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FOR PUBLIC RECORD

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Director Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
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Dear Sir

NEWSPRINT FROM FRANCE – MATERIAL INJURY ISSUES

INTRODUCTION

1. We represent UPM France SAS and associated companies (collectively **UPM**) in relation to the above matter.
2. We note the Commission's preliminary contention in the UPM Verification Report that the export price of our client's exports to Australia is less than the normal value of like goods sold in France. While our client does not agree with that contention we submit that even if dumping was established the export price of UPM's exports of newsprint to Australia have not caused, are not causing and do not threaten material injury to the Australian industry (**NSIA**).
3. We also note the Commission's preliminary finding that the dumping margin of the overwhelming majority of Korean exports of newsprint is negligible and consequently by the operation of s269TAE(2C)(c) of the *Customs Act 1901 (Act)* those exports are excluded from any cumulative consideration of the impact on the Australian industry of shipments from different countries.
4. We now turn to consideration of the probity of the applicant's assertions relating to the history of injury, the indicators of injury and causation and their relevance to the question of whether our client's exports have caused, are causing or are threatening material injury to the Australian industry.

INJURY HISTORY

5. In its application NSIA states, unequivocally, that prior to the 2013/14 investigation period exports from France and other sources did not cause any injury to the local production of newsprint¹. [Its later attempt to recant this damaging admission was subsequently rebutted comprehensively in a submission made on behalf of Jeonju²]. NSIA elaborated on its injury claim in its submission of 20 August 2014 in the following specific terms:

It should be noted that Norske Skog's application relates only to damage in the period April 2013 to March 2014. During this period the Australian newsprint market did continue the declining trend of the previous 5 years, however, during the application period the presence of imported newsprint at dumped prices had the effect of reducing the price in the Australian market causing injury to Norske Skog in addition to that caused by the overall decline in Market size³ [emphasis added].

6. Our client entered the Australian market in response to a 2010 request for tender for the supply of newsprint to West Australian Newspapers (WAN). UPM was one of the successful bidders but NSIA's pre-existing long term contract to supply was not renewed. It is significant, however, that at this time NSIA made no allegations of dumping or material injury even though, contemporaneously, the company suffered reduced volumes when renewing its supply contract with APN Newspapers Pty Ltd⁴.
7. UPM's contract to supply WAN extended to [REDACTED], thus covering both the injury and dumping investigation periods, and commercial shipments commenced in January 2011. Details of volumes and prices under the contract, which covered over [REDACTED]% of all newsprint sales by our client to Australia, are as follows:

Period	AUD/tonne	Tonnes
	[REDACTED]	[REDACTED]

8. The table, which demonstrates volumes reducing over the four years and prices increasing, raises the question of why material injury is alleged in NSIA's undated and unsigned application published on 22 April 2014 to have occurred abruptly in the period from 1 April 2013 to 31 March 2014. If neither the loss of volume under two contracts around 2010 nor exports from that time through to 31 March 2013 provided grounds for a claim of material injury, it is not open to the applicant to claim injury due to UPM's exports four years later unless a change in circumstances impacting on the performance of the Australian industry in the investigation period can be clearly demonstrated. There is no evidence of any such change. Furthermore, to substantiate its claim quoted in paragraph 5 above, NSIA would have to demonstrate, at a minimum, that UPM's prices during the investigation period *...had the effect of reducing the price in the Australian*

¹ Public Record: document #001, p.26

² *ibid.*, document #027, p.4

³ *ibid.*, document #021, p.3

⁴ *ibid.*, document #001, p.26

market. The claim is obviously unsustainable because under a contract accounting for only an insignificant proportion of the Australian market, UPM's exports were in fact decreasing in volume and increasing in price.

9. In addition it must be noted that in the period from 2010 to date, apart from the agreement with WAN, UPM has only once submitted a bid (unsuccessfully) in the Australian contract market for newsprint. That occasion provides further evidence of the absence of any correlation during the investigation period between UPM's exports to Australia and NSIA's economic performance. In August 2013 UPM responded to [REDACTED] request for supply proposal with a non-dumped price offer of [REDACTED]. This offer was undercut by the two successful tenderers - NSIA and an importer from a country not included in the current investigation. Thus, in the middle of the investigation period, there is proof that, contrary to the applicant's claim, UPM was not causing any alleged price related injury.
10. It appears that the real trigger for the current dumping application was not any change in circumstances in the investigation period but NSIA's failure to unseat UPM and the other incumbent as preferred suppliers when WAN called for tenders to supply newsprint for the period from [REDACTED]. NSIA would have become aware by January 2014 of its failure to win a supply contract with WAN and, despite being advised that its lack of success was not due to pricing, immediately embarked on the preparation of an application for a dumping duty notice on the unsustainable basis that the company had suffered material injury. After a gap of four years, failure to regain supplier status for a future contract period commencing on [REDACTED] provided no basis for a claim in April 2014 that material injury had been caused.
11. We note that the Commission confined its analysis in the Consideration Report to past and present injury and for reasons outlined above we submit that the decision of the Commissioner to initiate a dumping investigation on that basis was flawed. In any event, even if the investigation extended to consideration of threat of injury, the sales agreement attached to this submission between UPM and WAN covering the period commencing in [REDACTED] reveals that future export pricing would not be at dumped levels and consequently the Commissioner would be obliged to terminate the investigation.
12. We conclude that an examination of the performance of the Australian industry during the injury investigation period clearly demonstrates that it was not impacted by our client's exports from France. The applicant admitted that there was no such impact in the period up to 1 April 2013 and claims that injury occurred after that time are undermined by the fact that export volumes from France declined and prices increased in both 2013 and 2014.

