

For Publication

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry
10 Binara Street
CANBERRA CITY ACT 2601
adrp_support@industry.gov.au

24 July 2015

ADRP Review: Newsprint Exported to Australia from France and the Republic of Korea

We act for Seven West Media Limited (**SWM**). We refer to the review application made to the Anti-Dumping Review Panel (**ADRP**) by UPM Kymmene Pty Ltd (**UPM**) dated 1 June 2015 relating to investigation 242 (**Application for Review**). The investigation flowed from an application made by Norske Skog Industries Australia Limited (**NSIA**).

As the ADRP will be aware, SWM is an end user of the goods under consideration (**goods**). SWM's consumption of the goods is centralised to its Western Australian subsidiary, West Australian Newspapers (**WAN**). Over the course of the investigation, SWM made detailed submissions to the Anti-Dumping Commission (**ADC**). Those submissions are attached, for ease of reference, to the present submissions.

The decision of the Minister to publish a dumping duty notice (**Decision**) in the present matter was based upon the ADC's final report dated 23 March 2015 (**Report 242**). Our client respectfully submits that the recommendations of the report are based upon a flawed assessment of:

- (a) the **injury** allegedly suffered by NSIA; and
- (b) the finding that this was relevantly **caused** by dumped imports from France.

As such, SWM supports the action sought in Application for Review. SWM submits that it would be appropriate for the ADRP to recommend to the Parliamentary Secretary that she revoke the Decision and substitute a new decision specifying that exports from France did not cause material injury to the Australian industry.

Material injury

1. SWM draws attention to the following considerations arising from Report 242:

- (c) the size of **the Australian newsprint market has fallen significantly** and in a linear way year on year since 2010/11. Annual demand in the market in **2013/14 was 37% lower** than it was in 2010/11. To put it in volume terms there has been a reduction of the market size from 540,000 tonnes to 340,000 tonnes;
- (d) notwithstanding the above, NSIA was able to **increase its market share** over the injury analysis period. NSIA's sales declined by around 25%, in contrast to the 37% decline experienced by the overall market;
- (e) as illustrated in figures 2 and 3 of Report 242, NSIA has been able to retain **relatively stable unit CTMS and unit prices** over the injury analysis period. Whilst unit price in 2013/14 reflected a marginal reduction from 2012/13 levels, it was above unit prices at the start of the injury analysis period;

- (f) NSIA **increased profits** in 2011/12 and 2012/13. NSIA's profits decreased in 2013/14. However, profitability remained higher than at the beginning of the injury investigation period.
2. The above factual matters seem at odds with the finding that NSIA suffered material injury over the injury analysis period.
3. The ADC's findings show that, despite the dramatic decline of **37%** experienced in the Australian market, NSIA was able to **increase market share**. NSIA's sales declined by around 25% over the same period. In this regard, NSIA was able to **outperform the market**, in terms of sales volume, by 12%. NSIA was also able to achieve **profit growth**, despite the dramatically declining market.
4. When the extent of the downturn in the Australian market is appreciated, the ability of NSIA to maintain relatively favourable CTMS, revenue and profit levels, excluding 2013/2014, is remarkable. It is certainly not consonant with NSIA's claim to have suffered material injury over this period.
5. The ADC's analysis, therefore, appears heavily reliant upon:
- (a) the declining fortunes of NSIA over the 2013/2014 period; and
 - (b) the assumption that this was **caused** by dumped imports **from France**.

2013/2014 period

6. Part of NSIA's ability to insulate itself against market forces derived from longer term contracts in effect over the injury analysis period. The relatively steep decline in profit in 2013/14 is the result of this 'insulation' being removed at the end of supply periods and NSIA being exposed to an immediate and significant 'correction' of price, profit and profitability that had been occurring in the market since 2010/11 outside of the parameters of NSIA's protected contract environment.
7. NSIA was obliged to renegotiate contracts in circumstances where:
- (a) the market had for some years experienced dramatic and systematic decline, by reason of technological impacts upon the profitability of the newsprint industry;
 - (b) demand had decreased by 37%;
 - (c) basic economic principles dictated that decreasing demand against supply would have a downward effect on prices;
 - (d) there was strong competition from other countries, including Korea (the main source of imported newsprint to Australia), and Indonesia (the effects of which were not fully considered in Report 242)¹;

¹ The ADC acknowledged that imports from Indonesia increased over the injury analysis period, and may have contributed to any injury to NSIA. However, it does not appear to have considered the effect of this further on the basis that it "*does not detract*" from the finding that dumped imports from France were material. With respect, the logic of this analysis is, self-evidently, circular.

- (e) NSIA's products differed in material respects from that offered by certain exporters. In this regard, we refer to previous submissions regarding supply requirements as to higher proportions of recycled paper than are provided by NSIA.

Causation

8. There is every indication, based upon the above, that the cause of NSIA's declining fortunes was not dumping from France, but rather broader economic forces. The impact of those forces was potentially exacerbated by internal business practices and competition in the broader market, independent of UPM.
9. Notwithstanding a reduction in profits over 2013/14, NSIA was able to maintain profitability of sales in 2013/14 at levels above 2010/11 benchmarks. In these circumstances, it is submitted that NSIA has weathered market forces rather well.
10. Even if material injury were able to be established, it would still be necessary to provide a clear and credible evidentiary basis for finding that dumped imports from France **caused** material injury. At minimum, this would require some kind of credible basis for isolating the impact of other causes. Further, it would require credible analysis of NSIA's position 'but for' dumping by UPM.
11. It is respectfully submitted that this is not apparent within Report 242. The ADC's consideration of extraneous factors was notably underdeveloped. Moreover, SWM supports UPM's refutation of two key assumptions made by the ADC: namely, (1) that UPM's sales to WAN were based upon price; and (2) that NSIA was WAN's alternative choice to UPM. In this regard, SWM refers the ADRC to background information provided in respect of those transactions in its submissions dated 3 July 2014 and 19 February 2015.
12. The ADC appears to have assumed that, because competition from UPM may have been one of many factors faced by NSIA, it must have caused material injury.
13. It is SWM's submission that there is insufficient basis for this assumption. The presence of dumped goods in a market does not establish a causal link between those goods and any 'price based' injury complained of by an applicant. That is the basic conclusion arrived at in Report 242. It is wrong.

Conclusion

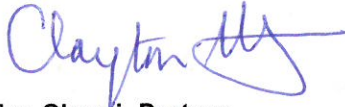
14. It is trite that anti-dumping measures are not to be used as surrogate protectionisms. The importance of genuine competitiveness in supply chains to Australian industries, and the broader economy, should not be disregarded.
15. This is particularly so where industries that rely upon such competitiveness are otherwise threatened. It is all the more so where the "industry" applying for protection is confined to one self-interested, monopolistic market participant.

