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Asia Symbol (Guangdong) Paper Co., Ltd
Greenpoint Global Trading (Macao Commercial Offshore) Ltd

Alleged dumping and subsidisation of certain A4 copy paper from China

Comments concerning Statement of Essential Facts and Exporter Verification Report

A Introduction

1 In this submission, we wish to address three aspects of the preliminary views of the Anti-Dumping Commission ("the Commission") regarding the dumping margin and subsidy margin as determined in relation to our client ("Asia Symbol" and "Greenpoint"), namely:

a) The finding that discounts and rebates (collectively, "sales discounts") allowed by Asia Symbol to its customers on Asia Symbol's sales of the like goods ("like goods") to the goods under consideration ("GUC") in the Chinese domestic market should be added as an upward adjustment to the normal value.

b) The finding that Asia Symbol and Greenpoint received countervailable subsidy benefits under the so-called *Program 1 – Policy loans to the paper industry*.

c) The finding that Asia Symbol received countervailable subsidy benefits under *Program 7 – Preferential income tax program for high or new technology enterprises* during the investigation period.

2 These findings were contained in, or were part of the basis of, the Statement of Essential Facts as issued by the Commission on 9 December 2016. We now address each issue separately in detail.

B Sales discounts upwards adjustment is incorrect

3 We refer to Section 7.1 of the verification report, which proceeds as follows:

> *7.1 Discounts and Rebates*
>
> *The exporter submitted calculated amounts for discounts and rebates to apply to and adjust downwards the domestic price. At the verification, the exporter submitted that these amounts were all quantity based for all goods sold domestically. At the verification it was also noted that amounts used in the calculation for sales rebates were accrued amounts recorded in the exporter's accounting information system and also included amounts relating to sales of products that were not like goods.*
>
> *The verification team considers that, where a quantity discount or rebate is generally granted on domestic sales and substantially the same quantities have been sold to Australia, a quantity adjustment may be equal to the discount or rebate generally granted on the comparable domestic sales. However, where the export sales quantities are less than the quantities sold on the exporter's domestic market, normal value may be based on the lesser discount, as would apply to that lesser quantity, or no discount.*
>
> *It is noted that the export quantity sold is significantly less than the domestic quantity sold. Additionally, no evidence was submitted to support that the quantity discount or rebates generally granted on domestic sales of the comparable models would apply at such quantity that was sold to Australia.*
>
> *The verification team has applied the exporter's calculated discount and rebate amounts by deducting the amounts from the invoice price for the purpose of ascertaining a net price to test sales for OCOT under subsection 269TAAD. These amounts have been added back for the purpose of ascertaining normal value, as the evidence does not support a downwards adjustment to normal value in these particular circumstances as described above.*

4 The finding that these sales discounts provided by Asia Symbol to its domestic customers should be *"added back for the purpose of ascertaining normal value, as the evidence does not support a downwards adjustment to normal value in these particular circumstances…"* is erroneous in a number of aspects.

5 Firstly, we note the Commission has determined that the normal value of the GUC exported by Greenpoint is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in China by Asia Symbol, and that all of Asia Symbol's domestic sales of like goods were arm's length transactions. The sales discounts provided by Asia Symbol to its domestic customers in China form part of the price (ie by way of deduction from the gross price, to arrive at the price). That deduction is determinative of the price paid or payable by those customers. This fact has been verified by the Commission, and it was those discounted/rebated prices of the like goods that were used in determining whether the like goods were sold in ordinary course of trade for home consumption. Accordingly, it is incorrect and without basis for sales discounts to be simply "added back" for the purpose of ascertaining normal value. This inflates the normal value and consequently the dumping margin in a manner which is contrary to the clear language of Section 269TAC(1) of the *Customs Act 1901*.

