The Director
Operations 2
Anti-Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Email: operations2@adcommission.gov.au

Via Fax: +61 3 8539 2499I

CFMEU
NATIONAL OFFICE
Construction Forestry Mining & Energy Union

Intial Submission – CFMEU

ADC 341

Dumping and Subsidisation Investigation ADC 341 - A4 Copy Paper exported from Brazil, China, Indonesia and Thailand.

Introduction:

Thank you for the opportunity to make this brief initial submission into the investigation into the importation into Australia of *A4* Copy Paper from China, Brazil, Indonesia and Thailand. The Construction, Forestry, Mining and Energy Union (CFMEU) consists of three Divisions namely the Construction and General Division, the Forestry and Furnishing Products Division and the Mining and Energy Division. We are the major union in these industries.

The CFMEU is a trade union which represents workers in the Australian producing industry. Indeed hundreds of the applicant's workforce are CFMEU members. In addition, hundreds more of our members are in the wood processing and harvesting sectors of the economy which rely on the ongoing operation of the applicant's mill at Maryvale in the Latrobe Valley for their livelihoods.

Australian Paper is the largest private sector employer in Gippsland and there are almost 6000 direct and indirect flow on jobs associated with its production. We make this submission on behalf of our members, their families and their communities who have suffered from the material injury to the applicant caused by the importation of artificially lowly priced, indeed, dumped and, from those

countries it is applicable, unfairly subsidised goods from countries subject to the investigation. If these imports continue to be imported at the volume and price they have been the result will be further material injury to the local industry with adverse impacts on jobs and communities.

We welcome the opportunity to make a formal submission as an interested party as defined by 269 (T) of the Customs Act (the act). We will be closely following the investigation and may feel compelled to make further submissions as the need arises.

In response to the submission from the Government of China:

We take the opportunity to reiterate the point that, as confirmed by the former Industry Minister Macfarlane:

> 'Australia's… regime for combatting injurious dumping and subsidisation is transparent and complies with our obligations under World Trade Organization agreements.'[1] (Our emphasis)

In addition, we make the point that, clearly, the Anti-Dumping Commission (the Commission) is acting *within* this regime by proceeding with this investigation. By way of example, the Commission has examined the application in relation to the WTO complaint legislative framework that underpins the making of an application and the Commission's consideration of an application (as contained in Divisions 1 and 2 of Part XVB of the act)

In doing so the Commission has been correct to, in accordance with subsection 269TC(1) of the act, be satisfied in this instance, that there appears to be reasonable grounds for the publication of a dumping and countervailing duty notices in respect of the goods the subject of the application and therefore to proceed with an investigation. In fact, it is apparent by both the quality of local industry's application and the comprehensiveness of the Commissions' consideration report that, in relation to Australia's

[1] Mr. Macfarlane made this statement as the responsible minister at the time for Australia's anti-dumping system prior to the Government making reforms to the system. In could not be argue that the legislative reforms passed in 2015 make Australia's regime non-compliant with the WTO ADA or SCM. Mr Macfarlane, *Minister's second reading speech*, 'Customs Amendment (Antidumping Measures) Bill (No. 1) 2015' , Thursday, 26 February 2015, available online @ http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/6ab7607c-a6db-41b2-96b3-1b2a6f2fb729/0009/hansard_frag.pdf;fileType=application%2Fpdf

WTO compliant regime, there is an extremely solid case for anti-dumping and countervailing duties to be placed on the imports from the countries under investigation.

The participation of foreign governments in the investigation is of course welcome. However, abuse of the close bi-lateral relationship which Australia shares with the importing countries is certainly not. For example in accordance with the recently signed China-Australia Free Trade Agreement:

> "The investigating authorities shall carefully review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation" and
>
> "Throughout the investigation, the other Party shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution."[2]

However, there should be no need to remind the Government of China (given their likely interest in the Government's rejected repeal proposal of Subsection 269TACC (2) of the act in 2015 by the Australian Senate) that Subsection269TACC (2) remains a part of Australia's WTO compliant act and regime. However, the submission from the Government of China does seem to ignore this in a number of areas for example including where it states regarding the VAT incentives and raw materials that, the Commission:

> "Shall not investigate the alleged program"[3]

This statement could be interpreted as a direction, or a demand rather than a suggestion. One might be forgiven to think that this direction is an attack of Australia's sovereignty as per its rights under the WTO Agreements on SCM.

