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24 June 2019

Mr P. O'Connor
Panel Member
Anti-Dumping Review Panel
c/- Anti-Dumping Review Panel Secretariat
Department of Industry, Innovation and Science
GPO Box 2013
Canberra City
Australian Capital Territory 2601

By email

Dear Panel Member

Review 2019/102 – A4 copy paper exported from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic

This submission is made on behalf of Hankuk Paper Mfg Co., Ltd ("Hankuk") in accordance with Section 269ZZJ of the *Customs Act 1901* ("the Act").

Contents

A Introduction

Hankuk's application set out three grounds as to why the reviewable decision, based upon the findings in *Report No.463 – Alleged Dumping of A4 Copy Paper Exported from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic* ("Report 463"), was not the correct or preferable decision. These grounds were:

- Ground 1: the injury to the Australian Industry referenced in Report 463 has not been caused because of Hankuk's exports;
- Ground 2: the evidence referenced in Report 463 does not support the causation finding; and
- Ground 3: there is insufficient evidence contained within Report 463 to support the finding that the Australian industry sustained material injury.

This submission will further elaborate on each of these grounds.

Before doing so, we wish to provide context for the review grounds using as a demonstration Report 463's analysis of the relationship between paper Australia Pty Ltd ("Paper Australia") and Officeworks Ltd ("Officeworks"). Officeworks is a major customer of Paper Australia, representing approximately 25% of Paper Australia's net revenue and volume sold in 2017.[1] On a close reading of Report 463, one is left with the impression that evidence regarding the dealings between these two entities was fundamental to the broader injury findings in Report 463. Therefore, it is an apt microcosm that illustrates the flaws in the larger analysis.

The reasoning in report 463 as to why the imports of the goods are said to have effected Paper Australia's prices to Officeworks in 2018 is as follows:

- *the Officeworks' 2018 price increase was agreed to in 2017;*
- *the price review mechanism employed was a different calculation methodology than for previous years to include increases in costs;*
- *Australian Paper accepted a percentage price increase which was lower than was initially offered;*
- *Officeworks purchased the goods imported from Finland, Korea, Russia and Slovakia at dumped prices in 2017 and had used its knowledge of these prices in its new supply agreement negotiations with Australian Paper in 2018;*
- *the Commission considers that these prices would also have been used by Officeworks in its price review negotiations in 2017.*[2]

To expand upon this further:

- The Commission had information regarding the contractual price review mechanism used in 2017. This information was sufficient enough to establish that it was "*different*" from previous years, and included "*increases in costs*". So, at the very least Report 463 should be informed by the actual terms of the contract mechanism.
- However, the link to the subject imports does not arise from the circumstances of the 2017 price review. Instead, it comes from an email exchange in relation to a new supply agreement

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1 SEF 463, page 62.

2 Report 463, page 105.

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negotiation in August 2018 – and presumably in the context of affixing a base price for that agreement – in which Officeworks purportedly quoted a price at which it could source the A4 copy paper from imports.[3]

- Report 463 is clear in stating that Paper Australia did not provide any evidence that supply agreement negotiations had occurred in 2017.[4] Further, Report 463 states that Paper Australia's prices in 2018 were agreed to in 2017.[5] Finally, Report 463's recommendation that measures be imposed is based solely on the operation of price reviews conducted in 2017.[6] So, there is no relationship between the August 2018 negotiation and the injury that was found to have occurred that was used as justification for the imposition of measures.
- Further, Report 463 clarifies elsewhere that Officeworks' reference to imports in August 2018 was general in nature, and did not name imports from a specific country or exporter.[7] We note that the relevant email was purportedly made eight months after the end of the period of investigation (31 December 2017), five months after the initiation of the investigation (19 March 2018) and three months after the making of a preliminary affirmative determination and the imposition of securities on imports of A4 copy paper from Korea, Finland, Russia, Slovakia and Austria (18 May 2018). In addition we note that in the period of investigation imports from the subject countries represented only 40% of all imports into Australia, meaning the reference could be to imports from a large range of other sources.
- Not deterred, Report 463 finds a linkage to the imports subject to the investigation in that that the price quoted by Officeworks matched the price from one importer during the period of investigation, on some unexplained metric.[8] For the reasons stated directly above, we would think this is of limited probative value. Nonetheless, Report 463 concludes that Officeworks' must have used knowledge of the price of the subject imports in 2017 to influence the outcome of the negotiation for the new supply agreement in 2018. Again, we note the outcome of the negotiation of this new supply agreement does not form part of the injury rationale that the imposition of measures is based upon.
- Apparently solely based on this coincidence, the Report concludes that for the price review in 2017, which again is based on an established contractual methodology which the Commission apparently has access to, Officeworks would have also used its knowledge of import prices. We note that this conclusion differs substantially, without any explanation from *Statement of Essential Facts No. 463 Alleged Dumping of A4 Copy Paper Exported from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic* ("SEF 463") which found:

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3 For more concerns about this general linkage, we would ask that you refer to EPR Doc 58, Letter from Hankuk Paper Mfg. Co., Ltd, *Comments in Response to Statement of Essential Facts* dated 13 December 2018 and EPR Doc 63, letter from Hankuk Paper Mfg. Co., Ltd, *Further Comments Regarding Statement of Essential Facts,* dated 15 January 2019.

4 Report 463, page 61.

5 Report 463, page 52.

6 Report 463, page 82.

7 Report 463, page 50.

8 *Ibid*.

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> "…*price increases that were achieved in 2017 were set with reference to increasing costs of production and did not reference imports in the market.*"[9]

We note that the SEF's finding matches the terms of the price review mechanism, as set out in the above extract.

As per Hankuk's Ground 2, the evidence before the Commission does not appear to support the conclusion that the subject imports caused Paper Australia injury in 2018. The reason for believing imports had any influence on the price review in 2017 appears to be based purely on speculation rather than positive evidence. We would further note that in Hankuk's application, it was mentioned that prices for 2017 supply were determined using import prices as an input. To clarify, the Report states that prices charged in 2017 were calculated using a methodology for which the weighted average import prices in 2015 and 2016 was one input used in that methodology.[10] Paper Australia has not been found to have suffered actionable material injury in 2017. We believe that the "*change in methodology*" used for the 2017 Officeworks price review did away with consideration of the weighted average import price. This would be consonant with the description of the 2017 price review mechanism extracted above, the finding in the SEF that all price review in 2017 were set with reference to increasing costs of production and the tortured logic used in Report 463 to link the dumped imports with that price review. In that context the finding that imports influenced the 2017 price review does not appear to be grounded in fact or evidence, as per Hankuk's Ground 2.

With regard to the impact of the subject imports (as per Hankuk's Ground 3), the issue fastened upon by Report 463 seems to be that in the 2017 price review Paper Australia "*accepted a percentage price increase which was lower than was initially offered"*. It is a common strategy of negotiation that a supplier will initially start a negotiation at a higher price than that which it reasonably hopes to achieve in the course of a negotiation. Are we to believe that the only non-injurious circumstance possible for Paper Australia was that Officeworks simply accepted its initial price offer without complaint? How does this initial offer compare to the "counterfactual prices" that were used to quantify the injury to the Australian industry? And why is it considered the case that Paper Australia has suffered any injury, when it clearly was able to increase its prices.

Finally, this illustrates the difficulties outlined in Ground 1 as well. The price review was a private interaction between two entities who had a pre-existing supply agreement and was apparently based upon some methodology agreed to by those parties. To the extent that such mechanisms operate, this clearly limits the supplier's ability to raise prices, just as it limits the purchase's ability to decrease prices. Yet, somehow, the parties' potential knowledge of import prices is the cause of the outcome of the price review, rather than the acceptance of contractual limitations on price increases by Paper Australia, or the other manifold and complex commercial circumstance and strategies of the parties to the agreement? More significantly, if the price review mechanism in 2017 does not specifically refer to import prices – which appears to be the case on the face of the record - why is there any belief that imports have impacted the outcome of the review process at all.

More perplexing is Report 463's concern that Officeworks' quoted a price while negotiating a 2018 supply agreement, which the Commission has linked to dumped imports. Putting aside our misgivings regarding the strength of that linkage for one second, is this really something that requires the imposition of anti-dumping protection to prevent? There is no suggestion or evidence that this reference lead to a materially worse outcome than would have been achieved if Officeworks had used some different negotiating strategy. There is no suggestion or evidence that an exporter was actively lobbying

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9 SEF 463, page 60.

