



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping Commission

Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

Mr Paul O'Connor
Panel Member, Anti-Dumping Review Panel
c/o- ADRP Secretariat

By e-mail: ADRP@industry.gov.au

Dear Mr O'Connor

A4 Copy Paper exported from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic

I write with regard to the notice under section 269ZZI of the *Customs Act 1901* (Cth) (the Act) published on 23 May 2019, advising of your intention to review the decision of the Minister for Industry, Science and Technology (the Minister) to publish a notice under subsections 269TG(1) and 269TG(2) of the Act (the Reviewable Decision). This notice was published on the website of the Anti-Dumping Commission (the Commission) on 10 April 2019, as Anti-Dumping Notice No. 2019/37.

I understand that the Commission has provided you with the information that was requested of me in your correspondence of 23 May 2019, that is:

1. the confidential attachments to the Statement of Essential Facts (SEF) relevant to the grounds of the review application;
2. parties' submissions to the ADC commenting on the SEF including confidential attachments relevant to the grounds of the applications for review;
3. the confidential attachments to the Final Report;
4. other relevant information (as defined in section 269ZZK of the Act) pertinent to the grounds of review raised by the Applicants, including:
 - a. the verification visit report of the Australian industry and any confidential attachments;
 - b. the export visit reports and work programs relating to the two applicants, plus any confidential information/spreadsheets sent to the applicants regarding the calculation of the normal value, export price and dumping margins; and
 - c. importer visit reports and any confidential information/spreadsheets sent to the importer.
5. any other records/documents that contain information about the verification reports; and
6. a copy of Moulis Legal's 28 May 2018 submission entitled *Verification note – Mondi's exemplary sales behaviour*.

I have considered the applications submitted by Hankuk Paper Mfg Co., Ltd and Mondi SCP a.s. for a review of the Reviewable Decision and make submissions, pursuant to section 269ZZJ(aa) of the Act, at **Confidential Attachment A**.

The Commission has responded to the questions raised by the ADRP during a conference held on 4 June 2019. A list of the relevant questions and responses are attached at **Confidential Appendices 1 and 2**.

Non-confidential versions of the submission and appendices have been provided.

The Commission remains at your disposal to assist you in this matter, and would be happy to participate in a conference if you consider it appropriate to do so.

Yours sincerely

Dale Seymour
Commissioner
Anti-Dumping Commission

24 June 2019

Attachment A

Background

1. On 12 February 2018, Paper Australia Pty Ltd (Australian Paper) lodged an application under section 269TB(1) of the *Customs Act 1901* (Cth) (the Act)¹ for the publication of a dumping duty notice in respect of A4 copy paper that has been imported into Australia from Austria, Finland, the Republic of Korea (Korea), the Russian Federation (Russia) and the Slovak Republic (Slovakia) (the goods).²
2. The Commissioner of the Anti-Dumping Commission (the Commissioner) subsequently initiated an investigation on 19 March 2018.³
3. On 10 April 2019, the Anti-Dumping Commission (the Commission) published a notice signed by the Minister for Industry, Science and Technology (the Minister) in which she decided to declare the goods, or like goods, to be goods to which section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) (the Dumping Duty Act) applies in respect to Finland, Korea, Russia and Slovakia (the subject countries).⁴ This notice was published pursuant to sections 269TG(1) and (2) of the Act (the Reviewable Decision).
4. In the Reviewable Decision, the Minister stated that she made the Reviewable Decision following consideration, and acceptance of, recommendations made by the Commissioner on 15 March 2019, as set out in *Anti-Dumping Commission Report No. 463* (Report 463).⁵ This report outlined the Commissioner's investigations, material findings of fact and law on which his recommendations were based and evidence relied upon to support those findings.
5. On 10 May 2019, Hankuk Paper Mfg., Ltd (Hankuk Paper) and Mondi SCP a.s. (Mondi SVK) made separate applications for review of the Reviewable Decision by the ADRP. The Commission understands these applications were made pursuant to section 269ZZ(1)(b) of the Act.

Application of Review submitted by Mondi SVK

Ground 1: Finding that the exports of Mondi SVK may be dumped in the future

6. In its application, Mondi SVK submitted that the correct and preferable decision was that the Minister should not be satisfied, for the purposes of section 269TG(2)(a) of the Act, that the amount of the export price of like goods that may be exported to Australia by Mondi SVK in the future may be less than the normal value of the goods.⁶

¹ All legislative references in this submission are to the *Customs Act 1901* (Cth) ('the Act') unless otherwise indicated.

² Paper Australia's non-confidential application is available on the electronic public record (EPR) for Investigation 463, on the Commission's website.

³ EPR 463, Document 3.

⁴ Ibid document 70.

⁵ Ibid document 68.

⁶ Mondi SVK Application, page 10.

7. Mondi SVK challenged aspects of the evidence, analysis and conclusions drawn in Report 463 to support its view that the Minister had not reached the required level of satisfaction when making the declaration in relation to Mondi SVK under section 269TG(2)(a) of the Act.⁷ In particular, Mondi SVK submitted that the Commission's analysis in Report 463 did not substantiate the opinion that it 'would engage in dumping' as required by section 269TG(2)(a) of the Act.⁸
8. The Commissioner disagrees with Mondi SVK's submissions. The Commissioner is satisfied that the relevant evidence, analysis and conclusions drawn in Report 463 substantiates his finding that the amount of the export price of like goods that may be exported to Australia by Mondi SVK in the future may be less than the normal value of such goods.

The legislative test under section 269TG(2)(a) of the Act

9. To publish a notice under section 269TG(2) of the Act, the Minister must be satisfied, among other things, as to goods of any kind, that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported in the future may be less than the normal value of the goods.⁹
10. The Commissioner considers that this test essentially requires consideration of the following two limbs:
 - (a) whether like goods already exported to Australia were at dumped prices (a past assessment);¹⁰ and
 - (b) whether there may be future exports of like goods at dumped prices (a forward looking assessment).
11. With respect to the second limb of this test, the Commissioner draws the ADRP's attention to the meaning of the term 'may' so to inform the level of satisfaction required for the purposes of section 269TG(2)(a) of the Act.
12. The term 'may' is not defined in the Act and there does not appear to be a settled legal definition. Accordingly, statutory interpretation principles require that the 'primary and natural significance' of the legislative term is given unless there is sufficient indication of another meaning.¹¹ Further, an interpretation of the term 'may' that would best achieve the purpose of object of the Act is to be preferred to other interpretations.¹²

⁷ Ibid pages 2-10.

⁸ Ibid page 7.

⁹ Section 269TG(2)(a) of the Act.

¹⁰ The Commissioner understands that Mondi SVK has not challenged this limb of the test and, therefore, has not addressed it in his submissions. The Commissioner also notes that the Minister was satisfied that this first limb was met, following the Commissioner's reasoning in Report 463, page 37.

¹¹ *Cody v J H Nelson Pty Ltd* (1947) 74 CLR 629, 647-8 (Dixon J).

¹² *Acts Interpretation Act 1901* (Cth), s 15AA.

13. The ordinary meaning of the term 'may', as defined in the *Macquarie Dictionary*, is 'to be possible'.¹³ The term 'possible' is defined as 'capable of existing, happening, being done, being used'.¹⁴ In turn, and relevant to this matter, the Commissioner submits that the term 'may' necessitates something that it is capable of happening.
14. Further, in *Thorne v Doug Wade Consultants Pty Ltd*,¹⁵ Justice O'Bryan found that the expression 'may cause' requires that an event 'must at least be reasonably possible'.¹⁶
15. For these reasons, the Commissioner submits that the preferable definition of the term 'may', for the purposes of determining that there *may* be future exports of like goods at dumped prices pursuant to section 269TG(2)(a) of the Act, having regard to the primary and natural significance of the term, is that it be possible.
16. The Commissioner submits that this interpretation best achieves the purpose or object of the Act which is further supported by having regard to the context in which other evaluative terms are found in the Act.
17. For example, the Commissioner submits that the term 'may' should be distinguished from the term 'likely', used in section 269ZHF(2) of the Act, which represents a higher evidentiary threshold for the purposes of continuation inquiries. In that context, Justice Rares has held that the term 'likely' should 'be interpreted as meaning more probably than not'.¹⁷ The Commissioner considers a similar interpretation applies with respect to the use of 'likely' in section 269ZDA(1A)(b) of the Act which relates to revocation reviews.
18. An assessment of 'likely' requires a positive finding on the balance of probabilities. The Commissioner considers that this is a higher evidentiary threshold and distinct from an assessment of the term 'may'.
19. For these reasons, the Commissioner submits the preferable interpretation of the term 'may' in section 269TG(2)(a) is that it be 'possible'.

Commissioner's assessment that future exports of like goods may be at dumped prices

20. In Report 463, the Commissioner was satisfied that, not only was it possible that Mondi SVK may export like goods in the future at dumped prices, as required by section 269TG(2)(a) of the Act, it was likely.¹⁸
21. In forming a judgment as to whether like goods may be exported at dumped prices in the future, the Commissioner considers prior evidence to be a relevant consideration.

¹³ *Macquarie Dictionary* (7th ed, 2007) 'may' (def 3).

¹⁴ *Ibid* 'possible' (def 1).

¹⁵ [1985] VR 433.

¹⁶ *Ibid* 465.

¹⁷ *Siam Polyethylene Company Ltd v Minister of State for Home Affairs and Another (No 2)* (2009) 258 ALR 515, 528.

¹⁸ Report 463, section 9.3.2.3.

