

# Consultation Points under Article 13.1 of SCM concerning the Application for Countervailing Duty Investigation on White Uncoated A4 Copy Paper Exported from the People's Republic of China

The Government of the People's Republic of China ("GOC") has been informed that Australia Anti-dumping Commission ("AADC" or "the Commission") recently received an application lodged by Paper Australia Pty Ltd ("Applicant"), requesting AADC to conduct an anti-dumping and countervailing duty investigation on White Uncoated A4 Copy Paper exported to Australia from China ("Subject Product"). Upon the Invitation by the Australia Government, GOC hereby submits this position paper for the purpose of consultation under Article 13.1 of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). The following aspects are not exhaustive, and nothing will prevent us from presenting other issues to the follow-up consultation.

## Section I. General Comments

### 1. The application is not qualified as a whole.

The applicant had filed the application on the same or similar products respectively in 2003, 2013 (TEXT REDACTED). As a result, (TEXT REDACTED) the investigations had been terminated without trade remedy measures being taken. The Commission had ruled repeatedly that the dumping margins for the major exporters were negligible, and the alleged injury was likely to have been caused by other factors including (1) retailers offering copy paper at discounted prices, and (2) imports of copy paper from other countries in particular Thailand. Again, the evidence provided in the new application cannot support a finding that the allegedly dumped imports from China caused any material injury to the applicant. The examples are as following:

(1) on Page 16 and 17 of the Application, the Applicant claimed in this new application that *Cut sheet paper production in China and Indonesia is growing well ahead of anticipated increases in domestic demand, creating a great deal of over-capacity, not just in both markets, but in the Asian region.* As a matter of fact, the production of copy paper is mainly for domestic demand, the export volume only

account for 4% of the total production in China. And the capacity of copy paper has been kept in the same level in the recent 5 years, since China has attached great importance to prevent over-capacity from certain industries, including paper manufacturing. More importantly, Chinese exports of the Subject Product to Australia have been kept steadily around 60,000 tons per year since 2012 to 2015, with a slight fall from 2014 to 2015 (Please refer to the attached annex), as the global paper manufacturers, including the Applicant, experienced prosperity in 2014. It is ridiculous to accuse Chinese Subject Product for *seeking opportunities on export markets at almost any price to sell the capacity*...

(2) on Page 20, the Applicant tried to demonstrate its decline in both sales quantities and values since 2010. However, the Export market has kept a continuous growing for the Applicant. If the Australian market is viewed combined with Export market of the Applicant, the outcome in following years is almost equal to that of 2010, or even slightly higher in 2014 and 2015. That is to say, the decline of the Applicant's domestic market is not due to the imported Subject Product, but the change of the Applicant's market strategy.

(3) similarly on Page 27 and 28, the Applicant's profitability and capacity utilization reached summit in 2014, and declined in 2015. It happened to the imported Subject Product as well in the form of Page 19. That is to say, the decline of the Applicant is not caused by the imports, but a normal global market fluctuation of the paper industry.

(4) on Page 43, it can be concluded that the export price of Chinese Subject Product had been increased monthly in 2015, with an average price much higher than the other alleged dumping countries. More importantly, these prices are higher even than the cost constructed by the Applicant without any statistics support on Page 53.

(5) on Page 52, the Applicant admitted that *Australian Paper has relied upon the cost model for uncoated production paper used by the US applicant industry in the Certain Uncoated Paper case that was based upon a constructed cost methodology*. GOC wonders if the Commission is entitled to initiate and investigate the case without the sufficient evidence by the domestic applicant, but on the basis of a case of other countries under WTO rules and Australian domestic laws and regulations or not.

Furthermore, there are more than one printing errors in the Application, such as on Page 52, the 1<sup>st</sup> paragraph under China sector, Page 64, 2<sup>nd</sup> paragraph under Shandong

Sun Paper Co, and so on. Therefore, we believe the Commission should make the same fair and correct decision as last time in February 2015, rejecting this unqualified application again.

## **2. The subsidy allegations are without merits.**

Article 11.2 of the SCM Agreement reads that, “*an application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.*”

**Firstly**, the Applicant does not research and study on the subsidies in this new application. Instead, it makes allegations mostly on the basis of wild guesses and conjectures. The examples are as following:

- (1) Page 58, *Australian Paper further considers that the identified Chinese A4 copy paper producers **are likely to also benefit from the subsidies**.....*
- (2) Page 63, ***It is not clear** how the policy banks have....., **however, it is likely that at some earlier date**.....*
- (3) Page 64, *Any A4 paper produced by Yanzhou..... and exported to(p) Australia **will likely attract** countervailable subsidies .....*
- (4) Page 65, *Australian Paper submits that **it is not unreasonable to anticipate that UPM China has received similar government assistance** ....., and*
- (5) Page 65, *Australian Paper is therefore reliant upon the disclosure ..... **to conclude that it is probable that UPM China has similarly benefited from subsidies provided by the GOC.***

It has to be emphasized that, the Applicant failed to specify any detailed subsidy programs benefited by UPM China, which is the largest Chinese exporter to Australia of the Subject Product. To, conclude, the Applicant does not meet the burden to provide **the sufficient evidence of the existence of a subsidy**, as requested by the SCM Agreement.

**Secondly**, the Applicant failed in providing any evidence regarding the **causal link** between the subsidized imports and the alleged injury, as regulated under Article 11.2. GOC is highly concerned by the criteria of initiating the countervailing duty investigation. If the Applicant did not bear the burden of proof appropriately, the

Commission shall strictly apply the criteria and reject the Application accordingly.

## **Section II. Specific Subsidy Allegations**

### **1. VAT Incentives**

GOC has notified this program to WTO, and such program aims to importing advanced foreign equipment and improving the upgrade of industry technology. Under this program, the qualified enterprises are exempted from paying the VAT and tariffs on importing self-use equipment within the total amount of investment. If the eligibility criteria listed in the applicable laws and regulations are met, the applicant, no matter foreign-funded or domestic enterprises, will qualify for the program. Therefore, this program has no specificity. Particularly, since January 1, 2009, this program has been partly ceased to implement, namely, imposition of the import VAT shall resume, and import tariffs shall continue to be exempted within the originally prescribed scope. Thus the Commission shall not investigate the alleged program.

### **2. Raw materials at less than adequate remuneration**

It is our long-standing position that we strongly disagree with the foreign investigating authorities in their findings and determining that Chinese State-owned input suppliers are public bodies under SCM Agreement. In this Application, the Applicant failed in providing the list of input providers, or any evidence to demonstrate that the provision of materials inputs to the producers of Subject Product by those state-owned suppliers is authorized or directed by GOC, and failed in analyzing suppliers' functions respectively. Moreover, the subject industry also includes many non-SOEs and it is unfair to define the non-SOEs as public body as well. Therefore, the Commission shall not investigate this alleged program.