

For Publication

The Director
Operations 1
Anti-Dumping Commission
5 Constitution Avenue
CANBERRA ACT

19 February 2015

Dear Sir

**Investigation 242 - Newsprint exported from Korea and France
Seven West Media response to SEF**

Introduction

We act for Seven West Media (SWM) in relation to the ongoing investigation by the Anti-Dumping Commission in relation to the alleged dumping of Newsprint exported to Australia from Korea and France.

SWM notes the ADC's preliminary findings set out in its Statement of Essential facts dated 30 January 2015 and related PAD in relation to Newsprint exported from France.

Whilst SWM is pleased to note the ADC's decision to terminate the investigation as it relates to Korean exporters, it remains concerned with the veracity of the ADC's injury and causation findings as they relate to exports of the GUC from France.

SWM respectfully submits that the SEF reflects insufficient consideration of relevant factors related to the condition of the Australian market, and unrelated to dumping, in its assessment of material injury and the causal link between 'injury' suffered by the Australian industry and the presence of dumped goods in the market.

1. Injury and causal link

1.1 As the ADC knows, the investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. Injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts namely:

- (a) Whether the applicant has suffered material injury; and
- (b) Whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be 'dumped prices'.

1.2 To test these two elements with the requisite rigor and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or, is threatened or, would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

1.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE *"must be based on facts and not merely on allegations, conjecture or remote possibilities"*.

Establishing the causal link

- 1.4 The Act and the WTO anti-dumping Agreement (**AD Agreement**) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.
- 1.5 Article 3.5 of the AD Agreement requires the investigating authority to examine “*any known factors other than the dumped imports which at the same time are injuring the domestic industry*”, and requires that any such injury should not be attributed to the subject imports.
- 1.6 The requirement to identify ‘other injury factors’ and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

*In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor **other than the exportation of those goods** such as:*

(a) the volume and prices of imported like goods that are not dumped; or

(b) the volume and prices of importations of like goods that are not subsidised; or

(c) contractions in demand or changes in patterns of consumption; or

(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.”

2. **Identifying 'injury', assessing materiality and establishing causal link in a market in transition**

- 2.1 As set out above the identification, and assessment, of injury factors and the existence of factors other than dumping that may have caused the applicant injury is a requirement of the Act in all investigations.
- 2.2 SWM submits that this process is critical in the context of assessing whether indicia of declining (or suppressed) trends in commercial performance can be characterised as ‘injury factors’ for the purposes of anti-dumping investigations.
- 2.3 This is particularly relevant in the context of an investigation of goods exported to Australia for consumption in a market during a period of systemic transition caused by changing patterns of demand and broader economic pressures.

The Australian market for newsprint and newspaper

- 2.4 SWM notes the ADC’s overview of market data at 7.4.1 and, specifically its finding that the size of the total Australian market for Newsprint (by sales volume) has declined in linear way year on year since 2010/11. As summarised in figure 1, the result of this decline in demand is

that, the market in 2013/14 was 37% lower than it was in 2010/11. To put it in volume terms there has been a reduction of the market size from 540,000 tonnes to 340,000 tonnes.

- 2.5 SWM submits that this data is consistent with its experience in the Australian market and directly follows the decline in end-user demand in the downstream market. SWM wishes to emphasise that these correlated trends do not reflect a temporary suppression of the Australian market, but instead are symptoms of a systemic change in the size and shape of the downstream Australian newspaper market.

The impact on the supply chain

- 2.6 SWM submits that a 37% evaporation of market demand has an inevitable and dramatic impact on operational and commercial performance of all entities across the supply chain who are forced to adapt to changing dynamics in the market.

- 2.7 The ADC will be well aware, from its verification of data provided from a variety of interested parties, that these changes in the market have placed pressure on the financial performance of newspaper producers (who are also primary newsprint consumers) and newsprint producers alike.

- 2.8 As SWM has indicated in previous submissions to the ADC, the reduced demand for newspaper and reduced third party investment, dramatically impacts revenue from sales of newspaper, and dramatically reduces profits and profitability in the newspaper sales segment of the market.

