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ABN 45 298 991 137

2 Julianne Close
Bolwarra Heights NSW 2320

Our reference
20161229-PPPC-SEF

Mr Tim King
Case Manager
Australian Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3008

Re: A4 COPY PAPER - STATEMENT OF ESSENTIAL FACTS NO. 341

Dear Tim,

On behalf of our client, Phoenix Pulp & Paper Co Ltd (PPPC), we submit the following comments in response to the Australian Anti-Dumping Commission's (Commission) Statement of Essential Facts No. 341 (SEF341). These comments are to be read in conjunction with PPPC's previous submissions to the Commission and in particular, its 2nd submission received by the Commission on 6 December 2016 which the Commission stated in its SEF341 that it had '*not had time to consider this submission prior to the publication of the SEF*'.

We reiterate PPPC's concerns that the implied difference between negative dumping margins in Indonesia and the alleged dumping margin attributed to PPPC suggests that the domestic prices in Thailand are up to 25 % higher than in neighbouring Indonesia and /or that cost of production are substantially higher. There is no evidence to support either of the higher domestic prices in Thailand or higher cost of production because neither scenario is factual. Also, the very large disparity in dumping margins calculated by the Commission across all countries and within the countries under investigation is baffling and raises the questions as to the appropriateness of the Commission's methodologies and/or the accuracy of its calculations.

We have requested feedback on the Commission's consideration of PPPC's request for the Commission to make the appropriate adjustments set out in its 2nd submission. Unfortunately, we have received no feedback. So once again we reiterate PPPC's comments and ask that the Commission make the appropriate adjustments as required by Australian and WTO legislation, to enable a fair comparison between PPPC's domestic and export sales.

1. **Level of Trade Adjustment**

At page 65 of the Dumping and Subsidy Manual under Adjustments, Level of trade, it is stated:

> *An example of a difference in the level of trade is where an exporter sells on its domestic market to levels A (a distributor) and B (a retailer). The export sales to Australia are at level A. In this circumstance the Commission examines whether it is possible to determine a normal value using only comparable domestic sales to level A. This normal value would be based upon those sales that are at the same trade level as the export sales and not the total population of sales.*

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This is the situation relating to PPPC. On its domestic market PPPC sells to both dealers and end users. It has been verified by the Commission that PPPC exports to only one customer. Further, it has been verified that that customer is at the equivalent level of Dealer (refer attached **Confidential** 'Sales Flow' Chart which has been provided to the Commission previously).

We requested that the Commission compare like with like to arrive at a fair comparison between export sales and domestic sales using only the domestic sales at the level of dealer to compare with the export prices at the same level of trade.

2. **Specification Adjustment**

In SEF3411 the Commission has maintained its reliance upon the Dumping and Subsidy Manual to attempt to justify a specification adjustment uplift based on the use of '*the difference in selling prices between that model and the next closest model for which there was sufficient domestic sales in the ordinary course of trade*' rather than base the specification adjustment uplift on the verified cost differential between the two products to make a fair comparison.

In Section 9 of the Dumping and Subsidy Manual, referring to basing a Normal Value on the Constructed Method it is stated:

> *If the exported goods differ from those sold on the domestic market (e.g. have different specifications) to the extent that this reflects a difference in the cost to make, care is taken to ensure that discrete costs to make are determined.*

Whilst we recognise that this is a reference to a comparison between exported goods and domestic goods, the situation is no different as the aim is to 'construct' a normal value of a similar model for a model that did not have sufficient domestic sales in the ordinary course of trade. The factual situation is that the difference in specification is due to the differences in the verified cost to make and not the difference in price. While the difference in specification may well affect price comparability, the selling price does not determine the difference in the specifications between the two products. As previously stated there are many and varied factors including, the amount of selling and marketing expenses contributed to the product, customer demand and willingness to pay, product supply, competition and other market conditions etc, that influence the price of a product. In applying the '*size of the price difference'* methodology the Commission has grossly distorted the adjustment and consequently the normal value resulting in an artificially high dumping margin. The difference in specification is clearly evidenced in the difference in the Cost to Make (CTM) which has been verified by the Commission to its satisfaction.

