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Ms Joanne Reid
Director Operations 2
Anti-Dumping Commission
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Reid

COPY PAPER FROM CHINA – STATEMENT OF ESSENTIAL FACTS (SEF)

INTRODUCTION

1. We represent UPM Asia Pacific Pte Ltd (**UPM AP**) in relation to the above matter and refer to SEF 225 published on 14 March 2014.
2. While agreeing with the Commission's overall conclusion in the SEF that there is no actionable dumping, there are a number of matters that our client wishes to comment on.

EXPORTER/IMPORTER

3. We agree with the Commission's observation that if it had not, contrary to Australian domestic law, 'collapsed' the two UPM entities the resulting dumping margin would have been the same when based on the correct identification of UPM AP as the exporter. However, we did not raise the matter as an argument in support of a change in the dumping margin. Similarly, identifying UPM AP as the importer under Australian law was not a mere academic exercise. The point is that the correct identification of importer and exporter in this matter has a material influence on any consideration, unwarranted in our view, of specious allegations by the applicant that s.269TAA(1)(c) applies to this case.

4. If UPM AP is both the exporter and importer then s.269TAA(2) has no application and the Minister's discretion to treat unprofitable sales as non-arms length cannot be exercised. Alternatively, irrespective of the identification of the exporter, the evidence is clear that the importer, UPM AP, is not selling to Australian customers at a loss and again the Minister's discretion has no application because the precondition set out in s.269TAA(2)(b) is not satisfied.

ARMS LENGTH TRANSACTIONS

5. Our client welcomes the Commission's finding that UPM's *...export sales can be treated as arms length*¹. Nevertheless, we remain concerned that the public record for the current matter contains scurrilous assertions of the existence of secret rebates designed to circumvent Australia's Anti-Dumping system that demand the firmest of rebuttals. These numerous assertions, totally unsupported by evidence and contained in a number of submissions over the past four months, include:
- *...deals may be done or coordinated on an international basis, covering the Asia Pacific Region rather than just Australia, suggesting that rebates from suppliers, since they have not been mentioned in the Fuji Xerox Australia visit report but are mentioned in the UPM-Kymmene Exporter Questionnaire response, may be flowing to head office*².
 - *We appreciate the acknowledgement of this issue[rebates], which we believe needs more investigation, possibly involving the head offices of the parent companies*³.
 - *The accuracy of export and import declarations and the existence and size of rebates are, as noted above, an issue of major importance*⁴.
 - *Rebates – with invoicing of Australian customers by UPM Singapore, and the regional head office of Fuji Xerox also being in Singapore, it may be that rebates flow at that level without explicitly being shown in accounts in either Australia or China*⁵.
 - *We have noted the industry practice of global rebates at a head office level and the likelihood that these exist between the UPM organisation and Fuji Xerox organisation*⁶.
 - *In the paper industry, 'Global' head office to head office rebates, in addition to the mill-to customer rebates are a common practice and are not always disclosed to either the mill or the importing customer*⁷.
6. We have been instructed by our client in strong and unequivocal terms to reject all of the above allegations and insinuations and to state that, apart from rebates already declared to the Commission, no entity within the global UPM Corporate Group has provided directly or indirectly any rebates, reimbursements, compensation, benefits or other forms of

¹ SEF 225, p.20

² Public Record: Item 018 – p.3

³ *ibid.* - p.4

⁴ *ibid.* Item 020 – p.19

⁵ *ibid.* Item 023 – p.1

⁶ *ibid.* Item 025 – p.3

⁷ *ibid.* Item 032 – p.8

support to Australian customers or associates of those customers. If necessary, senior officials within relevant entities of the group are prepared to make statutory declarations to that effect.

7. An assessment of the probity of the assertions made by the applicant is illuminated by consideration of some elements of the applicant's past use of Australia's anti-dumping system. In 2001 the applicant's then parent became the only company ever to be the subject of restrictions on its right to apply for the imposition of dumping duties. Motivated by ... *concerns in the industry that previous anti-dumping applications lodged by PaperlinX had had a negative effect on competition*⁸, the ACCC banned the company from lodging anti-dumping applications for a three year period unless it first obtained an opinion from an 'independent adviser' that a proposed application was ... *made bona fide and not frivolously or vexatiously*.
8. The applicant acquired such an opinion in support of an anti-dumping application filed in May 2003 alleging that our client and other Chinese exporters were exporting A4 Copy Paper at dumping margins of between 50% and 66%. The credibility of the supporting opinion was undermined by the revelation of the enormous gap between allegation and reality when Customs terminated the investigation in November 2003, having determined that the dumping margin for UPM Kymmene was minus 6.5%⁹.
9. The complete lack of plausibility in the 2003 application is reprised in the current investigation with the applicant alleging dumping margins of 40% - 59% and the Commission now finding that all margins are negative or negligible. In view of the inevitable market disruption that is a feature of all trade measures investigations, our client requests that in the event of any future dumping application being lodged by the applicant that the Commissioner assesses the merits of whether to initiate an investigation with a measured level of scepticism.

PULP SUPPLIES

10. In a submission dated 6 March 2014 the applicant implies that the total pulp requirements for the production of copy paper at Changshu may be sourced from a UPM affiliate in Uruguay¹⁰. We are instructed that in fact during the period of investigation pulp sourced from Uruguay accounted for less than ■■■ of Changshu's requirements. On this subject

⁸ ACCC – Media Release 012/01

⁹ Anti-Dumping Notice 2003/48

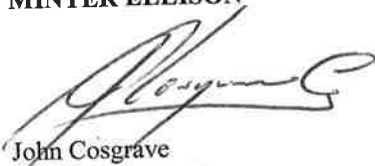
¹⁰ Public Record: Item 032 – p.4

we also refer to the Commission's incontrovertible conclusions, based on verified data, that the volume of pulp purchased from related companies was a small proportion of total purchases and that the unit price of pulp from related parties was higher than the unit price from unrelated suppliers¹¹.

CONCLUSION

11. Our client welcomes the Commissioner's proposal to terminate the investigation and we look forward to publication of a notice of termination under s269TDA(15) of the Act shortly after the closing date for submissions to the SEF.

Yours sincerely
MINTER ELLISON



John Cosgrave
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¹¹ ibid. Item 029 – p.29