[commercial in confidence (CIC)]

- 2.9

[CIC]

- 2.10 SWM submits that it does not characterise indicia of negative performance trends (when measured against historical benchmarks) as 'injury' - instead; these are symptoms of systemic market forces. There is an undeniable 'demand shift'. When such demand shift occurs mere 'trend analysis' (as the ADC has engaged in and reported in its SEF) is extremely unreliable and only genuine econometric analysis and validation will suffice.¹

- 2.11 For this reason, SWM submits that the ADC's assessment that NSIA has suffered 'injury' in the form of the below factors relies upon a flawed characterisation of injury and a blinkered analysis of the applicants commercial performance that does not give sufficient consideration to the context of the market in which NSIA operates.

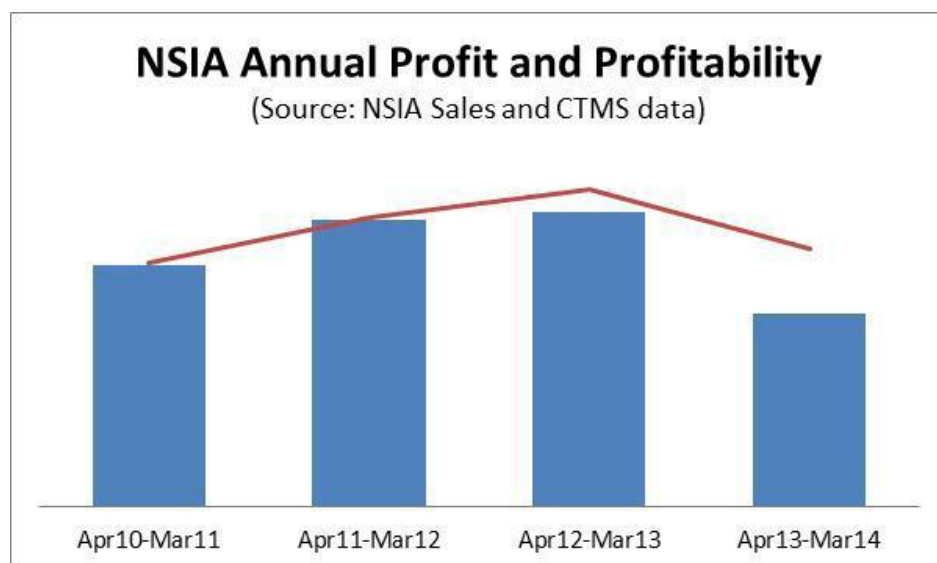
- (a) reduced sales volume;
- (b) price depression;
- (c) price suppression;
- (d) reduced profits;
- (e) reduced profitability; and
- (f) reduced revenue.

¹ See WTO Case Law of 2004-2005 edited by H Horn and C Mavroidis esp at chapter 12.

- 2.12 SWM will address the issues of price-based and other injury below.

Reduced Sales Volume

- 2.13 Foremost, the ADC's finding that NSIA has suffered 'injury' in the form of reduced sales volume since 2010/11 is a mischaracterisation of market trends. Simply put, NSIA, like all others in the Australian Newsprint supply chain, has experienced a decline in sales volume caused by the systemic reduction of the size and shape of the Australian market. The fact that NSIA has retained market share during this period of flux provides further evidence that reduced sales volume is not, of itself, appropriately characterised as 'injury'.
- 2.14 Furthermore, reduced sales volume caused by a reduction in overall market demand will, logically, lead to an overall reduction of revenue but for the ability to significantly increase prices. Similarly, without the ability to identify and deliver sufficient operational efficiencies, a decline in sales volume and revenue will place significant downward pressure on profitability of operations.
- 2.15 Again, these are factors that WAN has experienced during the investigation period in relation to its own operations. Accordingly, SWM wishes to clearly emphasise that the reduction in revenue in such an environment, the inability to effect an arbitrary price increase to counteract a fall in revenue caused by contracted demand and a reduction in profitability of operations caused by the inability to deliver sufficient efficiencies to counteract declining revenue **are not** injury factors in the context of a seriously eroded or contracting market environment.
- 2.16 SWM submits that it is crucial to understand (and to pay due consideration) to the downward pressure that declining market demand has upon prevailing market prices. Furthermore, it is crucial to carefully assess the way in which the applicant's commercial behaviours with respect to supply contracting have 'insulated' it from the full impact of market pressures during the injury analysis period.
- 2.17 SWM submits that the below table included as Figure 4 in the SEF illustrates these issues.



