

3 April 2014



Introduction:

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. We welcome the opportunity to make a formal response to the Statement of Essential Facts (SEF) (No 225), for the investigation into White Uncoated A4 and A3 Cut Sheet Paper Exported from the People's Republic of China (PRC).¹

The CFMEU is a trade union representing one or more persons employed in the Australian producing industry. The CFMEU made a submission as an interested party as per 269 (T) of the Act on the 15th of November.² The submission was made within 40 days after the initiation of the investigation, as required. The CFMEU rejects the Anti-Dumping Commission's (ADC's) proposal to terminate the investigation.³ This submission supports the basis for non-termination, as below.

The determination of normal value (and therefore dumping margin in SEF) under s. 269

TAC (1):

The SEF reads in part:

¹ ADC, 'Statement of Essential Facts, 14 March 2014- No. 225'- available online @:
<http://www.adcommission.gov.au/cases/documents/034-Report-SEF225.pdf>

² 'Submission CFMEU', 15 November 2013- available online at: <http://www.adcommission.gov.au/cases/documents/008-Submission-Other-CFMEU.pdf>

³ Ibid, 4

“Formulating the SEF, the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received by the Commission within 40 days after the date of initiation and any other matters considered relevant.”⁴ (Emphasis added)

When having full regard to the submission received from the CFMEU and any other matters considered relevant (or which should have been considered), the ADC should not have determined a normal value of the goods under s. 269 TAC (1) (that is, domestic selling prices of the most comparable models)

The CFMEU alerted the ADC in its submission that:

1. “There are countervailable subsidies in play in the PRC’s pulp and paper industry as evidence in countervailing duties on similar or like products exported to certain countries and per the Anti-Dumping Commission’s subsidies register.
2. These subsidies or other factors may be impacting the particular market situation in the PRC’s domestic market.”

This issue has not been outlined, acknowledged or responded to in the SEF or in any other document on the public record or in any forum which we are aware. There is no indication or clarification of whether or not the situation in the market of the country of export is such that sales in that market are suitable (or not) for use for determining a normal value under s. 269 TAC (1), or even if this issue has been analysed with any appropriate vigour.

⁴ Ibid, 5

The CFMEU was in its right to draw this issue to the attention of the ADC as an interested party to the investigation and has a subsequent right for satisfactory response to concerns outlined. To provide context, the Market Situation Working Group (MSWG), *Report to Government* (December 2011) (Which the Government agreed to all recommendations) states:

“The MSWG also discussed the possibility of an interested party other than the applicant presenting information relevant to determining the existence of a market situation, which may require further refinement to the questionnaire. Customs and Border Protection considers that if information is presented in a timely manner, supplementary questionnaires can be issued where warranted.”⁵

Furthermore, and perhaps more importantly, the report states:

“Where an Australian industry makes a claim of a particular market situation existing in the country of export, Customs and Border Protection will examine this claim and the supporting evidence to determine whether there appears to be reasonable grounds to initiate an antidumping investigation on the basis that a particular market situation exists in the country of export that renders domestic sales unsuitable for determining the normal value.

Following initiation Customs and Border Protection will investigate the claim further. This will include issuing questionnaires to exporters and the government of the exporting country seeking relevant information. Customs and Border Protection will not issue such questionnaires where a claim of particular market situation has not been made.

⁵ International Trade Remedies Forum, ‘Market Situation Working Group: Report to Government’, December 2011, 15, available online @ <http://www.adcommission.gov.au/aboutus/documents/MarketSituationWorkingGroupReporttoGovernment.pdf>

However this does not preclude a finding of particular market situation being made where Customs and Border Protection investigates a market situation claim raised subsequent to initiation or becomes aware of such a situation during the course of an investigation and is ultimately satisfied that a particular market situation exists.”⁶ (Emphasis added)

Evidence of subsidies supporting the PRC's pulp and paper industry include:

1. Current countervailing duties on paper products exported from China including for products such as :

- Coated paper suitable for High Quality Print Graphics exported to the US
- Light weight thermal paper exported to the US
- Coated free sheet paper exported to the US
- Coated fine paper exported to the EU- citing EU trade spokesperson John Clancy who argued on levying, that subsidies provided to the paper industry “are not in line with the obligations China has signed up to when joining in 2001 the World Trade Organisation.”⁷

2. Other evidence such as the ADC's own *Subsidies Register* which identifies subsidies enjoyed by the Chinese pulp and paper industry, from the countervailing investigation into tissue paper exported from China including:

- “Preferential lending to encouraged industries.
- "Two Free, Three Half” Program provided to Foreign Invested Enterprises (FIE) - includes:
 - Preferential Tax policies for FIEs engaged in agriculture, forestry or animal husbandry

⁶ Ibid, 6.

