

MinterEllison

18 October 2016

BY EMAIL

The Director
Anti-Dumping Commission
Operations 2
GPO Box 1632
Melbourne VIC 3001

FOR PUBLIC RECORD

Dear Director

UPM - A4 Copy Paper from China

We act for UPM in the above matter

We note the Commission's claim in section 6.8 of UPM's exporter visit report that an upward adjustment to normal value is required on account of export VAT incurred by UPM on sales to Australia.

No reason for the claim is provided in the report and in confidential correspondence. In confidential correspondence the Commission has stated that it has simply relied on directions contained in the Dumping and Subsidy Manual that baldly assert that the ... *Commission treats this VAT liability in export sales as having influenced the export price.*

This approach ignores the fact that questions of adjustments can never be resolved by recourse to broad statements of policy or practice but must be considered on a case by case basis in the context of the specific requirements of the Act and the Anti-Dumping Agreement. No such consideration has been undertaken by the Commission.

In contrast to the preliminary point raised by the verification team UPM submits, unequivocally, that in this case there is no lawful ground on which an upward adjustment to normal value based on the payment of export VAT can be made.

Proceeding to a preliminary finding on this issue by way of unsubstantiated assertion stands in stark contrast to the observations and conclusions of the ADRP in Report No.28 on the subject of adjustments and the acceptance of those conclusions by the Assistant Minister.

At paragraph 48 of that Report, reflecting, but not referencing, the comments of a WTO Panel in *Egypt – Steel Rebar* (para 7.352), the ADRP stated that ... s 269TAC(8) of the Act calls for a *factual inquiry into the actual effect of the particular differential incidence of taxation on either the price paid or payable for like goods or the export price. This follows from the use of the expression “modified” and the focus in the sub-section on sales, rather than costs.* In noting the similar inquiry requirements of Article 2.4 of the ADA, the ADRP also observed that ... *[I]f a difference does not have a demonstrated effect, no allowance should be made in respect of it.*

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Obviously in the present matter where the Commission has not undertaken any factual inquiry, no effect on prices has been demonstrated and no adjustment to normal value should be made. However, even if an appropriate examination was undertaken, reference to UPM's cost and price data verified by the Commission provides clear evidence that the differential incidence of VAT on UPM's domestic and exports sales is not reflected in UPM's export pricing. [REDACTED]

[REDACTED] destroying the mere assumption made by the verification team that export VAT has had a demonstrated effect on pricing. [*Confidential financial information*]

We request that the Commission recalculate UPM's preliminary dumping margin on the basis that it cannot include any lawful upward adjustment on account of export VAT.

Yours faithfully
MinterEllison



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Director, Trade Measures

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