10 Report 463, Page 52

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to take the supply agreement from Officeworks. This is largely hypothetical, because the 2018 negotiation has not been found to have been injurious, however the spectre that common commercial negotiation practices could or should require Anti-Dumping action should be concerning to all interested parties.

Ultimately, Paper Australia was still able to achieve a price increase over previous years within the context of the price suppression and depression it legally obligates itself to observe through entering supply agreements that limit its ability to unilaterally change prices to the customer. This happened while dumping was found to have occurred, but that does not mean that Paper Australia suffered injury or that any such injury was caused by dumping. Report 463 is replete with these issues. It does not provide sufficient positive evidence supporting the injury determination nor is it based on an objective examination of the effect of the subject imports on the price of Paper Australia's goods.

B Ground 1 – injury to the Australian industry has not been caused by Hankuk's exports

Hankuk's application explained the broad reasoning adopted by Report 463 in finding that the subject imports caused injury. We will not repeat that here, other than to say that the entire injury theory was based upon the finding that price review mechanisms that took place in 2017 were influenced by import prices, and that this was injurious to the Australian industry in 2018. Hankuk's application criticises this in some detail, which again we will not repeat, but it suffices to say this theory is not concordant with other findings in Report 463.

We think it is important at this point to illustrate what has not been found to injure Paper Australia. Report 463 includes some broad comments regarding "*price transparency*" and "*product substitutability*". These concepts are irrelevant in the present case, because the injury found to have occurred is expressly and specifically linked to price review mechanisms in pre-existing supply agreements, rather than to negotiations for new supply agreements in which a base price needs to be agreed to anew. In fact, Report 463 advises that Paper Australia did not provide any evidence of new supply agreements being negotiated in 2017.[11] The report also indicates that the base price in the supply agreements were negotiated prior to 2017,[12] so the question of the impact of dumped imports on the negotiation of base prices is irrelevant to the substance of the injury finding;[13] all base prices were set prior to the investigation period, and the Act does not permit any determination that dumping has occurred prior to the start of an investigation period.[14]

While Paper Australia may make spot sales these are apparently small in volume, and are only referred to once in Report 463.[15] Whatever price competition there is between these spot sales and the imports – if any – is not mentioned in Report 463. So these appear to be of little matter to the Commission's finding.

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11 Report 463, page 61.

12 Report 463, page 82.

13 Report 463, page 61.

14 Per Section 269T(2AE) of the Act and noting the statement of concurrence to this general rule at page 49 of Report 463.

15 Report 463, page 21.

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Accordingly, the injury determination appears to be based solely on a consideration of obligations in pre-existing agreements between private parties.

Despite varying degrees of complexity, the elements of contracts are well known – agreement, consideration, capacity, intention and certainty. Paper Australia and its customers agreed, after presumably some level of negotiation, to enter into long-term supply agreements which range in terms from one to eight years.[16] Such agreements will include terms relating to *"brand/grade, volume, price and distribution"*.[17] In choosing to bind itself to the terms of a supply agreement, and then, presumably to some form of stipulated pricing mechanism, Paper Australia chooses to limit its freedom to unilaterally raise prices to the customer. Essentially, this is a form of self-imposed price suppression and/or depression. Equally, the customer has limited its ability to seek a decrease in price outside the terms of the contract which would be to Paper Australia's benefit. Neither party is compelled to enter these agreements, they do so of their own volition and on the calculation that it will be beneficial to their own interests.

Such benefits are not necessarily just price related, for example, it may be that Paper Australia was seeking to increase market share and that the terms surrounding the volume of sales were beneficial to achieving this goal.[18] It is a basic economic principle that consumers will purchase greater volume of a product at a lower price – this is why a standard demand curve is downward sloping. However, selling more product at a lower price is not injurious, because there is a resultant increase in net revenue when sales quantities increase. This appears to have been the case for Paper Australia – their revenue has increased significantly over the injury analysis period:

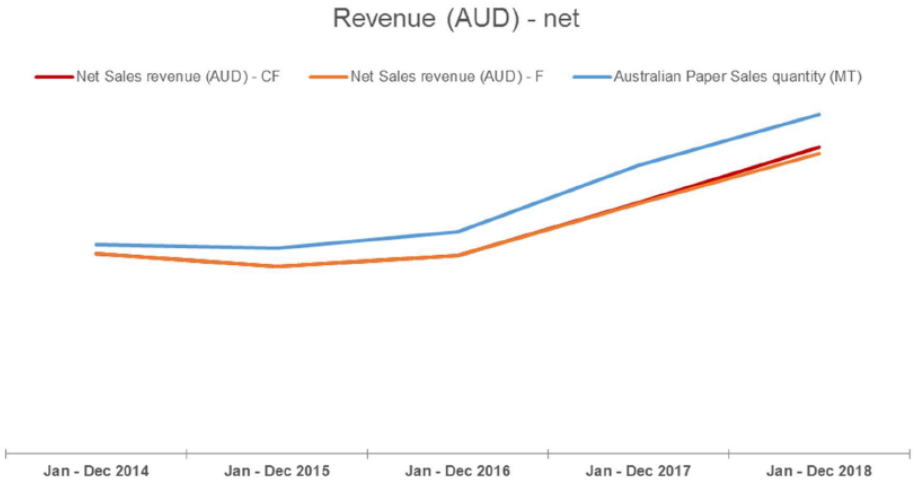

Figure 12: Australian Paper's revenue and the relationship with volume between 2014 and 2018*
**Sales plotted on secondary axis*

16 Report 463, page 63.

17 Report 463, page 21.

18 In fact, Report 463 indicates acquiring market share was Paper Australia's strategy. In particular, page 66.

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It is also notable that such agreements may, and likely, do, include goods that are outside the scope of the investigation, as was the case for Officeworks.[19] So in choosing to enter such an agreement, Paper Australia would weigh the overall benefit of that agreement to the business. In contrast, the Report focusses on the purported operation of price review mechanisms for a discrete category of products under these agreements, with the result that the Report's scope and understanding of those agreements are unduly narrow. It tells the Minister nothing about why Paper Australia chose to enter into these agreements in the first place and resultantly obligated itself to limiting its pricing for the term of the contract.

Ultimately, we do not accept that the operation of these price review mechanisms is caused by any circumstance relating to Hankuk's exports, as is required by Section 269TAE(1). Paper Australia chose to be bound by the terms of the supply agreements and accepted the methodology for price reviews under those agreements. It was to their benefit to do so. We do not believe the Minister could or should be satisfied on the evidence and analysis before her that Hankuk's exports have caused injury to the Australian industry.[20]

C Ground 2 – evidence does not support the causation finding

In Hankuk's application, we explained that the evidence before the Commission in support of the assumption that price review mechanisms refer to import prices was limited. The summary extract of this is:

> *…the Report cites one instance where import prices were an input in a previously agreed pricing mechanism, one instance where prices were varied on the basis of cost increases (again, in accordance with a contractual price mechanism) and one instance where no evidence or information has been provided that prices were set with regard to imports.*[21]

The "one instance" referred to relates to Officeworks. For the reasons stated in the introduction, we do not believe this to be the case anymore. Again, it seems as though the price review mechanism used in the 2017 price review was based on costs. Which means there are no instances of analysed price reviews that support the contention that import prices were a common determinant in the price reviews which occurred in 2017.

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19 Report 463, page 51.

20 We note that Paper Australia's submission to the ADRP dated 17 June refers to cumulation. To be clear, we have referred to Hankuk's exports in Ground 1 of the Application because we represent Hankuk. The criticisms in Ground 1 are likely equally applicable to any of the imports subject to the investigation – although we cannot say that with certainty, as the writer does not represent any other exporter of the goods. Ground 1 does not depend on de-cumulating the impact of import from all sources. However, given the injury finding is based on the purported impact of knowledge of import prices on review mechanisms rather than actual market-based competition, the conditions of competition requirements of Section 269TAE(2C)(e)(i) and (ii) of the Act have likely not been met by Report 463. The lack of fidelity between the injury finding in Report 463 and the requirements of that Section further illustrates why we consider it a misstep to characterise the operation of pre-existing price review mechanisms as being caused by imports those mechanism *may* consider a step to far for Australia's anti-dumping system.