6 Secondly, it must be recognised that the provision of discounts and rebates in the domestic market is part and parcel of the way prices are determined and how sales are made in that market. The price for normal value purposes must be either the *discounted and rebated price*, or the sales discounts must be recognised as a domestic selling expense to be adjusted *downward* from the full/undiscounted sales price for comparison purposes. For Australian sales, **[CONFIDENTIAL TEXT DELETED – sales arrangement]**. Both Greenpoint's Australian customer and Asia Symbol's domestic customers are at the same level of trade. The sales are priced differently – with or without discounts and rebates, and higher or lower - because one sale is made in the Chinese domestic market, to Chinese customers, and the other is made to the Australian market, to the Australian customer. In other words, these are differences in the markets themselves. By ignoring, or upwardly adjusting for, the domestic sales discounts, the Commission is creating an "abnormal" value rather than a "normal" one.

7 Thirdly, we take note of the Commission's comment that the basis for adding back the sales discounts was due to the perception that these discounts were only allowed to customers because of the quantity of the sales to those customers. This represents a misunderstanding and mischaracterisation of the sales discounts offered by Asia Symbol to its domestic customers. The Commission's comment is simply inaccurate. As was stated in our clients Exporter Questionnaire ("EQ") response, and as was presented during the verification, Asia

Symbol provides sales discounts to cover various arm's-length selling arrangements with customers, including:[1]

[CONFIDENTIAL TEXT DELETED – types of discounts]

[CONFIDENTIAL TEXT DELETED – type of discounts]

8 It is important to note that the first of these, namely the sales discounts under [CONFIDENTIAL TEXT DELETED – type of discounts], were available and were provided by Asia Symbol [CONFIDENTIAL TEXT DELETED – sales discounts arrangements and policy]. That part of the sales discounts was based on [CONFIDENTIAL TEXT DELETED – discount policy] – including in the case of the same type as was exported to Australia – and had nothing to do with the quantity sold.

9 As evidence of this, we provide Asia Symbol's official sales discount policy document as was in effect in 2015 (see Attachment 1 [CONFIDENTIAL ATTACHMENT]). [CONFIDENTIAL TEXT DELETED – sales discounts arrangements and policy] Accordingly it is incorrect to say that these pre-agreed sales discounts would not apply to a customer in the domestic market who purchased the same volume of copy paper as purchased by [CONFIDENTIAL TEXT DELETED – Australian customer].

10 For [CONFIDENTIAL TEXT DELETED – details of GUC] exported to Australia, [CONFIDENTIAL TEXT DELETED – applicable sales discounts for domestic market], the relevant rebate for [CONFIDENTIAL TEXT DELETED – product type] applies.

11 To further demonstrate these facts, we provide examples of domestic contracts stating the agreed rebate and discount for customers who purchased similar or smaller volumes than [CONFIDENTIAL TEXT DELETED – Australian customer]. We draw attention to these facts:

a) Attachment 2 [CONFIDENTIAL ATTACHMENT] is a contract with [CONFIDENTIAL TEXT DELETED – domestic customer] which states that the customer will enjoy [CONFIDENTIAL TEXT DELETED – discount provided] discount/rebate for all purchases if the customer buys [CONFIDENTIAL TEXT DELETED – sales terms] (ie, combined sales discounts of [CONFIDENTIAL TEXT DELETED – number]% under the

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1 See Greenpoint and Asia Symbol Exporter Questionnaire response, at page 25.

agreement). This volume is comparable to (slightly more than) the volume of the GUC exported to **[CONFIDENTIAL TEXT DELETED – Australian customer]** by Greenpoint.

b) Attachment 3 **[CONFIDENTIAL ATTACHMENT]** is a contract with **[CONFIDENTIAL TEXT DELETED – domestic customer]**, who was given the **[CONFIDENTIAL TEXT DELETED – sales term]**, which is a type "B" product, in the same product type category as the GUC exported to Australia (ie, combined sales discounts of **[CONFIDENTIAL TEXT DELETED – number]**% under the agreement). This volume is comparable to (slightly less than) the volume of the GUC exported to **[CONFIDENTIAL TEXT DELETED – Australian customer]** by Greenpoint.