SWM would be happy to expand upon any of the above matters should the ADRP wish it to do so.

Anti-Dumping Review Panel, Department of Industry

24 July 2015

Kind regards



Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Natasha Blake, Lawyer
+61 2 9353 4816
nblake@claytonutz.com

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For Publication

The Director
Operations 1
Anti-Dumping Commission
Customs House
1010 Latrobe Street, Docklands
MELBOURNE VIC

3 July 2014

Attention: Mr Jukka Mäntynen

Dear Sir

Newsprint exported from Korea and France**Seven West Media Injury Submission****1. Introduction**

We act for Seven West Media (**SWM**) in relation to the ongoing investigation by the Anti-Dumping Commission in relation to the alleged dumping of Newsprint exported to Australia from Korea and France.

SWM notes that the ADC has accepted a definition of the goods under consideration (**GUC**) under the following terms:

Newsprint in roll or sheet form having a weight within the range 40 grams per square metre (gsm) to 46 gsm (inclusive) and brightness below a measure of 70 ISO.

As the ADC is aware SWM is an end user of the GUC (so defined above) which is a primary raw material input in the production of newspapers. SWM's consumption of the GUC is centralised to its Western Australian subsidiary, Western Australian Newspapers (**WAN**).

WAN procures the GUC to produce a range of metropolitan and regional publications. WAN has a long history in the Western Australian newspaper industry and controls an unmatched share of the market - over 80% of Western Australians read 'The West Australian' or access the content provided electronically on 'thewest.com.au'.

As the ADC is well aware, WAN manages its supply chain in accordance with a variety of key considerations which relate to production and logistical concerns (quality and functional utility requirements) as well as commerciality concerns (supply risk mitigation, value for money).

WAN's procurement model has, over the course of its operation, sourced the GUC from a variety of manufacturers including the applicant, NSIA, and overseas exporters including those from the countries named in the present investigation.

Based on its commercial interactions with the applicant, and a variety of other suppliers of the GUC in the Australian market, our client strongly disagrees with the applicant's allegations that underlie its application made to the ADC. Namely that, in summary:

a) newsprint exported to Australia from Korea and France has been sold at 'dumped' prices in accordance with the provisions of the *Customs Act 1901* (**Customs Act**); and

b) Australian industry producing the GUC (that is, NSIA) has suffered material injury caused by dumped imports from Korea and France.

2. A Précis of Law

Threshold requirements - Standing

2.1 Section 269TB of the Customs Act specifies the requirements that must be satisfied for a person¹ to have standing to submit an application to the Commissioner requesting that the Minister publish a dumping duty notice in relation to goods exported to Australia.

2.2 269TB sets out 3 criteria that must be satisfied for this purpose, in summary these are:

(a) a consignment of goods has, is likely to be, or may be imported into Australia;

(b) there is, or may be established, an Australian industry producing like goods; and

(c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice in respect of the goods in the consignment

2.3 For the purposes of (b) above (and elsewhere in the Customs Act) 'like goods' is defined under section 153B of the Act to mean goods that are identical in all respects to the goods under consideration **or** that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Substantive requirements

2.4 The requirements of the *General Agreement on Tariffs and Trade 1994* (**GATT**) with respect to the imposition of anti-dumping duties are well known to the ADC. The GATT establishes the guiding principle that anti-dumping duties can only be imposed on imported goods where those goods have been found to have been:

(a) dumped; and,

(b) as a result of that dumping have caused, or threaten to cause, material injury.

2.5 The GATT principle is replicated in sections 269TG(1) or (2) of the Customs Act. Those provisions establish that the publication of a dumping notice can only be made in instances in which the Minister is satisfied that the goods for which the notice is published are dumped, and because of that dumping:

"...material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered."

¹ 'person' includes partnerships and unincorporated associations per Section 153B of the Act.

- 2.6 It is clear that Australian law and the GATT are consistent in so far as both demand that the investigating authority must, on consideration of the verified facts available to it, find that both variables – dumping and a causal link to material injury – are sufficiently supported by probative evidence in order for the publication of an anti-dumping notice (**ADN**) with respect to the goods under consideration.
3. **The issue of 'like goods'**
- 3.1 Our client submits that there are significant, discernible production performance differences between the newsprint produced and offered to WAN by NSIA and the newsprint WAN sources from overseas sources when used in their production equipment.
- 3.2 Specifically, WAN submits that the newsprint it imports from overseas mills is produced using recycled material inputs (pulp) whereas the newsprint produced by NSIA is manufactured using virgin pulp fibres sourced directly from plantation forests.
- 3.3 Our client submits that the manipulation of this variable in the manufacturing process not only significantly distinguishes the production process of NSIA from export manufacturers, but also has a significant, material effect upon the functional utility of the finished product.
- 3.4 WAN's internal audit of its production processes has found that recycled product has driven tangible efficiency increases throughout the production line which are clearly reflected in the fact that WAN has been able to significantly reduce the number of overprinted copies produced during each print run. Conversely, the product offered by NSIA, derived from virgin fibres requires a higher number of overprinted copies per print run to satisfy publication orders due to greater problems through the inserting and binding process. These challenges were most prominent in the production of the 192 page 'Weekend West' published each Saturday.
- 3.5 The efficiency differences between the two forms of Newsprint have a material impact on commercial performance demonstrated by [confidential business information].
- 3.6 Our client submits that the ADC must consider the significant commercial differences between the different forms of Newsprint available in the market, with specific attention to the comparability of product derived from recycled fibres and product derived from virgin fibres.
- 3.7 Our client submits that it raised the production issues with Mr Italo Papasergio - product performance manager of the applicant, in 2007 and 2008 - and specifically discussed the production problems of loose cover slippage, keyhole shape, front page curl and consequent efficiency losses as a result of using NSIA's product exclusively. NSIA has, to date, been unable to address these issues and continues to only offer virgin fibre newsprint to WAN.
- 3.8 Our client submits that the efficiency concerns associated with the choice of material input in the production line have become a commercial priority due to the changing dynamics in the newspaper market prior to, and during, the period of investigation.
- 3.9 As will be discussed in greater detail below, the dramatic decline in demand for newspapers in the market has had a significant impact on production throughput and, in turn, revenue and profitability. Cost efficiency at the production line level has become a crucial consideration.
- 3.10 Our client submits that recycled newsprint and virgin fibre have material, significant differences both in terms of the manufacturing process and their commercial utility. So acute are these differences in the 192 page 'Weekend West' that the two forms can neither be said to be identical, nor to share closely resembling performance characteristics when used in the production of newspapers at WAN.
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4. Dumping

- 4.1 The question as to whether dumping has occurred is a question of fact that can only be tested by investigation of factors relevant to the export and domestic trade (in very general terms – a comparison between export price and the ‘normal value’ of the goods sold for home consumption in the country of export). The investigative processes and consideration requirements that apply to the analysis of dumping are numerous. Discussion of the ADC’s analysis of dumping with respect to our client will not be dealt with in this submission.