22. This view is supported by comments made in the Federal Court in *Siam Polyethylene Company Ltd v Minister of State for Home Affairs*.¹⁹ In that case, it was held that, in the context of anti-dumping matters, past conduct can often be a guide to future conduct.²⁰ Further, in *ADRP Report No. 44*, the Senior Member considered that 'past conduct is probably the most reliable indication of future conduct'.²¹
23. Mondi SVK's application for review stated that future dumping cannot be assumed because of a past finding of dumping.²² The Commissioner agrees, but notes that all relevant considerations need to be accorded due weight in coming to a decision.
24. While untested assumptions cannot be made, prior evidence of dumping is directly relevant to whether Mondi SVK may export at dumped prices in the future. That is, whether it is possible. The Commissioner submits that it is necessary to consider the available evidence, including prior dumping, and draw informed inferences.
25. To assist the ADRP, the Commissioner has summarised Mondi SVK's quarterly export prices, normal values and dumping margins during the investigation period in Table 1. Table 1 also includes the weighted average export price, normal value and dumping margin:²³

	Q1	Q2	Q3	Q4	Weighted Average Investigation Period
Unit Export Price					
Unit Normal Value					
Dumping Margin	4.8%	7.8%	6.1%	7.9%	5.8%

Table 1 Mondi's 2017 Normal Value, Export Price and Dumping Margin

26. Table 1 demonstrates that, for each quarter of the investigation period, and on a weighted average basis, Mondi SVK's export price was below its normal value (i.e. at dumped prices).
27. The verified export prices and normal values for the investigation period are contemporaneous. This is positive evidence upon which the Minister can rely on to draw inferences about Mondi SVK's future export prices and normal values.
28. The Commissioner also considers that Mondi SVK failed to provide sufficient evidence to refute the possibility that it may export at dumped prices in the future.
29. The Commissioner submits that Mondi SVK's verified prior conduct of exporting like goods to Australia at dumped prices, in the investigation period, in the absence of

¹⁹ *Siam Polyethylene Company Ltd v Minister of State for Home Affairs and Another* (2009) 258 ALR 481.

²⁰ Ibid 504.

²¹ [38].

²² Mondi SVK application, page 7.

²³ This is a pivot table based on (b) DM summary tab of Confidential Attachment 7 to Report 463. The export prices and normal values are in Euro.

persuasive evidence otherwise, is sufficient to satisfy the legislative test (i.e. 'may') under section 269TG(2)(a) of the Act.

30. The Commissioner submits that this view is supported by the fact that Mondi SVK has maintained its production facilities and, therefore, has the capability to export like goods to Australia at dumped prices in the future.²⁴ An alternative view could be open if there was evidence that Mondi SVK had shut down mills, for example.
31. The Commissioner considers that the fact Mondi SVK has maintained its production facilities demonstrates an ability to shift distribution of exports to Australia should the conditions suit. Mondi SVK's prior conduct of increasing exports to Australia following the imposition of securities on exports from other countries in Investigation 341, supports this finding.
32. In its application, Mondi SVK identified 11 excerpts from Report 463 and argued that these excerpts either do not go to the proposition that Mondi SVK may dump in the future²⁵ or are incorrect in the conclusions drawn.²⁶
33. The Commissioner accepts that Mondi SVK has a different view on certain excerpts. The excerpts constitute facts relevant to making a finding under section 269TG(2)(a) of the Act and considered together with the reasoning provided in paragraphs 25-31 above, support the Commissioner's view that Mondi SVK may export like goods in the future at dumped prices.
34. The Commissioner submits that it would not assist the ADRP to consider these excerpts in isolation because any finding made under section 269TG(2)(a) must be made on all available evidence.
35. Further the Commissioner views that the excerpts must be considered in the context that Mondi SVK had ceased exporting towards the end of the investigation period. Report 463 addressed whether Mondi SVK may resume exporting like goods to Australia in the future.²⁷ A number of the excerpts referred to by Mondi SVK go to this question.
36. To assist the ADRP, the Commissioner has responded to each of the comments made by Mondi SVK in **Appendix 2**.
37. Lastly, Mondi SVK referred to a submission made during a verification visit (the verification submission) to support its claims that the Commission should not be satisfied that dumping would continue or recur in the future.²⁸ The verification

²⁴ Report 463, page 90.

²⁵ Excerpt paragraphs a, b, d, e, h, l, j and k.

²⁶ Excerpt paragraphs c, f and g.

²⁷ Report 463, section 9.3.2.3

²⁸ Mondi SVK application, page 7; Verification Note dated 28 May 2018.

submission was considered by the Commission in preparing Mondi SVK's verification visit report and in Report 463.²⁹

38. The verification submission refers to, among other things, third party criticism of Mondi SVK's (high) prices, its "premium price position" in relation to other participants in the Australian market, its focus on profitability and its announcement of price increases during the investigation period.³⁰ Mondi SVK also refers to the recent devaluation of the Australian dollar as supporting its claim that future exports would not be dumped.³¹
39. The Commissioner considers that this evidence referred to by Mondi SVK addresses matters relevant to its export price. This included its reluctance to sell like goods into the Australian market below a certain level of profit, its pricing in relation to other sources in the Australian market, and the impacts of an unfavourable Australian dollar.³² Mondi SVK does not address its corresponding normal value in any detail.
40. For the purposes of section 269TG(2)(a) of the Act, export prices and normal values must be considered together to determine whether future dumping may occur.
41. Relevantly, as identified in Table 1 above, despite Mondi SVK's claims, the verified data shows that dumping occurred in each quarter of the investigation period and on a weighted average basis. In addition, notwithstanding that Mondi SVK increased its export price towards the end of the investigation period, there was a corresponding increase in the normal value for the same period. As a result, the dumping margin for Mondi SVK was highest in the last quarter of the investigation period.
42. The Commissioner submits that the available evidence when considered in its entirety, does not support Mondi SVK's claims that it may not export like goods at dumped prices in the future. Based on the available evidence, the Commissioner considers that the correct and preferable decision is that Mondi SVK may export at dumped prices in the future, for the purposes of section 269TG(2)(a) of the Act.

Discrepancy between Figure 14 of Report 463 and verified export prices

43. In its application, Mondi SVK queried a discrepancy between the trend in the Slovakian export prices in Figure 14 of Report 463 and Mondi SVK's verified export prices. Upon review, the Commissioner agrees that there is a discrepancy between the Slovakian export prices in Figure 14 of Report 463 and Mondi SVK's verified export prices.³³
44. Figure 14 of Report 463 includes export prices for each of the subject countries for 2017 and 2018 in Australian dollars. Figure 14 of Report 463 is provided in the context of whether dumping may continue in the future. The Slovakian export prices

²⁹ Report 463, page 89.

³⁰ Mondi SVK application, pages 7-9.

³¹ Ibid page 9.

³² The accuracy of these claims have not been examined as part of this submission.

³³ Report 463, Appendix 6.

in Figure 14 of Report 463 originate from the Australian Border Force Import Database (ABF data) and not Mondi SVK's verified sales data.

45. ABF data was used in Figure 14 of Report 463 because there was limited participation from importers together with uncooperative exporters. In addition, the ABF data includes a column reporting export prices in Australian dollars. For consistency, the Commission's preference in Report 463 was to show trends in export prices from the subject countries using a single source of data and in the same currency, Australian dollars. The Commission considered that the ABF data was suitable for the purpose of showing export price trends in Figure 14 of Report 463.
46. In assessing Mondi SVK's application for review to the ADRP, the Commission identified an error in the ABF data which affects the export prices for Slovakia in Figure 14 of Report 463. The Commissioner considers this error to be isolated to this fourth quarter of 2017 and only affects Slovakia. The Commissioner did not identify any other potential errors in the remaining quarters. The error had the effect of overstating Slovakian export price increase in the fourth quarter of 2017.³⁴
47. The Commissioner submits that the error in Figure 14 of Report 463 does not detract from his view that Mondi SVK may export like goods at dumped prices in the future. Importantly, the Commissioner's assessment at paragraphs 25-29 (including Table 1) above was made using Mondi SVK's verified export prices.

Ground 2: Finding that Mondi SVK's dumped exports caused material injury to the Australian industry

48. Mondi SVK submitted in its application that the correct and preferable decision is that the Minister should not be satisfied that its exports of the like goods caused material injury to an Australian industry, as required by sections 269TG(1)(b) and (2)(b) of the Act for the Minister to publish a notice under sections 269TG(1) and (2) of the Act.³⁵
49. To support its submission, Mondi SVK make the following two particular claims:
- (a) The injury and causation finding was not based on facts;³⁶ and
 - (b) Mondi SVK's exports were not appropriately cumulated with other exports.³⁷
50. For the reasons explained below, the Commissioner disagrees with Mondi SVK's submissions. The Commissioner submits that the Minister made the correct or preferable decisions in finding that material injury to Australian industry producing like goods was caused because of like goods exported to Australia at dumped prices

³⁴ The Commissioner's response to question 3 of Confidential Appendix 1 includes a monthly summary of the verified export prices of Mondi SVK during 2017.

³⁵ Mondi SVK application, page 16

³⁶ Ibid page 13.

³⁷ Ibid page 14.

by the subject countries and consequently publishing notices under sections 269TG(1) and (2) of the Act.

(a) Injury and causation finding was based on facts

51. Mondi SVK submitted that the Commission's assessment of injury was not based on facts, because important facts that would need to be determined with respect to 2018 are missing or have been assumed.³⁸ Mondi SVK continued that the Commission's approach, therefore, failed to be based on facts, as required by section 269TAE(2AA) of the Act, and was instead based on assumptions and remote possibilities.

52. In particular, Mondi SVK claim that the Commission did not have evidence of the Australian industry's verified cost to make and sell (CTMS) data for 2018. Further in working out the Australian industry's 2018 CTMS, which formed part of the counterfactual assessment, Mondi SVK claim that the Commission:

(a) did not cater for differences in the CTMS of different types or grades of A4 copy paper; and

(b) did not adjust for differences in the volume mix of A4 copy paper that might have been sold in 2018 as compared to 2017.