---

[2] China-Australia Free Trade Agreement, Chapter 7, Trade Remedies- available online @ http://dfat.gov.au/trade/agreements/chafta/official-documents/Documents/chafta-chapter-7-trade-remedies.pdf

[3] The Government of China, 'Consultation Points under Article 13.1 of SCM concerning the Application for Countervailing Duty Investigation on White Uncoated A4 Copy Paper Exported from the People's Republic of China' available online on the Electronic Public Record @ http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20341/008-%20Submission-Gov-Gov%20of%20China-EPR%20341.pdf

The CFMEU notes that if this suspicion were proven to be correct it would not be the first time that there was a misgiving that the Chinese Government had the intention of seeking to improperly exploit Australia's open dialogue on Trade Remedies with China in a way that unduly influenced an active investigation. For example, in September 2014 in refusing to participate in a review, a diplomatic officer from the Economy & Commerce Division on the Embassy of the People's Republic of China in Australia suggested a sensitive matter would be discussed at the '4th High Level Dialogue on Trade Remedies'. We would agree with the response from the Commission to this extraordinary suggestion:

> "In the Commission's view, these (High level dialogues and investigations) are two separate processes with very different objectives… the High Level Dialogue is not the appropriate forum for raising issues as they relate to specific investigations"[4]

We seek an assurance that any concerns of the Government of China will be dealt with openly and in a transparent manner in a way that 'natural justice' can be realized by Australian workers, their families and communities which are relying on the imposition of the trade remedies.

In addition, some of the claims made in the Government of China's submission border on the absurd. For example their submission cites the previous investigation into imports from China by the Commission and states that the Commission found that the alleged injury was likely to have been caused by other factors including 'from imports of copy paper from other countries in particular Thailand'. A cursory look at the notice, application or consideration report for the current inquiry would have found that imports from Thailand (and indeed other countries in addition to China) are being analyzed in this investigation (unlike last time) and indeed that the cumulative imports under examination make up over 90% of all imported products and nearly 60% of the Australian market.[5]

[4] See "Email correspondence between the Anti-Dumping Commission and the People's Republic of China" available online@ http://www.adcommission.gov.au/cases/documents/037-EmailDocument-ForeignGovernment-CorrespondancewithGovernmentofChina.pdf

[5] See IndustryEdge, *Pulp and Paper Strategic Review 2015*, p 166/ 167 'Australian Apparent Consumption of UCWF Cut Reams: 2005-2015 (ktpa)' and 'Australian Imports of UCWF Cut Reams by country of origin: 2005-2015 (ktpa)'

As the Commission reports, the investigation which the Government of China cited (the 2013/2014 investigation into paper allegedly dumped from China) in comparison to the recent US case involving uncoated paper exported from Brazil, China, Indonesia and Portugal, wherein a final determination was made on 16 January 2016, is different in a number of respects.[6] Despite the need to take into consideration the differences in jurisdictional procedures which gives an insight to the complexities involved in comparing outcomes between jurisdictions, one matter which the Commission must consider in this investigation is the very small percentage of imports in comparison to the local market in the US investigation combined with fact that the US authorities still determined that the imports caused material injury to coal industry.

Specifically, market share in the US for local firms was still 82% whereas dumped sources made up a calculated 12.8% of market share.[7] In contrast the imports from countries subject to the Commission's current investigation make up 58% of Australian market share. Imports from China make up approximately 32 % of market share and Thailand and Indonesia of above 12% each.[8] Clearly a finding of non-negligible dumping by any one of these countries or their combinations is therefore likely to determine material injury to Australian industry caused by the dumping based on the international precedent of causation of material injury demonstrated in the US investigation.