INJURY INDICATORS

13. Evidence available to the Commission from a range of sources shows that globally the newsprint industry is in a parlous state and there is no need in this submission to reiterate the reasons for the decline. The dramatic reduction in demand for newsprint is not part of the ebb and flow of business but an irreversible trend. In these circumstances the outstanding feature of the Australian industry is its resilience and relative prosperity. The evidence is clear that the Australian newsprint industry has increased domestic market share (from 70% to over 80% during the injury investigation period), restricted sales

volumes losses compared to most other suppliers including UPM, substantially increased export volumes and broadly maintained costs, prices, production volumes, production utilisation and employment. As would be expected in a market in which the Commission estimates that total sales volumes have reduced by 40%, NSIA's profitability has reduced, but only by less than 8%.

14. As illustrated in an earlier public submission⁵ detailing the applicant's comparative profitability, NSIA's performance profile in the current state of the global newsprint industry would be the envy of other newsprint producers and is incompatible with any claim that the applicant is suffering material injury.

CAUSATION

15. The first injury related question arising under s 269TG of the Act is whether because of the export to Australia by our client of newsprint at prices allegedly slightly below the normal value, material injury has been caused to NSIA's production in Australia of newsprint in the investigation period. For the reasons set out in paragraph 8 above the answer is plainly no.
16. Two further matters that then arise under s 269TG(2) are whether there are reasonable grounds on which to be satisfied that UPM's future export prices of newsprint may be less than the normal value and, if so, whether such prices threaten material injury to the Australian industry? For the reasons set out in paragraph 11 above the answer to the first point is no and consequently there is no ground for the publication of a dumping duty notice. However, even if an affirmative answer is assumed there would still not be any grounds for a finding of threat of material injury.
17. Subsection 269TAE(2B) of the Act provides that '...in determining whether or not material injury is threatened to an Australian industry....'

the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make the injury foreseeable and imminent unless dumping or countervailing measures were imposed

From the applicant's perspective there has been no relevant change in the circumstances surrounding the supply of newsprint to WAN since 2010 other than the confirmation four years later that, for reasons other than price, it was not a preferred supplier for the period through to [REDACTED]. On two grounds that confirmation cannot be said to constitute injury for the purposes of Part XVB of the Act.

18. Firstly, the confirmation is not evidence of a deterioration in the position of the local industry. In relation to the supply contract in question, NSIA's position has been unchanged since 2010⁶ and relevant economic factors in the foreseeable future such as local production volumes, capacity utilisation, profitability and market share will not be impacted. In addition future exports by UPM are projected to decline as follows:

⁵ *ibid.*, document #009, p.21

⁶ *ibid.*, document #001, p.26

Period	Tonnes

19. Secondly, s 269TAE(2B) is one of a number of provisions that emphasises the remedial purpose of Part XVB of the Customs Act. It is only open to the Minister to publish a dumping duty notice in circumstances where the imposition of a dumping duty on dumped imports would eliminate or reduce any material injury caused by those imports. In the present matter the imposition of duties would have absolutely no impact on the economic performance of the applicant in the foreseeable future.

OTHER FACTORS

20. Evidence already before the Commission on the radical impact of new technologies on demand for newsprint is not disputed by any interested party and the Commission is obliged under s 269TAE(2A) to ensure that any detriment to the applicant caused by this factor is not attributed to exports by our client. While this must be a major consideration in the Commission's deliberations, there are other important factors that must be examined in the context of the non-attribution principle.
21. UPM's newsprint exports to Australia are produced entirely from recycled paper. This is an absolute requirement of WAN and the detailed reasons are set out in a submission to the Commission dated 3 July 2014⁷ and the requirement is emphatically reaffirmed in a further submission of 10 December 2014⁸. It is a matter of record that NSIA cannot meet this requirement and consequently even if the applicant could substantiate injury resulting from its exclusion as a preferred supplier to WAN the cause of any such injury would not be allegedly dumped exports but the failure of NSIA's production to meet specifications. That failure is of course also relevant to the Minister's obligations under s 269TAE(2B) of the Act because even if, hypothetically, punitive dumping measures were imposed on newsprint from France, there would not be any remedial effect as NSIA would still not regain its former preferred supplier status.
22. NSIA makes it clear in its application that a significant element of its strategic response to the dwindling domestic market for newsprint is to aggressively seek out export markets and its success is evidenced by an increase in export volumes of over 900% in four years.⁹ While this success has obviously contributed to relatively stable production volumes, capacity utilisation and costs, NSIA's frank acknowledgement that it is dumping¹⁰ its newsprint exports inevitably impacts on the company's profits and profitability. Again the Minister is obliged to identify the detriment caused by the applicant's dumped export pricing and ensure that the detriment is not attributed to exports from France.

⁷ *ibid.*, document #012, section 3.

⁸ *ibid.*, document #033, p.1

⁹ *ibid.*, document #001, p.16

¹⁰ *ibid.*, document #001, p.29

NON-CONTRACT SALES

23. In the investigation period UPM supplied a very small quantity of newsprint (about █% of the Australian market) to PMP Print Pty Ltd on a spot basis. The order was placed with UPM in order to satisfy the requirement of an Australian end user that insisted on newsprint produced from recycled paper¹¹. The verification report relating to PMP makes it clear that all of its other purchases of newsprint during the investigation period were from NSIA and that its business with the applicant has been expanding since 2013¹². Obviously these facts are incompatible with any claim that UPM's shipments to PMP have caused any material injury.

CONCLUSION

24. In the absence of any evidence that exports of newsprint from France have caused or may cause material injury to the Australian industry we submit that s 269TDA(13) of the Act requires the Commissioner to terminate the investigation so far as it relates to that country.

Yours sincerely

MINTER ELLISON



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¹¹ ibid., document #022, p.10

¹² ibid., document #022, p.11