53. The Commissioner disagrees with the above. As an overview of the Commission's counterfactual assessment and in direct response to Mondi SVK's claims, the Commissioner relies on the following:³⁹

(a) it was open for the Commission to undertake a counterfactual assessment informed by the circumstances of this case. The Act does not prescribe a mandatory or indicative methodology for conducting assessments of injury and causation. As stated in the Commission's *Dumping and Subsidy Manual*,⁴⁰ under a 'but for' (counterfactual) analytical method it may be possible to compare the current state of the industry to the state the industry would likely have been in if there had been no dumping;

(b) the methodology applied by the Commissioner must necessarily be informed by the particular circumstances of the case. In this case, the Commission considered that the counterfactual assessment was the most appropriate and was consistent with another of the Commission's publications, the *Economic Framework for Injury and Causation Analysis*⁴¹;

³⁸ Ibid page 14.

³⁹ The overview provided in this submission is for the purposes of the issues raised by Mondi SVK and Hankuk Paper and is for the purposes of this submission. A complete description of the Commission's counterfactual assessment and injury analysis is in Report 463.

⁴⁰ Anti-Dumping Commission *Dumping and Subsidy Manual* (November 2018), page 31, available at www.industry.gov.au.

⁴¹ Available at: https://www.industry.gov.au/sites/default/files/2019-05/acd_injury_and_causation_framework_overview.pdf

(c) The counterfactual assessment in this investigation was informed by evidence. Importantly, the Commission:

- i. in assessing the actual (factual) economic condition of the Australian industry relied on data from Australian Paper which included detailed production data, CTMS data and sales data for the period between 2014 and 2017. This data was verified by the Commission. Further detailed sales data and cost of goods sold (COGS) data was obtained from Australian Paper for the 2018 period. The 2018 data was reviewed for accuracy and was determined to be reliable for the purposes of the investigation as the data was consistent with other verified data and information provided by Australian Paper during Investigation 341 and this investigation;⁴²
- ii. accounted for differences in the CTMS of different grades of A4 copy paper,⁴³ in working out the Australian industry's 2018 CTMS. Namely the Commission accounted for differences in costs for private labels, mill brands and the recycled content of each of these private labels and mill brands;
- iii. accounted for sales volume mix differences between 2017 and 2018 in the price, revenue and cost analysis, drawing upon the detailed sales information obtained from the Australian industry for 2017 and 2018;
- iv. obtained detailed information regarding the negotiation processes and timelines of certain supply agreement negotiations from Australian Paper.⁴⁴ The Commission completed a detailed analysis of these price negotiations and timelines, which included reviewing relevant documentary evidence, submissions received and, in some cases, meeting with the relevant parties to those negotiations;
- v. in assessing the impact of import prices on price negotiations, the Commission focused its analysis on Australian Paper's three largest customers (Officeworks, OPANZ & Customer B) who accounted for [REDACTED] per cent of Australian Paper's sales. These supply agreements were an important aspect of the Commission's analysis by virtue of the significant value and volume of these customers' purchases from Australian Paper; and
- vi. the Commission extended its analysis to all other customers of Australian Paper. In relation to these other customers, the Commission established that market prices were either used as an input in price negotiations (customers X, Y & Z) or that price was a primary driver for sales. The Commission confirmed, as established in Investigation 341, that the like goods were price sensitive and that price was a key driver for sales. No submissions asserting otherwise were made. In addition, the Commission established that the price of imported like goods is a

⁴² Report 463, page 44.

⁴³ Ibid pages 57 and 59.

⁴⁴ Ibid pages 45, 54 and 58.

relevant consideration when Australian Paper enters into supply contracts and when it undertakes price reviews⁴⁵. The Commissioner is satisfied that placing emphasis on the impact of market prices on these negotiations for other customers was appropriate in the circumstances.

54. Mondi SVK notes that a finding of material injury at a time where a dumping finding is not found, but is in fact connected to an earlier period where dumping was found, should be strongly articulated.
55. The Commissioner submits that he is not precluded from assessing injury suffered by an Australian industry producing like goods in 2018, which was caused by dumping during an investigation period in 2017.
56. In support of this view, the Commissioner refers to *Pilkington (Australia) Ltd v Minister of State for Justice & Customs*.⁴⁶ In that case, the Federal Court found that while an assessment of past dumping was confined to the investigation period due to the language in section 269TACB of the Act, current and threatened dumping was not so confined.⁴⁷ In particular it was noted that section 269TACB(1) referred specifically to the investigation period, with respect to past dumping, but there was no such reference with respect to current or threatened dumping.
57. The Commissioner considers that this reasoning can be extended to the assessment of injury. That is, while the assessment of past injury appears confined by the language of section 269T(2AD) of the Act, the language of section 269TACD does not similarly confine the assessment of current or future injury.
58. Mondi SVK claims that Figure 13 of Report 463 appears to contradict the Commission's counterfactual assessment, on its belief that it shows Australian Paper's profit and unit profitability increasing in 2018 by a factor greater than the price injury estimated by the Commission.⁴⁸
59. Mondi SVK appear to have misunderstood the Commission's counterfactual assessment in relation to Figure 13 of Report 463. Whilst Figure 13 of Report 463 demonstrates, in part, an improvement in Australia Paper's actual (factual) profit and profitability in 2018, the counterfactual assessment identified that the factual prices were ■■■ per cent lower than otherwise would have been in 2018.⁴⁹ That is, Australian Paper's profit and profitability would have been even higher in 2018 in the absence of imports at dumped prices from the subject countries.
60. Table 2, below, which is drawn from Confidential Attachment 17 of Report 463 illustrates the differences between the actual profit/profitability improvement and the improvement under the counterfactual profit/profitability assessment. Table 2

⁴⁵ Ibid page 22

⁴⁶ [2002] FCA 770.

⁴⁷ Ibid [55].

⁴⁸ See Report 463, section 8.6.1 (Commission's CTMS analysis); Confidential Attachment 18 (Commission's cost analysis).

⁴⁹ Ibid page 75

demonstrates that there is no contradiction in the Commission's counterfactual assessment, as claimed by Mondi SVK.

	COUNTERFACTUAL - ALL GRADES & BRANDS		FACTUAL - ALL GRADES & BRANDS	
	WA Unit profit (AUD/MT) - CF	Profitability (%) - CF	WA Unit profit (AUD/MT) - F	Profitability (%) - F

Table 2: Australian Paper actual and counterfactual profit and profitability

61. For these reasons, the Commissioner considers that its assessment of injury was based on facts, not remote possibilities, as required by section 269TAE(2A) of the Act.

(b) Cumulation of Mondi SVK's exports of like goods with other exports to Australia

62. Mondi SVK submitted the conditions of competition between Mondi SVK's exports of like goods to Australia and exports of like goods from other subject countries were such that it was not appropriate to cumulate the effects of exports in assessing material injury to the Australian industry.⁵⁰

63. Mondi SVK claimed that it either did not undercut the Australian industry or participate in the Australian market for a significant portion of the two year period in which the Commission assessed injury (2017 and 2018).⁵¹

64. The Commissioner disagrees with Mondi SVK's claim. The Commission's assessment of the conditions of competition in Report 463 was broader than just price undercutting and whether particular exporters were present in the market at all times, the two things mentioned by Mondi SVK in its application.⁵²

65. The conditions of competition were summarised at section 7.3.3 of Report 463 in the following:

- that the exported goods from the subject countries were physically, functionally and commercially like and in direct competition with each other in the Australian market, and
- the domestically produced goods and the goods from the subject countries were physically, functionally and commercially like and in direct competition with Australian Paper's goods in the Australian primary market segments.⁵³

⁵⁰ Mondi SVK application, pages 14-16.

⁵¹ Ibid pages 15-16.

⁵² Ibid pages 15-16.

⁵³ Report 463, section 5.2.

- a reference was made to the Commission's findings in relation to the Australian market at Chapter 5 of Report 463. That chapter discusses relevant Australian market conditions which form part of the conditions of competition.⁵⁴

66. Among other things, this included that:

- regardless of the source, all A4 copy paper is physically alike in terms of the practical aspects, being white paper cut in rectangular sheets of required dimensions. Unless placed side by side, the average consumer would not identify the source. This supports that the A4 copy paper is highly substitutable and capable of the same end-use;
- supply is firstly made into the same primary market segments (retail, corporate stationery, resellers and original equipment manufacturers). It is then on-sold to the same downstream consumers, via the same supply channels. Some consumers that purchase imported like goods also purchased the Australian industry's like goods;
- the highly substitutable nature of the products has led to the recognition of various brand segments (manufacturer brands/premium labels, customer brands/private labels and generic brands/plain labels). The Commission considers that these brand segments are one way that highly substitutable goods have been differentiated and is indicative of a highly competitive market; and
- the Australian market is price sensitive with price being a key driver for sales. The presence of imports is used as an input into price negotiations involving the Australian industry.

67. The following specific facts are relevant to Mondi SVK:

- Mondi SVK exported to one primary importer in Australia, [REDACTED], [REDACTED].⁵⁵
- [REDACTED] supplied into the reseller market segment in which other importers from the subject countries and the Australian industry competed;⁵⁶
- [REDACTED] sourced like goods from multiple import sources during the investigation period, including Austria, Korea, and Slovakia; and⁵⁷
- Sales data from [REDACTED] identified that [REDACTED] purchased [REDACTED].⁵⁸

⁵⁴ Ibid chapter 5

⁵⁵ Ibid page 67. The Commissioner notes that Fuji Xerox provided some information to the Commission, but did not complete an importer questionnaire response.

⁵⁶ Ibid page 18.

⁵⁷ Ibid page 68. The investigation in relation to Austria was terminated.

⁵⁸ [REDACTED] [confidential source].