21 Application, page 8.

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This is significant. As noted, Officeworks represented 25% of Paper Australia's revenue and sales volume in 2017. Customer B also represented 25% of Paper Australia's 2017 net revenue and volume.[22] Report 463 concludes that there is no evidence that Customer B's 2017 price review set prices with respect to imports.[23] Finally, we have no information regarding the sales volume and value of the OPANZ customers, other than the fact that they are "key customers" for Paper Australia.[24] The OPANZ price review in 2017 was found to be based on increases in costs of production.[25] Accordingly, the majority of Paper Australia's sales in 2017 were subject to price reviews which explicitly did not refer to import prices.

With regard to other customers, it appears as through Report 463 had regard to the following information:

> *The Commission requested customer contract information from Australian Paper at its verification visit in March 2018. The Commission requested the following information:*
>
> - *customer name;*
> - *whether the contract was entered into pre-2017;*
> - *the end date of the contract;*
> - *the date of the last contract negotiations; and*
> - *the date of upcoming negotiations for new contract.*
>
> *Australian Paper provided details of seventeen customers which it considered as key customers and these were classified as being in the retail or corporate stationer segments of the Australian market.*[26]

Finally, the Commission had regard to negotiation timelines in its analysis, as well as information regarding negotiations that occurred in 2016 and 2017. That appears to be it. Of 17 customers, four (two OPANZ customers, Officeworks and Customer B) represented over half of Paper Australia's sales in volume and value and did not employ price review mechanisms that had regard to import prices in 2017. Of the remaining 13, 9 had prices last negotiated prior to 2017 or *no information was provided*, which suggests the imports would have no evidenced impact on any prices in 2018 at all.[27]

In none of this information do we see any concrete evidence that any price review mechanisms operating in 2017 considered import prices to any degree. No substantive reasoning is given for the change from the SEF's finding that prices increases achieved in "*2017 were set with reference to increasing costs of production and did not reference imports in the market*". Therefore, the belief in Report 463 that imports in 2017 led to lower price review outcomes in 2017 which resulted in injury in 2018 is not based on fact. It is speculative and fails to meet to meet the binding requirement of Section

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22 SEF 463, page 63.

23 Report 463, page 105.

24 Report 463, page 54.

25 Report 463, page 49.

26 Report 463, page 54.

27 *Ibid.*

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269TAE(2A). Nor does it meet the international standard that requires that an injury determination be based upon positive evidence, being evidence that is affirmative, objective and verifiable.[28]

With regard to the lack of evidence we also wish to emphasise as follows.

There is a significant amount of information and analysis in Report 463 that has not been put to interested parties at any point during the 387 days between the initiation of the investigation and the announcement of the Minister's decision. The key reason for this was that the shift in justification for the imposition of measures between SEF 463 and Report 463. In SEF 463 the following findings were made:

> *Based on the above analysis, and noting that the prices of the imports from Finland, Korea, Russia and Slovakia had undercut the Australian industry, the Commission is not satisfied that the dumped imports caused material injury to the Australian industry during the investigation period. The Commission considers that there are other factors that have caused the injury experienced by the Australian industry, whereby:*
>
> - *contracted prices with their key customers were set at a time prior to the investigation period, when imports from the subject countries were minimal;*
> - *price review mechanisms for increasing prices when set with reference to imports, were for a period when imports from the subject countries were minimal; and*
> - *price increases that were achieved in 2017 were set with reference to increasing costs of production and did not reference imports in the market*[29]

And:

> *The Commissioner considers that continuity of the 2017 dumped prices, proposed by Customers A and B is threatening Australian Paper with material injury in the form of;*
>
> - *ongoing price suppression;*
> - *ongoing price depression;*
> - *ongoing reductions in profits and profitability;*
> - *lost sales volume; and*
> - *lost revenue.*
>
> *The Commission concludes that the current private label supply negotiation for two of Australian Paper's customers is a change in circumstance due to the expiration of existing supply agreements which would make the material injury described above foreseeable and imminent unless dumping measures were imposed.*[30]

The "Customer A" referred to in the above extract is Officeworks.[31] Officeworks as well as Hankuk and other interested parties made submissions following the publication of SEF 463, primarily focussed on critiquing, countering and further informing the evidence and analysis that supported the proposed "threat" finding. This apparently had some effect on the Commission's thought processes, as Report 463 does away with "threat" as a basis for the imposition of measures. However, Report 463 includes

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28 United States – Anti-Dumping Measures on Certain Hot-rolled Steel Product from Japan, *Report of the Appellate Body* (WT/DS184/AB/R), para 192.

