the relevant Continuation Inquiry No. 588.

II. Exports from Brazil are non-standard products

The claims made by Sylvamo in its application mirror those made by Jackaroo throughout previous investigations as well as the continuation inquiry and Reviewable Decision which is the subject of this review. Sylvamo's appeal does not provide any new information in relation to these claims which were dealt with on Page 61, Section 8.4.2 of REP 588.

In terms of the 'uniqueness' of the product, the Commission has detailed its findings in relation to the commercial, functional and production likeness of the exported goods and those manufactured by the Australian industry and continues to find that *"the primary physical characteristics of the goods and locally produced goods are similar"*, and *"the goods and locally produced goods are commercially alike, as they are sold to common users, and directly compete in the same market"*, and *"the goods and locally produced goods are functionally alike, as they have a similar range of end uses"*, and *"the manufacturing process for locally produced goods and the goods is similar."*¹

Jackaroo and now Sylvamo continue to repeat this tired claim that the exported goods are somehow commercially or functionally different to the like goods without supplying any evidence to support.

The Commission summarised its analysis in REP 588 by concluding that *"the goods from Brazil are of a comparable specification to Australian industry's products, and those sourced from other countries."*²

Given that the Commission has dealt with these vexatious claims through the conduct of multiple inquiries and there remains no new or compelling evidence forthcoming from either Jackaroo or Sylvamo, it should be the Panel Member's decision that the review be terminated insofar as it relates to this claim.

III. Continued trend of negligible export volumes from Brazil

Sylvamo's claim in its application that its exports are of negligible volumes have been repeated by its exclusive exporter Jackaroo throughout the Continuation Inquiry, and has been considered in detail by the Commission.

Jackaroo's submission made during the continuation inquiry related to Reviewable Decision 588³ contended that whilst the exports from Brazil increased during the 2020 year, that the volumes were immaterial, and further that the increase was not significant. In fact, the data available to OAP⁴ suggests that exports from Brazil increased between 2019 and 2020 by approximately 26 per cent. Furthermore, OAP notes the consistent nature of the exports to Australia following the original measures.

Jackaroo and Sylvamo's claims of immaterial volumes are inaccurate given that Brazil is estimated to exported an annual average of around 2,250 tonnes per annum over the past decade. Additionally, the claim is also largely irrelevant considering that the Commission's determination that the existence of dumped prices in the market influence the price sensitive good and OAP's pricing due to price transparency regardless of volumes. Furthermore, the Brazilian export volumes in and of themselves need not be substantial as the Commission has correctly cumulated the volumes of dumped goods with other imports in assessing material injury.

Finally, as part of the Final Report relating to the Reviewable Decision 588, the Commission correctly summarised that *"Jackaroo's submission raises various points concerning the materiality of its imports from Brazil. The submission does not address whether exports from Brazil are likely to continue."* Furthermore, Jackaroo and Sylvamo did not provide any substantive evidence or data to support their claims around volume and materiality which contradicted that which was available to the Commission. Given that Sylvamo's application to the ADRP also does not contribute any new information in support

¹ REP 588, Section 3.5.5, Page 19.

² REP 588, Section 8.4.3, Page 63.

³ EPR 588, No. 26 published on 13 January 2022

⁴ Export volumes to Australia of the subject goods sourced from TradeData International Pty Ltd.

of the claims, the Panel Member should consider this unconvincing and reject these as valid grounds for appeal.

IV. Patterns of trade and distribution links

Sylvamo discloses in its appeal that it has maintained an exclusive supply agreement with Jackaroo, perhaps suggesting that this would somehow decrease the likelihood that the exports will materially impact the Australian market. This of course is fanciful and does not reflect the actual market dynamics as analysed and detailed by the Commission in the Original Investigation No. 341, the Review of Measures 551, and the Continuation Inquiry 588. In summary, the Commission found through the conduct of these inquiries that there is significant price transparency in the Australian market, which is characterised as a highly price sensitive market where large reseller customers hold the negotiating power, a dynamic which is worsened by the continued access to dumped imports, including those supplied by Sylvamo through Jackaroo.

Again, Sylvamo provides no evidence or credible information which counters that available to the Commission during the conduct of the investigation, and as such the maintenance of strong distribution links between Sylvamo and Jackaroo should be considered to demonstrate a high degree of likelihood that the trade will continue into the future in the absence of measures.

V. Impact of dumping cases in other jurisdictions

Sylvamo, in its application goes on to list its trade remedies exposure in other jurisdictions. Whilst Sylvamo does not actually provide any specific claim in connection with this, it is OAP's interpretation that Sylvamo provides this information as a means to suggest that exports to Australia will not continue. Given that there is no supporting evidence contributed by Sylvamo in relation to this vague suggestion, and that its mere suggestion does not compel any reasonable person to consider that the Commission's analysis is incorrect, and that the information does not strike to the core issue of whether dumped exports to Australia are likely to continue, the Panel Member must reject this as valid grounds for appeal.

VI. Capacity

Sylvamo seeks to differentiate its product from the rest of the Australian market despite several iterations of the Commission's inquiries finding that this is not valid. Further Sylvamo suggests that a capacity utilisation increase in Brazil is in some way strongly connected to the idea that it would no longer export the dumped goods to Australia. Sylvamo also claims that a capacity utilisation increase automatically confirms an increase in Brazilian sales, but makes no clarifying statement as to how or why this is the case, nor providing any evidence to confirm same. Capacity utilisation increases could in fact lead to higher volumes of exports if domestic demand does not increase. This claim actually has the potential to increase likelihood of dumped exports entering Australia as opposed to decreasing the likelihood. Again, the claim is not supported by Sylvamo in any way, and as such, should not compel the Panel Member to overrule the detailed analysis conducted by the Commission on the likelihood of continued exports to Australia.

VII. Recommendations

OAP contends that Sylvamo has not demonstrated that the Minister has erred in accepting the Commission's findings and recommendations that the Australian industry remains likely to be exposed to the export of A4 copy paper at dumped prices from Brazil, China, Indonesia, and Thailand in the absence of measures.

The Minister's decision as detailed in Report 588 is the correct and preferred decision based upon the available evidence – which was made difficult by the limited cooperation from importers and exporters. OAP considers that it is not in the interests of the importers and exporters to fully cooperate as full



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cooperation would likely divulge the true impact of the dumping and high degree of likelihood that the dumping would continue in the absence of measures.

Nevertheless, the analysis of the Commission confirmed that the Australian industry remains exposed to material injury from the dumping of A4 copy paper exports to Australia from Brazil, China, Indonesia, and Thailand. Anti-dumping measures remain necessary to remedy the injury, and the Minister's decision, therefore, is the correct and preferred decision.

If you have any questions concerning this submission, please do not hesitate to contact me on +61 425 619 677

Yours sincerely

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

Matt Decarne
MD Trade Law Consultants on behalf of Opal Australian Paper.