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27 June 2022

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 UPM Asia Pacific Pte Ltd– 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 measures under section 269ZHG(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 Indonesian A4 copy paper exporter APRIL Far East (Malaysia) Sdn.Bhd and PT Riau Andalan Kertas, collectively known as ("APRIL") has alleged two grounds for appeal in respect of the Reviewable Decision:

- That the Commissioner erred in his recommendation to continue the anti-dumping measures applying to A4 copy paper exported from Indonesia by APRIL, and all other exporters, as there was 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.

- The Commissioner erred in the recommendations with respect to the determination of variable factors: the export price determined has no connection with the importation of A4 copy paper to Australia; the normal value did not accurately reflect the domestic selling price of A4 copy paper by RAK; and that the non-injurious price should have been RAK's normal value or the landed duty inclusive price of RAK's exports, whichever is the lesser.

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

- Securing the continuation of the anti-dumping measures is not in the national interest as it does not and cannot address or remedy the systemic, structural issues confronting the Australian industry but, rather, national interest is served by not securing the continuation of the anti-

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dumping measures and allowing them to expire and, instead, inquiring into other remedies to address the issues confronting the domestic industry producing A4 Copy Paper; and

- The expiry of the anti-dumping duty measures on the due expiry date of 19 April 2022 would not lead to or be likely to lead to the material injury that the measures are intended to prevent.

OAP will address each of the claims made by APRIL for which it had not previously addressed, but notes that the Commission has previously analysed and responded to similar claims around the national interest and likelihood of resumption of dumping and material injury in the absence of measures throughout the conduct of the Continuation Inquiry No 588 ("the inquiry"). It is also noted that the 67 page application repeats a number of its claims many of which are unrelated to the grounds, and as such, OAP provides a summary response to the application and its themes as a whole.

II. National Interest

The notion that the continuation of the dumping measures would not be in the national interest was first raised by APRIL during the conduct of the inquiry in the 12 January submission (No. 27 on EPR 588), specifically *'Section 4: Submission on National Interest and Miscellaneous Matters'*. OAP's review of this submission at the time did not prelude a response on the public record due to the simple fact that contentions laid out by APRIL did not hold any water. The lack of substantive relevance or the inclusion of any evidence in support of APRIL's arguments was stark, and again, insofar as it relates to this application for appeal, there is no explanation which adequately connect the contentions around the national interest with the aforementioned grounds for appeal. Laid bare, it is an abstract and vexatious distraction for the fact that APRIL does not have any worthwhile argument in support of the supposed grounds for appeal. Notwithstanding this, OAP will set out in short the misgivings of APRIL's invocation of the national interest.

APRIL starts with an attempt to lower the bar in terms of what must be considered by the Minister in making their Reviewable Decision. It is noted that whilst section 269ZHG(1) of the *Custom Act 1901* does allow the Minister to consider other information that they consider relevant, there is no mention of the national interest in this section. Furthermore, there is no such advice that would lead any objective person to conclude that the Minister must define arguments relating to the national interest as relevant information. The Commission correctly summarises its position relating to APRIL's claims that the national interest must be considered, saying *"Although APRIL urges the inquiry to take account of the national interest, there is no obligation for the Commissioner to do so. There is also no express power in Australia's domestic legislation that authorises the Minister to take into account the national interest or otherwise conduct a public interest test before continuing measures."*[1]

APRIL itself even concedes this later in this very same submission noting that *"there is no statutory obligation for the Commissioner to address the national interest in his report to the Minister in a continuation inquiry."*[2]

Regardless of whether there is a mechanism for the Minister or Commissioner to consider this topic there is also no direction in the legislation as to whether or not the 'national interest' as a vague concept should be considered to be 'relevant information' to a continuation inquiry. Firstly, in effect, the entire Trade Remedies System and indeed the Commission and ADRP act through their roles as administrators of Australia's WTO Agreement obligations as the national interest, and is designed to investigate/review claims of material injury caused by dumped/subsidised imports which of course are in the national interest. Furthermore, the imposition of dumping measures following an investigation within alignment to the WTO agreement to an extent which removes the injurious impact of the unfair trade will always by definition be in the national interest.

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[1] REP 588, Section 8.7.1, Page 102.

[2] APRIL Application, Part VI, Attachment A, Part 10, Page 6.

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Hence there can be no plausible argument made that material injury suffered by the Australian industry on account of unfair trade practices, whether it be suffered through volume, revenue, profit, job losses or otherwise could ever be in the national interest. In fact, the degradation or loss of a domestic industry increases dependence on foreign imports which not only has a negative economic impact, but also greatly increases national security and sovereign risk.

Notwithstanding APRIL's incorrect claim that the Minister must consider the national interest to be relevant information, it is not explained by APRIL how open and unfettered access to its dumped exports is even in the national interest. As part of the Commission's undercutting analysis, it was established that the *"imports from Indonesia undercut Australian industry's prices in 2021 and were the lowest amongst the subject exporters"*.[3] Whilst APRIL throws around wild claims including its belief that dumping duties constitute a tax on Australian consumers, it does not point to a specific reason or basis for its claim that allowing the dumped imports would be in the national interest other than to avoid a non-existent 'tax'. In reality dumping duties are paid by the importer (not the end consumer) and are calculated to be only sufficient to remove the injurious impact of the unfair trade, not to remove it entirely nor to invoke price increases on end uses. It simply restores fairness to the market by providing a level playing field.

I. The Australian market and injury

The application submitted by APRIL goes on to argue that the material injury suffered by the Australian industry will not be impacted by the continuation of the measures since the unprofitability is inevitable. This and similar arguments have been made by various interested parties to Anti-Dumping investigations and reviews since the imposition of measures in April 2017. However, anyone who has reviewed the Commission's public record over this period will know that OAP has remained exposed to dumped exports for the entirety of the period dating back to 2015 (and OAP would argue as far back to 2012). It is absolutely true that OAP has remained exposed to dumped prices in the and market which was noted by the Commission as being characterised by a high degree of price sensitivity. OAP has yet to experience relief commensurate to the injury suffered from dumped imports since there has not been a period where dumped import offers were not available to OAP's customers. Outcomes from Investigations 341, 463, 583 (active), and Review 551 found that dumping was still rampant and in some cases margins had increased. The reviewable decision found that APRIL's dumping margin had increased dramatically, which further puts their argument about national interest in perspective. Given the unrelenting exposure to dumped prices, it stands to reason that OAP has not experienced a sufficient recovery to date. As evidenced by the Commission's analysis based on best available information, it is reasonable to expect, and in fact highly likely that removal of the dumping measures would lead to worsened material injury.

I. Recommendations

Prior to the imposition of measures following the original Investigation No. 341, the Commission found that 52% of the Australian market was supplied by dumped goods. The is no evidence or plausible analysis to support a claim that the market share of dumped imports would not return to these levels in the absence of measures, nor that this situation would be in the national interest. In fact it would likely result in the loss of around ~900 regional Aussie FTE jobs.

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 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.

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[3] REP 588, Section 8.6.1 Page 90.

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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

MJDecarne

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