Dumping and Subsidisation

Investigation ADC 341

A4 Copy Paper exported from Brazil, China, Indonesia and Thailand.

Response to Statement of Essential Facts

Construction, Forestry Mining and Energy Union

(CFMEU)

Overview:

Duties on imported A4 copy paper from Brazil, China, Indonesia and Thailand as outlined in previous Preliminary Affirmative Determinations in this investigation have been welcome news to workers, their families and communities suffering from the effects of unfair imports. We are looking forward to confirmation of the duties in the findings of the final report due on January 23, 2017.

This response from the CFMEU to the Statement of Essential Facts will include recommendations for inclusion the final report.

Introduction:

We are a trade union which represents workers in the Australian producing industry. Indeed hundreds of members of the applicant's workforce are CFMEU members of the union's Pulp and Paper Workers'

District. In addition, hundreds more CFMEU members of our union's Forestry, Furnishing, Building Products and Manufacturing Division in the wood processing and harvesting sectors of the economy rely on the ongoing operation of the applicant's mill at Maryvale in the Latrobe Valley for their livelihoods.

We welcome the opportunity to make a formal response to the SEF as an interested party as defined by 269(T) of the *Customs Act* (the act). We make this response on behalf of our members, their families and their communities who have suffered because of material injury to the applicant caused by the importation of artificially lowly priced, indeed, dumped and unfairly subsidised paper.

The applicant, *Australian Paper* is the largest private sector employer in Gippsland. There are almost 6000 direct and indirect flow on jobs associated with the applicant's production. The ongoing importance of the Maryvale mill to the community has been recently highlighted by the forthcoming major unemployment event which will be caused by the hastily planned shutdown of the Hazelwood power station.

As much defence from unfair trade to the applicant available in accordance with the facts of the investigation and any limitations or constraints imposed by Australia's WTO and/or other international obligations along with domestic legislation should be forthcoming. Certainly, it should be this attitude that the Anti-Dumping Commission (ADC) and the Assistant Minster takes when determining the final dumping and unfair subsidy margins and subsequent levels of dumping and countervailing duties.

We support the findings of dumping and unfair subsidies in the SEF and the findings that the dumping and unfair subsides have caused material injury to Australian industry. However, we contend in this response to the SEF that greater relief to Australian industry is possible. In addition, we make the point that in the future we would like to see more timely relief through the provision of earlier preliminary determinations. This response will outline some of these issues in further detail as below.

Basing Normal Value in China on Domestic Prices:

The ADC has not found a market situation in China and has therefore, for the purposes of the SEF, considered domestic selling prices of paper in China as suitable for the purposes of determining normal values. This has potentially reduced the dumping margin of A4 copy paper from China and therefore the amount of relief available for Australian industry. One of the reasons why this is controversial is that the ADC did find 'significant' Government influence on prices and costs.

As per the SEF:

> "It is the Commission's view that the Government of China retains significant influence over the industry… the Commission confirms the existence of numerous subsidy programs available to Chinese paper producers."

We do not agree with the ADC's view that:

> "While these programs are likely to have caused a degree of distortion to production and pricing, the extent of this distortion was not sufficient to render the domestic prices unsuitable for the determination of normal values under subsection 269TAC (1) of the Act."

Particularly we are perplexed by the rationale provided by the ADC for this (above underlined), which is:

> "This assessment is based on the Commission's comparison of domestic A4 copy paper prices with regional benchmarks…"

&

> "Given the Commission's inability to obtain a more directly comparable benchmark, the Commission also analyzed pricing information from verified Chinese exporters which confirmed that domestic Chinese A4 copy paper prices (70-80 gsm grade) were consistent with the 'Korean' and 'Asia' price benchmarks during the investigation period. For example the Commission estimates that average domestic prices for Chinese A4 copy paper (70-80 gsm)

> ranged between USD 890 and USD 930 a tonne during the investigation period compared to between USD 900 and USD 965 (70-80 gsm) a tonne for the Asian region benchmarks"

The ADC has relied on these regional benchmarks, even though, in our view, regional prices are likely impacted by Chinese and Indonesian exports at dumped prices. We note that ADC have done this despite acknowledging in the SEF a submission which indicates that "Thai manufacturers are also facing increasing competition from Chinese imports in their home market."

Australian Industry, authorities and Government have recently, originally as part of the *Streamlining Reforms* and then subsequently considered the issue through analysing the most appropriate way to determine normal value when a particular market situation is indeed found. Article 2.2 of the ADA sets the permitted ways to determine the normal value when a particular market situation is found:

- A comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or
- The cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

However, in recognition that a comparable price of the like product when exported to an appropriate third country may not reflect a "price that is representative" and therefore an appropriate basis for determining normal value because the product may be "dumped" the findings of the Particular Market Situation Working Group in 2011, determined that:

> "Given the practical difficulties and impact on timeframes, together with the fact that Customs and Border Protection often has some verified costs (or alternative benchmarks to rely on), Customs and Border Protection considers a cost construction to be the most appropriate approach. Australian industry recognises the limitations of using third country export sales and supports the approach taken. Discussions with the EC, US and Canada confirmed that they

> undertake a similar approach and seek to use verified costs in preference to sales to third countries for determining normal value."