- 2.18 SWM submits that the above table carries a very real risk of misrepresenting commercial performance to substantiate 'injury'. SWM submits that NSIA's relative year-on-year increase

- in both profit and profitability in 2011/12 and 2012/13 is the result of long term supply contracts that enabled NSIA to effectively 'insulate' prices from the influence of market forces.
- 2.19 The relatively steep decline in profit in 2013/14 is the result of this 'insulation' being removed at the end of supply periods and NSIA being exposed to an immediate and significant 'correction' of price, profit and profitability that had been occurring in the market since 2010/11 outside of the parameters of NSIA's protected contract environment. Notwithstanding this reduction in profits, NSIA was able to maintain profitability of sales in 2013/14 at levels above 2010/11 benchmarks.
- 2.20 It should be noted that there is not a single reference to world market price in the SEF. One would rationally conclude that any assessment of injury would have had regard to the influence of world prices for the GUC.
- 2.21 Again, it is unreasonable to suggest that this marginal shift in performance is an 'injury factor' without giving due consideration to the changes in the market.

Price-based injury

- 2.22 SWM is particularly concerned with the ADC's analysis of, and positive findings in relation to, price suppression and depression as indicia of price based 'injury'. Again, SWM submits that analysis of price dynamics in transitioning markets (shaped by dramatic increases or, in this case, decreases in total demand) has not been effectively considered.
- 2.23 SWM notes figures 3 and 4 that provide the visual representation of the ADC's examination of the relationship between:
- (a) Unit price and unit CTMS; and
 - (b) Total revenue and total CTMS
- 2.24 SWM considers it important to note that both tables demonstrate the relative stability of the relationship between the variables in each scenario. Specifically, SWM considers it important to note that:
- (a) NSIA has been able to retain a relatively stable unit CTMS over the injury analysis period and whilst the 2013/14 CTMS is above 2010/11 (which is reasonably to be expected in any market) it is lower than benchmarks in 2012/13.
 - (b) Over the same period NSIA's sale price has remained relatively static - again, whilst unit price in 2013/14 reflected a marginal reduction from 2012/13 levels, it was above unit prices at the start of the injury analysis period.
- 2.25 SWM submits that NSIA's ability to retain stability in CTMS and Unit prices during a period of significant market turbulence cannot, in any way, be characterised as demonstrating injury.
- 2.26 SWM notes that when total CTMS is analysed in relation to total revenue a similarly stable relationship between the two variables was maintained across the injury analysis period. Whilst SWM notes the linear decline in both variables from 2011/12, and the closing gap between cost and revenue, it believes that these trends are symptomatic of the changing dynamic of the market as a whole and are not specific or unique to the commercial position of NSIA.

- 2.27 SWM is underwhelmed by the significance of the trends and relationships reflected in tables 3 and 4. Furthermore, SWM is concerned by the ADC's preliminary finding that these data sets indicate that NSIA has suffered suppressed and depressed prices during the period. SWM submits that:
- (a) NSIA achieved a reduction in unit CTMS in 2013/14 relative to 2012/13 levels;
 - (b) Whilst 2013/14 CTMS was higher than 2010/11 levels the disparity was no more significant that could be expected in the ordinary course of business;
 - (c) Whilst 2013/14 unit sales prices were marginally down from 2012/13 levels, they finished above 2010/11 benchmarks;
 - (d) The ratio between CTMS-Sales Price remained relatively stable during the injury analysis period and, whilst smaller in 2013/14 than 2012/13, this ratio was on par with 2010/11 levels.
 - (e) Given the 37% reduction of the size of the market over the same period and the subsequent (and verified) impact on sales volume the ability to retain a stable price, cost and the ratio between them at a level consistent with benchmarks during a period of significantly larger market demand is an indicator of positive commercial performance.
- 2.28 In these circumstances, a finding that prices were depressed or suppressed can only be made by ignoring or de-emphasising the dramatic shift in the size and shape of the market and the reasonable impact that a change of that size must have on performance expectations.
- 2.29 To suggest that any entity in a declining market should be able to effect an increase in prices or increase ratio of prices to cost is unreasonable. To claim that the inability to do so suggests that prices have been suppressed or depressed is illogical.