5. Injury and causal link

- 5.1 The investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. As the ADC is well aware, injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts, namely:

- (a) Whether the applicant has suffered material injury; and
- (b) Whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be ‘dumped prices’.

- 5.2 To test these two elements with the requisite rigour and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or is threatened or would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

- 5.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE “*must be based on facts and not merely on allegations, conjecture or remote possibilities*”.

6. Establishing the causal link

- 6.1 The Act and the WTO Anti-Dumping Agreement (**AD Agreement**) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.

- 6.2 Article 3.5 of the AD Agreement requires the investigating authority to examine “*any known factors other than the dumped imports which at the same time are injuring the domestic industry*”, and requires that any such injury should not be attributed to the subject imports.

- 6.3 The requirement to identify ‘other injury factors’ and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

*In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor **other than the exportation of those goods** such as:*

- (a) the volume and prices of imported like goods that are not dumped; or*
 - (b) the volume and prices of importations of like goods that are not subsidised; or*
 - (c) contractions in demand or changes in patterns of consumption; or*
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(d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or

(e) developments in technology; or

(f) the export performance and productivity of the Australian industry;

and any such injury or hindrance must not be attributed to the exportation of those goods.

6.4 Consideration of the existence of 'other factors' is not only a requirement of the Act in all investigations but, we submit, is particularly relevant in the present investigation given the dynamics of the Australian market under consideration and the significant changes that have occurred in this market over the period under investigation for the purposes of injury analysis.

7. **Summary of the injury submission**

7.1 Our client submits that:

- (a) The applicant's claims regarding injury suffered by its business are unsubstantiated and unfounded. There is no positive evidence of the injury complained of by the applicant aside from assumption and assertion. Additionally, in many instances the claims of injury that have been made for the purposes of initiating the present investigation are at odds with publicly available information regarding the performance of the applicant.
- (b) The applicant's claims regarding the causal link between injury and dumped imports lack credibility and are not supported by verifiable evidence. The applicant has relied upon assertion, assumption and questionable market intelligence to support its claim regarding market competitiveness and price-based injury. The applicant has also attempted to downplay the relevance of other market factors which have fundamentally impacted the Australian market generally, and the dynamics of trade by all participants in the market in recent years.

8. **The current market for Newsprint in Australia**

Demand for Newspapers in Australia

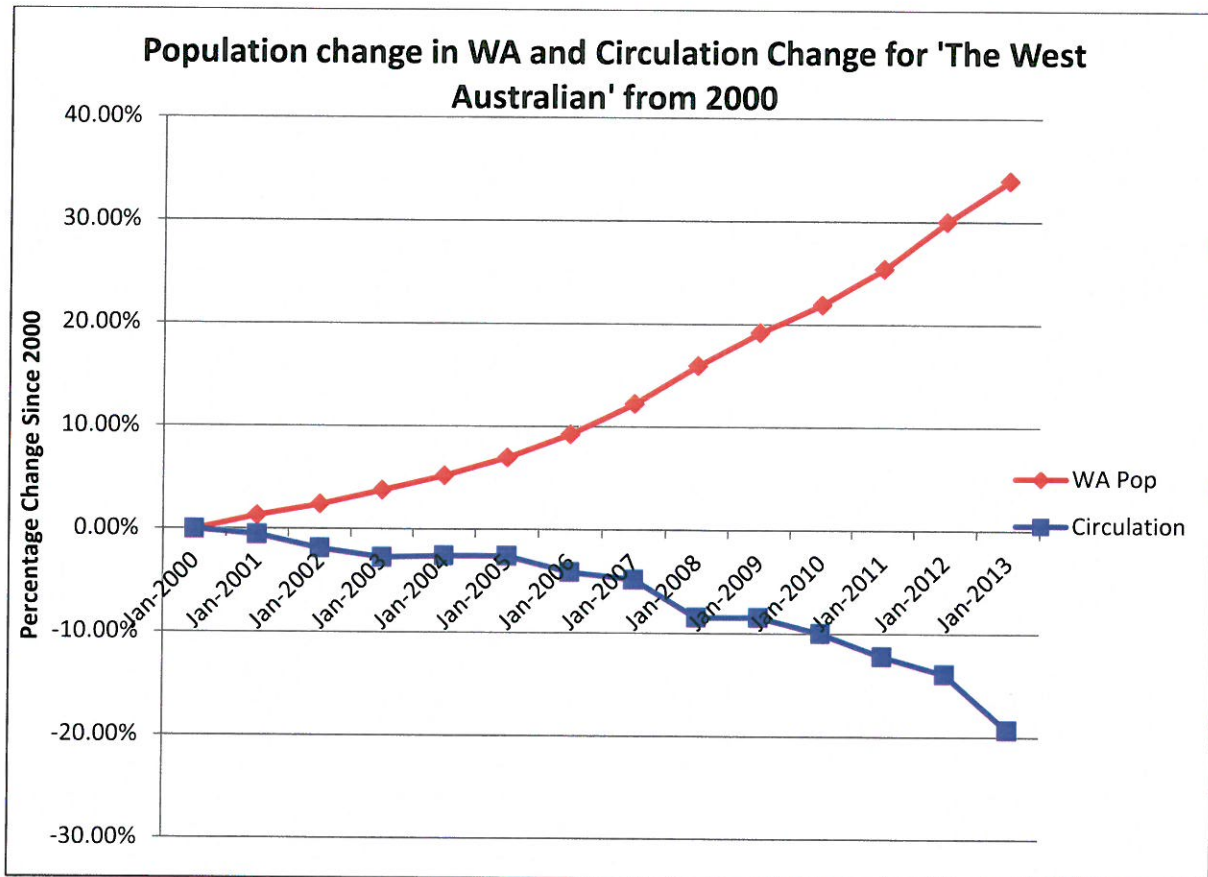
- 8.1 Our client submits that it is critically important for the ADC to understand and appreciate the characteristics of current markets - globally and domestically - before turning its mind to questions of material injury and the factors which may have caused injury allegedly suffered by NSIA.
 - 8.2 The ADC must appreciate that overall demand for newspaper comprises two interrelated variables:
 - (a) circulation - the number of copies of the newspapers purchased in the market; and
 - (b) content - the number of pages per copy sold
 - 8.3 The former variable is linked directly to consumer behaviours and changing preferences in relation to their engagement with media in Australia - the rapid development of a variety of
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electronic platforms for providing news to Australian customers, and the increasing accessibility of online mediums has driven a decrease in the circulation of newspaper copies.

