



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

| |
|---|
| Applicant's name: Sylvamo do Brasil Ltda |
| Address: Rodovia SP 340 KM 171, Mogi-Guaçu, São Paulo, CEP 13.845-901 |
| Type of entity (trade union, corporation, government etc.): Corporation |

2. Contact person for applicant

| |
|---|
| Full name: Ms. Catarina Possatto |
| Position: Commercial Lawyer |
| Email address: Catarina.Possatto@sylvamo.com |
| Telephone number: +55 (19) 3851-6640 |

3. Set out the basis on which the applicant considers it is an interested party:

| |
|--|
| Sylvamo do Brasil Ltda ("Sylvamo") is the producer and exporter of the subject to Australia. |
|--|

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of the reviewable decision are:

Uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm (grams per square metre) and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).

7. Provide the tariff classifications/statistical codes of the imported goods:

4802.56.10 (Statistical codes 03, 09)

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: [ADN 2022/023](#)

Date ADN was published: [31 March 2022](#)

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission’s website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be **highlighted in yellow**, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

[Refer to Attachment B.](#)

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

[Refer to Attachment B.](#)

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

[Refer to Attachment B.](#)

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

[Refer to Attachment B.](#)

13. Please list all attachments provided in support of this application:

[Attachment A: ADN 2022/023](#)
[Attachment B: Grounds of review](#)

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: [John Bracic](#)

Position: [Director](#)

Organisation: [J.Bracic & Associates Pty Ltd](#)

Date: [26 / 4 / 2022](#)

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

| |
|---|
| Full name of representative: John Bracic |
| Organisation: J.Bracic & Associates Pty Ltd |
| Address: PO Box 6203, Manuka, ACT 2603 |
| Email address: john@jbracic.com.au |
| Telephone number: +61 (0)499 056 729 |

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature: 

Name: [Ms. Catarina Possatto](#)

Position: [Business Lawyer](#)

Organisation: [Sylvamo do Brasil Ltda](#)

Date: [28 / 04 / 2022](#)



J.BRACIC & ASSOCIATES
TRADE REMEDY ADVISORS

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29 April 2022

Anti-Dumping Review Panel
c/o Legal, Audit and Assurance Branch
GPO Box 2013
Canberra, ACT 2601

Review of a Ministerial decision – Continuation of measures applying to A4 Copy Paper exported from Brazil by Sylvamo.

Sylvamo seeks a review of a following finding which led to the decision by the Minister to secure the continuation of the anti-dumping measures applying to A4 copy paper exports from Brazil.

9. REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.

Sylvamo seeks a review on the basis that the Minister erred in finding that exports from Brazil would lead to a continuation, or a recurrence of, the material injury that the measures were intended to prevent.

At the outset, it is noted that section 269ZHF(2) of the Customs Act ("the Act") explicitly requires that the Commissioner:

must not recommend that the Minister take steps to secure the continuation of the antidumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The Commission's Dumping and Subsidy Manual³ provides further guidance on the threshold test for establishing whether recurrence of dumping is 'likely'. It explains that:

In examining the likelihood of injury as a result of any future dumping or subsidy, the Commission takes guidance from WTO jurisprudence where 'likely' has been taken to mean 'probable'.

³ Dumping & Subsidy Manual; December 2013, page 153

In *US Dumps*⁴, the WTO Dispute Panel found that the continued imposition of measures must be based on ‘positive evidence’. The Panel stated:

Accordingly, we must assess the essential character of the necessity involved in cases of continued imposition of an anti-dumping duty. We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.

Further, the Appellate Body said of Article 11 in *Corrosion Resistant Carbon Steel*⁵:

In view of the use of the word “likely” in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.

Finally, in the review by the Anti-Dumping Review Panel (ADRP)⁶, the ADRP confirmed:

*27. Undertaking a continuation inquiry requires a prospective examination of the likelihood of future dumping and material injury. In its reinvestigation report (REP 389) the ADC referred to the decision of the Federal Court in *Siam Polyethylene Co Ltd v Minister for Home Affairs (No.2)*,⁸ where the Court held that the word “likely” in section 269ZHF(2) of the Act was taken to mean “more probable than not”.*

Therefore, the Act requires the Commissioner to recommend expiry of the measures, unless there is positive evidence to demonstrate that the recurrence of dumping and material injury in the future is likely or probable (ie. implying a greater degree of certainty that the event will occur than a finding that the event is not “not likely”).

Sylvamo considers that the evidence and analysis set out in the Commission’s Final Report 588 (REP 588), which was the basis of the reviewable decision by the Minister, does not meet the necessary threshold for concluding that it is likely that expiration of the measures would result in material injury continuing or recurring, that the measures were intended to prevent. In particular, it is apparent that REP 588 either overlooks or downplays critical factors demonstrating that exports from Brazil continue to represent a miniscule fraction of the total Australian market, and that this negligible volume is primarily focused on products

⁴ US Dumps – WT/DS99/R; para 6.42, page 139

⁵ US – Sunset Review of Anti-Dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan – WT/DS244/AB/R; para 111, pages 39-40.

⁶ ADRP Report No. 50 - Food Service and Industrial (FSI) Pineapple exported from the Kingdom of Thailand, pages 8-9.

with unique characteristics, that do not and would not, contribute to material injury suffered by the Australian industry.

The factors that Sylvamo contends confirms that the reviewable decision was not correct or preferable are outlined below.

a) Exports from Brazil are primarily of non-standard products

Exports of A4 copy paper by Sylvamo generally involves products that are non-standard in their characteristics compared to imports from other subject countries and locally manufactured products offered in the Australian market. This includes:

- exclusive 80gsm HP branded copy paper with ColorLok technology, optimised for use with HP printers;
- copy paper in non-standard weights of 90gsm; and
- fully recyclable copy paper including a 100% recyclable wrapper.

