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By Email

Mr. Paul O'Connor
Panel Member
Anti-Dumping Review Panel
Department of Industry, Innovation and Science
10 Binara Street
Canberra City ACT 2601

Dear Mr. O'Connor,

Re: – ADRP Review 153 – Exports of A4 Copy Paper from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand - Supplementary Submission

I refer to the submission of 24 June 2022 (**Submission**) made on behalf of my clients, APRIL Far East (Malaysia) Sdn. Bhd (**AFEM**) and PT Riau Andalan Kertas (**RAK**), collectively (**APRIL**) in relation to the abovementioned Review 153.

This submission supplements, not replaces, the Submission.

What is the material injury that is intended to be prevented by the measures?

In considering whether the expiry of the anti-dumping measures would lead or be likely to lead to the 'material injury that the measures are intended to prevent' in making the *reviewable decision*, this requires, amongst other things, what effect, if any, the expiry of the measures would have on the Australian A4 Copy Paper market and, consequently, the Australian industry.

As set out in the Submission, the only injury that the Australian industry, that is, Australian Paper, has incurred in the five years prior to the due date for expiry of the anti-dumping measures was the unprofitability of its A4 Copy Paper business, both in its domestic and export sales. No injury was identified in Report 588 attributable to dumping of exports from the subject countries and, in particular, from Indonesia that was or was not prevented by the anti-dumping measures.

Therefore, what is the material injury that the anti-dumping measures are intended to prevent? That is, what is the material injury caused by dumping of exports from the subject countries and, in particular, from Indonesia, that would 'continue' or 'recur' following the expiry of the measures?

Such injury is not, of course, the unprofitability of Australian Paper's A4 Copy Paper business. That injury, as set out in the Submission, has been and is being caused by other economic factors and will continue to be caused by such economic factors.

Specifically, the unprofitability of the Australian industry was caused and continues to be caused by price suppression in the market due to:

- (a) technological change, that is end-users, namely, businesses and consumers switching to electronic (digital) solutions in preference to more costly and less inefficient paper-based solutions; and
- (b) supply is progressively exceeding demand due to excess domestic production by the sole domestic producer, which excess supply will continue to increase as demand progressively contracts.

It is not attributable to the dumping of exports from the subject countries, including, in particular, from Indonesia and there is no finding supported by evidence to the contrary. Further, such price suppression, of course, applies equally to all other participants in the Australian A4 Copy Paper market.

The continuation of the anti-dumping measures cannot prevent this injury to the Australian industry from occurring. Anti-dumping measures cannot reverse or alter the market forces operating in the Australian A4 Copy Paper market causing such injury.

Accordingly, it is unclear precisely what material injury will continue or recur with the expiration of the anti-dumping measures that the measures are intended to prevent.

Effect of expiry of the anti-dumping measures

The question, therefore, is what will be or likely be the effect of the expiry of the anti-dumping measures? Specifically, what effect will the expiry of the anti-dumping measures likely have on prices and sales volumes in the Australian A4 Copy Paper market at each of the levels of trade in the Australian A4 Copy Paper market depicted in Figure 1 in Report 588 where competition actually takes place between imports and the domestic like goods?

Having set out the structure of the Australian A4 Copy Paper market in Figure 1 of the Report, an analysis of the operation of that market both while the anti-dumping measures have been in place, and the likely effect that the expiration of the anti-dumping measures would have on that market, appears missing.

The effect the expiry of the anti-dumping measures will likely have on prices and sales volumes in the Australian A4 Copy Paper market at each of the levels of trade in the Australian A4 Copy Paper market, requires examination of the Australian A4 Copy Paper market and its operation at the various levels of trade and market segments, both individually and as a whole. Such an examination appears not to have been undertaken by the Commission or, at least it is not apparent from Report 588. This presumably was because it lacked sufficient information.

It is acknowledged that to obtain such sufficient reliable information and evidence from a variety of sources is problematic. Nevertheless, retailers, resellers and possibly importers would have detailed information concerning the Australian A4 Copy Paper market, including their involvement in it. Such information and evidence, whether obtained directly or through advisors and consultants, would form a necessary part of their businesses, particularly for businesses supplying a consumer product.

Will prices fall on expiry of the anti-dumping measures

The question, therefore, is whether the expiry of the anti-dumping measures will lead or likely lead to a fall in prices in the Australian A4 Copy Paper market? There is no evidence that it would.

For example, assuming dumping of exports from the subject countries continues after the expiration of the measures, would importers purchasing A4 Copy Paper at dumped prices on-sell that A4 Copy Paper into the Australian A4 Copy Paper market at prices that reflect to some unknown extent that the A4 Copy Paper was purchased by them at dumped prices. There is no evidence that this would be the case, nor would it necessarily be in their self-interest to do so. What would be the commercial and financial benefit to importers in not maintaining their prices into the Australian A4 Copy Paper market? To maintain prices to those comparable prior to the expiry of the anti-dumping measures would result in the interim dumping duty previously payable now constituting additional profit.