- 8.4 The latter variable is linked to stakeholder investment in the product - that is, purchased space within the pages of each edition for third party advertising and public notices. The attractiveness of third party investment is driven by a number of factors including, most significantly, consumer consumption and market penetration of newspapers within key demographics in comparison to alternative mediums. A decline in third party investment in 'purchased space' will have a direct impact on the number of pages printed in each edition (as well as the revenue of the producer).
- 8.5 Circulation is measured in terms of audited records of copies sold. Total content of copies sold can be measured as the total weight of newsprint consumed.
- 8.6 The below graph tracks the trends in each variable year on year from 2010-13. As the ADC will be able to clearly extrapolate, circulation declined dramatically between 2010-11, in 2011-12 the rate of decline slowed fractionally and then decreased sharply between 2012-13.
- 8.7 [Confidential Graph]

The impact on end users - demand for Newsprint

- 8.8 Reduced demand for newspapers, and reduced third party investment, has dramatically impacted revenue from sales of newspapers, and dramatically reduced profits and profitability in the newspaper sales segment of the market. [Confidential business information and accounting data].
- 8.9 Changes to the patterns of demand in this market are not a new phenomenon. As demonstrated by the table below, to date there is a clear divergence between population increase and newspaper circulation year on year from 2001 onwards.
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- 8.10 Demand for newspapers has a directly correlative relationship to demand for newsprint from upstream suppliers. Logically, reduced demand (total circulation and content per unit) has led to dramatically reduced demand for newsprint from upstream suppliers as forecasted supply needs are re-adjusted.
- 8.11 This is supported by the ADC's own analysis of the Australian newsprint market and, in particular, Figure.1 of CON 242 which demonstrates the linear decline of total market size year on year for the period commencing April 2010 and ending March 2014. As the ADC has extrapolated, the size of the market (expressed in total tonnes of newsprint) has reduced by over 40% since 2010/11.
- 8.12 Reduced newspaper demand has also had a significant impact on production schedules and the throughput of production lines. This has resulted in an elevated cost-base per copy printed.
- 8.13 Efficiency and effectiveness are now primary concerns for end users of newsprint globally who must seek to drive internal efficiencies to counteract cost increases associated with declining throughput and reduced sales volumes.
- 8.14 [Confidential business methods to address reduced newspaper demand].

The current market and its prognosis

- 8.15 There is no indication that the newspaper market will return to its former glory. The depressed demand for finished product and reducing demand trends are considered to be the new status quo as electronic mediums become increasingly accessible and preferred by consumers.
- 8.16 WAN submits that all Australian newspaper manufacturers have been looking for mechanisms to offset the depressed demand in the newspaper market - these include the growth of digital channels and internet-based platforms.
- 8.17 Due to the inextricable link between demand for newspapers and demand for newsprint, there is likely to be no change in the trends of demand for the GUC in the Australian market.
- 8.18 This is a commercial reality to which the ADC must give due consideration in its assessment of NSIA's performance and its related assertions that commercial performance issues have been caused by competition with dumped imports in the Australian market and that the application of anti-dumping duties will alleviate the issues experienced across its operations.
- 8.19 WAN submits that the ADC must carefully consider, and understand, the commercial performance of NSIA in the context of the dynamics of the Australian market and give due consideration to its operational models and commercial behaviours in the market.

WAN and NSIA

- 8.20 Our client submits that it will be useful for the ADC to appreciate the history of commercial interaction between WAN and NSIA over the past decade, in the context of the fundamental changes in the Australian newsprint buyer's market, summarised above.
- 8.21 [Confidential contract arrangements].
- 8.22 Our client submits that this practice, whilst no doubt commercially effective for NSIA for many years, has meant that its pricing practices have lost relativity to world prices and has led to NSIA becoming uncompetitive in global terms. Therefore they have not adequately adapted to changing market dynamics and has dramatically impacted NSIA's competitiveness.

9. The applicant's claims of injury

- 9.1 NSIA's claims that it has suffered the following material injury caused by dumped imports of newsprint exported from France and Korea. NSIA claims that this injury was suffered in 2013/14 and is reflected in the following indicia:
- a) Lost sales volumes;
 - b) Price undercutting;
 - c) Price depression;
 - d) Price suppression;
 - e) Reduced profit and profitability; and
 - f) Reduced revenues
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- 9.2 Our client submits that the commercial interests of the newsprint industry and the newspaper production industry are inextricably linked given that both depend on consumer interest in newspapers.
- 9.3 Furthermore, whilst there are technical differences in the production processes involved in the production of newsprint and the production of newspaper-utilising newsprint, both are production-line manufacturing processes.
- 9.4 The cost of the production process for both industries is a key concern for both industries in terms of:
- (a) Cost to make (including raw material cost, waste, efficiency etc.)
 - (b) Cost to sell; and
 - (c) Production line throughput
- 9.5 As the ADC will appreciate the commercial performance of any manufacturing line will depend on the relative ratio between the cost to make and sell price achievable in the market for the goods produced.
- 9.6 It is critically important to recognise that the cost to make newsprint and newspapers is both directly impacted by the volume of production - simply put the lower the throughput, the higher the cost of manufacture per unit. Production through-put is driven by demand for the newspaper along the supply chain - both in relation to the finished product (newspaper) and the raw material (newsprint).
- 9.7 Demand also drives market prices in a correlative trend - high demand enables higher unit prices to be achieved, and, conversely, depressed demand results in depressed market prices. These trends are particularly acute in the global newsprint market.
- 9.8 Declining demand in downstream markets has had a sharp, depressive impact upon global market prices for newsprint from 2010/11 onwards. The prices achievable at market have been, and continue to be, well below the price achievable historically when demand was at its peak (pre-2000).
- 9.9 The relationship between demand, production cost and market price has a direct and significant impact on the achievable profit and profitability of operations.
- 9.10 These issues have significantly impacted newspaper publishers and newsprint producers alike. The ADC will appreciate that declining demand in a traditionally buoyant market has a number of consequential impacts on operational activities and the commercial performance of those activities. Our client submits that the decline in demand (reflected in both the reduction in future opportunities and current supply demands) leads to:
- (a) Reduced sales volumes and reduced revenue;
 - (b) Decreased throughput and higher long term inventory holding - as production and supply outstrips demand and operational schedules adjust;
 - (c) Reduced capacity utilisation - as production forecasts are re-adjusted in line with demand;
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- (d) Increased costs - as lower throughput in production increases the operating costs to make and sell allocated per copy;
 - (e) Reduced profits and profitability - as the ratio between cost and price decreases and the proportion of profit relative to total revenue reduces;
- 9.11 Our client submits that the various indicia listed by the applicant to demonstrate 'injury' are symptoms of declining commercial performance that have been suffered by most, if not all, entities operating across the newspaper supply chain in Australia.
- 9.12 The size and shape of the Australian market has experienced a fundamental change that is in step with global trends in the majority of global markets.
- 9.13 NSIA has successfully protected itself from exposure to these market factors over the past decade due to its contracting arrangements. These arrangements have not only secured substantial volume of supply demand, but have also ensured price controllability across the life of the contract.
- 9.14 The mere fact that it has now been forced to face the trends of the current global newsprint market and must re-evaluate its operational models to adapt to the current operational environment cannot be seen to be evidence of 'injury'.
- 9.15 In particular, our client disputes the implied assertion that the fact that NSIA has found itself in a position in which its price negotiation and desired product price points are disassociated with prevailing market prices constitute its prices being 'undercut' and driving price suppression and depression.
10. **Injury and causation - other injurious factors**
- 10.1 Our client also submits that the applicant, in outlining the alleged injury it has suffered during the period and seeking to assert the existence of a causal link between this injury and allegedly dumped import competition, has not adequately engaged with the real issue which is that, performance issues deemed by the applicant to indicate 'material injury' have been caused by factors other than dumped imports.
- 10.2 The principle of non-attribution, and its relevance to the consideration of causation, is well known to the ADC. In simple terms, in considering whether a causal link can be established between the injury suffered by the Australian industry (which is denied) and dumped imports from the identified countries, the ADC must consider other factors which have contributed to the injury factors complained of.
- 10.3 These 'other factors' must not be taken into account in the context of establishing whether a causal link exists between the injury and dumped imports.
- 10.4 As discussed above, our client considers that the performance indicators complained of by the applicant have been inappropriately characterised as factors of 'injury' throughout the investigation.
- 10.5 An understanding of the current newsprint market in Australia, and the performance of all participants in the market during the injury analysis period, will indicate that depressed performance across these indicators is a symptom of market forces which have fundamentally changed the demand for newspapers in Australia and, as a result, the demand for newsprint.
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- 10.6 These changes have, in turn, dramatically impacted the reasonable performance expectations in relation to the manufacture and sale of newsprint in the Australian market and have required all participants along the supply chain to adjust their business models and operational strategies.

