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4 November 2016

Mr Tim King
Assistant Director
Anti-Dumping Commission
55 Collins Street
Melbourne
Victoria
Australia 3000

By email

Dear Director

Dumping and subsidisation investigation – ADC 241 A4 copy paper from the People's Republic of China

As you know we represent the Government of the People's Republic of China (the "GOC") in this investigation.

The GOC wishes to convey its deep concern regarding the false and damaging assertions made by Paper Australia Pty Ltd ("the Applicant") regarding both the alleged "particular market situation" ("PMS") and the alleged subsidy programs. The Applicant's assertions have no basis and have not been supported by evidence. The GOC laid this bare when addressing these issues in its response to the Government Questionnaire ("GQ"). The GOC will summarise and further elaborate those positions in this letter.

A Chinese A4 copy paper market operates fully competitively

The Applicant has based its PMS allegations on the existence of broad GOC policy documents. Specifically, these are the *Catalogue for Guidance of Foreign Investment Industries* and *Twelfth Five Year Plan of the Paper Industry.* The Applicant holds these up to be a means through which the GOC *"controls*" the A4 copy paper industry in China.

A "PMS" is a legal concept. Under WTO law, the only relevant "situation" is one which impacts domestic sales made in the ordinary course of trade in such a way that they *"do not permit a proper comparison"* with export prices. The policy documents to which the Applicant refers do not have any impact on prices in the A4 copy paper market, or on the market itself. It is clear from the EQ responses of Chinese exporters that the GOC's dealings with the paper industry and paper market are limited and entirely appropriate. Therefore there is no evidence that a PMS of the type alleged by the Applicant exists.

The basis of the Applicant's smear campaign against the Chinese domestic market is the finding of the United States Department of Commerce ("USDOC") investigation into uncoated, woodfree paper. The GOC reiterates that the USDOC findings are not evidence that can be relied upon by the Commission. They are merely findings from a different investigative body, based in a different jurisdiction, operating under different laws and policies to the Commission.

The GOC reminds the Commission that USDOC is instructed by US law to treat China as a non-market economy, and that the US frequently disregards WTO law in favour of US law. This is in

contrast to the treatment under Australian law. Moreover, the GOC notes that USDOC deemed that the GOC was not cooperating in the investigation in question. In that circumstance, US law requires adverse inferences to be made against the interested parties concerned. The standard of Australian law is that *"relevant information"* is to be used where there is an absence of information received directly from interested parties. In any case, the Commission has noted that the GOC has *"fully cooperated with the Commission's Government Questionnaires"*.

For these reasons, there can be no reliance on the USDOC findings in this investigation. Our client submits that those findings are outlandish in terms of both WTO law and Australian law, and in the context of the demonstrated and reliable facts which are on the Commission's record.

Ultimately, there is no evidence that the GOC has any "controlling" or even directive impacts on the price of A4 copy paper. Moreover, there is no evidence that the GOC has any impact on the raw material inputs used by producers of A4 copy paper. The evidence before the Commission is that the Chinese market for pulp, the main raw material for the GUC, is internationally open and competitive.[1] The volume of imported pulp has grown by [CONFIDENTIAL TEXT DELETED – information from confidential attachment of GQ response]% between 2011 and 2015 and in the POI equated to [CONFIDENTIAL TEXT DELETED – information from confidential attachment of GQ response]% of total market consumption.[2] The GOC considers it highly unlikely that producers of pulp operating outside of China would continue to export their goods to China, indeed to increase the volume of pulp exported to China, if the price of pulp was somehow artificially low. We see no way for the GOC to be found to have impacted the price of pulp in line with the *"artificially low"* standard that the Commission has adopted in other investigations.

Finally, the GOC notes that the Commission has sought *"pulp and paper price data*" to assist with its consideration of the Applicant's PMS allegations. Firstly the GOC notes that the PMS allegations are not supported by evidence. However, the GOC also notes that price differences between different markets is not, and cannot be, evidence of a PMS. Prices differ between markets. This is the circumstance that underpins the benefits of global free trade. Such price differences are not evidence of any form of market distortion, whether government-created or otherwise. The markets for pulp and paper in China are competitive markets, and the prices derived there-in are competitive market prices.

B The subsidy allegations made by the Applicant are unfounded

The GOC reminds the Commission that in order for there to be an actionable countervailable subsidy the following legal elements must be established:

- a financial contribution by a government or public body;
- the conferral of a benefit; and
- specificity of the alleged subsidy.

The GOC notes that the Applicant has not provided evidence to prove that any of these requisite legal elements exist. The GOC notes that it is not the job of an investigating authority to fill the holes in the allegations of a domestic industry. An investigating authority such as the Commission is an impartial and objective arbiter of the evidence before it. After all, this is an investigation, not an inquisition. On this basis alone, the GOC considers the Commission should terminate the subsidy investigation. Having said that, the GOC also has some specific comments relating to the subsidy allegations, as now follow.