The only benefit in reducing prices would be to increase sales volumes. However, this assumes that, for example, the importer has the necessary capacity and infrastructure to supply increased volumes of A4 Copy Paper within its existing supply channels, unless, for example, it was relying on the customer's distribution networks, such as those of a retailer. If existing supply channels needed to be expanded, this would no doubt come at a cost and presumably impact prices. For example, to replicate the distribution network of Edwards Dunlop, which was distributor of APRIL's exports before it was acquired by Australian Paper in 2016/17, would require a significant investment of time and money and probably could not be justified in the current circumstances of the Australian A4 Copy Paper market.

The point here is that it cannot simply be assumed that importers and others have the necessary infrastructure throughout Australia similar to Australian Paper's network of warehouses to readily increase sales volumes and provide reliable supply at minimal cost. Whether they are able to do so and to what extent requires 'objective examination' based on 'positive evidence'.

Demand vs supply

Similarly, the somewhat formulaic approach in assessing the capacity and ability for producers/exporters in the subject countries to supply the Australian A4 Copy Paper market does not address the issue of what effect the expiry of the anti-dumping measures will have on prices and sales volumes in the Australian A4 Copy Paper market. While the capacity and ability to supply is possibly relevant to some extent, such analysis misses the point that demand, not supply, both for imports and the domestic like product is driven by the market itself – that is, in the Australian A4 Copy Paper market, demand drives supply.

For example, for suppliers such as APRIL that supply A4 Copy Paper for domestic consumption and for export only on order, the placing of purchase orders is a prerequisite to producing and supplying the A4 Copy Paper the subject of the order. The placing of purchase orders is, of course, driven by demand in the relevant market. If demand for the grades/types of A4 Copy Paper in sufficient quantities and at remunerative prices is absent, purchase orders will not be placed in the supply chain. Exports will not eventuate. In short, demand, not supply, drives the Australian A4 Copy Paper market.

Further, in addressing the issue from a supply perspective, Australian Paper has significant excess production sufficient to supply the whole market. What prevents it and has prevented it from supplying the whole Australian A4 Copy Paper market, including following the imposition of anti-dumping measures? It presumably would not have had difficulty in lowering its already unprofitable prices for its A4 Copy Paper given that it has sold its A4 Copy Paper unprofitably throughout the five-year period since the anti-dumping measures were imposed, presumably with the support of its parent company

Importers' perspective on supply to the Australian market

Supply of imports into the Australian A4 Copy Paper market also must be assessed from the importer's point of view, as well as from the point of view of the customers of importers. It is the importer who will be seeking sources of supply for supply from overseas from whom it can purchase the various grades/types of A4 Copy Paper sought by end-users that it can on-sell into the Australian A4 Copy Paper market at prices and quantities that are profitable and commercially remunerative and to do so in competition with other importers and with the sole Australian producer.

It is evident that what drives demand and prices from an importer's perspective is the Australian A4 Copy Paper market itself. Such demand originates from the demand of end-users, that is, businesses and consumers across Australia, A4 Copy Paper being a consumer product. It is to meet that demand at the requisite prices through the relevant supply channels in sufficient quantities and prices to make the business commercially viable and remunerative, that is, profitable.

It is these prices and demand that drive the prices and quantities importers negotiate with their overseas suppliers. In other words, as stated in the Submission, it is the Australian A4 Copy Paper market and, in particular, the end-user/retail level of trade via the resellers, distributors and retailers that ultimately drives the prices paid by importers for A4 Copy Paper from their overseas suppliers and at which price the paper is introduced into the commerce of Australia. It is not exports or exporters driving prices in Australia. They, like Australia Paper, and as Australia Paper has contended, are 'price takers' and not 'price makers', with resellers and retailers apparently setting prices based on such demand.

Given that prices and demand are market driven and, in particular, because A4 Copy Paper is a consumer product, by end-users in the market, the question is to what extent, if any, does dumping of 'export prices' flow through to prices at the points of competition between imports from the subject countries subject to the anti-dumping measures and the domestic like goods? There would appear to be no information supported by evidence that it does, particularly as prices are driven by demand from end-users. Accordingly, how is it known that competition between imports and the domestic like good on price, if and where occurring, is causing material injury attributable to dumping?

Upon expiry of the anti-dumping measures, the only thing that would change is that importers would no longer be required to pay interim dumping duty at the then current rates on imports from the countries that were subject to the measures. The Australian A4 Copy Paper market would remain unchanged, including the structure of the market, both vertically and horizontally, demand within that market, suppliers to that market and the prices within that market.

From an importer's perspective, prices in the market would be the same and not having to pay interim dumping duty would mean that there would be greater opportunity to increase their profit margins without increasing their prices. What would be the commercial and financial imperative for importers to reduce prices and for resellers/distributors/retailers to reduce prices? What would be the extent of any reduction in prices? Would it result in sufficiently increased sales volumes to end-users to offset the reduction in prices? Do they possess the necessary infrastructure to meet increased sales volumes or would the capacity of existing infrastructure need to be developed and at what cost? Would the range of grades/types of A4 Copy Paper offered to end-users alter and would the price points change? Would it be countered by the dominant supplier in the Australian A4 Copy Paper market, Australian Paper, reducing its prices to those of its export sales or lower, given that it has been supplying the market at unprofitable prices since 2017?