The approach taken in the US is not surprising, for, as stated for a number of years now by the applicant:

---

[6] Anti-Dumping Commission, *Consideration Report Number 341,* 29 March 2016 'Attachment 3: A comparison of recent outcomes between US and Australian jurisdictions' p 86 available online@ http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20341/003%20-%20Consideration%20Report_FINAL.pdf

[7] See U.S. International Trade Commission, *Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal Investigation Nos. 701-TA-528-529 and 731-TA-1264-1268 (Final) Publication 4592 February 2016*, 'Table IV-11 Uncoated paper: Apparent U.S. consumption and market shares, 2012-14, January-September 2014, and January-September 2015' p IV-20 available online @ https://www.usitc.gov/publications/701_731/pub4592.pdf

[8] IndustryEdge, Strategic Review 2015, p 166/167

> "It must be understood that, particularly in relatively undifferentiated markets such as printing papers, even a relatively small quantity of very low priced (dumped &/or subsidised) goods can have a price leadership role and destabilize the market."[9]

Therefore both price suppression and declining market share for local industry are likely to be important factor in determining material injury in this investigation even if not all countries have found to have dumped or subsidized their goods.

In response to the submission from certain Indonesian exporters:

In relation to the submission made on behalf of certain Indonesian's exporters which states:

> "We submit that it is inappropriate for there to be a particular market situation inquiry in this dumping investigation where there is a subsidy investigation being conducted in conjunction with the dumping investigation…."[10]

We illustrate that in the Commission's August 2014 termination report into imports into paper imported from China the Commission pointed out:

> "While the receipt of countervailable subsidies may be a factor contributing to a particular market situation finding, in the Commission's view, such a claim should be considered only in the context of a combined antidumping and countervailing investigation where the existence of countervailable subsidies is being properly investigated according to the provisions of Australian anti-subsidy legislation and the World Trade Organization Agreement on Subsidies and Countervailing Measures."[11]

---

[9] For example, see: Australian Paper, *Comment on the Productivity Commission Inquiry Report No. 48 into to Australia's Anti-dumping and Countervailing System,* 30 July 2010, p 3, available online @ http://www.pc.gov.au/research/completed/antidumping-developments/comments/submissions-test/submission-counter/comment007-antidumping-developments-attachment2.doc

[10] Roger D Simonson and Associates, submission 21 April 2016, p 1, available at the Electronic Public Record online @ http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20341/005%20-Letter%20to%20Dale%20Seymour%20-%2021%2004%2016.pdf

[11] Anti-Dumping Commission, Termination Report (225), p 26, August 7, 2014, available online @ http://www.adcommission.gov.au/cases/Documents/TER225.pdf

This would appear to be very similar to the process which the applicant and the Commission is following in this regards and they should be commended for it given the provision of this advice back in 2014.

The Investigation as a test case on the Government's performance on anti-dumping:

Workers have a right to be disappointed in the current Government's implementation of its 2013 election commitments around anti-dumping and countervailing. They abandoned their commitment to reverse the onus of proof in anti-dumping investigations and have been lax in their commitment to strengthen enforcement of the provisions in the WTO Agreement on subsidies and countervailing measures.

In addition, they attempted to weaken the system's responsiveness to local industry by trying to abolish the International Trade Remedied Forum (ITRF). They have not convened the ITRF a sufficient number of times in accordance to the act. A consequence of their approach to the ITRF is that critical work not exclusively related to, but including reform to enhance access to import data for the purposes of launching an application for an anti-dumping and/or countervailing investigation has not proceeded adequately. At concern is a provision in domestic legislation, (the *Census and Statistics Act*, 1905) which allows parties associated with the imports of a particular product to request that the name of the country of origin (and the associated values and volumes) be suppressed in the reporting by the Australian Bureau of Statistics. It is a curious provision in an era of free trade.[12]

As the applicant has argued in the past:

> "Suppression of country of origin information in Customs/ABS import statistics is common in tariff codes affecting the pulp and paper industry."[13]

This investigation proves the critical nature of this reform agenda around import data being pursued. It was back in October 2014 when Australian Paper's CEO, Mr Kunishimo Kashima Company stated that

[12] See IndustryEdge, *Paper Cuts - Critical analysis of copy paper imports into Australia*, 2012, p 3
[13] See Australian Paper sub. DR41, p. 3, cited by the Productivity Commission, *Productivity Commission Inquiry Report Australia's Anti-dumping and Countervailing System, No. 48, 18 December 2009,* p 158, available online @ http://www.pc.gov.au/inquiries/completed/antidumping/report/anti-dumping.pdf

Australian Paper would re-initiate anti-dumping investigations.[14] It is apparent that confidentiality restrictions have hindered the timeliness of the process. Two countries who have eventually being subject to the investigation Thailand and Brazil have, since April 2014, had confidentiality restrictions on the full transparency of data associated on their exports to Australia in place due to the fact that one or more exporters from at least one of those countries sought to mask their trade with Australia. For these imports, average monthly prices fell to as low as AUD FOB 960.17/t in 2015. By contrast, the lowest monthly average import price for all imports in 2015 was 12.8% higher at AUD FOB 1,083.35/t. [15] It is clear that the provision is being exploited to hide dumping behavior and is providing unacceptable costs to Australian industry when it is considering an application against imported product.