29 SEF 463, page 60.

30 *Ibid*. page 73.

31 Rep 463, page 50.

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information and analysis regarding customers other than Officeworks and Customer B to substantiate the call for anti-dumping measures.

We have not seen anything to suggest that, before or after determining that information regarding other customers was relevant to injury, the Commission sought to inform itself of the terms and conditions of the underlying agreements between Paper Australia and these customers nor sought any input from those customers. One would have thought this latter step would be of critical importance given Officeworks was able to provide significant and relevant contrary information once SEF 463 revealed that negotiations between Officeworks and Paper Australia were of relevance to the proposed imposition of measures.[32] It should also be noted that customer's do not easily fit within the definition of an "interested party" under s 269T of the Act so these entities may have little knowledge regarding the minutia of an anti-dumping investigation that is on the periphery of their awareness.[33] We would also emphasise that there are clear suggestions in Report 436 that Paper Australia did not provide the Commission with all information that the Commission requested throughout the expanse of the investigation.[34]

We would be concerned if, given this context, the allegations and conjecture that underpin the reviewable decision were justified on the basis that the Commission was not provided contrary evidence to challenge them. Such opportunity was not afforded to interested parties nor to other parties that may have had relevant information.

Finally, we recall that under Australian law it is a requirement that an injury determination be based upon facts and not merely on allegations, conjecture or remote possibilities.[35] As pointed out in Hankuk's submission there is no power in Section 269TAE to make such a determination on the basis of all relevant information. If the applicant for anti-dumping measures cannot factually establish that it has suffered injury, and the Commission do that same through objective investigating processes that spanned over a year, a positive determination cannot be made for the purpose of Section 269TAE. Accordingly, the Minister should not have had the requisite satisfaction to impose measures under Section 269TG of the Act.

D Ground 3 – it has not been established that the Australian industry suffered injury

As noted in Hankuk's application, the material injury that Report 463 considers Paper Australia has suffered has been quantified by the application of a "counterfactual" analysis to Paper Australia's 2018 sales. The logic provided for this is:

- *as Australian Paper and its customers use import pricing when conducting price negotiations, the difference between the factual price and the counterfactual price determines the level of price injury caused by dumping;*

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32 EPR Doc 59, letter from Officeworks to the Anti-Dumping Commission dated 10 December 2018 and EPR No. 64, letter from Officeworks to the Anti-Dumping Commission dates 22 January 2019.

33 This is another reason why we submit the anti-dumping mechanism is not designed to equivocate in the contractual arrangements between the Australian industry and its customers.

34 Report 436, pages 53, 54 and 61.

35 Section 269TAE(2AA).

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- *establishing the counterfactual price as described in Table 12 above, takes into account Australian Paper's CTMS, volumes sold, pricing decisions, contractual arrangements and market behaviour – in effect, it provides a realistic scenario in the absence of dumping; and*
- *as Australian Paper did not provide evidence of new supply agreements being negotiated in 2017, the counterfactual price relates to price increases occurring in 2017 for supply in 2017 and 2018, as per contracted price review mechanisms.*[36]

The main concern in Report 463 appears to be the unbounded statement that Paper Australia and its customers "*use import pricing when conducting price negotiations*". However the relevance of this is undercut by the finding that in 2017 there were *no* negotiations for supply agreements. So, the "counterfactual model" is targeted at assessing the impact of imports on the 2017 "*contracted*" price review mechanisms which, at the risk of otiose recitation, are not evidenced to have been influenced by import prices in the slightest. Thus, the underlying logic which informs the entire methodology is inaccurate. There is nothing to support the contention that the "counterfactual prices" were the lowest prices Paper Australia should have been able to achieve in the absence of dumping.[37] The suggestion that Paper Australia's 2018 prices should have been, on average, 2% higher than they were, is pure conjecture and thus does not meet the requirements of Section 269TAE(2AA) of the Act.