c) Attachment 4 **[CONFIDENTIAL ATTACHMENT]** is a contract with **[CONFIDENTIAL TEXT DELETED – domestic customer]**, who was given the same combined sales discounts of **[CONFIDENTIAL TEXT DELETED – number]**% as under the Attachment 3 contract, for the purchase of **[CONFIDENTIAL TEXT DELETED – sales terms]**, type "B" product. This volume is less than half of the volume of the GUC exported to **[CONFIDENTIAL TEXT DELETED – Australian customer]**.

d) As another example, in the sample set of domestic sales document provided as Attachment 14 to the EQ response, the customer purchased a large range of product, **[CONFIDENTIAL TEXT DELETED – sales terms and discounts arrangements]**.

12 Asia Symbol notes that the focus at the verification was in relation to whether these sales discounts were indeed provided with respect to the domestic sales of like goods, and the accuracy of the amount reported. There was no discussion with our client and ourselves about the thinking of the Commission, and certainly no suggestion that these sales discounts would be unfavourably adjusted as has now been explained in the verification report. The matter was only brought to our attention upon receipt of the verification report, which we received for the first time on 1 December 2016, which was only one week before the SEF was published. This is therefore the first chance we have had to clarify this matter in the context of the Commission's concerns.

13 In light of the above, and as an alternative to Asia Symbol's primary view that the *entirety* of the sales discounts should be *deducted* in working out the price paid and *not* be used as an upwards adjustment (as to which, see paras 5 and 6 above), we submit that the part of the upward adjustment that is not volume based must be reversed. This is because it must be

accepted that the first [CONFIDENTIAL TEXT DELETED – number]% of the sales discounts on domestic sales of the like goods [CONFIDENTIAL TEXT DELETED – discounts policy] is *not* volume-related and *was* paid on the same product as was exported to Australia. This part of the sales discounts is not related to the reasoning offered by the report for the upwards adjustment, because it has nothing to do with the quantity purchased by the customer.

14 Insofar as volume is a relevant consideration in the Commission's mind, we reiterate that Asia Symbol's customers in China were afforded the sales discounts based [CONFIDENTIAL TEXT DELETED – discount policy] when the volume sold to them was comparable or even smaller than that sold to [CONFIDENTIAL TEXT DELETED – Australian customer]. This is demonstrated by the sales discounts policy itself and by the examples provided above at para 11. Those domestic customers are at the same level of trade as [CONFIDENTIAL TEXT DELETED – Australian customer].

15 In summary, it is true that sales discounts were provided by Asia Symbol under sales agreements applicable to the investigation period which stipulated a target volume for each kind of goods the customer contracted to buy from Asia Symbol during the agreed period (usually within the calendar year). However the [CONFIDENTIAL TEXT DELETED – discount policy and sales terms] were not dependent on the volume purchased.

16 The amount of the sales discounts was reported in the EQ response by way of calculating a per tonne amount for each transaction, regardless of whether the sales discount was related to [CONFIDENTIAL TEXT DELETED – type of discounts]. The totals of the discounts and rebate columns in the EQ response amount to [CONFIDENTIAL TEXT DELETED – number]% of the total gross invoice value. As we have now established, the [CONFIDENTIAL TEXT DELETED – number]% is applicable to [CONFIDENTIAL TEXT DELETED – like goods exported to Australia].

[CONFIDENTIAL TEXT DELETED – other type of discounts]

17 Additionally, and as noted in the Commission's margin calculation spreadsheet itself, the amount that it used as an upwards adjustment (based on the perception that it was entirely quantity-based) was RMB[CONFIDENTIAL TEXT DELETED – number]. It must be recognised that the other three types of expenses are typical marketing expenses that have nothing to do with volume. They very ordinarily and very normally constitute a downward adjustment to normal value (if not already taken into account in the domestic price). There is no reason to reject them

from consideration as a downward adjustment. A breakdown of the relevant accounts was included in Asia Symbol's EQ response and explained at the verification.