⁷ John Clancy, EU Trade spokesperson in ‘EU slaps Anti-Dumping, Countervailing Duties on Chinese Paper’. International Centre for Trade and Sustainable Development, [Bridges Weekly Trade News Digest, Volume 15, Number 18](http://ictsd.org/i/news/bridgesweekly/106901/), 18t May 2011, available online@ <http://ictsd.org/i/news/bridgesweekly/106901/>

or enterprises with foreign investment established in remote and economically underdeveloped areas; and

- Preferential Tax Policies for Export-oriented FIEs.
- Local income tax exemption for FIEs.
- Preferential tax policies for enterprises with foreign investment established in the three gorges of the Yangtze River economic zone.
- Preferential policies for enterprises established in the poverty stricken areas.
- VAT rebates on purchases of domestically produced equipment.
- Income tax credits for FIEs on purchases of domestic equipment.
- Income tax credits for DIEs on purchases of domestic equipment.
- Preferential tax policies for enterprises engaged in forestry.
- Domestic VAT refunds for companies in Hainan Economic Development Zone.
- Forestry Funds:
 - Special fund for projects for the protection of natural forestry
 - Cash subsidy for returning cultivated land to forests
 - Compensation fund for forestry ecological benefits
 - Interest discount for loans for the purpose of desertification prevention in forestry
 - Subsidy for prevention from and control of pest and disease in forestry.
- Grants provided for Export Performance.
- State Key Technology Renovation Project Fund.
- Clean Production Technology Fund.
- Reduction/ Exemption of Special Land Tax and Land Use Fees.
- Direction adjustment tax on fixed assets.
- Preferential tax policies for research and development.
- Income tax refund for re-investment of FIE profits being:
 - Income Tax Refund for Re-investment of FIE Profits by Foreign Investors
 - Income Tax Refund for Re-investment of FIE Profits in Export-orientated or technologically advanced Enterprises.

- One-time awards to enterprises whose products qualify for 'well known trademarks of China' and 'famous brands of China'.
- Preferential tax policies for foreign invested enterprises - reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years.
- Preferential tax policies enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)/ Preferential Tax Policies for Enterprises with Foreign Investment which are Technology- Intensive and Knowledge Intensive.
- Preferential tax policies enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones.
- Preferential tax policies enterprises with foreign investment established in Pudong area of Shanghai.
- Preferential tax policies in the western regions/ 'Go West' Strategy.
- VAT and tariff exemptions on imported equipment.”⁸

3. Academic publications:

For instance see:

- *No Paper Tiger: Subsidies to China's Paper Industry*, which with very conservative methodology calculates the \$33.1 billion in subsidies to China's paper industry from 2002-2009 and effects. Subsidies calculations include: from 2002-2009: electricity (\$778 million), coal (\$3 billion), reported subsidy income (\$442 million) and loan-interest subsidies (\$2 billion); from 2004-2009; pulp (\$25 billion); and from 2004-2008; recycled paper (\$1.7 billion).⁹

⁸ Anti-Dumping Commission, Subsidies Register, available online@ <http://www.adcommission.gov.au/reference-material/subsidies-register.asp>

⁹ Usha C. V. Haley and George T. Haley, *No Paper Tiger: Subsidies to China's Paper Industry, 2009*, June 30 2010, Economic Policy Institute - available online @: http://www.epi.org/publication/no_paper_tiger/

- As above, *Subsidies to Chinese Industry: State Capitalism, Business Strategy, and Trade Policy* by Usha C.V. Haley, George T. Haley.

4. The Pulp and Paper Industry Strategy Group (PIISG) in its final report to Government in March 2010 observed:

“As part of its economic development plan, the Chinese Government has set ambitious capacity expansion targets for its pulp, paper and wood processing industries. To achieve these objectives, the government has implemented a series of aggressive development policies to speed up the industry’s growth, namely encouraging foreign private investment through tax incentives, and providing government loans and loan subsidies for the upgrade of technologies and for the expansion projects.”¹⁰

5. In addition to these subsidies to the PRC’s Pulp and Paper industry, the CFMEU notes the low price that UPM China (Changsu Mill) purchased pulp from Uruguay (\$US 301 per tonne) ¹¹ and notes that there are significant subsidies at play in the Uruguayan industry. For example, just considering the plantation sector Carlos points out that:

“Various fiscal incentives are channelled to those plantations established on ‘forestry priority land’. Up to 1997, subsidies and tax exemptions amounted to about \$US350 per hectare (without counting other benefits which were only applied to certain firms as part of the overseas debt cancellation mechanism for direct investments). Multilateral financial institutions were

¹⁰ Pulp and Paper Industry Strategy Group, *final report*, March 2010: 20 April 2010 (release,) 59, available online @ http://www.innovation.gov.au/industry/pulpandpaper/Documents/PPISG_FinalReportMarch2010.pdf

¹¹ Australian paper, *Anti-Dumping Commission- Electronic Public Record*, ‘Re: Dumping investigation ADC 225 Copy paper exported from China - Response to ADC Visit Report – UPM (China) Co. Ltd’, 3, 06 March 2014, available online @ <http://www.adcommission.gov.au/cases/documents/032-Submission-AustralianIndustry-AustralianPaper.pdf>

essential for the expansion of the Uruguayan forestry sector. Additionally, the Japanese International Cooperation Agency (JICA), played a major role in the preparation of a national plantation plan in 1986 aimed at the establishment of 420,000 hectares of eucalyptus and pines over a period of 30 years...

...Benefits enjoyed by the forestry sector in Uruguay:

- Tax exemptions for plantations and forestry companies for a period of 12 years after the plantation has been established, including protection from any new taxes which may be created and which may tax plantations generically. This means that forestry firms are exonerated from all of the principal taxes paid by ordinary agricultural establishments.
- Companies involved in forestry or the industrialisation of wood and timber are exempted from all import duties payable on machinery and other inputs for a period of 15 years from the date of the enactment of the 1987 forestry law.
- Direct subsidies are granted to plantations established in the forestry priority areas, provided each new project is approved by the Forestry Department. This subsidy covers approximately 50% of the cost of establishing the plantation. At the present time, this is valued at approximately U\$S160 per hectare.
- Companies are allowed to register as "Sociedad Anónima" (public limited company, or Incorporated), something that is not allowed otherwise in the agricultural sector.
- Forestry firms benefit from long-term (12 to 15 years) credit facilities with the National State Bank, Banco de la República, with a period of grace for repayment of interest and capital until the trees get harvested.

- A one third reduction in port fees for the movement of timber.”¹²

Until 2009, the Changshu Mill received its pulp from Indonesia, supplied by Asia Pacific Resources International Limited (APRIL). This was a relationship that UPM ended in November 2009, reportedly in respect of sustainability issues. (Pulp Paper News, 2009)¹³ (Perhaps ironically, given the land use tensions associated with industrial plantation forestry in Uruguay and ongoing international tension between Argentina and Uruguay over the pulp mill at Fray Bentos on the Uruguay River and its supply)¹⁴

The historic subsidies outlined above (associated with the establishment of the Uruguayan plantation estate) in addition to the direct subsidies provided to the PRC’s paper making industry are relevant because the MSWG report states:

“A member of the MSWG suggested that when looking at whether a particular market situation has, on the balance of probabilities, rendered sales unsuitable for comparison purposes, Customs and Border Protection may look at Market behaviors outside of the investigations period. This reflects the reality that to identify the impact of particular market situations on selling prices it may be necessary in some cases to examine market behaviors before (and perhaps after) the relevant investigation period”.¹⁵

¹² Carlos, Perez Arrarte, ‘Uruguay’s Destructive Plantation Model’. *Seedling*, September 2000, available online @ <http://www.grain.org/es/article/entries/255-uruguay-s-destructive-plantation-model>

¹³ IndustryEdge Pty Ltd, ‘Plantation Forestry – The Sustainable Paper Perspective: A comparative analysis of industrial plantations and their role in paper supply’, December 2013, , available online @: http://www.industryedge.com.au/pdf/2012-12-13_Plantation_forestry_in_perspective.pdf

¹⁴ For instance see: Eilis O’Neill, Gualeguaychú, Argentina, ‘Pulp and paper battle tears at Uruguay-Argentina relations’, 02 December 2013, available online @ <http://www.dw.de/pulp-and-paper-battle-tears-at-uruguay-argentina-relations/a-17227616>

¹⁵ MSWG Report to Government, 16.