We request that the Commission apply the specification adjustment uplift based on the difference in the weighted average difference in the CTM over the whole investigation period to provide a more realistic normal value based on the evidence, facts and sound commercial practices.

3. **Domestic stock carrying Adjustment**

We can only reiterate the comments made by PPPC in it submission received by the Commission on 6 December 2016. Like PPPC we do not understand how the Commission can reverse its original position on the downwards adjustment for domestic stock carrying.

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The fact are as verified by the on-site verification team, there are no holding cost associated with export sales.

The Commission claims that it disallowed the adjustment '*following further consideration of the facts and evidence*'. However, it has failed to provide the '*facts and evidence*'. Rather, the Commission has relied on its 'considered' view:

> *'The Commission **considers** that while the cost of carrying stock for domestic and export sales may be different, there would at least be some cost associated with holding stock produced for export until the goods are transported to the port for export. PPPC has not provided any evidence of this cost, therefore an adjustment for the cost difference in carrying stock for domestic and export sales cannot be made.'*

AS stated in the previous submission, PPPC has not provided any evidence because there is no evidence as there is no holding cost associated with export sales. A4 copy paper for export is made to specific orders, prepared for shipment, shipped out directly and are not held by PPPC. This was demonstrated to, verified and accepted by, the Commission's on-site verification team. Refer 6.2: Stock Carrying, in the PPPC Visit Report, July 2016.

> *'PPPC demonstrated to the verification team that stock is held for domestic sales, which incurs a cost for storage and movement. Exports sales, however, are produced for specific orders, which are then prepared for shipment and are not held by PPPC.*
>
> *The verification team considers a downwards adjustment to the normal value for domestic stock carrying is required to ensure a fair comparison to the export price. The verification team applied a downwards adjustment based on the verified stock carrying expenses.'*

These are the facts and the evidence provided to and verified by the Commission. We are at a loss as to how the Commission can overturn its original decision and reject the adjustment based on its **consideration**, not on facts and evidence as claimed, that '*there would at least be some cost associated with holding stock produced for export*' when the facts and evidence presented to it on-site demonstrate otherwise?

We request the Commission reinstate this rightfully claimed and verified adjustment for domestic stock carrying costs. If the Commission is not of a mind to reinstate this legitimate adjustment, PPPC requests that it be provided with the 'facts and evidence' that the Commission is relying upon to reject this adjustment.

4. **Other Marketing Expenses**

As previously advised, PPPC incurs additional marketing expenses over and above the adjustment allowed for salesman expenses. These are identified as 'Other Marketing Expenses' in the spreadsheets provided as part of PPPC's Exporter Questionnaire Response. These were discussed and verified during the on-site verification. The verification team went through the 'Other Marketing Expenses Spreadsheet (Domestic Sales_PPPC_Calculation) and crosschecked it against PPPC's SAP records. While the team found some overstatement with the domestic marketing expenses, these were adjusted and provide to the team on-site. The team found all cost to be complete, relevant and accurate.

Attached is an example of supportive evidence that shows Other Marketing activities relating to domestic sales only. (See attached **Confidential** "Other Marketing activities – 2015".)

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We request that the above matters be taken into account by the Commission and that the appropriate adjustments be made as required by Australian and WTO legislation, to enable a fair comparison between PPPC's domestic and export sales, prior to providing the Commission's Recommendations and Final Report to the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary).

We ask that the Commission provide us with feedback once it has had the opportunity to consider the above matters and that if it has any questions or requires further information that PPPC be given the opportunity to answer those questions and provide any further information, in time for the Commission to give meaningful consideration to whatever is requested and prior to the Commission providing its Recommendations and Final Report to the Parliamentary Secretary.

Yours sincerely

Kevin Reilly

Kevin Reilly

Principal
GTR Consulting

2 Julianne Close, Bolwarra Heights NSW 2320 Ph: +61 411 439 366 Fx: + 61 2 4930 1217 Email: kevin@gtrconsulting.com.au