This methodology was solidified through the Government's *2015 CUSTOMS AMENDMENT (ANTI-DUMPING MEASURES) BILL (NO. 1) 2015.*

Particularly relevant were changes *to* 269 TAC (3) of the act which had the effect of:

> "Amending the provisions regarding the calculation of the normal value in anti-dumping matters…in Australia's anti-dumping system, there is no specific hierarchy between the various methodologies for determining normal value. The amendment removes doubt that the Commission can calculate normal value on the basis of construction without first having regarded the use of third country prices. This clarification takes advantage of flexibility permitted under the WTO agreements and thereby improves the alignment of Australia's provisions with those of the WTO agreements."

It is more than somewhat counterintuitive to acknowledge that, on the one hand export prices to a third country may not be a suitable determination of normal value in the exporting country because those exports might be dumped, while on the other hand; relying on the prices of paper in a region (prices which could very well be suppressed by dumping) to determine that domestic sales in the exporting country are consistent with regional benchmarks and therefore domestic prices in the exporting country are suitable for the determination of normal values under subsection 269TAC (1) of the act.

The Government of Indonesia's support for the development of timber plantations and the export ban on timber logs, as acknowledged in the investigation, have increased the availability of timber relative to demand and have resulted in artificially low prices for Indonesian logs and pulp. Indonesia exports large volumes of this fibre to China for paper making.

Given this, it is not unreasonable to expect that this would also contribute to artificially low pulp prices in China. Given that pulp makes up around half the production cost of A4 copy paper there is significant influence of pulp prices on the finished products. The regional disruption of artificially low Indonesian woodchip and pulp prices, as well as Chinese regional dumping of finished goods, are likely to have rendered regional prices not fit for third country comparison benchmarks.

If third country benchmark pricing were therefore going to be used to determine if Chinese domestic prices are 'reasonable' or 'representative' for normal value purposed then a more appropriate substitution of Chinese domestic pulp prices should have been utilized and a non-Asia region domestic price employed (e.g. Brazil or Latin America domestic pulp price)

Recommendation 1:

a) Acknowledge in the final report's findings that the Government of China's significant influence over the industry and the numerous subsidy programs available to Chinese paper producers render their domestic prices unsuitable for the determination of normal value under subsection 269TAC (1) of the act due to the market situation in China.
b) Subsequently establish 'normal value' based on a cost construction using prices which 'reasonably reflect competitive market costs associated with production, or manufacture and sale of like goods" in accordance with subsection 269TAC (5A) and 269AC (7) of the act, where the Minister has absolute discretion to "disregard any information that he or she considers to be unreliable" (we cannot think of any circumstances where a Minister would consider costs that do not reflect competitive market costs to "be reliable").
c) Under subsection 269TAC (6) determine the constructed normal value "having regard to all relevant information."
d) Adjust dumping margins for Chinese exports forthwith.

Countervailing Investigation:

Key exporters from China and Indonesia decided not to participate in a countervailing investigation conducted by US Authorities in 2015 and were subsequently hit with high subsidy margins (and countervailing duties) as non-cooperative exporters of 177% and 109% respectively. Some of these exporters did cooperate with Australian authorities in this investigation and received subsidy margins as follows:

Exporter	**Subsidy Margin**
UPM	0.8%
Tjiwi Kimia	1.1%
Pindo Deli	0.9%
Indah Kiat	1.7%

It is interesting that the exporters chose not to participate in the investigation in the US if their production costs are relatively unaffected by subsidies as the Australian investigation is suggesting. Comparing the results of exporters who cooperated in both investigations is also instructive. For example:

Exporter	**Australian Subsidy Margin**	**US Subsidy Margin**
Asia Symbol	2.2	7.23
RAK	1.4	21.2

Given the vast discrepancies, it is perhaps not surprising why the exporters when investigated by US authorities didn't bother cooperating but when the exporters were investigated by Australian authorities, they did think it was worth their while.

We acknowledged in our initial submission the need to take into consideration the differences in jurisdictional procedures which gives an insight to the complexities involved in comparing outcomes between jurisdictions. However variant dumping margins in Australian investigation's findings compared to a US investigation's findings is more conceivable than such variant countervailing margins.

Dumping margins might be different due to different methods of determining normal value and perhaps different pricing strategies for two distinct export markets. However, we would suggest that far less conceivable are such variant subsidy margins. In fact we argue it is highly unlikely that distinct production for export to Australia might receive less government support compared to general production or distinct production to be exported to the US in apparent absence of any targeted export subsidies.