68. Together with the Commission's observations about the Australian market in Chapter 5 of Report 463, the Commissioner considers that the above facts support his view that it was appropriate to consider the cumulative effect of exportations from the subject countries, having regard to the condition of competition between those goods and like goods that were domestically produced, as required by section 269TAE(2C)(e) of the Act.
69. The Commissioner disagrees with Mondi SVK's claims that price undercutting in only two quarters of 2017 supports a view that Mondi SVK and the Australian industry don't compete and that Mondi SVK's exports should not be cumulated with other exports.
70. The Commissioner considers that price undercutting is but one of many factors that may be taken into account in assessing the conditions of competition. It is noted that the Act contains no specific mandatory or indicative factors that must be present for the Minister to be satisfied that cumulation is appropriate in having regard to the conditions of competition. An absence of price undercutting for a particular period in isolation, is not supportive of a conclusion that there was no competition between imported and domestically produced like goods.
71. As outlined above in paragraph 46, the Commission identified an error in the ABF data affecting Slovakia export prices for the fourth quarter of 2017. The ABF data was also used as an input into the price undercutting analysis in Report 463.
72. Figure 2, below, corrects the error and illustrates the price undercutting using the verified export prices for Mondi SVK as an input. Figure 2 shows that there was price undercutting, in relation to Slovakia for two quarters of 2017. For the other two quarters of 2017, Slovakian prices were very similar to the Australian industry's prices, which supports that Mondi SVK competes with the Australian industry.
73. The Commissioner considers that the prices and trends for the various supply sources in the market are broadly consistent, such that it is appropriate to cumulate the effects of exports from the subject countries.

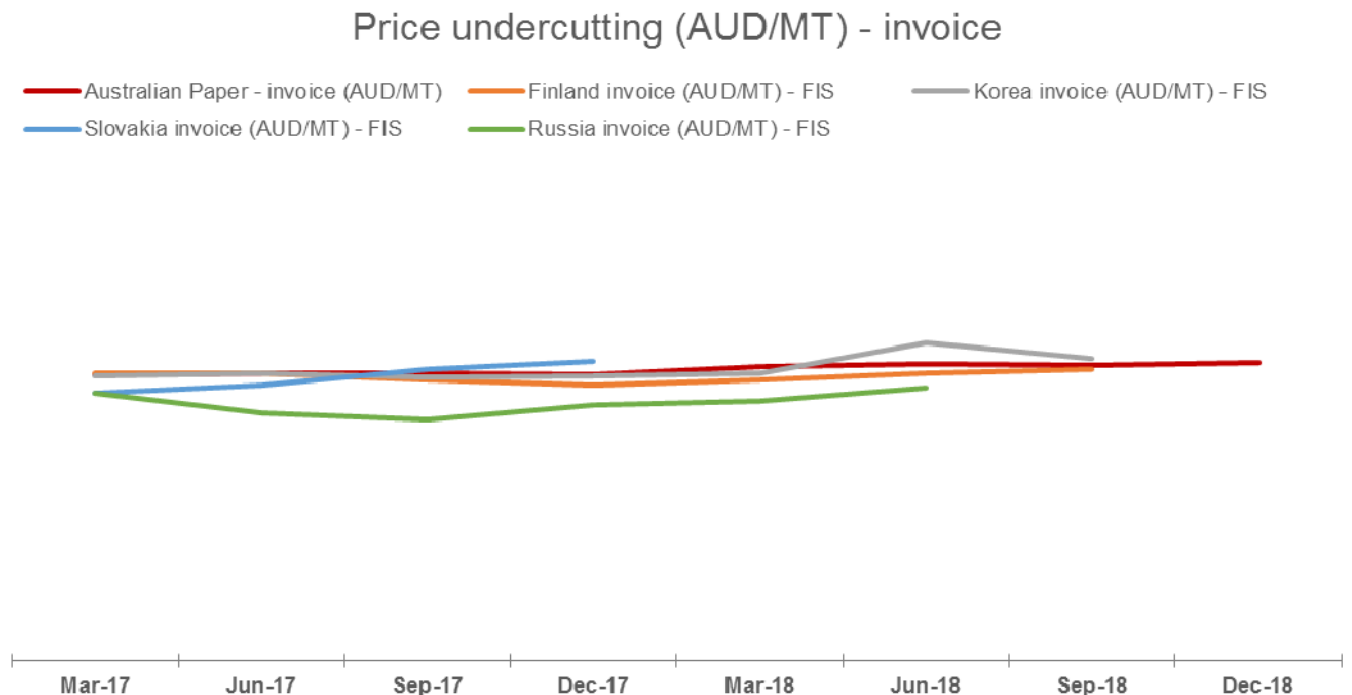


Figure 2: Revised pricing in the Australian market using Mondi SVK's verified export prices

74. Whilst Mondi SVK ceased exporting to Australia in the fourth quarter 2017 and did not export in 2018, the Commissioner does not consider that this precludes cumulating the effects of exports of like goods from Mondi SVK with other exports from the subject countries, under section 269TAE(2C) of the Act.
75. In addition, the Commissioner does not consider that Mondi SVK's absence of sales in 2018 impacted the conditions of competition that generally exist in the Australian market.
76. Lastly, the Commissioner draws the ADRP's attention to the Commissioner's reasoning and satisfaction of the remaining criteria under section 269TAE(2C) of the Act, which has not been disputed by Mondi SVK:
- (a) Each of the exportations considered by the Commission were subject to Investigation 463;⁵⁹
 - (b) All of the investigations of those exportations resulted from applications under section 269TB of the Act lodged on the same day;⁶⁰
 - (c) The dumping margin worked out under section 269TACB of the Act for each exporter was at least 2%;⁶¹ and

⁵⁹ Section 269TAE(2C)(a) of the Act; See Report 463, section 2.1.

⁶⁰ Section 269TAE(2C)(b)(i) of the Act; Report 463, section 2.1.

⁶¹ Section 269TAE(2C)(c) of the Act; See Report 463, section 7.3.1.

- (d) The volume of the goods the subject of the application that have been, or may be, exported to Australian over a reasonable examination period, which in this case the Commission determined to be the investigation period, from the country of export and dumped is not taken to be negligible.⁶²

77. For these reasons, the Commissioner submits that it is the preferable decision for the Minister to consider the cumulative effect of exportations of goods from different countries of export, including the export of like goods by Mondi's SVK.

Application of Review submitted by Hankuk Paper

Ground 1: Finding that Hankuk Paper's dumped exports caused material injury to Australian industry

78. In its application for review, Hankuk Paper submitted that the correct and preferable decision is that the Minister cannot be satisfied that there was a basis to impose measures in relation to exports of like goods from Korea, pursuant to section 269TG(2) of the Act. It submits that Australian Paper's prices were not lower in 2018 than they otherwise would have been because of Hankuk Paper's export of like goods to Australia in 2017.⁶³

79. In support of its submission, Hankuk Paper claims including the following:

- (a) Hankuk Paper was not a party to the negotiations through which Australian Paper's supply agreements were set;⁶⁴
- (b) Hankuk Paper has no insight into why Australian Paper accepted the terms of these agreements and these contracts were entered into prior to 2017 when the imports from the countries subject of this investigation were negligible; and⁶⁵
- (c) there is no evidence of direct competition between Hankuk Paper and Australian Paper.⁶⁶

80. The Commissioner disagrees with Hankuk Paper's submissions.

81. Section 269TAE(2C) of the Act states that the Minister should consider the cumulative effects of the exportation of goods to Australia where those exportations are subject to the investigation, the exporter's dumping margin is not *de minimis*, the volume from each country is not negligible and it is appropriate to do so having regard to the conditions of competition between the exported goods, and the exported goods and the Australian industry's like goods.

82. The Commissioner is satisfied that the facts supported an assessment of the cumulative effects of the exports from the subject countries.⁶⁷ In particular, the Commissioner found that Hankuk Paper's dumping margin was greater than two per

⁶² Section 269TAE(2C)(d) of the Act; See Report 463, section 7.3.2.

⁶³ Hankuk Paper application, page 6.

⁶⁴ Ibid page 4.

⁶⁵ Ibid page 4.

⁶⁶ Ibid page 5.

⁶⁷ Report 463, section 7.3.

cent, the volume of dumped imports from each of the subject countries was not negligible and greater than three per cent, and the conditions of competition were such that it was appropriate to cumulate the effects of those exportations.

83. Having cumulated the effects of exportations from the subject countries, the Minister is not required to find material injury caused by exports from Korea, or specifically in relation to Hankuk Paper, alone. Notwithstanding, the Commissioner explains by reference to the relevant evidence, how Hankuk Paper's exports contributed to the Commission's cumulative assessment of the effects from the subject countries, below.
84. The Commissioner accepts that Hankuk Paper was not a party to Australian Paper's supply negotiations and that the Commission had no evidence of Hankuk Paper directly competing with Australian Paper on tenders or supply agreements to supply its major customers. However, this is expected and does not support that there is no competition between Hankuk Paper and the Australian industry.
85. Due to the conditions of competition in the Australian market, exporters do not necessarily compete directly in supply contracts involving the Australian industry. The competition between the Australian industry and exporters such as Hankuk Paper occurs further down the supply chain. It is necessary for the Commission to analyse competition at the level at which it exists. In relation to Hankuk Paper, competition with Australian Paper predominantly occurs in the reseller and retailer segments.
86. Australian Paper directly competed with other suppliers in the reseller and retail segments into which Hankuk Paper's exports were supplied. Specifically, the Commissioner made the following findings in Report 463, which are relevant to the conditions of competition and have not been disputed by Hankuk Paper:
- (a) Central National Australia Pty Ltd (Central National) and Hankuk Paper partnered in 2016 to establish the Australian market as a viable export market;⁶⁸
 - (b) Central National provided data and evidence with regards to its role in the importation of A4 copy paper, noting that it acts as an intermediary between the exporter (Hankuk Paper) and importer (Fuji Xerox). Therefore, any A4 copy paper sales in the Australian market are between Fuji Xerox and its customers and not between Central National and Fuji Xerox;⁶⁹
 - (c) Fuji Xerox operated in the reseller market segment; and⁷⁰
 - (d) Australian Paper stated in its application that copy paper supply channels were concentrated through a limited number of national resellers and retailers. Australian Paper provided information (in its application and at the verification visit) on proportions of the channels it supplied and its understanding of the key competitors operating within each of the key supply

⁶⁸ Ibid section 9.3.2.2

⁶⁹ Ibid section 8.8.2.