Market price

- 10.7 Our client submits that a contracted market characterised by limited volume of demand inhibits the increase of prices such that the benchmark price points of goods will appear 'suppressed' - where price suppression is defined by the inability to increase prices to meet rising costs.
- 10.8 Price 'depression' (the lowering of prevailing market price) is also a symptom of competition in a contracting market, and a natural phenomenon as the market adjusts to new paradigms of supply and demand.
- 10.9 Our client reiterates that the allegations of price suppression and depression must be assessed by looking at the Australian applicant's business model and strategies and its inflexible price strategy dealt with in the section that follows.

Business model

- 10.10 Our client submits the applicant has failed to adjust its business model and commercial behaviours in negotiating supply terms with its customers to the changing dynamics of the Australian market and is out of step with global market price trends.
- 10.11 NSIA has, traditionally, been very successful in negotiating long-term supply contracts with customers which crystallised supply price over the terms of the contract under specific price adjustment provisions.
- 10.12 These practices have ensured supply sustainability (across a significant proportion of total customer demand) and price certainty over a long period of time. They have also sheltered NSIA's operations from the impact of market price fluctuations.
- 10.13 Our client submits the ADC must consider NSIA's commercial strategies in the context of the market environment. The mere fact that NSIA has recently, after a long period of being sheltered by the terms of its contractual arrangements in the Australian market, found that its historical operational models and price positions are no longer viable cannot be regarded as an indicator of 'injury' for the purposes of the investigation.
- 10.14 To this end, the ADC must consider and assess the extent to which NSIA has, in effect, contributed to the alleged injury it has suffered.

Pricing issues

- 10.15 NSIA have applied a strict pricing platform that has not responded to global market trends. Global benchmarks have been shifting for quite some time, commensurate to declining demand.
- 10.16 Our client submits that NSIA has, when domestic demand declined, increased its sales to overseas markets. Our client understands that, as these sales were not made under the terms of long-term supply contracts, NSIA pitched its prices in accordance with the prevailing price benchmarks in the market at the time.
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- 10.17 However, NSIA has not, and will not, discuss the readjustment of its prices in the Australian market on the same terms. Our client submits that these issues have been specifically discussed with NSIA in the context of supply negotiations and NSIA has intimated that it cannot reduce its offered prices for fear of upsetting parties with whom it is under contract at an elevated supply price.
- 10.18 Our client acknowledges that NSIA's pricing policies are a business decision for NSIA. We also appreciate that NSIA would logically prefer to retain its price point at the elevated level it has historically been able to achieve. This desire is, however, not a sufficient basis upon which to allege that NSIA's prices have been 'undercut' by import sources by the mere fact that such prices are no longer achievable in current market conditions.
- 10.19 The issues underlying NSIA's approach to the Australian market were highlighted during market testing undertaken by our client between November 2013 and February 2014. As part of this tender process our client requested, and received, offers from local and overseas suppliers [confidential business and market testing data].
- 10.20 Our client believes that NSIA's unwillingness to adjust to changing paradigms in the market and its inability to provide a supply offering that is in step with reasonable offers in the market have prevented it from remaining competitive with overseas supply sources.

Quality/utility issues

- 10.21 As mentioned above, production efficiency is a crucial consideration for end-users of newsprint in Australia. In a market where margins are becoming increasingly eroded due to declining demand, the utility of a raw material becomes a key consideration in procurement.
- 10.22 Our client has demonstrated that the use of newsprint produced from recycled fibres has been proven to increase efficiency across the production line by reducing overprinting. The cost-saving this achieved is a not-insignificant benefit to its operations.
- 10.23 Our client engaged with NSIA in 2008 (at a time when NSIA was the contracted supplier of 90% of its total newsprint needs and commonly supplied 100%) in relation to the issue of production inefficiencies when utilising the NSIA product. NSIA was unable to reduce the efficiency losses (and resultant production cost increases) suffered by WAN when using the NSIA product.
- 10.24 Product from recycled fibre has also been found to dramatically minimise issues associated with 'key-hole' newspaper bending (which causes commercial inserts and loose leaf material in newspapers to become dislocated and lost during transportation), inserting problems and 'loose front page' (which causes the front pages of the paper to become removed from the body of the paper during production processes and transport).
- 10.25 Our client submits that NSIA failed to appropriately address the concerns of its customer (WAN) in relation to the supply of its product and failed to appreciate the significance that utility considerations have in procurement decisions in the current market.

