MinterEllison

20 October 2016

**BY EMAIL**

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

**FOR PUBLIC RECORD**

Dear Director

**A4 Copy Paper from China**

We act for UPM in relation to the above matter.

We refer to the section of Confidential Attachment 2 to UPM's exporter visit report dealing with currency conversion and setting out the Commission's views that UPM's export prices should be converted to the currency of the country of export under s.269TAF(1) of the Act.

Unfortunately those views are based on a number of factual errors and incorrect claims that undermine the preliminary position adopted by the Commission on the issue of currency conversion. In identifying those errors and rebutting those claims this submission demonstrates that UPM's export prices should be converted to CNY under s.269TAF(2) of the Act.

[redacted]

[redacted] **[UPM's currency management procedures]**

[redacted]

[redacted] **[UPM's export sales recording procedures]**

[redacted]

[redacted] **[UPM's currency management procedures]**

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[redacted]

[redacted] **[UPM's Customer supply arrangements]**

[redacted]

[redacted] **[Factors affecting the setting of UPM's export sales prices]**

*6. Subsection 269TAF(2) is then invoked if a currency conversion is required under 269TAF(1), a forward exchange rate is used and the currency has undergone a short term fluctuation.*

The short term fluctuation provision set out in s.269TAF(3) relates only to conversions undertaken under s.269TAF(1). It has nothing to do with the exercise of the Minister's power under s.269TAF(2).

[redacted]

[redacted] **[Currency conversion process details]** We note that, in comparable circumstances, in Case 254 the Commission concluded that it was satisfied … *that the rate of exchange and methodology used by UPM in converting AUD invoice prices to Euros in its Australian Sales listing is accurate and reasonable, and should be used for determining an export price in Euros.* [Normal values in the Newsprint case were ascertained by reference to domestic sales in France in Euros]

[redacted]

[redacted] **[UPM's currency management policies]**

[redacted]

[redacted]

[redacted] **[Application of UPM's currency management policies to export sales]**

*10*. [S]*ales prices derived from the use of forward exchange rates … do not reflect the prices paid by the importers as required by subsection 269TAB(1).*

The argument implicit in this assertion must be set aside on two grounds. Firstly, it would result in s.269TAF(2) of the Act having no field of operation. This offends one of the fundamental principles of statutory interpretation that an Act cannot be interpreted in a manner that makes a provision of the Act inoperative. Secondly, it betrays a misunderstanding of the interaction between s.269TAB and s.269TAF. If a currency conversion is required to compare domestic and export prices, the latter price, being the price paid by the importer in the export contract currency, is to be converted to the currency of the exporting country using a rate of exchange identified by the Minister after applying one of the methods set out in s.269TAF. The outcome, after applying any of those methods (including a forward rate of exchange), is an amount that, for the purposes of s.269TAB(1), is an equivalent in another currency of the price paid by the importer.

Yours faithfully
**MinterEllison**

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