



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 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 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 Chinese A4 copy paper exporter UPM Asia Pacific Pte Ltd ("UPM") 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 failed to establish that expiry of the measures would likely lead to a continuation of exportation at dumped prices and material injury to the Australian industry.

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

- The Minister's reviewable decision does properly apply the statutory test on the likelihood that the expiration of measures would result in the continuation of material injury, because of;
 - a) Errors, omissions, dismissive treatment by the Commission of materials and events described by UPM.
 - b) The Commission's finding that UPM is likely to continue or recommence exportation of goods at dumped prices in the absence of measures, did not consider that UPM ceased exports.

OAP will address each of the claims made by UPM but notes that the Commission has previously analysed and responded to similar claims made by this exporter throughout the conduct of the Continuation Inquiry No 588 ("the inquiry").

II. Likelihood of resumption of exports

In its application UPM correctly states that the Commission was required to form a position from its analysis that the expiry of measures would likely lead to the continuation or recurrence of dumping and injury. However, in the applications, as well as throughout the conduct of the inquiry UPM claimed that the Commission's consideration of export volumes, market share, pricing and likelihood of future injury and materiality of injury, was insufficient in the context of sales to Officeworks by OAP and UPM.

In its application UPM claims that increased shipping expenses were a driver in Officeworks advising that they would change supply source. Through the conduct of the inquiry UPM made similar albeit conflicting claims that increased pulp costs were the primary driver of the lost business. It is noted by OAP that these claims also conflict with statements made by Officeworks.

The Commission rightly compared UPM's prevailing price in 2021 to the price offerings made to Officeworks and found that the price increase was materially lower than the 45% increase in pulp costs, and this did not even take into account the claimed increased shipping costs. The Commission went on to note that *"The commission also established that UPM-AP's unsuccessful 2021 offer to Officeworks reflected dumped prices. The commission considers UPM-AP offer of dumped goods supports the view that a continuation of dumping is likely."*¹ Therefore, not only has UPM been shown to have continued to offer the goods for sale into Australia at dumped prices, but it had absorbed pulp price increases to suppress the Australian prices. Given that UPM is willing to absorb price increases in order to retain business, it stands to reason that shipping rate increases could also be offset at the Australian customer level through lower export prices in the absence of measures.

Importantly, the Commission noted that *"In correspondence to UPM-AP, Officeworks cites the anti-dumping measure itself as one of the reasons why it switched its source of supply to Paper Australia. The commission considers the Officeworks' disclosure regarding the measures is relevant to a consideration of what would likely happen if the measures expired."* Clearly, this evidence should put any notion that the measure is not required or impactful to rest.

UPM has asserted that it attempted to pass on a price increase to Officeworks in 2021, and appears to further the claim that this should, for an unstated reason, ensure the absence of any recurrence of dumping and injury in contradiction to the Commission's analysis. Notwithstanding whether or not this is true or correct, OAP provided evidence to the Commission in EPR submission No 32, which debunked the notion that UPM intended to trade fairly in the market and cease its continued dumping and undercutting. A search on the Officeworks website revealed that UPM continued to trade with Officeworks after October 2021 despite UPM's claims that it had ceased trade, and continued by February 2022 to price product at a level which undercut the domestic industry. Further, UPM employed a tactic of offering lower GSM paper (70gsm) for sale at a lower price point in order to reduce the dumping margin per tonne sold (given that there would be less tonnes imported per container, pallet, box, and ream by virtue of the fact that the paper is lighter). Hence the lower GSM allowed UPM to justify a lower price point, which undercuts the Australian market prices.

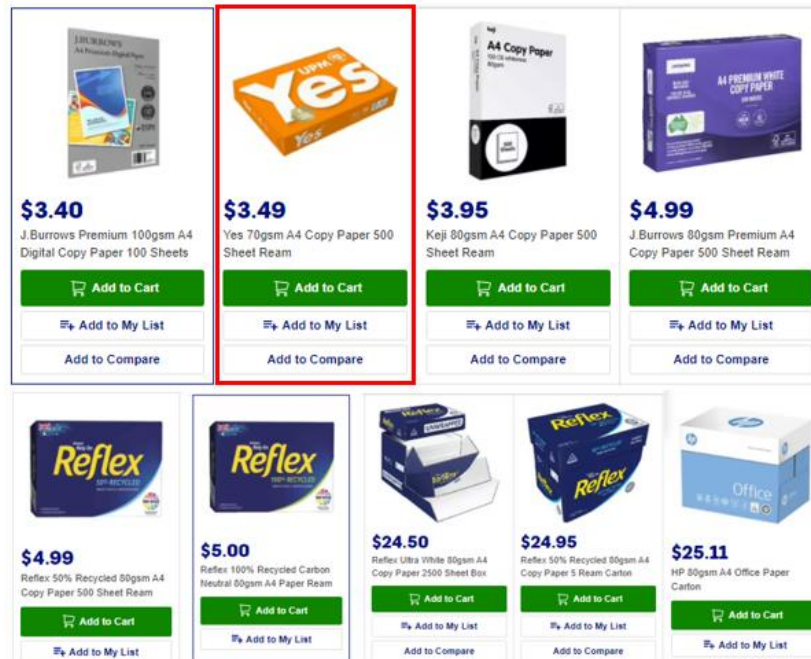
UPM's continued sales discredit any notion that OAP's supply to Officeworks prevents UPM from selling to Officeworks now or in the future. This continued trade at prices which undercut OAP represented unequivocal evidence that there is a continued likelihood of dumping and recurrence of material injury. This position was supported by the Commission in its Final Report.