⁷⁰ Ibid section 5.2.1.

channels. Australian Paper further claimed that such concentration "...places the balance of power firmly in the hands of the reseller".⁷¹

87. Further, in Report 463 the Commission highlighted that, during price negotiations between Australian Paper and Officeworks, price lists from a reseller sourcing like goods from Hankuk Paper were used to demonstrate the lower prices that Officeworks could achieve by switching to an import source.⁷² Section 8.5.2 of Report 463 provides an explanation of these price negotiations and the referenced import price list. This evidence forms part of the Commission's counterfactual assessment.
88. Hankuk Paper submit that the conclusions reached by the Commission overstate the prevalence of import prices in price review mechanisms in Australian Paper's supply agreements.⁷³
89. The Commission disagrees and refers to price negotiations for Australian Paper's largest customers (Officeworks, OPANZ and Customer B). The Commission completed a detailed analysis of these price negotiations, which included reviewing relevant documents, submissions received and, in some cases, meeting with the relevant parties to these negotiations. Ultimately, the Commission found that the evidence supported that, of the three largest customers, Officeworks's price negotiations were impacted by dumped import prices.
90. In relation to Australian Paper's other two largest customers, the Commission was not satisfied that the evidence sufficiently supported the conclusion that these negotiations were materially impacted by dumped import prices. This confirms the Commission did not overstate the prevalence of import prices in price review mechanisms.
91. Lastly, Hankuk Paper submitted that the Commission may not have all pertinent and relevant information that would presumably be available to Australian Paper.⁷⁴ The Commissioner disagrees, noting that whilst the Minister may not have all relevant information, this does not preclude her from making findings based on the available evidence.
92. For these reasons, the Commissioner submits that the Minister did not err in making her finding and that the cumulative effect of exports of like goods from the subject countries (including Hankuk Paper) at dumped prices caused material injury to Australian industry producing like goods, pursuant to section 269TG(2)(b) of the Act. As a result, it was the correct and preferable decision for the Minister to publish a notice under section 269TG(2) of the Act with respect to exports of like goods from Korea.

⁷¹ Ibid section 5.2.1; EPR 463, document 1.

⁷² Ibid, section 8.5.2.

⁷³ Hankuk Paper application, pages 4-5.

⁷⁴ Ibid, page 5.

Ground 2: Evidence supporting causation between export of like goods at dumped prices and material injury suffered by Australian industry producing like goods

93. In its application, Hankuk Paper submitted that the correct and preferable decision was for the Minister not to impose measures under section 269TG(2) of the Act because the particulars of evidence disclosed in Report 463 did not factually support a finding that Australian Paper was materially injured by the subject countries.⁷⁵
94. The Commissioner disagrees with Hankuk Paper's claims in this regard.
95. In response, reference is firstly made to paragraph 53 of this submission which outlines the evidence used in the counterfactual assessment. As previously mentioned, the Commission appropriately focused its assessment of the impact of import prices on Australian Paper's three largest customers given the significant value and volume of these customer's purchases.⁷⁶ The Commission established that Officeworks's price negotiations were impacted by the import prices and these sales accounted for ■ per cent of the 35 per cent of Australian Paper's sales found to have been suppressed by the dumped prices.⁷⁷
96. In relation to other customers of Australian Paper, the Commission, as discussed in paragraph 53 of this submission, either established that market prices were used as an input for the negotiation of prices (customers X, Y & Z) or that price was primary a driver for sales.⁷⁸ In addition, the Commission established that the price of imported like goods is a relevant consideration when Australian Paper enters into supply contracts and when it undertakes price reviews⁷⁹.
97. For these reasons, and on the basis of the facts and evidence before the Commission during the investigation, the Commissioner submits that the Minister made the correct or preferable decision by finding that Australian industry was materially injured because of dumped exports from the subject countries, and consequently publishing a notice under section 269TG(2) of Act.

Ground 3: Finding that injury suffered by the Australian industry producing like goods was material

98. In its application, Hankuk Paper submitted that it could not be factually determined on the basis of the particulars of evidence disclosed in Report 463 that the Australian industry was materially injured because of the exports of like goods at dumped prices by the subject countries. In its view, the correct and preferable decision was to not impose measures pursuant to section 269TG(2) of the Act.
99. The Commissioner disagrees with Hankuk Paper's submission. Report 463 established that the 35 per cent of Australian Paper's sales were suppressed by the dumped imports. This caused Australian Paper's profitability to be approximately

⁷⁵ Report 463, page 10.

⁷⁶ Ibid section 8.5.

⁷⁷ Ibid Confidential Attachment 18.

⁷⁸ Ibid page 103.

⁷⁹ Ibid page 22

three per cent lower in 2018 than it otherwise would have been.⁸⁰ The Commission considers this profit and profitability shortfall, which is in the millions, was material to Australian Paper⁸¹. The Commissioner considers that the materiality of this shortfall should be considered in the context of it preventing or delaying Australian Paper's recovery from the injurious effects of dumped imports in 2015, as established in Investigation 341⁸².

100. Hankuk Paper states that the Commission's analysis speculates about a different outcome based on certain value judgements about what Australian Paper should have received and that this analysis falls short of the requirements of section 269TAE(2AA) of the Act.⁸³
101. The Commissioner disagrees with Hankuk Paper's submission. Reference is made to paragraph 53 of this submission which outlines the Commission's approach to the counterfactual assessment in this investigation.
102. Hankuk Paper also submitted the following specific claims about the Commission's counterfactual assessment, which the Commissioner has subsequently addressed:

(a) A weighted import price to establish the lowest price Australian Paper could achieve in the absence of dumping is incorrect;

The Commission disagrees with this claim. Before determining to apply a weighted average import price in the counterfactual assessment, the Commission analysed all import prices during the investigation period and determined that using a weighted price would be appropriate in the circumstances, particularly where weighted average prices were reasonably consistent on a quarterly basis.

(b) It is doubtful that, given the lack of information about Australian Paper's supply agreements, that all contract limitations have been observed by the Commission;⁸⁴

The price increases achieved by Australian Paper under the OPANZ supply agreement were restricted by a price limiting clause under the price review mechanism and not by dumped imports.⁸⁵ As discussed in Report 463, the Commission did not include OPANZ's sales in the 35 per cent of sales found to have been suppressed by dumped exports.⁸⁶

The Commissioner refutes Hankuk Paper's claim that the Commission failed to consider price limitation clauses in the other contracts analysed. Price limitation clauses were not applicable to the Officeworks, Client B, Client X, Client Y and

⁸⁰ Ibid, section 8.11. The report further identifies that this profit reduction was "even with consideration of Australian Paper's market share strategy and its distribution costs"

⁸¹ Ibid page 80

⁸² Ibid pages 43, 44 and 59

⁸³ Hankuk Paper application, page 12.

⁸⁴ Ibid page 5.

⁸⁵ Report 463, page 50.

⁸⁶ Ibid Confidential Attachment 18 - Injury factual-counterfactual model.

Client Z price negotiations given these negotiations concerned new contracts, not price reviews under existing contracts.

The Commissioner further notes that Australian Paper's supply agreements vary significantly and it is incorrect for Hankuk Paper to imply that all supply agreements contain price increase limitation clauses.

- (c) Adding the per cent of import price suppression to the reflex price was incorrect;⁸⁷

The Commissioner submits that Hankuk Paper has misunderstood the Commission's approach. Having considered the relevant evidence in relation to Officeworks' negotiations and the impact on the price premium that Australian Paper could achieve for Reflex branded paper, the Commissioner considers that it correctly applied a ■■■ per cent price suppression factor to the Reflex pricing in its counterfactual assessment.⁸⁸ This ■■■ per cent price suppression factor is particular to the Reflex brand and is less than the weighted average price suppression factor applied otherwise.⁸⁹ The ■■■ per cent suppression factor reflects the evidenced reduced premium that Australian Paper could achieve in the negotiations with Officeworks for its Reflex brand.

- (d) The counterfactual assessment, which is based on the assumption that dumping is the cause of all instances where factual prices are less than counterfactual prices is incorrect⁹⁰

The counterfactual assessment did not assume that dumping caused injury in all instances where the factual prices were demonstrated to be less than the counterfactual prices. In the contrary, the Commission's counterfactual assessment found no injury from two of Australian Paper's primary customers based on the available evidence.

- (e) The counterfactual assessment imposes a factually unsound theoretical price floor and assumes that all prices above or below are so because of dumping, which is a purely speculative finding⁹¹

The Commissioner submits that Hankuk Paper has misunderstood how the counterfactual assessment was applied. The counterfactual assessment sought to assess Australian Paper's improvement in pricing rather than assessing whether the pricing was above or below a floor price. This involved an assessment of profitability and relevant CTMS to establish a recovered unit price which then enabled the Commission to assess whether the export of like goods to Australia at dumped prices materially injured Australian industry in recovering from the injury it had previously suffered from dumping as evidenced in Investigation 341.

⁸⁷ Hankuk application, page 13.

⁸⁸ Report 463, Confidential Attachment 18 - Injury factual-counterfactual model.

⁸⁹ Ibid Confidential Attachment 18 - Injury factual-counterfactual model..