Finally, the difference in the 'uncooperative subsidy rate' between the Australian and US investigations are also highly variant:

Country	**Australian Subsidy Margin (Uncooperative Exporters)**	**US Subsidy Margin (Uncooperative Exporters)**
China	8%	177%
Indonesia	-	109%

Recommendation 2:

a) Reflect in the final report subsidy rates for exporters from China and Indonesia which adequately reflect the countervaialble support provided.

b) Adjust countervailing duties upward appropriately and implement them where required forthwith.

c) Consider benchmarking countervailing duties other countries have imposed in acknowledgement that the production of goods exported to Australia are unlikely to receive less Government subsidisation than equivalent exports to other jurisdictions.

Additional Matters:

Form of Duties for Exports from Brazil:

When it comes to the form of duties, we do not agree with the SEF's proposal for exporters from Brazil not to be subject to the combination method of duty. Our assessment is that there is a high risk that exporters from Brazil would use this proposed method to absorb the duty as a way to circumvent the intention of the anti-dumping duties which is to remove material injury to Australian industry.

Recommendation 3:

a) Make the form of duties which Brazilian exporters are subject to the combination duty as opposed to the *ad valorem* duties methodology.

Lesser Duty Rule, Non-Injurious Price and Unsuppressed Selling Price:

The ADC in the SEF points out that:

> "A submission was received from Construction Forestry Mining & Energy Union (CFMEU) stating that it would be inappropriate to consider the lesser duty rule for China and Indonesia if a particular market situation finding was made. The CFMEU also stated that the lesser duty rule in relation to the other countries would need to allow for a level of profit based on a sustainable rate of return."

The use of the lesser duty rule, when used at all, needs to be used on the basis of the precautionary principle acknowledging it is the ADC's main remit to remove injury to Australian industry from

dumping. Therefore any use of the rule needs to have this objective in mind predominately rather than any secondary condition such as ensuring the duty is “as least trade restrictive as necessary to remove injury”.

In this regard the Commission by “reconsidering the appropriateness of Australian Paper’s selling prices in the period 2012 to 2014 as representative of the prices it could achieve in the absence of injurious dumping and subsidization” should not be used as basis for the imposition of a lesser duty than the full margin of dumping.

There ae a couple pf pertinent considerations to support the above as follows:

1. The ADC’s proposition is based on a “Noting that in the earlier 2013 investigation by the Commission, either no dumping or negligible levels of dumping were established for the period between 1 July 2012 and 30 June 2013”. This justification is not appropriate because it does not acknowledge the now proven (by the US investigation and this investigation) problems in that investigation. It also does not acknowledge that the 2013/2014 investigation found Australian industry suffering injury in the form of:

- loss of sales volume;
- price depression;
- loss of profits;
- reduced profitability;
- reduced revenue;
- reduced return on investment; and
- reduced employment.

The Commission acknowledged in the investigations that the imports (which they deemed were undumped) were a contributing factor to this injury.

2. The ADC has reversed its position as detailed in the previous PAD not to adjust the Unsuppressed Selling Price for an increase in Consumer Price Index (CPI). There is a lack of basis provided by the ADC in its conclusion that "the CPI is unlikely to be reflective of either price movements or costs for Australian Paper." Indeed we find the ADC's proposition unlikely to be reflective of market realities.

Recommendation 4:

a) If used at all, no lesser duty rule should be applied if it is based on a "non-injurious price" or an "unsuppressed selling price" where the price was found to result in Australian industry suffering injury, whether or not the ADC acknowledges that in the previous investigation it erred in its findings about whether the injury was caused by dumping or simply un-dumped imports and other factors.

b) Reconsider the decision not to apply the CPI to the Unsuppressed Selling Price.

Delays in the delivery of a PAD:

We outlined in our original submission that:

> "Given the extremely strong case for duties as per the application by the local industry and the consideration report of the Commission, this investigation is a test case for the adequacy of the Government's recent ministerial directions namely:
>
> - The Customs (Extensions of Time and Non-cooperation) Direction 2015 (Customs Direction) (30 of October 2015) and
> - The Customs (Preliminary Affirmative Determinations) Direction 2015 (PAD Direction) (22 October 2015)
>
> Unless it can be comprehensively and irrefutably demonstrated by the exporters that they have not dumped the product on the Australian market or that their dumping (and/or any subsidy)

behavior has not caused material injury to Australian industry there should be a Preliminary Affirmative Determination levying duties at day 60 of the investigation which is June 11."

Unfortunately, injury was allowed to continue un-remedied until the 29th of September when the first PAD was delivered.

Recommendation 5:

a) In the future deliver PADs in a timely manner to deliver remedy to Australian industry suffering material injury earlier than has occurred in the course of this investigation.

Ends