After identifying the subsidies at play it would then have been appropriate for the ADC to determine whether the subsidies had distorted domestic selling prices. To just take the one example of the \$33.1 billion in subsidies to China's paper industry from 2002-2009, it is obvious that this interference and the subsequent production increases of printing and communication paper in the region at 6.1% per annum in the decade until 2012¹⁶ has distorted domestic selling prices rendering them unsuitable for determining normal value.

There is a precedent for this, as per the MSWG report:

"In a recent case Customs and Border Protection examined an allegation that a particular market situation existed in China due to the impact of government policies that resulted in lower costs of production than would have otherwise occurred in normal market conditions. This in turn resulted in artificially low prices for like goods on the domestic market in China."¹⁷

If the ADC had agreed with the CFMEU that it was not appropriate to determine normal value under s. 269 TAC (1) after analyzing these subsidies and determining they impacted the market rendering domestic sales unsuitable because domestic sales were distorted, it would then be up to the ADC to determine the normal value through other methods. If this had occurred with the use of adequate methodology, there would likely be a significant dumping margin. This is despite the fact that the ADC have included Cost to Make and Sell (CTMS) data in their SEF for the purposes of 'OCOT'¹⁸ and they have included CTMS in the verification report where they have confirmed that the ADC were provided with actual costs in the CTMS data.¹⁹

¹⁶ IndustryEdge, *Pulp and Paper Strategic Review 2013*, 2013, IndustryEdge, 108

¹⁷ MSWG Report to Government, 17.

¹⁸ SEF, 21

¹⁹ ADC, Visit Report, UPM (China) Co., Ltd, December 2013, 26, available online@ <http://www.adcommission.gov.au/cases/documents/029-VerificationReport-Exporter-UPM-ChinaCoLtd.pdf>

In determining normal value after finding that a particular market situation distorted domestic sales and rendered them unsuitable though, actual CTMS data would not suffice. Greater clarity is required however and perhaps ministerial direction or legislative reform to ensure that a fairer normal value is determined in this situation compared with current practice. Currently in accordance with s.269TAC (2) (a) (ii) of the act, subsection 269TAC (5A) specifically applies the operation of regulation 180 to the normal value calculation method which states “exporter’s records” must, amongst other requirements “reasonably reflect competitive market costs associated with production, or manufacture and sale of like goods”, and if they do not, the Minister may have regard to “all relevant information”. Under the 269TAC (7) of the Act, the Minister has absolute discretion to “disregard any information that he or she considers to be unreliable” and we cannot think of any circumstances where a Minister would consider costs that do not reflect competitive market costs to “be reliable”. In this circumstance it should be open for the Minister under subsection 269TAC (6) to determine the constructed normal value “having regard to all relevant information”.

In the absence of clarity being provided through ministerial direction to the Anti-Dumping Commissioner, the CFMEU supports change in legislation along the lines of the amendment presented by Senator Whish-Wilson to the *Customs Amendment (Anti-Dumping Measures) Bill 2013* which stated:

“Subsection 269TAC (2A)

After subsection (2), add:

(2A) Where the Minister is satisfied that because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1), regardless of subsection (5D), the normal value of goods is the amount determined by the Minister having regard to all relevant information, including by reference to

costs of production calculated on the basis of records kept by the exporter or producer, provided that:

(a) such records are in accordance with generally accepted accounting principles of the exporting country;

(b) such records reasonably reflect the costs associated with the production and sale of the like goods under consideration; and

(c) the costs incurred are not affected by the particular market situation.”²⁰

Government inaction has contributed to the recommendation to terminate, which has been made on the basis of the calculation of normal values through s. 269 TAC (1):

Determining normal values under s. 269 TAC (1) of the Act may be defended by the ADC despite the evidence presented above because the applicant did not, at least as we are aware, on application, allege a particular market situation impacting domestic selling prices. For instance the application states in the section on subsidy; “not applicable”²¹. As outlined though, the ADC would be wrong to rely on this justification as a defence for the use of s. 269 TAC (1) as this does not account for the ADC being required to have regard to claims of particular market situation from interested parties and nothing precluding a finding a normal market situation if one is discovered in the course of the investigation.