In addition, this falls short of Australia's obligations under the Anti-Dumping Agreement, which require that an injury determination be based on positive evidence.[38] While it is accepted that this allows for some degree of assumption, such assumptions need to be based upon a reasonable inference from a credible basis of facts.[39]

Further, as Hankuk's application points out, all the injury assessment methodology does is impose a floor price – if Paper Australia's prices in 2018 were below the point that Report 463 thinks they should have been, then this was so because of dumping. Hankuk's application also illustrates that this does not take into account the starting point for each customer – being the base prices that were individually negotiated prior to 2017, when the subject imports were negligible. We would add that this analysis fails to consider some major factors that would impact on the prices Paper Australia receives in 2018. We note as follows:

- Australian Paper's price market share strategy was to reduce prices to increase volumes.[40]
- Australian Paper achieved approximately 18 per cent sales volume growth in 2018 as compared with 2017.[41] This is exceptional volume growth, following on from major increases in sales volume during the injury analysis period.

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36 Report 463, page 61.

37 Report 463, page 59.

38 Article 3.1 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("the Anti-Dumping Agreement").

39 Mexico – Anti-Dumping Duties on Rice, *Report of the Appellate Body* (WT/DS295/AB/R), para 204.

40 Report 463, page 50.

41 Report 463, page 62.

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- As we have noted above, it is basic economics that increased sales volumes will tend to lead to a lower of the unit price. Indeed, we also understand that this function is often achieved contractually: it is common in the Australian paper market to offer volume-based discounts and incentives, so that the per unit price will decrease when a prescribed sales volume is met.[42]

- Why then, would this not also be a cause for Paper Australia's prices being lower than the level the Commission thinks they should be?

This injury assessment methodology is flawed because it presupposes that prices achieved by Paper Australia below a presumed level are so because of dumped imports, despite there being multiple reasons as to why prices may differ from what Report 463 believes they should have been. In the context of Australia's international obligations there is a requirement that there be an "*objective examination of… the effect of the dumped imports on prices in the domestic market for like products*".[43] In this case, the examination was not "objective" because its result is predetermined by the methodology itself.[44]

The imposition of measures was justified on the finding that 35% of Paper Australia's prices in 2018 were impacted by some form of price review in 2017 which resulted in Paper Australia's weighted average unit price being 2% lower than it otherwise would have been. From this "2% lower" figure flowed the purported forgone revenue, unprofitability, reinvestment unattractiveness and reduced return on PPE.[45] None of this is credibly based in fact.

The facts are these – Paper Australia now dominates the Australian paper market, having increased its sales volumes, market share and revenue significantly in recent years up to and including 2018. It has done so while returning to profit from 2016.[46] It is not, by any factual measures, suffering from injury. The hypothetical that Paper Australia could have achieved prices that were on average 2% higher is based on unsubstantiated assumption and flawed methodology. It is not a sufficient basis for the Minister to be satisfied that material injury has been caused by the dumped imports under Section 269TAE(1) of the Act, and so the Minister's decision to impose the measures not correct or preferable.

E Conclusion

The injury finding is of equal importance to the decision to impose measures as the finding of dumping itself. Dumping, without injury, is merely the supply of cheap product into Australia. The injury finding in Report 463 does not establish a factually appropriate basis for the imposition of measures.

It is a difficult task to undertake an injury determination in the context of pre-existing contractual obligations. It is a difficult task to quantify the materiality of injury based on hypotheticals as to the outcome of contractual price reviews. It is a difficult task to find injury in circumstances where the Australian industry's sales volume, revenue and profit are growing and when it appears to have successfully increased prices to some degree. Nonetheless, this is what Report 463 attempts to do.

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42 Report 463, page 22.

43 Article 3.1 of the Anti-Dumping Agreement.

44 European Community – Anti-Dumping Duties on Imports of Cotton-typed Bed Linen from India*, Report of the Appellate Body* (WT/DS141/AB/RW) at para 123.

45 Report 463, page 82.

46 Report 463, page 79.

The law is clear – injury determinations need to be based on facts, rather than on allegations, conjecture, or remote possibility. For the reasons stated in this submission and as discussed in Hankuk's application, Report 463 does not meet these requirements. The Minister should not have been satisfied that dumping had cause, or was causing, the Australian industry material injury, and so no measures should have been imposed.

We respectfully request that the measures be revoked at the soonest possible opportunity.

Yours sincerely

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