11. Conclusion

- 11.1 As the ADC is well aware, if no material injury has been suffered during the period of investigation:
- (a) there can be no positive finding of any injurious dumping; and

The Director, Anti-Dumping Commission

3 July 2014

- (b) in the absence of such a finding, dumping notices cannot be published.
- 11.2 The claims made by NSIA rely upon a misinterpretation of market statistics regarding the numerous extraneous variables which have impacted the structure or the market within which they operate, and the performance of their business in the current commercial landscape in Australia.
- 11.3 If the applicant's market performance is used as the indicia of 'material injury', the ADC must carefully examine the link between such injury and the specific conditions of the newsprint market in Australia during the period in question.
- 11.4 Our client submits that the alleged injury which the applicant has complained about is not associated with competition with imported product, dumped or otherwise.

For completeness, we **attach** a confidential presentation - Attachment A - a copy of which was provided to you by our client during your visit on 29 May 2014 in Perth.

If you have any questions concerning this submission please contact me.

Yours sincerely

Zac Chami, Partner

+61 2 9353 4744

zchami@claytonutz.com

Our ref 11276/80155314

For Publication

The Director
Operations 1
Anti-Dumping Commission
Customs House
1010 Latrobe Street, Docklands
MELBOURNE VIC 3000

10 December 2014

Attention: Mr Jukka Mäntynen

Dear Sir

**Newsprint Exported from Korea and France
Seven West Media Injury Submission**

We refer to Norske Skog's letter dated 1 December 2014 which was recently published on the electronic public record.

Although elements of that letter are redacted, it is evident that some of the matters addressed in it may refer to or otherwise concern our client. Accordingly our client responds to the following matters, adopting the headings in the Norske Skog letter.

Recycled Paper

On the assumption that this matter relates to our client, the representation that Norske Skog had not been notified that recycled paper was a supply requirement is, respectfully, mistaken. [*Reasons provided*].

As to the representation that Norske Skog's newsprint performs "*as well if not better than the newsprint made from 100% recycled paper*", our client rejects that claim [*Reasons provided*].

[Customer] Contract

We are uncertain as to which particular tenderer is being referred to however a supply contract that commences after the investigation period is irrelevant and cannot be taken into account by the ADC. Additionally, as to Norske Skog's '*deduct[ion]*', concerning pricing as referred to in its letter, that is mere supposition and speculation. As is well known by the ADC, speculation must be excluded from all consideration - speculation is not a proxy for actual proof.

Yours sincerely


Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com

Our ref 11276/80155314

For Publication

The Director
Operations 1
Anti-Dumping Commission
5 Constitution Avenue
CANBERRA ACT

19 February 2015

Dear Sir

**Investigation 242 - Newsprint exported from Korea and France
Seven West Media response to SEF****Introduction**

We act for Seven West Media (SWM) in relation to the ongoing investigation by the Anti-Dumping Commission in relation to the alleged dumping of Newsprint exported to Australia from Korea and France.

SWM notes the ADC's preliminary findings set out in its Statement of Essential facts dated 30 January 2015 and related PAD in relation to Newsprint exported from France.

Whilst SWM is pleased to note the ADC's decision to terminate the investigation as it relates to Korean exporters, it remains concerned with the veracity of the ADC's injury and causation findings as they relate to exports of the GUC from France.

SWM respectfully submits that the SEF reflects insufficient consideration of relevant factors related to the condition of the Australian market, and unrelated to dumping, in its assessment of material injury and the causal link between 'injury' suffered by the Australian industry and the presence of dumped goods in the market.

1. Injury and causal link

1.1 As the ADC knows, the investigation and analysis as to whether dumping has caused material injury (for the purposes of an anti-dumping investigation) demands the careful consideration of relevant facts. Injury analysis is a composite process which requires two queries to be tested against the available, verifiable, facts namely:

- (a) Whether the applicant has suffered material injury; and
- (b) Whether the injury suffered can be attributed to dumped imports such that the injury can be said to have been caused by exportation of goods to Australia from the identified countries at prices deemed to be 'dumped prices'.

1.2 To test these two elements with the requisite rigor and reliability, in order to make a positive determination under section 269TAE(1) that material injury to Australian industry has been or is being caused or, is threatened or, would or might have been caused, the analysis must be based upon positive evidence that is objectively verifiable and defensible.

1.3 This is set out under section 269TAE(2AA) of the Act, which clearly states that a determination with respect to injury pursuant to section 269TAE "must be based on facts and not merely on allegations, conjecture or remote possibilities".

Establishing the causal link

- 1.4 The Act and the WTO anti-dumping Agreement (**AD Agreement**) prescribe the analysis for satisfaction of the causation test in the context of anti-dumping investigations.
- 1.5 Article 3.5 of the AD Agreement requires the investigating authority to examine “*any known factors other than the dumped imports which at the same time are injuring the domestic industry*”, and requires that any such injury should not be attributed to the subject imports.
- 1.6 The requirement to identify ‘other injury factors’ and to ensure that these are not considered in the context of establishing the causal link between dumping and material injury is set out in section 269TAE(2A) of the Act, which states:

*In making a determination... the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor **other than the exportation of those goods** such as:*

- (a) *the volume and prices of imported like goods that are not dumped; or*
- (b) *the volume and prices of importations of like goods that are not subsidised; or*
- (c) *contractions in demand or changes in patterns of consumption; or*
- (d) *restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or*
- (e) *developments in technology; or*
- (f) *the export performance and productivity of the Australian industry;*

and any such injury or hindrance must not be attributed to the exportation of those goods.”

2. **Identifying ‘injury’, assessing materiality and establishing causal link in a market in transition**
- 2.1 As set out above the identification, and assessment, of injury factors and the existence of factors other than dumping that may have caused the applicant injury is a requirement of the Act in all investigations.
- 2.2 SWM submits that this process is critical in the context of assessing whether indicia of declining (or suppressed) trends in commercial performance can be characterised as ‘injury factors’ for the purposes of anti-dumping investigations.
- 2.3 This is particularly relevant in the context of an investigation of goods exported to Australia for consumption in a market during a period of systemic transition caused by changing patterns of demand and broader economic pressures.

The Australian market for newsprint and newspaper

- 2.4 SWM notes the ADC’s overview of market data at 7.4.1 and, specifically its finding that the size of the total Australian market for Newsprint (by sales volume) has declined in linear way year on year since 2010/11. As summarised in figure 1, the result of this decline in demand is

that, the market in 2013/14 was 37% lower than it was in 2010/11. To put it in volume terms there has been a reduction of the market size from 540,000 tonnes to 340,000 tonnes.

