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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 refer to the Statement of Essential Facts (SEF) published by the Anti-Dumping Commission in relation to this investigation and, in particular, to the following statement that appears on page 36 of the SEF:

> "*In respect of export sales to Fuji Xerox Australia, the Commission considers that the selling prices do not reflect arms length prices because the goods were sold at substantial losses by Fuji Xerox Australia and those losses are not recoverable within a reasonable period of time*."

This is of course not the correct test. It is but one of the factors that may be taken into account as to determine whether sales are at a loss.

The correct test is contained in s.269TAA(2) of the *Customs Act 1901*, which relevantly provides that the "*Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price*". (underlining added)

In exercising that statutory discretion, the Minister must comply with the usual principles of administrative law. That is, the Minister must not apply an inflexible policy, must take into account relevant considerations, not irrelevant considerations and have regard to fact that there was no evidence of any compensatory arrangement between UPM and Fuji Xerox Australia, as previously submitted and verified by the Commission.

In this regard, your attention also is drawn to the provisions of s.5 of the *Administrative Decisions (Judicial Review) Act 1977*.

No doubt the Parliamentary Secretary, so as not to mislead him, will be advised of the correct test to be applied under s.269TAA(2) of the *Customs Act 1901* and that the exercise of his statutory discretion must be exercised in accordance with the usual administrative law principles and with the relevant provisions of the *Administrative Decisions (Judicial Review) Act 1977*.

Yours sincerely

Andrew Percival