Percival Legal

Telephone: 0425 221 036

Email: Andrew.percival@percivallegal.com.au

Date 2 December 2016

By email: operations2@adcomission.gov.au

Director, Operations 2
Anti-Dumping Commission
55 Collins Street
Melbourne VIC 3001
Australia

Attention: Mr Tim King, Case Manager

Dear Sir **Non -Confidential**

Anti-Dumping Notice No. 2016/33 in respect of A4 Copy Paper Exported from the Republic of Indonesia, China, Brazil and Thailand

I act for Fuji Xerox Australia Pty Ltd (**FXA**) in relation to the above matter and I refer to the second preliminary affirmative determination (PAD) made by the Commissioner of Australian Anti-Dumping Commission (Commissioner) on 4 November 2016.

Unfortunately, the PAD contains numerous errors of fact and law. Specifically, apart from other errors of law and fact, the PAD contains a preliminary finding that transactions between UPM and FXA were not at "arms length" under relevant provision of the *Customs ACT 1901*.

The relevant provision, as the Commissioner would be aware, is s. 269TAA of the *Customs Act 1901*:

http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s269taa.html

In this regard I draw your attention to s. 269TAA((3)(d) of the *Customs Act 1901*. That is, to reach a decision that a transaction between an exporter and importer is not at arms length, where some sales by the importer are at loss, there needs to be some evidence of a compensatory arrangement between the exporter and the exporter.

The PAD refers to no compensatory arrangements between FXA and UPM, and no evidence of any such compensatory arrangements, because there are no such arrangements and never have been. The PAD makes no refrence to any evidence as to any compensatory arrangements. Why? Because there are no such arrangements.

Why has this not been disclosed in the PAD? If the ADC has evidence of any compensatory arrangements, why were the not disclosed in the PAD? What is the Commissioner relying on that there are compensatory arrangements between FXA and UPM and why has the Commissioner not disclosed them?

The relevant facts are: -

- the fundamental nature of dumping is that it is the sale by an exporter into an export market at a price that is less than it sells in its domestic market – i.e. dumping is about transactions by an exporter to importers;
- FXA is a separate legal entity to UPM, the exporter, and the parties are in no way related as verified by the Commission;
- negotiation of transactions for the supply of A4 Copy Paper by UPM to FXA, including price, are conducted at arms length as the Commission verified;
- the Commission found, in its verification report on information and evidence provided to it by UPM and verified by it, that all of UPM's transactions, including those with FXA, were at arms length;
- FXA negotiates transactions with its Australian customers, including as regards to price, at arms length as the Commission has verified;
- UPM has no involvement in FXA's negotiation of its transactions with its Australian customers including in relation to price, as the Commission has verified;
- UPM has no involvement and is not privy to FXA's profit or loss on its transactions on the supply of A4 Copy Paper to its Australian customers as the Commission has verified;
- FXA provided the Commission with reasons it had incurred any losses in relation to A4 Copy Paper and those submissions were neither questioned nor disputed by the Commission;
- FXA also submitted to the Commission its plan to return the relevant part of the FXA business to profit and again that plan was neither questioned nor disputed by the Commission;
- UPM has not reimbursed, compensated or provided to FXA for any losses that FXA may have incurred with its Australian customers and this would be apparent from UPM's accounts verified by the Commission; and
- any losses incurred by FXA in its transactions with its Australian customers were properly recorded in its accounts and borne solely by it as the Commission has verified.

The Commission has investigated and verified that transactions between UPM and FXA have been at arm length and that there were no compensatory or any other similar arrangements between the companies. The ADC has not identified or provided any evidence of any compensatory arrangements between the companies, because there are none. No doubt the ADC will (as it must) advise the Parliamentary Secretary accordingly.

Any finding that any commercial arrangements between FXA and UPM were otherwise than at arms length displays a fundamental misunderstanding of the facts and the relevant law under Australia's antidumping legislation and GATT and the WTO Anti-Dumping Agreement, as well as

failure for the commission to comply with its own guidelines under its Dumping and Subsidy Manual.

Accordingly, we request that the Commission provide evidence with 48 hours as to what compensatory benefits exist between FXA and UPM to render transactions between those companies as not being at arms length. If no such evidence is provided within this time frame, then the finding that that transactions between FXA and UPM were not at arms length must be reversed.

Yours sincerely

Andrew Percival