Indeed the Productivity Commission in its 2010 inquiry report observed:

> "It is somewhat incongruous that export data published or available on request from government agencies in other countries — which may closely approximate data that has been suppressed by the ABS — is sometimes used by an applicant for anti-dumping measures. In these circumstances, from the applicant's perspective, the effect of the confidentiality provisions is simply to increase the time and expense involved in seeking antidumping protection without having any ultimate material impact on the availability of the information concerned."[16]

And recommended:

> "The Government consult with the Australian Bureau of Statistics on the best way to ensure that import data are not suppressed on confidentiality grounds when the same or similar information can be publicly accessed through other sources — for example, from the export statistics of other countries. In these circumstances, suppression serves no useful confidentiality

[14] Mr Kashima, *Pulp and Paper Edge*, 'Dumping Double Down – Australian Paper Restarts Investigation', Edition 113: October 2014, 14 October, p 4.
[15] IndustryEdge, *Pulp and Paper Edge*, 'Australian A4 Dumping Estimates up to 72.72%!', Edition 129: April 2016, p 1/2
[16] Productivity Commission, Inquiry Report, p 158

purpose, but can make it more time consuming and costly to get anti-dumping cases initiated."[17]

At the March 2013 meeting of the ITRF it was agreed that the way that New Zealand, China and the US dealt requests of confidentiality of import data was dealt with in comparison to Australia's approach would be analyzed with a view of making a recommendation to Government about necessary reform. This analysis has not been provided to the ITRF and the necessary reform has not occurred as a result.[18]

In addition to attempting to abolish the ITRF and not convening it in accordance to the act, the Government tried to weaken Australia's industry's rights to have subsidies remedied (though attempted repeal of subsection 2698TACC (2) of the act discussed above) and weaken the right to of Australian industry to have the full dumping rate of duty levied in certain situations (through attempted repeal of Paragraph 269TJ (3BA)(a))

The one area of supposed improvement around the Government's commitments has the delivery promises to "introduce more stringent and rigorous enforcement of deadlines for submissions" and "crack down on those overseas producers who do not cooperate with anti-dumping investigations."

In this regards, especially 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)

[17] Ibid P 160

[18] For a full discussion of the impact on this in regards to necessary reform to import data see: AMWU, AWU and CFMEU, *Joint Submission Inquiry into the Customs Amendment (Anti-dumping Measures) Bill (No. 1) 2015 and Customs Tariff (Anti-Dumping) Amendment Bill 2015*, p 35-45 available online@ http://www.aph.gov.au/DocumentStore.ashx?id=43ef8fd9-05e2-4bbd-b5ec-ae481b5286e3&subId=350584

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.

Additional Matters:

- In applying anti-dumping and countervailing duties it would not be appropriate for the Minister to consider the lesser duty rule given the complexities of the case, particularly in relation to imports from Indonesia and China if a particular market situation is found in accordance 269TAC(2)(a)(ii). Not considering a lesser duty rule in this instance would be in accordance with SECT 269TG (5A) of the act. There is also the possibility that for the countervailing investigation into those countries the lesser duty rule will not need to be considered in accordance with Paragraph 269TJ(3BA)(a)) of the act and we submit that it would be inappropriate to consider the lesser duty in this instance in this instance.

- In countries not subject to an allegation of a particular market situation or subject to a countervailing investigation any imposition of a lesser duty rule would need to be calculated based on a level of profit based on a sustainable rate of return for industry reinvestment to avoid the continued adverse impact of dumping on both the Australian industry and legitimate exporters of un-dumped goods.

- There may be a case for retrospective duties under SECT 269TN. Serious analysis of recent import volumes should be undertaken to decide whether anti-dumping and countervailing duties should be imposed retroactively.

Thank you for considering this submission, if you would like any further information please do not hesitate to contact the union.