- 2.5 SWM submits that this data is consistent with its experience in the Australian market and directly follows the decline in end-user demand in the downstream market. SWM wishes to emphasise that these correlated trends do not reflect a temporary suppression of the Australian market, but instead are symptoms of a systemic change in the size and shape of the downstream Australian newspaper market.

The impact on the supply chain

- 2.6 SWM submits that a 37% evaporation of market demand has an inevitable and dramatic impact on operational and commercial performance of all entities across the supply chain who are forced to adapt to changing dynamics in the market.

- 2.7 The ADC will be well aware, from its verification of data provided from a variety of interested parties, that these changes in the market have placed pressure on the financial performance of newspaper producers (who are also primary newsprint consumers) and newsprint producers alike.

- 2.8 As SWM has indicated in previous submissions to the ADC, the reduced demand for newspaper and reduced third party investment, dramatically impacts revenue from sales of newspaper, and dramatically reduces profits and profitability in the newspaper sales segment of the market.

[commercial in confidence (CIC)]

- 2.9

[CIC]

- 2.10 SWM submits that it does not characterise indicia of negative performance trends (when measured against historical benchmarks) as 'injury' - instead; these are symptoms of systemic market forces. There is an undeniable 'demand shift'. When such demand shift occurs mere 'trend analysis' (as the ADC has engaged in and reported in its SEF) is extremely unreliable and only genuine econometric analysis and validation will suffice.¹

- 2.11 For this reason, SWM submits that the ADC's assessment that NSIA has suffered 'injury' in the form of the below factors relies upon a flawed characterisation of injury and a blinkered analysis of the applicants commercial performance that does not give sufficient consideration to the context of the market in which NSIA operates.

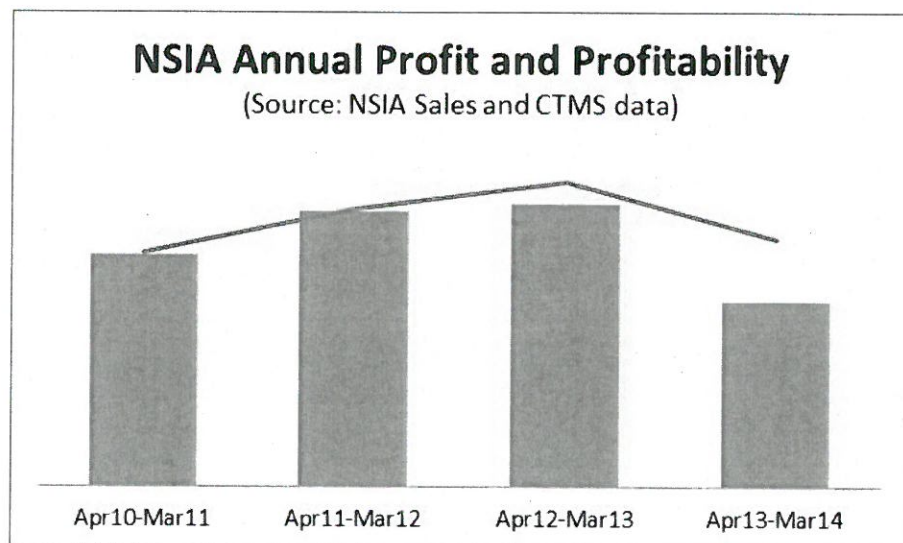
- (a) reduced sales volume;
- (b) price depression;
- (c) price suppression;
- (d) reduced profits;
- (e) reduced profitability; and
- (f) reduced revenue.

¹ See WTO Case Law of 2004-2005 edited by H Horn and C Mavroidis esp at chapter 12.

2.12 SWM will address the issues of price-based and other injury below.

Reduced Sales Volume

- 2.13 Foremost, the ADC's finding that NSIA has suffered 'injury' in the form of reduced sales volume since 2010/11 is a mischaracterisation of market trends. Simply put, NSIA, like all others in the Australian Newsprint supply chain, has experienced a decline in sales volume caused by the systemic reduction of the size and shape of the Australian market. The fact that NSIA has retained market share during this period of flux provides further evidence that reduced sales volume is not, of itself, appropriately characterised as 'injury'.
- 2.14 Furthermore, reduced sales volume caused by a reduction in overall market demand will, logically, lead to an overall reduction of revenue but for the ability to significantly increase prices. Similarly, without the ability to identify and deliver sufficient operational efficiencies, a decline in sales volume and revenue will place significant downward pressure on profitability of operations.
- 2.15 Again, these are factors that WAN has experienced during the investigation period in relation to its own operations. Accordingly, SWM wishes to clearly emphasise that the reduction in revenue in such an environment, the inability to effect an arbitrary price increase to counteract a fall in revenue caused by contracted demand and a reduction in profitability of operations caused by the inability to deliver sufficient efficiencies to counteract declining revenue **are not** injury factors in the context of a seriously eroded or contracting market environment.
- 2.16 SWM submits that it is crucial to understand (and to pay due consideration) to the downward pressure that declining market demand has upon prevailing market prices. Furthermore, it is crucial to carefully assess the way in which the applicant's commercial behaviours with respect to supply contracting have 'insulated' it from the full impact of market pressures during the injury analysis period.
- 2.17 SWM submits that the below table included as Figure 4 in the SEF illustrates these issues.



- 2.18 SWM submits that the above table carries a very real risk of misrepresenting commercial performance to substantiate 'injury'. SWM submits that NSIA's relative year-on-year increase

in both profit and profitability in 2011/12 and 2012/13 is the result of long term supply contracts that enabled NSIA to effectively 'insulate' prices from the influence of market forces.

- 2.19 The relatively steep decline in profit in 2013/14 is the result of this 'insulation' being removed at the end of supply periods and NSIA being exposed to an immediate and significant 'correction' of price, profit and profitability that had been occurring in the market since 2010/11 outside of the parameters of NSIA's protected contract environment. Notwithstanding this reduction in profits, NSIA was able to maintain profitability of sales in 2013/14 at levels above 2010/11 benchmarks.
- 2.20 It should be noted that there is not a single reference to world market price in the SEF. One would rationally conclude that any assessment of injury would have had regard to the influence of world prices for the GUC.
- 2.21 Again, it is unreasonable to suggest that this marginal shift in performance is an 'injury factor' without giving due consideration to the changes in the market.