²⁰Senator Whish-Wilson, ‘Amendments to be moved by Senator Whish-Wilson on behalf of the Australian Greens in committee of the whole’ to the *Customs Amendment (Anti-dumping Measures) Bill 2013*, 25 June 2013, available online@ http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Famend%2Fr5063_amend_6c7fe803-cfbc-4645-8aa5-dcd9b191c7b8%22

²¹ Australian Paper, ‘Application for the publication of dumping duty notices: White Uncoated A4 and A3

Cut Sheet Paper From China’, July 2013, 65 available online @: http://www.adcommission.gov.au/cases/documents/001-Application-AustralianIndustry-AustralianPaperPtyLtd_000.pdf

If the ADC has any justification, it will only have been assisted by the fact that the Government has, since its election, despite having a policy to “strengthen the anti-dumping regime” including by “strengthening enforcement of the provisions of the WTO Agreement on Subsidies and Countervailing Measures”²², largely taken a hands off approach to what was before the election continued bi-partisan support for reform of the anti-dumping system for the benefit of Australian manufacturers.

The CFMEU points out two instances of grievance which if avoided might have determined a different approach by the ADC in determining normal values in this investigation as outlined above:

1. Despite the requirement that the International Trade Remedies Forum (ITRF) must meet at least twice each calendar year as per the legislation establishing the ITRF, the Forum only met once last year and has still not met since the 25th of March, 2013.²³

The Minutes of the March 25 meeting included:

“Action item 9: Customs and Border Protection to establish the Subsidies Working Group with the same membership as the Market Situation Working Group.”²⁴

The Subsidies Working Group has not been established nor did, as a result of the Forum not meeting, a scheduled Subsidies Briefing which was due to accompany the next Forum occur

²² ‘The Coalition’s Policy to Boost the Competitiveness of Australian Manufacturing’, August 2013, 12, available online @ <http://lpaweb-static.s3.amazonaws.com/13-08-21%20The%20Coalitions%20Policy%20to%20Boost%20the%20Competitiveness%20of%20Australian%20Manufacturing.pdf>

²³ See: CUSTOMS ACT 1901 - SECT 269ZZYG; Number of meetings- (1) The Forum must meet at least twice each calendar year, available online @: http://www.austlii.edu.au/au/legis/cth/consol_act/ca1901124/s269zyg.html

²⁴ Draft minutes, *International Trade Remedies Forum*, March 25, 2013, 6.

where, amongst other matters, scheduled for discussion was how subsidies could impact market situations, determining domestic selling prices distorted and thus unsuitable for determining normal values.

2. The terms of Reference for the Pulp and Paper Advisory Group (PPAG) included to “Position industry to capitalize on relevant elements of the Government’s Anti-Dumping Policy.” An industry submission to these Terms of Reference which went to the PPAG secretariat with the support of the CFMEU included:

“The pulp and paper industry (and most other ‘commodity’ industries) are heavily subsidized in the major exporting countries. These subsidy schemes are often in place across multiple industries and are far reaching. It would make sense for the new Anti-dumping Commission to have a mandate to investigate on its own behalf subsidies in the major exporters to Australia and to make this information available to domestic industry...”²⁵

The PPAG was abolished by the Government on the 8th of November 2013.

Other Matters for consideration:

- The CFMEU in its November 15 submission asks the ACD to adhere to the mandate that the Government has in conducting Anti-Dumping investigations as confirmed at the last federal Election including rigorous enforcement of deadlines. In a latter Media Release the CFMEU states:

“The Coalition policy regarding enforcement of deadlines and cracking down on non-cooperation is necessary and is supported. However in recent cases Australian investigators

²⁵ *Industry submission to Terms of Reference, Pulp and Paper Advisory Group.*

have allowed themselves to be taken for a ride by granting requests for extensions to foreign exporters and Governments for reasons such as we can't get it to you in time because it's school holidays."²⁶

It would appear from the public record that extension have still been granted to exporters and the only change in practice that the CFMEU's intervention has led to has been that the correspondence requesting and granting extensions have not been published on the Electronic Public Record. This apparent lack of transparency is not best practice and is not the intention of the policy mentioned.

- The rate of the increase in the volume of imports at the low prices and the material injury caused by the imports as the SEF acknowledges indicates that the application of safeguard duties on the imports concerned may be appropriate.

Conclusion:

- Termination of the investigation should not be made as per the serious issues outlined in this submission.
- Any recommendation to terminate should be followed by immediate action by the Government as outlined in this submission to adequately protect the industry, its workers and its communities from what is clearly unfair trade.

²⁶ CFMEU, MR: 'Anti-Dumping Election Promises Must Be Kept in Chinese Paper Probe: CFMEU', *Union makes unprecedented formal submission on probe*, 18 November 2013, available online@ <http://www.cfmeu.net.au/news/anti-dumping-election-promises-must-be-kept-in-chinese-paper-probe-cfmeu>