Summary of change to dumping margin

18 Correction of the inclusion of the [CONFIDENTIAL TEXT DELETED – type of discounts] in the calculation, by removing them from the upward adjustment, represents an RMB[CONFIDENTIAL TEXT DELETED – number] reduction from the current per unit rebate/discount of RMB[CONFIDENTIAL TEXT DELETED – number] per tonne. The correction of this mistake reduces the dumping margin by about [CONFIDENTIAL TEXT DELETED – number]%.

19 Correction of the inclusion of that part of the sales discounts that are not quantity based is achieved by apportioning the total amount of the sales discounts ([CONFIDENTIAL TEXT DELETED – number]%) in the ratio of [CONFIDENTIAL TEXT DELETED – ratio].[2] This represents an RMB[CONFIDENTIAL TEXT DELETED – number] per tonne reduction from the current per unit rebate/discount of RMB[CONFIDENTIAL TEXT DELETED – number] per tonne. The correction of this mistake will reduce the dumping margin by about [CONFIDENTIAL TEXT DELETED – number]%.

20 In making this alternative submission, which isolates the non-quantity based sales discounts, we would like to clarify that we maintain that none of the discounts and rebates in the domestic market can simply be disregarded, as per paras 5 and 6 above, and that we reserve our client's rights to maintain that position in another place should it have to do so. However, we submit that the reversal of the adjustment as explained and quantified in the preceding paragraphs must be accepted, as it has nothing to do with volume.

C No "policy loans" subsidy applies

21 Asia Symbol disagrees with the Commission's finding that Asia Symbol and Greenpoint received countervailable subsidies in the form of "policy loans" or "preferential lending" by the Government of China.

[2] See para 17 above in relation to the [CONFIDENTIAL TEXT DELETED – number]% portion of the sales discounts that was also not volume based.

22 First and foremost, Asia Symbol submits that all the loans obtained by Asia Symbol were as a result of purely commercial negotiations. Asia Symbol obtained loans from both Chinese State-owned financial entities and private and foreign owned entities. None of the loans obtained by Asia Symbol were "policy loans".

23 **[CONFIDENTIAL TEXT DELETED – details of bank loans]**. More importantly, the **[CONFIDENTIAL TEXT DELETED – loans]** was provided to Asia Symbol at interest rates comparable to the interest rates charged by non-Chinese financial entities.

24 The SEF cites no evidence to justify the view that the loans obtained by Asia Symbol from the Chinese State-owned commercial banks concerned were policy loans or loans with preferential interest rates. There are two attempted justifications for the view expressed in the SEF:

a) that the Commission's predecessor – Australian Customs and Border Protection - discovered some evidence regarding the provision of policy loans in relation to "toilet paper" producers – not A4 copy paper producers - back in 2008; and

b) that similar views/findings have been held by a foreign investigating authority –views also based on findings and determinations which are now more than 10 years old.

25 We submit that these things are not evidence that could justify the view that Asia Symbol was provided with any or all of its loans by Chinese State owned commercial banks as "policy loans", or at an interest rate which was "preferential" either to Asia Symbol specifically, or to Asia Symbol as a paper manufacturer.

26 We further note that the Government of China has clearly pointed out to the Commission that different regulatory requirements are applicable to the provision of working capital loans than might apply to policy loans. Chinese law clearly stipulates and requires that banks only issue working capital loans based on commercial considerations and risk assessment, and not on the basis of any industrial policy issued by the GOC.[3]

27 In determining whether and what benefit was provided to Asia Symbol by Chinese State owned commercial banks, and whether any such benefit was specific, the Commission appears to have

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3 See Government Questionnaire response by the GOC, at page 25.

failed to discharge its obligation to make such determinations based on facts and considerations of its own. Asia Symbol respectfully submits:

a) That the use of the high interest rate benchmark has no legal or factual basis because it is absolutely clear from the record evidence of this investigation that Asia Symbol obtained loans from both Chinese and foreign banks, and that the interest rates charged by the Chinese State-owned commercial banks are comparable to those charged by the foreign banking entities.

