

ADRP Conference Summary

2017/55A A4 Copy Paper exported from the Federative Republic of Brazil, the People's Republic of China, the Republic of Indonesia and the Kingdom of Thailand. Remittal of matter for reconsideration by the Anti-Dumping Review Panel (Review Panel)

Panel Member	Jaclyne Fisher (Panel Member)
Review type	Review of Minister's decision
Date	20 December 2018
Participants	██████████ (Minter Ellison representing UPM AP), ██████████ (Minter Ellison), Justin Wickes (Anti-Dumping Commission), Steven Spears (Anti-Dumping Commission), ██████████ (Percival Legal representing Fuji Xerox Australia), James English (ADRP Secretariat)
Time opened	09.30 AEDT
Time closed	10.15 AEDT

Purpose

The purpose of this conference is to obtain further information in relation to the resumption of the Review Panel Report No 55 in relation to UPM Asia Pacific Pte Ltd (UPM AP) as ordered by the Federal Court on 8 October 2018. It relates to A4 Copy Paper exported from the People's Republic of China (China) by UPM AP.

The conference is being held pursuant to s.269ZZHA of the *Customs Act 1901* (the Act) for a review of a Minister's decision. In particular, it is noted that s.269ZZHA(2) prescribes that the Review Panel may have regard to 'further information' to the extent that it relates to 'relevant information' and conclusions reached at the conference based on the relevant information.

In the course of the conference, the Review Panel may ask parties to clarify an argument, claim or specific detail contained in the party's application, submission or in relation to the Anti-Dumping Commission (ADC) Reinvestigation Report (dated 11 December 2017) and the conference held with the above-mentioned parties on 11 December 2018. This conference is not a formal hearing of the review and is not an opportunity for parties to argue their case before me.

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The Review Panel may only have regard to information provided at this conference as it relates to relevant information within the meaning of s.269ZZK(6) of the Act. Any conclusions reached at this conference are based on that relevant information. Information that relates to some new argument not previously put in an application or submission is not something that the ADRP has regard to and is therefore not reflected in this conference summary.

To the extent that any party to the conference identifies there is confidential information that needs to be provided to the Review Panel, this will be done on confidential basis and needs to be raised prior to the commencement of a discussion.

This conference was not recorded, and a conference summary would be provided following the close of the conference.

Discussion

The specific information that the Review Panel sought in this conference relates to issues arising from the conference held with the parties on 11 December 2018.

I advised the parties that this would be a short conference to obtain further information in relation to the Selling, General and Administration expenses (SGA) for FXA given the ADC had used █████% in the deductive export price calculation whereas UPM AP had questioned whether it should have been █████% given the FXA submission (dated 3 June 2016).

Secondly, the Review Panel wished to advise that the ADC had provided to the Review Panel the revised deductive export price spreadsheet (as a result of the calculation error identified at the 11 December 2018 conference). This recalculation error had led to the dumping margin decreasing to 32%. The Review Panel notes that this is not a finding of the Review Panel but merely the correction of the deductive export price spreadsheet. The Review Panel has inquired with FXA as to whether it requires a copy of the deductive export price spreadsheet and has sought permission from FXA to provide this spreadsheet to UPM AP (on a confidential basis).

Response by FXA SGA

Mr █████ (FXA) noted that he is currently experiencing issues with his internet connection and requested that until rectified, prior to any email correspondence being sent to him, that he be phoned about such correspondence. Mr █████ (FXA) commented that he had been unable to locate the FXA response to the importer questionnaire and the FXA letter to the

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ADC (dated 3 June 2016) and had not been able to confirm the different SGA amounts. He requested that the ADC provide these documents to him. The ADC agreed to provide this information following this conference. He had also not received instructions at this time regarding the amounts of the SGA submitted by FXA.

The ADC confirmed that the SGA amount used in the deductive export price calculation was provided by FXA in its response to the importer questionnaire. It had been emailed to the ADC by FXA on 20 May 2016. The amount shown in the P and L information provided to the ADC in a letter from FXA dated 3 June 2016 related to all sales during 2015 including A4 copy paper. It noted that there were two amounts shown: one SGA as percentage of revenue and then another much higher amount that included transport, storage and handling. The ADC indicated that it had provided the deductive export price calculations to FXA and received a response on 25 October 2016, questioning some aspects of the calculation but none relating to the amount of SGA used. Mr ██████ (FXA) is to confirm with FXA the percentage of SGA for A4 copy paper is the one provided in the response to the importer questionnaire.

UPM AP commented that it was not aware of the 20 May 2016 and 25 October 2016 correspondence and questioned whether this had been before the Review Panel. The Review Panel advised it had access to the response to the importer questionnaire (20 May 2016 correspondence) but that it did not necessarily review all correspondence between the ADC and importers/exporters regarding the spreadsheet calculations given the outcomes are usually in the final report. UPM AP further commented that for the purposes of the Minister forming an opinion under s.269TAA(1)(c) that the buyer will be reimbursed, the difference in SGA amounts between A4 copy paper and all FXA sales reinforced its position that FXA losses were related to FXA business decisions and were not due to reimbursement by UPM AP.

Deductive Export Price Spreadsheet (adjusted)

Mr ██████ (FXA) advised that he was yet to receive instructions from FXA as to whether a copy of the corrected spreadsheet could be provided to UPM AP and whether FXA had any comments on the recalculated export price. Once Mr ██████ (FXA) receives instructions, and on the basis that it will be agreed, Mr ██████ (FXA) will then provide a copy of the spreadsheet to Minter Ellison and will notify the Review Panel Secretariat that this has occurred. FXA will also provide any comments on the adjusted export price, if necessary.

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Information to be provided:

- ADC to provide a copy of the confidential FXA response to the importer questionnaire (20 May 2016) and FXA letter to the ADC (dated 3 June 2016) relating to the SGA amounts to Mr. ██████ (FXA). *ADC advised the Secretariat following the conference that it had provided the email from FXA that contained the confidential parts B and C of FXA's response to the importer questionnaire (20 May 2016) and the confidential FXA submission to the ADC dated 3 June 2016.**
- Mr ██████ (FXA) to provide a copy of the adjusted deductive export price spreadsheet to Minter Ellison and notify the Review Panel Secretariat that this has occurred if FXA agree to it be provided to UPM. *Mr ██████ (FXA) advised that FXA would not provide a copy of the adjusted deductive export price to UPM AP for confidentiality reasons, but would provide a copy to Minter Ellison subject to a confidentiality agreement. This has now been completed.**
- Mr ██████ (FXA) is to confirm with FXA the amount of SGA for A4 copy paper. *Mr ██████ (FXA) advised that FXA is unable to provide a response on this issue until 14 January due to staff absences*.*

The Review Panel indicated that it would appreciate the information to be provided (referred to above) being actioned as early as possible, noting the impending Christmas break. The Review Panel advised that this conference information would be linked with the 11 December conference in order to finalise the outstanding actions items. This would occur early in the new year.

Jaclyne Fisher

Review Panel Member

Anti-Dumping Review Panel

*Action completed following the conference.