⁹⁰ Hankuk Paper application, pages 13-14.

⁹¹ Ibid page 14.

103. For these reasons, and on the basis of the facts and evidence available, the Commissioner submits that the Minister made the correct or preferable decision by finding that Australian industry was materially injured because of dumped exports from the subject countries, and consequently publishing a notice under section 269TG(2) of Act.

Appendix 1 - Anti-Dumping Commission written response to questions discussed at a conference on 4 June 2019

QUESTIONS

- 1. At pages 4 to 6 of its Application to the Review Panel, Mondi takes issue with 11 findings the Commission relied upon in support for its conclusion that “Mondi is likely to resume dumping the goods into Australia in the future.” Can the Commission respond to each of Mondi’s submissions with respect to each of the 11 findings?**

Please refer to paragraphs 32 to 36 and Appendix 2 of the Commissioner’s submission.

- 2. At page 7 of the Application, Mondi suggests that the Commission has applied the wrong test regarding future imports and the justification for measures to guard against such imports. Mondi says, “future participation in the Australian market is not the point” and “finding that there could be exports in the future does not go to the proposition of whether there may be dumping of goods by Mondi in the future.” Please comment on Mondi’s argument.**

Please refer to paragraphs 9 to 42 of the Commissioner’s submission.

- 3. Please provide details of Mondi’s export volumes and unit prices from 2014 through to 2018. I am particularly interested in the volume comparison between exports in the first and second halves of 2017. Does the Commission agree that Mondi increased its selling prices in Quarter two and Quarter three of 2017 about ceased exporting to Australia in Quarter four of 2017?**

The Commission has prepared Table 1, below, which shows export volumes based on both Mondi SVK’s sales invoice dates and import arrival dates.

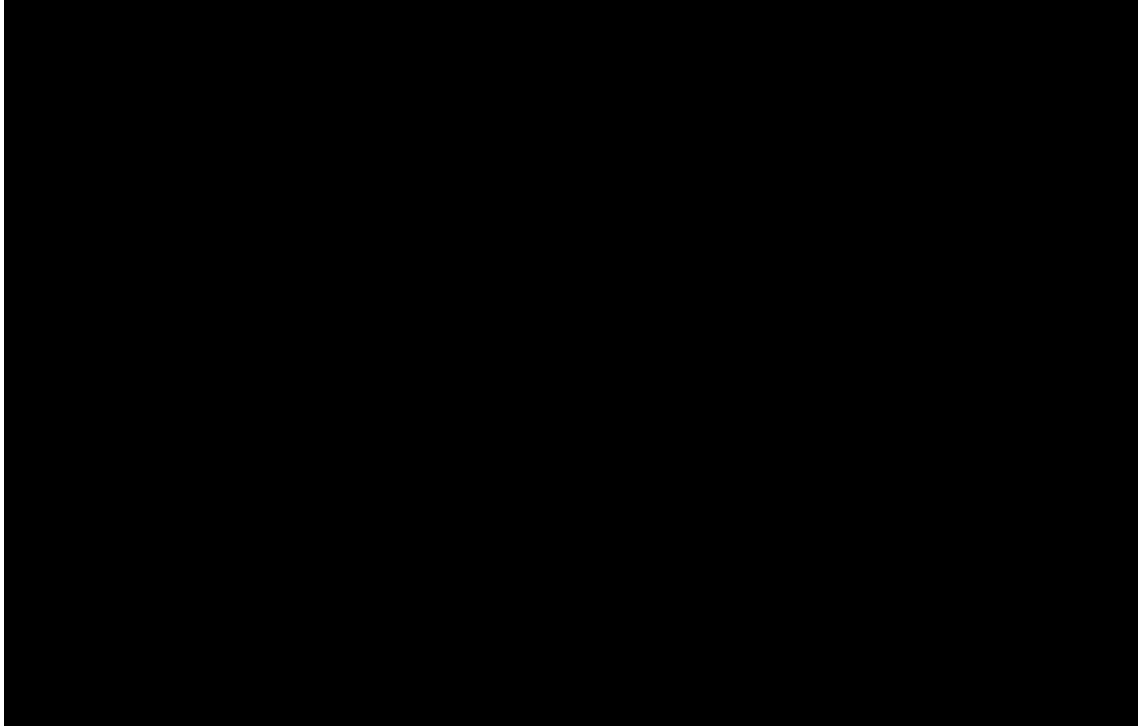
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Table 1: Mondi SVK Export Volumes (MT)

Table 2, below, shows Slovakian FOB export prices for 2014 and 2016. The export prices are based on data from the ABF import database (ABF data).

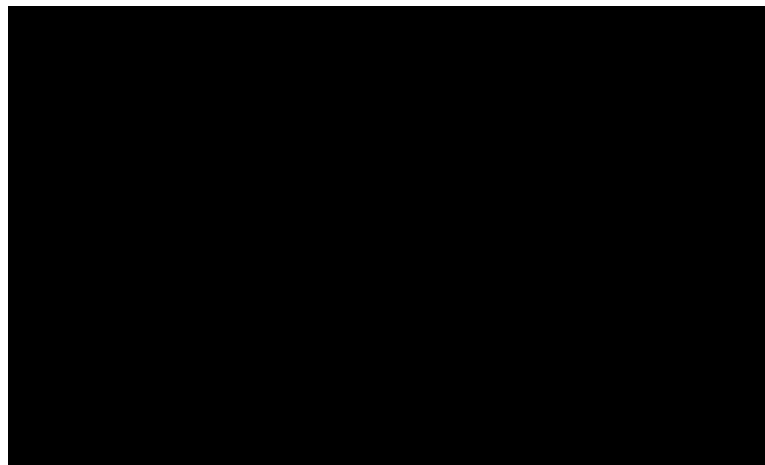
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Table 2: 2014 and 2016 FOB Export Prices (AUD FOB)

Table 3, below, shows Mondi SVK's FOB export prices for 2017. These prices are based on the verified export sales data from Mondi SVK, converted to a FOB Australian dollar value. These export prices have been split between the two models exported to Australia.

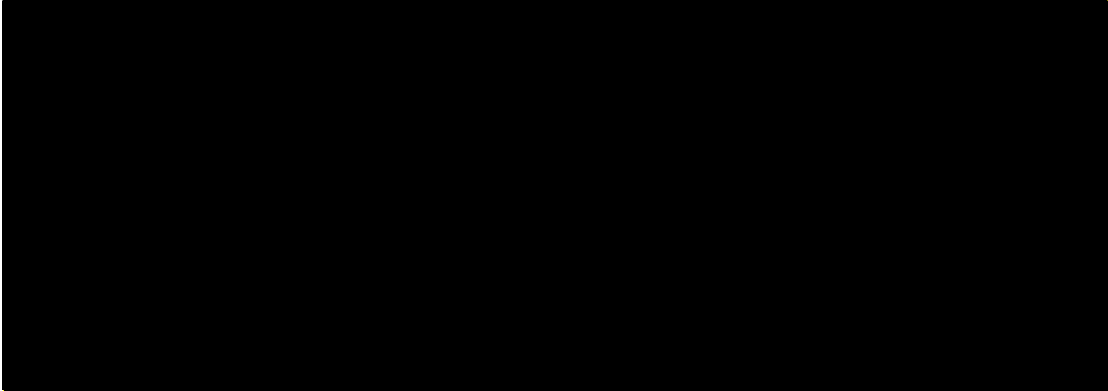
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Table 3: 2017 Mondi SVK FOB Export Prices (AUD FOB)

The Commission agrees that Mondi SVK's export prices increased in the second half of 2017. The export price increase when expressed in the original invoice currency (Euros) is less than increase when expressed in Australian dollars. This variation is due to fluctuations in the Australian dollar. Table 4, below, shows the export prices in Table 3, above, in Euros.

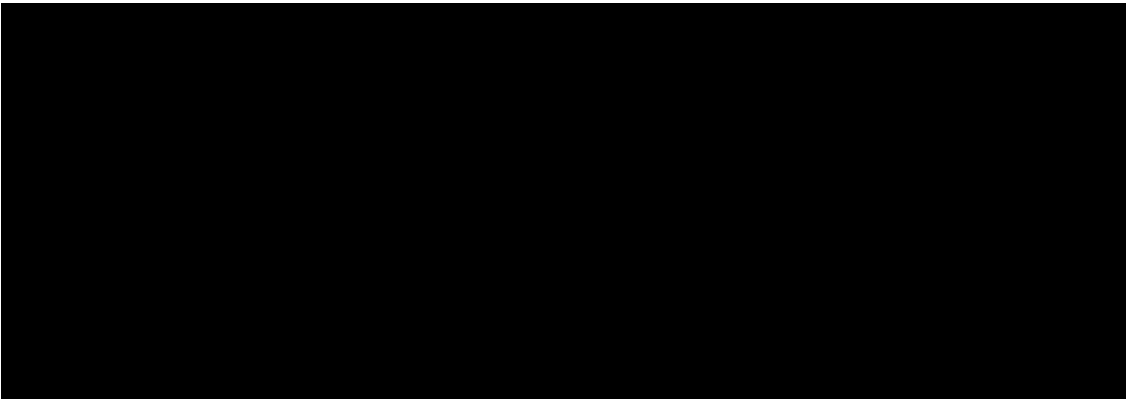
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Table 4: 2017 Mondi SVK FOB Export Prices (EURO FOB)

4. Does the Commission agree that Mondi was regarded as a relatively high-priced supplier by the market? Did the market regard Mondi as a premium priced supplier?

The Commissioner understands that Mondi SVK did not export a 'premium' priced model (brand/label) of like goods to Australia. However, other mills within the Mondi global group outside Slovakia exported a 'premium' priced model (brand/label) of like goods to Australia.