Insufficiency of information and evidence

This, of course, is all speculation. Such speculation is necessary because there is no information or evidence as to what is likely to occur. Neither on the Commission's public file nor in Report 588 is there information or evidence on what importers/resellers/distributors/retailers/etc. themselves would expect as likely to occur upon expiry of the anti-dumping measures both in terms of prices and sources of supply, that is, between imports and domestic like goods and why? Again, there is an insufficiency of 'positive evidence' to undertake an 'objective examination' of these matters to assess the likely effect that the expiry of the anti-dumping measures would have.

Not only, therefore, is it unknown whether the anti-dumping measures have been effective in preventing the material injury that the measures are intended to prevent and, consequently, whether such material injury whatever it may be would continue to occur or recur on the expiration of the measures, but also it is also unknown what effect that expiry of the measures would have or likely have on prices and sales volumes and, consequently, the Australian industry that is attributable to dumping of exports from the subject countries.

In summary, having identified the structure of the Australian A4 Copy Paper market in Figure 1 in Report 588, the analysis has seemingly ignored the likely effect of the expiration of the anti-dumping measures will have on competition within that market, especially given that importers supply A4 Copy Paper of different grades/types to all levels of trade within that market. Analysis of competition within the Australian A4 Copy Paper market between all participants in that market appears missing. This appears due to the insufficiency of 'positive evidence' necessary to undertake the required 'objective examination'.

Consequently, the material injury that the anti-dumping measures are intended to prevent remains unidentified.

Analysis of APRIL's exports

For completeness, it is, of course, necessary to consider APRIL's exports in this context. Specifically, given the grades/types, volumes, prices and duration of such exports during the investigation periods in Review 551 and Continuation Inquiry 591, could they have caused material injury to the Australian industry attributable to dumping or was the injury occurring prior to such exports and continuing after such exports?

Further, what is the likelihood of such exports following expiry of the anti-dumping measures and in what grades/types of A4 Copy Paper, at what prices and quantities and to which customers for supply to which market segments to cause material injury from dumping given that APRIL only supplies to order? What will likely be the demand for A4 Copy Paper from APRIL and at what prices and quantities following the expiry of the anti-dumping measures and how will expiry of the measures affect that demand?

As APRIL's exports are driven by importers in Australia negotiating, agreeing and placing purchase orders with APRIL, inquiry would necessarily need to be made of AFEM's Australian customers as to the circumstances of their placing purchase orders with APRIL for the A4 Copy Paper. Such inquiries presumably would include reasons for the quantities, prices, etc., of the A4 Copy Paper supplied in order to foretell the likelihood of future purchase orders, including likely quantities, prices, etc.

Further, while APRIL's exports have been determined to be dumped, they have been of a variety of grades/types of A4 Copy Paper and apparently have both undercut and not undercut the prices of other participants in the market. In addition, such exports have not been constantly supplied throughout each investigation period. Finally, there appears to have been no inquiry to whom the

importers on-sold such exports into the Australian A4 Copy Paper market – that is, what grades/types of A4 Copy Paper, in what quantities and at what prices were on-sold at which levels of trade given that importers supplied all levels of trade?

Hence the difficulty in foretelling what APRIL's exports will be, if any, after the expiration of the anti-dumping measures as it depends on importers placing purchase orders.

However, notwithstanding the absence of such inquiry, the injury incurred by the Australian industry was being incurred prior to APRIL's exports and after APRIL's exports and during APRIL's exports arriving in Australia and was unaffected by APRIL's exports. Accordingly, what injury can be attributed to such exports due to dumping and how? This has not been addressed.

Conclusion

Absent such inquiries into the operation of the Australian A4 Copy Paper market while the anti-dumping measures have been in force, it is unclear how the likelihood of future exports could be foretold, including in what likely quantities, prices, etc., to whom and where in the Australian A4 Copy Paper market such exports would compete with the Australian industry's like product.

In a market governed by demand, an analysis of demand and its effect on market conditions within the Australian A4 Copy Paper market, including the effectiveness or otherwise of the anti-dumping measures, would seem to be a prerequisite to an assessment of what effect the expiry of the anti-dumping measures would likely have on such demand, if any. Specifically, what is the likelihood of exports from the subject countries causing material injury to the Australian industry due to dumping given the nature and operation of the Australian A4 Copy Paper market as depicted in Figure 1 of Report 588, including the extent of competition within that market? This requires an 'objective examination' based on 'positive evidence'.

Accordingly, APRIL reiterates its contention that, based on the grounds set out in the application and in the Submission as supplemented by the foregoing, the reviewable decision was not the correct or preferred decision, but the preferable decision is, in the alternate, Preferable Decisions 1, 2 and 3.

I hope the foregoing is of assistance, but please contact me if you have any questions.

Yours faithfully,

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

Andrew Percival
Principal