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[1] We note, in particular, the volume of pulp imports as reported in Attachment 11 to the GQ, compared with the volume of pulp domestically produced, as reported in Attachment 3 to the GQ.

[2] GQ Attachment 11.

1 Policy loans to the paper industry

The Applicant alleges that low cost interest loans have been provided to paper producers for investment in the pulp and paper industry. The GOC reiterates that it has not engaged in the provision of such loans to the copy paper industry. Industrial policies do not dictate the actions of commercial banks in China and they are not in the nature of "public bodies". Commercial banks in China make commercial decisions based upon their own interests, as is the case for banks in Australia and around the world. The critical factors commercial banks in China will consider in the process of lending money are the commercial terms of the proposed loan and the ability of the borrower to pay interest and repay the principal. The relevant interest rates are determined on the basis of market conditions, not on the basis of any policy objectives highlighted by the GOC.

This alleged subsidy does not exist.

2 Coal at less than adequate remuneration

Coal is not a material input for the purposes of manufacturing paper. The alleged program could only be relevant to the extent that a paper producer may purchase and use coal to generate its own electricity. Therefore the GOC is perplexed by the claimed relevance of this supposed subsidy to the goods under consideration.

In any regard, the basis put forward by the Applicant is troubling. The existence of this supposed subsidy is based upon a finding in Report 198, published on 19 December 2013. The GOC reminds the Commission that the finding in Report 198 largely followed a similar finding in Report 193, published on 4 August 2013. However, the pertinent findings in Report 193 were appealed to the Anti-Dumping Review Panel ("ADRP"). In its *Decision Regarding Dumping Duties and Countervailing Duties for Zinc Coated (Galvanised) Steel and Aluminium Zinc Coated Steel Exported from the People's Republic of China*[3] the ADRP overturned the finding that State-invested enterprises ("SIEs") which provided coal were "public bodies". Therefore there was no subsidy. The ADRP recommended that the subsidy notice published in relation to zinc coated (galvanised) steel and aluminium zinc coated steel be revoked. The Parliamentary Secretary to the Minister for Industry accepted all material findings of fact and law relating to the ADRP's recommendations on 13 February 2014.

The acceptance by the Parliamentary Secretary of the findings of fact and law underpinning the ADRP's recommendation conflicts with *and postdates* the finding in Report 198. As the ADRP decision was most recent decision (and quite apart from the fact that those two investigations relate to periods of investigation that are different to the present one) it is apparent that Report 198 cannot stand as an administrative precedent for the existence of any such subsidy.

The Applicant's statement that *"the GOC maintains absolute control over coal pricing*" is a blatant falsehood. Coal is a material input in a variety of industries and prices are subject to market forces. It is not supplied by "public bodies". No special treatment is afforded to the paper and pulp industry in relation to the provision of coal. Where a producer wishes to purchase coal it is purchased from the same market as any other producer – whether papermaker or not, and whether an industrial user or not.

Lastly, the GOC understands that the coal used by paper producers, if any, would be usually only for the purpose of power generation. As such, even if such an alleged program existed, it could not be considered specific to the paper making industry.

This alleged subsidy does not exist.

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[3] http://www.adreviewpanel.gov.au/PastReviews/Documents/ADRPReviewReportMOFCOM-November2013AmendedFINAL.pdf

3 Raw material inputs at less than adequate remuneration

The GOC is not engaged in the provision of calcium carbonate, caustic soda or titanium dioxide. Notwithstanding this, it is important to note that the majority of pulp used in the production of paper is imported into China. Chemical pulp makes up a very small proportion of the total amount of pulp used to manufacture paper in China. The chemicals alleged to be part of subsidy programs are a minor component of the industry and make up a very minor amount of the total cost of the goods.

In the Application, the Applicant alleges that the chemicals are provided by GOC entities at artificially low prices *"due to the predominance of SOEs in the basic chemicals sector"*. There has been no evidence provided on whether this is true, or as to how this may have distorted the prices of the chemicals. Indeed, the evidence in the GQ is to the effect that the GOC is not engaged in the provision of calcium carbonate, caustic soda, titanium dioxide and that the GOC does not specifically involve itself in the industries that that produce these chemicals.

Further, similar to coal, the GOC has demonstrated in its GQ that the various chemicals identified in the Applicant's subsidy allegations are used in a broad range of industry and for different purposes, and are not "specific" to the paper making industry.

These alleged subsidies does not exist.

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We again submit that the allegations of the Applicant are misleading and unsubstantiated. The GOC repeats its request that the investigation be terminated insofar as it relates to these unsubstantiated allegations.

Yours sincerely

Charles Zhan
Associate