Establishing the causal link between dumped imports and 'injury'

- 2.30 Notwithstanding the strong belief that the data presented by the ADC cannot reasonably be interpreted to demonstrate 'injury' suffered by NSIA during the period in question, SWM also has significant concerns with the logic of the ADC's finding that such 'injury factors' were caused by competition with dumped imports.
- 2.31 Foremost, SWM submits that the ADC's finding that dumped imports from France caused injury in the form of lost sales volume to be incorrect. The ADC's logic, summarised at 8.5.2, appears to be that because imports from UPM to WAN were dumped and that the volume of supply to WAN from UPM represents sales volume that may have otherwise been secured by NSIA that a causal link exists between dumped imports and the lost sales volume. The brittle logic that underlies this assessment is *"that in the absence of dumping, NSIA would have been in a stronger position to achieve sales to WAN because the UPM price offer would have been less competitive"* (emphasis added).
- 2.32 SWM continues to have significant concerns with the data that the ADC is relying upon when making assessments regarding the relative 'competitiveness' of NSIA offers in the market during the period in question. The commercial data held by SWM, related to [REDACTED] demonstrates that:

- (a) on a weighted average basis, the NSIA offer was consistently [REDACTED]. **CIC**
- (b) when presented on a 3 year weighted average basis [REDACTED], the NSIA price point was consistently below [REDACTED] price point - [REDACTED] being the 'un-dumped' market price. **CIC**
- 2.33 This information is included in **confidential attachment 1**. SWM would be happy to provide the ADC with additional information to assist it verify the accuracy of this data should it wish to do so.
- 2.34 This issue of price competition and price competitiveness is critical to the ADC's analysis of the link between dumping and 'injury'. SWM submits that the SEF does not reflect an adequate consideration of the external drivers of market prices during the period and the impact that market contraction has upon Australian newsprint pricing. Indeed, no econometric or expert analysis was undertaken other than trend analysis which is highly subjective, unscientific and often bereft of perfect logic. The presence of dumped goods in a market does not establish a causal link between those goods and any 'price based' injury complained of by an applicant. That is the basic conclusion arrived at in the SEF - and it is wrong.
- 2.35 SWM submits that (based on standard and indisputable economic principles) depressed demand in any market will place downward pressure on market prices and competition. The argument that has been accepted by the ADC is that the presence of 'dumped' prices for goods from UPM somehow undermined the natural competitive tension of the tender process to the extent that, but for the presence of these price offers, the offer of NSIA would be competitive/favourable. If that logic were true, the presence of [REDACTED] would also have forced the prevailing market price down for all [REDACTED] would also have been forced to rationalise its position in line with this benchmark or be 'priced out' of contention. This was clearly not the case [REDACTED]. **CIC**
- 2.36 SWM submits that the relationship of bidder pricing demonstrates the influence of market dynamics on market pricing and principally the size/shape of demand and particular customer preferences above and beyond market price. SWM strongly believes that market price points were, and remain, a product of market demand and are not driven by import prices, dumped or otherwise.

Conclusion

- 2.37 The ADC's findings regarding material injury rely upon a misinterpretation of performance data without due consideration of the nature of this data in the context of the variables of the market during the injury analysis period.
- 2.38 The SEF notes at 8.8.3.1 that *'The Commission considers that NSIA has suffered injury from contractions in demand in the Australian newsprint market'*. However this statement is not reflected in the majority of the ADC's assessment. The ADC does not appear to have given significant consideration to the magnitude of the 'injury' caused by market forces. The SEF does not demonstrate a genuine attempt to ensure that the impact of factors other than dumping are not attributed when examining material injury and causation.
- 2.39 SWM remains of the strong belief that the changing paradigms of performance of which the applicant has complained of is caused by factors in the market which are not associated with competition with imported product from France.

Yours sincerely

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