Please refer to paragraph 72 and 73 and Figure 2 of the Commissioner's submission. This provides a description of Mondi SVK's Australian market prices in comparison to Australian Paper and imports from the subject countries during 2017.

5. Does the Commission agree with the statement at page 7 of Mondi's Application to the Review Panel to the effect that Mondi sought to increase its selling prices at a time when other exporter's prices were either reducing or only increasing marginally?

As discussed in the Commissioner's submission at paragraph 46, the Commission identified an error in the ABF data which affects the export prices for Slovakia. Once corrected, the degree of the price change in the fourth quarter for Mondi SVK is significantly less than the price change assessed in Report 463.

Figure 1, below, illustrates the recalculated export price based on verified export prices for Mondi SVK and the other import sources. The Commission considers that this does not support Mondi SVK's claim.

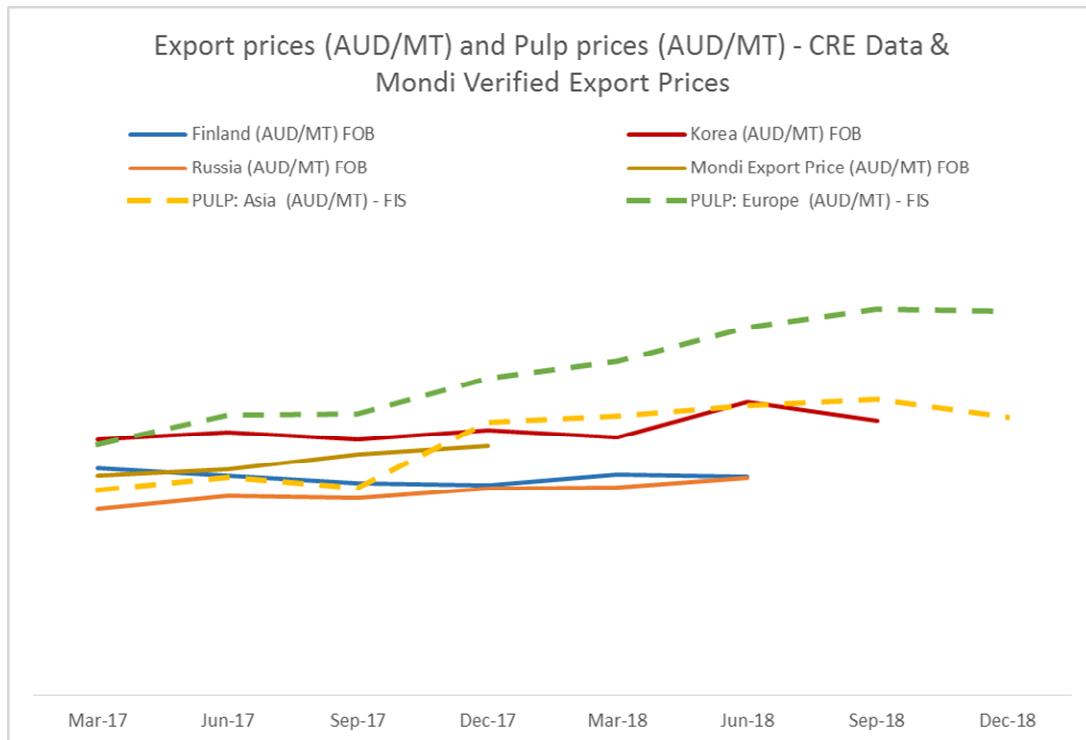


Figure 1: FOB Export Price Comparison

6. Please comment on Mondi's criticisms at page 8 of its Application regarding the accuracy of Figure 14 of REP 463.

Please refer to paragraphs 43 to 47 of the Commissioner's submission which discusses the accuracy of Figure 14 of Report 463.

7. In the third paragraph, on page 89 of REP 463, the Commission refers to Mondi's "sudden price increase in 2017" and its acceptance of "the

previous 2017 prices as indicative of export prices for Mondi.” Please elaborate on the Commission’s reasoning in this regard.

Please refer to Appendix 2 of the Commissioner’s submission.

- 8. At page 89 of REP 463, the Commission states Mondi’s “Australian export price in 2014 was higher than its 2017 export price, at a time when pulp prices were considerably lower in 2014 than in 2017.” Did the Commission have domestic selling price data or CTMS data going back to 2014 for comparison with export prices in that year?**

The Commission did not have domestic selling price data or CTMS data for 2014 in relation to Mondi SVK. The 2014 export price was based on ABF data. The pulp prices were based on independent pulp pricing data obtained from Fastmarkets RISI.

- 9. From Figure 18, at page 90 of REP 463, it appears that that pulp prices increased in 2017 at about the same time as Mondi sought to increase its export prices. Please comment on this observation.**

This observation is correct, Mondi SVK’s export prices increased during a period when pulp prices were increasing. Refer to paragraphs 43 to 47 of the Commissioner’s submission.

Paragraph 46 of the Commissioner’s submission explains that in assessing Mondi SVK’s application for review to the ADRP, the Commissioner identified an error in the ABF data which affected the export prices and volumes for Slovakia in the fourth quarter of 2017. As result of this error, Slovakian prices in the fourth quarter of 2017 are overstated in Figures 10, 14 and 17 of Report 463.

- 10. At page 37 of REP 463, the Commission states it found Mondi’s domestic selling prices suitable for use in determining normal value under section 269TAC(1), such sales being profitable. Does the Commission agree regarding the profitability of those sales?**

Yes, in determining Mondi SVK’s normal value, the Commission found that all of Mondi SVK’s domestic sales of like goods during 2017 were profitable. The weighted average profit margin on these sales (sales in the ordinary course of trade) was ■ per cent. This information is contained in Confidential Appendix 3 of Mondi SVK’s verification report.

- 11. Mondi’s second Ground for review the challenges that the Commission’s finding that Mondi’s exports were a “causative connection” with Australian Paper’s material injury. It is recalled that although the Commission found that exports Slovenia, and other countries, had been dumped in 2017 they**

did not cause material injury to the Australian industry in 2017 but did so in 2018. Accepting that Mondi's exports to Australia in 2017 had been dumped, is it the Commission's position that such exports contributed to the material injury found by the Commission in 2018 due to the exports' influence upon supply contracts negotiated in 2017 for the supply of A4 copy paper throughout 2018? (Refer REP 463 at page 75].

Yes, the Commission's assessment was that customer prices agreed in 2017 for supply in 2018 were influenced by the dumped exports from the subject countries in 2017. The dumped goods exported in 2017 caused price suppression injury to the Australian industry in 2018. This injury was expressed was such that the factual prices of Australian Paper's sales of like goods were two per cent lower than otherwise would have been in 2018. This injury affected approximately 35 per cent of Australian Paper's 2018 business by volume.

It is recalled that, in determining whether material injury was caused to the Australian industry for like goods, the cumulative effect of exportations from the subject countries were taken into account, pursuant to section 269TAE(2C) of the Act.

- 12. Mondi takes issue with the Commission's analysis at Figure 13, at page 79 of REP 463, and suggests that contrary to the Commission's conclusions that Figure indicates Australian Paper's profit and unit profitability increase between 2017 and 2018. Please comment on Mondi's claim in this regard.**

Please refer to paragraphs 58 to 60 and Table 2 of the Commissioner's submission.

- 13. At page 13 of its Application, Mondi is critical of the Commission's counterfactual analysis. Mondi alleges although the Commission found "lower prices and an assumption of reduced revenue" the Commission did not "consider what the effects of those things have been on the financial condition of the industry." Please comment on Mondi's claim in this regard.**

For the purposes of the counterfactual analysis, the Commission assessed the Australia's industry's economic performance in 2017 for each of the claimed grounds of injury by Australian Paper and other economic factors not claimed as injury by Australian Paper. These other factors included capacity, capacity utilisation, employment, wages and cash flow.

The Commission assessed the Australian industry's economic performance in relation to profitability, profit, revenue, volume, price and return on investment effects in 2018.

PUBLIC RECORD

The Commissioner considers this analysis was sufficient for the purposes of section 269TAE of the Act and was appropriate in the circumstances.

In coming to this view, the Commissioner notes that consideration of the economic factors listed in section 269TAE(3) of the Act by the Minister is discretionary and should be suited to the particular facts of the investigation. This discretion is demonstrated by the use of the word 'may' in section 269TAE(1) of the Act.

- 14. At page 14 of its Application, Mondi is critical of the Commission's determination of Australian Paper's 2018 CTMS and says the method "does not cater for differences in the CTMS of the different types or grades of A4 paper." However, at page 58 of REP 463, the Commission refers to collecting additional data subsequent to the SCF which appears to address Mondi's criticism. Please comment.**

The additional data referenced as being collected by the Commission on page 58 of Report 463, subsequent to the publication of the Statement of Essential Facts, was Australian Paper's 2018 sales data and 2018 cost of goods information (COGS).

Please also refer to subparagraphs 53 (c)(ii) and (iii) of the Commissioner's submission which discusses how the Commission accounted for differences in the CTMS of the different types or grades of the like goods.

- 15. At page 58 of REP 463 there are several references to "Table 11 above". Should this be a reference to Figure 11 at page 74 of the REP 463?**

The reference to Table 11 is a typographical error in Report 463. The correct reference is to Table 9, which is contained in pages 56 to 57 of Report 463.

- 16. At footnote 20, at page 11 of its Application, Mondi refers to its last exports to Australia occurring on 31 July and 12 October 2017, yet at page 15 it refers to exports occurring in October and November 2017. Can the Commission confirm the dates for the export of the two relevant consignments?**

The Commission understands that the reference to the 31 July and 12 October 2017 refer to the invoice dates or date of sale in Mondi SVK's records. The ABF data indicates that the recorded arrival dates for the last shipments from Mondi SVK were on 20 August, 21 August and 13 November 2017.