The characteristics that differentiate these products from other product offerings in the Australian market, also provide for a degree of market segmentation. For example, [REDACTED]

[REDACTED] [proprietary production information]. The ColorLok technology provides bolder blacks, richer colors and faster drying time, improves the recyclability of paper, reduces paper jams and extends the life of print devices when used with laser printers.

As a result of the improved printing performance, businesses, offices and consumers using HP printers are recommended to use HP Inkjet and LaserJet paper, as the paper is specifically designed and manufactured to work best with HP printers. For certain customers then, purchasing decisions will take into account HP's recommendation for the preferred paper, and not purely based on price.

b) Continued trend of negligible export volumes from Brazil

Sylvamo has been exporting to Australia since at least [REDACTED]. Over those years, export volumes from Brazil have been negligible, not exceeding more than % of the total Australian market. This is confirmed by export data in the table below which shows Sylvamo's export volumes for each year since 2012 and its estimated share of the total Australian market. This supports the view that exports from Brazil have been, and continue to be, non-injurious in the Australian market, both prior to and since the imposition of measures in 2017.

[TABLE OF EXPORT VOLUMES REDACTED]

The negligible volumes again reflects the specialised nature of the copy paper products exported by Sylvamo, and the exclusive distribution channel via the importer, Jackaroo

Paper Pty Ltd (Jackaroo Paper), which itself is a supplier of specialised paper and packaging products.

Based on past and current volumes, there is a clear trend that exports by Sylvamo remain insignificant in the Australian market, confirming that in the absence of measures, material injury caused by Sylvamo's exports would not recur.

c) Patterns of trade and distribution links

Sylvamo has been exporting to Australia since at least [REDACTED] and as highlighted in the earlier table, volumes have remained immaterial over that period. The Commission can also observe that Sylvamo has maintained a stable and exclusive distribution link with Jackaroo Paper. Sylvamo does not and has not sought to acquire new customers in the Australian market, given its exclusive trading arrangement with Jackaroo Paper.

d) Impact of dumping cases in other jurisdictions

As confirmed by the Commission in REP 588, the imposition of measures on Brazilian exports in other jurisdictions has had no impact on corresponding export volumes to Australia. The submitted evidence confirms that:

- Sylvamo's exports to Pakistan have [REDACTED] [export volume trend] despite the imposition of trade remedy measures in 2018, as evidenced in the table below.

[TABLE OF EXPORT VOLUMES REDACTED]

- Sylvamo's exports were not impacted by the imposition of measures in the USA, as its parent company, International Paper Company, is a local producer of the subject goods in the USA. As such, the US market has never been a major export market for Sylvamo.
- in the case of exports to Mexico, the measures were imposed on a broader range of cut size paper and paper roll products than the subject goods exported to Australia. Sylvamo's exports to Mexico differ to the goods exported to Australia, being primarily focused on jumbo rolls, folio sheets and rolls in general. Despite the imposed measures, Sylvamo continues to export these non-subject goods to Mexico, confirming that the trade remedy measures have not materially impacted Sylvamo's capacity utilisation of A4 copy paper.

Therefore, the current trade remedy measures on exports from Brazil do not and have not impacted Sylvamo's pattern of exports or capacity utilisation.

Irrespective of the trade remedy measures imposed in the three jurisdictions, Sylvamo reiterates that its exports to Australia have always been negligible, representing less than [REDACTED]% of its total production capacity. Therefore, the impact of trade remedy measures has no bearing on Sylvamo's export volumes to Australia.

e) Capacity

Sylvamo's capacity utilisation has increased whilst export volumes to Australia have remained negligible, confirming an increase in domestic sales of A4 paper. Whilst limited additional capacity remains, the insignificant demand in the Australian market for the unique products supplied by Sylvamo (ie. HP branded paper and 90gsm paper), confirms that any excess capacity would not be relevant and/or redirected to future exports to Australia.

Conclusion

Sylvamo contends that its exports of the subject goods to Australia, continue to be of negligible volumes and representative of atypical products. These characteristics remain unchanged since it commenced supplying the Australian market in [REDACTED], and despite the imposition of measures in 2017.

The past and current evidence confirms that in the absence of measures, Sylvamo's exports would continue to be focused on the highlighted atypical products, and at negligible levels. On that basis, it was appropriate for the Minister to recommend that the measures expire, insofar as they relate to Sylvamo.

10. THE CORRECT AND PREFERABLE DECISIONS

Sylvamo contends that the available evidence does not support a finding that material injury to the Australian industry is likely to be caused by future exports from Brazil, in the absence of the measures. As such, the Commissioner ought not have recommended that the Minister take steps to secure the continuation of the anti-dumping measures against Brazil, as the Commissioner could not be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.

The correct and preferable decision was for the Minister to not secure the continuation of the measures insofar as they relate to Sylvamo, and that the measures subject to the notice should expire, pursuant to subsection 269ZHG(1)(a) of the Act.

11. SUPPORT FOR THE PROPOSED CORRECT OR PREFERABLE DECISION

The grounds and evidence outlined in question 9 support the making of the proposed correct or preferable decision, as it establishes that the Minister's decision was based on the flawed analysis and reasoning contained in the Commissioner's Report 588.

12. REASONS WHY THE PROPOSED DECISIONS ARE MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION.

Sylvamo's exports are currently subject to an interim dumping duty rate of 8.1%. Has the Minister made the correct decision, Sylvamo's exports would no longer be subject to interim dumping duties.