b) That the SEF's determination of whether Asia Symbol was provided with any preferential loan ignores the commercial reality and negotiation between Asia Symbol and its lenders that, **[CONFIDENTIAL TEXT DELETED – details of bank loans]**.

c) That there is no evidence to suggest that the so called "preferential" interest rate was indeed preferential – rather than being just the normal commercial rates applicable to Asia Symbol as a foreign-owned Chinese registered company.

d) That the interest rate used as a benchmark neither reflects the interest rates applicable in China, nor those of any other major economy. As commented in the Government of China's GQ response, China has higher interest than many of its counterparts, including Australia, US, EU and Japan.

28 Thus, Asia Symbol submits that the Commission's finding regarding the amount of benefit and the "specific nature" of the alleged subsidy is wrong, and should be reversed.

29 Separately from the issues identified above regarding the Commission's finding concerning Asia Symbol, we submit that the subsidy margin determined is wrong in so far as it attempts to include an amount of subsidy under Program 1 based on the loans obtained by Greenpoint.

30 Greenpoint is a Macao based company. The Commission's finding assumes that Greenpoint has also benefited from the alleged policy loans to the A4 copy paper industry. However:

a) Macao has been a separate member of the WTO since 1995; and

b) Greenpoint is a Macao based international trading company, and does not form part of the "Chinese A4 copy paper" industry for the purposes of a subsidisation analysis.

31 It appears that Greenpoint has been deemed as having received a "policy loan" or "preferential loan" subsidy benefit because it has obtained loans from the offshore branches of Chinese State owned commercial banks. As pointed out in the GOC's response to the Government Questionnaire, a number of the largest Chinese state owned commercial banks are amongst the best performing banks globally, and have an increasingly expansive international presence. A customer who obtains a loan from an offshore branch a Chinese State owned commercial bank outside China is not thereby being "subsidised" by the Chinese Government. Greenpoint is a fully foreign owned company that is located outside China.

32 For the above reasons, Asia Symbol and Greenpoint urge the Commission to reverse its findings regarding the subsidy margin determined under the alleged Program 1 in so far as it relates to Asia Symbol and Greenpoint, and to find that the two companies did not receive any countervailable subsidy benefit under the alleged program.

D No income tax benefit applies

33 Asia Symbol notes that the Commission also proposes to find that Asia Symbol received a benefit in the form of preferential income tax during the investigation period under *Program 7 – Preferential income tax program for high or new technology enterprises*. However this finding was only made on the basis that Asia Symbol received such a tax benefit in 2014, and not in the investigation period of 2015. The SEF proposes to justify such a finding on the basis that:

> *In China the financial year for income tax purposes is the calendar year 1 January to 31 December, with tax returns due the following calendar year. Therefore, for this investigation the benefit received during the investigation period is the benefit of any reduction in income tax received for the 2014 financial year.*

34 However this is mistaken because it is a well-established fact that the preferential income tax rate based tax exemption is administered by way of prepayment of income tax on a quarterly/monthly basis at the reduced rate. Accordingly, the tax exemption was factually related only to Asia Symbol's operations prior to the investigation period, and was expensed and realised prior to the investigation period. There is no evidence that such benefit was either received or expensed in the investigation period. Accordingly, it is incorrect to determine a subsidy amount for Asia Symbol in relation to this program in the investigation period, because any tax reduction it received related to a previous period and because the benefit was received prior to the investigation period. The Commission must find that Asia Symbol did not receive any subsidy under Program 7 during the investigation period.

E Concluding comments

35 We are grateful for the opportunity to comment on the matters raised by the SEF and the Verification Report as they relate to our client, and to clarify those matters. We hope we have done so to the Commission's satisfaction however should any further information or explanation be required please do not hesitate to contact us. We also request that the Commission share the changed margin calculations with us, to enable us to confirm the accuracy of the calculations and to otherwise assist the Commission in arriving at the correct and preferable decision.

Charles Zhan
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