Price-based injury

- 2.22 SWM is particularly concerned with the ADC's analysis of, and positive findings in relation to, price suppression and depression as indicia of price based 'injury'. Again, SWM submits that analysis of price dynamics in transitioning markets (shaped by dramatic increases or, in this case, decreases in total demand) has not been effectively considered.
- 2.23 SWM notes figures 3 and 4 that provide the visual representation of the ADC's examination of the relationship between:
- (a) Unit price and unit CTMS; and
 - (b) Total revenue and total CTMS
- 2.24 SWM considers it important to note that both tables demonstrate the relative stability of the relationship between the variables in each scenario. Specifically, SWM considers it important to note that:
- (a) NSIA has been able to retain a relatively stable unit CTMS over the injury analysis period and whilst the 2013/14 CTMS is above 2010/11 (which is reasonably to be expected in any market) it is lower than benchmarks in 2012/13.
 - (b) Over the same period NSIA's sale price has remained relatively static - again, whilst unit price in 2013/14 reflected a marginal reduction from 2012/13 levels, it was above unit prices at the start of the injury analysis period.
- 2.25 SWM submits that NSIA's ability to retain stability in CTMS and Unit prices during a period of significant market turbulence cannot, in any way, be characterised as demonstrating injury.
- 2.26 SWM notes that when total CTMS is analysed in relation to total revenue a similarly stable relationship between the two variables was maintained across the injury analysis period. Whilst SWM notes the linear decline in both variables from 2011/12, and the closing gap between cost and revenue, it believes that these trends are symptomatic of the changing dynamic of the market as a whole and are not specific or unique to the commercial position of NSIA.

- 2.27 SWM is underwhelmed by the significance of the trends and relationships reflected in tables 3 and 4. Furthermore, SWM is concerned by the ADC's preliminary finding that these data sets indicate that NSIA has suffered suppressed and depressed prices during the period. SWM submits that:
- (a) NSIA achieved a reduction in unit CTMS in 2013/14 relative to 2012/13 levels;
 - (b) Whilst 2013/14 CTMS was higher than 2010/11 levels the disparity was no more significant that could be expected in the ordinary course of business;
 - (c) Whilst 2013/14 unit sales prices were marginally down from 2012/13 levels, they finished above 2010/11 benchmarks;
 - (d) The ratio between CTMS-Sales Price remained relatively stable during the injury analysis period and, whilst smaller in 2013/14 than 2012/13, this ratio was on par with 2010/11 levels.
 - (e) Given the **37%** reduction of the size of the market over the same period and the subsequent (and verified) impact on sales volume the ability to retain a stable price, cost and the ratio between them at a level consistent with benchmarks during a period of significantly larger market demand is an indicator of positive commercial performance.
- 2.28 In these circumstances, a finding that prices were depressed or suppressed can only be made by ignoring or de-emphasising the dramatic shift in the size and shape of the market and the reasonable impact that a change of that size must have on performance expectations.
- 2.29 To suggest that any entity in a declining market should be able to effect an increase in prices or increase ratio of prices to cost is unreasonable. To claim that the inability to do so suggests that prices have been suppressed or depressed is illogical.

Establishing the causal link between dumped imports and 'injury'

- 2.30 Notwithstanding the strong belief that the data presented by the ADC cannot reasonably be interpreted to demonstrate 'injury' suffered by NSIA during the period in question, SWM also has significant concerns with the logic of the ADC's finding that such 'injury factors' were caused by competition with dumped imports.
- 2.31 Foremost, SWM submits that the ADC's finding that dumped imports from France caused injury in the form of lost sales volume to be incorrect. The ADC's logic, summarised at 8.5.2, appears to be that because imports from UPM to WAN were dumped and that the volume of supply to WAN from UPM represents sales volume that may have otherwise been secured by NSIA that a causal link exists between dumped imports and the lost sales volume. The brittle logic that underlies this assessment is "*that in the absence of dumping, NSIA would have been in a stronger position to achieve sales to WAN because the UPM price offer would have been **less competitive***" (emphasis added).
- 2.32 SWM continues to have significant concerns with the data that the ADC is relying upon when making assessments regarding the relative 'competitiveness' of NSIA offers in the market during the period in question. The commercial data held by SWM, related to [REDACTED] demonstrates that:

- (a) on a weighted average basis, the NSIA offer was consistently [REDACTED]. CIC
- (b) when presented on a 3 year weighted average basis [REDACTED], the NSIA price point was consistently below [REDACTED] price point - [REDACTED] being the 'un-dumped' market price. CIC

- 2.33 This information is included in **confidential attachment 1**. SWM would be happy to provide the ADC with additional information to assist it verify the accuracy of this data should it wish to do so.
- 2.34 This issue of price competition and price competitiveness is critical to the ADC's analysis of the link between dumping and 'injury'. SWM submits that the SEF does not reflect an adequate consideration of the external drivers of market prices during the period and the impact that market contraction has upon Australian newsprint pricing. Indeed, no econometric or expert analysis was undertaken other than trend analysis which is highly subjective, unscientific and often bereft of perfect logic. The presence of dumped goods in a market does not establish a causal link between those goods and any 'price based' injury complained of by an applicant. That is the basic conclusion arrived at in the SEF - and it is wrong.
- 2.35 SWM submits that (based on standard and indisputable economic principles) depressed demand in any market will place downward pressure on market prices and competition. The argument that has been accepted by the ADC is that the presence of 'dumped' prices for goods from UPM somehow undermined the natural competitive tension of the tender process to the extent that, but for the presence of these price offers, the offer of NSIA would be competitive/favourable. If that logic were true, the presence of [REDACTED] would have forced the prevailing market price down for all [REDACTED] would also have been forced to rationalise its position in line with this benchmark or be 'priced out' of contention. This was clearly not the case [REDACTED]. CIC
- 2.36 SWM submits that the relationship of bidder pricing demonstrates the influence of market dynamics on market pricing and principally the size/shape of demand and particular customer preferences above and beyond market price. SWM strongly believes that market price points were, and remain, a product of market demand and are not driven by import prices, dumped or otherwise.

Conclusion

- 2.37 The ADC's findings regarding material injury rely upon a misinterpretation of performance data without due consideration of the nature of this data in the context of the variables of the market during the injury analysis period.
- 2.38 The SEF notes at 8.8.3.1 that *'The Commission considers that NSIA has suffered injury from contractions in demand in the Australian newsprint market'*. However this statement is not reflected in the majority of the ADC's assessment. The ADC does not appear to have given significant consideration to the magnitude of the 'injury' caused by market forces. The SEF does not demonstrate a genuine attempt to ensure that the impact of factors other than dumping are not attributed when examining material injury and causation.
- 2.39 SWM remains of the strong belief that the changing paradigms of performance of which the applicant has complained of is caused by factors in the market which are not associated with competition with imported product from France.

Yours sincerely

Zac Chami, Partner
+61 2 9353 4744
zchami@claytonutz.com
Our ref 11276/80152428