In the final paragraph of the application UPM doubles down on the false assertion that it had ceased exports, saying *"exports of the Goods by UPM ceased in late 2021"* and referencing page 66 of REP 588. Review of this page of the report does not reveal any specific acknowledgement by the Commissioner that exports had ceased, in fact, OAP had supplied the Commission with evidence to confirm that UPM continued to be available for sale at Officeworks in February 2022. Below extract was

¹ REP 588, Section 8.6.1, Page 92.

obtained from the Officeworks website in February 2022 and shows that UPM goods continued to be sold well after their claimed cessation of exports.

Confidential extract from EPR No. 32 (Continuation Inquiry 588).



Furthermore, the import statistics available to OAP (and to the Commission) support an estimate that UPM has exported between 1,000 – 330 tonnes per month in the months after UPM's claimed cessation. Given that the export of dumped goods continues, it is clear that future dumping is 'reasonably foreseeable' in the absence of measures. The simple fact that UPM did continue to export goods to Australia after the time which it claims it was no longer viable should be considered a compelling insight into the lack reliability of their claims.

I. Comparative strength of the Australian industry

In its application UPM goes on to list factors relating to the claimed strength which it believes is held by the Australian industry and namely OAP. UPM hints that OAP's status as an integrated pulp and paper producer somehow places it a competitive advantage, however, UPM does not provide any further comment or evidence to support this claim.

UPM then claims that there is no relevance of findings in past investigations namely Investigation No. 463. This is of course ridiculous given that well established patterns of trade and market dynamics are highly informative context which should be considered in any subsequent investigations. It is also somewhat confounding that UPM would seek to restrict the Commissions considerations to a price offering where it was established that UPM had offered pricing at dumped levels, and absorbed costs to maintain low pricing to its Australian customer Officeworks.

UPM goes on to provide extracts from REP 588 relating to the Australian market and economic condition, making observations and comments on individual sentences without providing context or making clear the relevance of its critique to its grounds for appeal. OAP won't comment on this vexatious running commentary as it does not relate to the grounds for appeal, notwithstanding the fact that the Commission now has the accumulated knowledge and bank of analysis stemming from Investigations

341, 463, 552, 583, and Reviews 547, 551, as well as this continuation inquiry. To suggest that the Commission does not have an adequate understanding of the market structure and dynamics by now is simply ridiculous. Furthermore, any objective person having read and understood the Commission's analysis contained within REP 588 and the Reviewable Decision would be satisfied that it remains likely that UPM would export dumped goods to Australia in the absence of measures.

I. Officeworks agreement

UPM suggests that even if a sales agreement is 'non-binding', the relevant parties cannot reasonably discontinue the relationship at their discretion. OAP finds this statement to be an illogical contradiction to the evidence provided to the Commission by OAP during the course of the inquiry, namely the supply arrangement between Officeworks and OAP. As confirmed during the industry verification, the agreement between the parties expressly stipulates 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 tonnes from OAP, nor preventing them from purchasing like goods from UPM or any other exporter to Australia. In seeking to counter this fact, UPM provides no evidence to support its claims.

UPM in its application merely speculates about terms which may or may not be in the agreement, and which may or may not be enforceable without even having viewed said agreement. The Commission however, has for the purposes of the inquiry had access to the entirety of the agreement and in reference to the agreement stated "*The commission considers 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.*"²

I. Dumping and price undercutting

UPM's application follows on from its earlier course of cherry-picking various sentences and excerpts from the Final Report, and provides pointed critique without presenting the context or adequately explaining how the extract, or their counterpoint is relevant to the grounds for review.

It appears from the lack of cohesive line of argument that UPM seeks simply to publicly air its grievances with the Reviewable Decision by introducing as many spurious and unsupported assertions as it can in the faint hope that one of the handful of darts thrown at the wall will hit the dart board. OAP holds that the Commission's approach to these matters was not only reasonable in light of the available information, but that it was correct.

II. Recommendations

In summary, the continued exportation, dumping, absorption of price increases, in addition to Officeworks' specific statement confirming that the measures were the primary reason for shifting from UPM to OAP (not the reasons claimed by UPM) all point to a likelihood of continuation of dumping and material injury 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 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.

² REP 588, Section 8.4.3, Page 66.



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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

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