- 17. At page 75 of REP 463, the Commission found prices were suppressed for approximately 7% of Australian Paper's business by volume in 2017 and**

caused the weighted average unit price to be lower than it should have been by 0.5% in 2017. On what basis did the Commission conclude that price suppression, amounting to 0.5%, was material or otherwise contributed to the Australian industry's material injury?

The Commissioner's assessment found that the export of goods at dumped prices from the subject countries in 2017 caused Australian Paper's price suppression injury in the amount of prices to be 0.5 per cent. This injury affected 7 per cent of Australian Paper's sales by volume in 2017. Consequently, the Commission found that the injury caused in 2017 by the dumped exports was not material.

18. Can the Commission confirm the price suppression of 2% in 2018, identified through its counterfactual methodology, contributed to Australian Paper's material injury in 2018?

Yes, the Commission's assessment was that customer prices agreed in 2017 for supply in 2018 were influenced by the import prices from the subject countries in 2017. The 2017 dumped import prices had the effect of suppressing prices, such that the factual prices were 2 per cent lower than otherwise would have been in 2018 and affected approximately 35 per cent of Australian Paper's 2018 business by volume.

19. At page 13 of Mondi's Application, it alleges that having identified lower prices, and having assumed a consequential reduction in revenue, the Commission did not go on to analyse these effects on the overall financial condition of Australian Paper. Please comment on this claim.

As discussed in response to question 13, the Commission considers that its assessment was sufficient for the purposes of section 269TAE of the Act and was appropriate in the circumstances.

20. At page 14 of Mondi's Application, it alleges the Commission's methodology to determine Australian Paper's CTMS for 2018 did not have regard to differences in the CTMS of different types or grades of paper, nor the varying volumes sold. Please comment on this claim.

Please refer to subparagraphs 53 (c)(ii) and (iii) of the Commissioner's submission.

21. Further, Mondi alleges Figure 13 is inconsistent with the Commission's finding of 2% price suppression, as the Figure suggests Australian Paper's unit profit and unit profitability appears to have been more than the identified price reduction. Please comment on Mondi's claim in this regard.

Please refer to paragraphs 58 to 60 and Table 2 of the Commissioner's submission which discusses Figure 13 of Report 463. Table 2 includes the actual figures used to create Figure 13 of Report 463 and illustrates the relative two per cent change.

- 22. At page 15 of Mondi's Application, it notes REP 463 concludes that Mondi undercut the Australian industry in the first three Quarters of the investigation period. Mondi questions this conclusion as its last two exports to Australia were in July and October 2017 and these were at higher prices due to their small volume. Please comment on Mondi's claim in this regard.**

Please refer to paragraphs 70 to 73 and Figure 2 of the Commissioner's submission which discusses Figure 10 of Report 463. Figure 2 includes the corrected figures used to create Figure 10 of Report 463.

- 23. Hankuk at page 4 of its Application, alleges that Confidential Appendix 3 to REP 463 states that all the supply agreements/contracts referred to "were entered into prior to 2017, when exports from the subject countries it was said to be 'negligible'". Please comment on this claim.**

The Commissioner disagrees. The negotiations relating to supply agreements for Officeworks, Client B, Client X, Client Y and Client Z were for new contracts entered into in 2017. The negotiations in respect of OPANZ related to a price review under an existing supply agreement contract and was entered into prior to 2017.

Please also refer to paragraph 102 of the Commissioner's submission.

- 24. Does the Commission accept that under the various supply agreements/contracts prices can be reviewed having regard to a number of factors, which are not limited to price?**

Yes. Australian Paper's supply agreements may vary significantly depending on the customer and, as a consequence, they may or may not include price review clauses.

Please refer to paragraph 102 of the Commissioner's submission.

- 25. Hankuk infers that the Commission assumed that price was the determining factor in any review mechanism. Does the Commission agree with this inference?**

The Commissioner does not agree. Please refer to paragraphs 53, 88 to 90 and 102 of the Commissioner's submission.

26. To demonstrate its point that import prices were but one factor in the agreed pricing methodologies, Hankuk, at pages 7 and 8 of its Application, refers to Australian Paper's pricing negotiations with three customers and notes, REP 463 "sites one instance where import prices were an input in a previously agreed pricing mechanism, one instance where prices were varied on the basis of cost increases... and one instance where no evidence or information has been provided that prices were set with regard to imports." Additionally, Hankuk's makes reference to what it characterizes as an "undisclosed" alternate supply and claims:

- the source cannot be assumed to have related to the goods the subject of the investigation;**
- does not relate to a period in which Australian paper has been found to have been injured; and**
- ultimately did not prevent a higher price been agreed between the parties.**

Please comment on Hankuk's claims in this regard.

In relation to Customers B and OPANZ, the Commissioner ultimately did not accept that dumped import prices had materially impacted on negotiations and, as a consequence, the sales to Customer B and OPANZ were not included in the 35 per cent of sales that were suppressed by dumped imports.

27. At page 9 of the Application, Hankuk refers to price negotiations with the customers X, Y and Z all of whom had price reviews in 2017. Following reference to such negotiations the Commission considered that 2017 market prices were used as an input for price negotiation. Hankuk questions the Commission's consideration in this regard. Please comment.

Please refer to paragraphs 53 of the Commissioner's submission which discusses the Commission's approach to the counterfactual assessment and assessing the negotiations under the various supply agreements.

28. Hankuk claims Appendix 3 "refers to entire classes of customers about which the Commission has no information other than their prices in 2018." Such customers include those for which the Commission did not have the specific contract or agreement information and a further group of customers referred to as "uncontracted customers." For those customers for which the Commission had access to all details of the terms of supply agreements or contracts what was the proportion of their offtake relative to Australian Paper's total sales?

Please refer to paragraph 53 of the Commissioner's submission which identifies that Officeworks, OPANZ and Customer B accounted for ■ per cent of Australian Paper's sales in volume.

The Commission had access to detailed information on these agreements and the price negotiations in relation to each of those agreements. In relation to the other supply agreements the Commission had access to varying degrees of relevant information.

- 29. Please comment on Hankuk's claim at page 9 of its Application to the effect that "the only real evidence referred to in the report regarding price review practices relates to [three customers]. Only in one instance are import prices relevant to the price review mechanism, and only as one of a number of imports."**

Please refer to paragraphs 53 of the Commissioner's submission which discusses the Commission's approach to the counterfactual assessment and assessing the negotiations under the various supply agreements.

- 30. Please comment on the following statement contained at page 13 of Hankuk's Application, "the counterfactual analysis is based on the assumption that dumping is the cause of instances where factual prices are less than counterfactual prices."**

Please refer to subparagraph 102(d) of the Commissioner's submission.

- 31. "At page 13 of its Application, Hankuk is critical of the ADC's adoption of two counterfactual prices: a Weighted Average import price; and, the percentage increase to the Reflex price. Hankuk asserts the Weighted Average import price is not the *"lowest price paper Australia could expect to receive"* in the absence of dumping because import price is only one factor in price negotiations. Put differently, Hankuk's assertion is that there is no evidence on the record to demonstrat² that import prices were the determining factor in price negotiations.**

Similarly, Hankuk challenges the ADC's practice of *"adding a % of import price suppression to the Reflex unit price"* and asserts there is no basis for the ADC's a determination that the counterfactual reflex price is the lowest price paper Australia could expect to receive on its sales of Reflex.

Please comment on Hankuk's assertion in relation to the two counterfactual prices."

Please refer to subparagraphs 102(a) and 102(c), respectively, of the Commissioner's submission.

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Para	Excerpt from Report 463	Mondi SVK submission	Commissioner's response
(a)	Mondi can export the goods to Australia from a number of its mills globally.	This does not go to the proposition that Mondi SVK might dump A4 paper in the future. It is nothing more than a finding that the Mondi group of companies exists.	<p>Mondi SVK ceased exporting like goods to Australia during the investigation period. As a result, the Commission assessed whether Mondi SVK may begin resuming exports of like goods to Australia in the future.</p> <p>The Commissioner considers that the fact Mondi SVK has maintained its production facilities demonstrates an ability to shift distribution of exports to Australia should the conditions in the market suit. Mondi SVK's prior conduct of increasing exports to Australia following the imposition of securities on exports from other countries in Investigation 341, supports this finding.</p>
(b)	The emergence of exports from Russia and Slovakia are directly related to the securities and measures imposed as a result of Investigation 341.	This does not go to the proposition that Mondi SVK might dump A4 paper in the future. It only goes to the proposition that because dumping measures imposed on certain exporters caused the risk and cost of purchasing those exports to increase, other exporters were called upon by Australian importers to meet the resultant demand for alternative suppliers.	Please see the Commissioner's response for paragraph (a).
(c)	The previous 2017 prices are indicative of export prices from Mondi SVK.	The context for this finding is that Mondi SVK's prices were lower in AUD terms in the first half of the investigation period, than they were in the second half of the investigation period. It is not apparent to us why prices in the first half of the	<p>The Commissioner accepts that Mondi SVK disagrees with the Commission's view.</p> <p>In any case, absent this factor, the Commissioner is still satisfied that Mondi SVK may export like goods at dumped prices in the</p>

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Para	Excerpt from Report 463	Mondi SVK submission	Commissioner's response
		investigation are not indicative of prices in the first half of the period, and why prices in the second half of the investigation period are not indicative of prices in the second half of the investigation period. ¹⁴ Mondi SVK's prices in the second half of the investigation period are facts that cannot be ignored.	future for the reasons outlined in the Commissioner's submission.
(d)	Mondi SVK may return to exporting the goods to Australia where market conditions were suitable.	This does not go to the proposition that Mondi SVK might dump A4 paper in the future. It only goes to the proposition that Mondi SVK might export A4 paper to Australia in the future.	Please see the Commissioner's response for paragraph (a).
(e)	Mondi SVK's Australian export price in 2014 was higher than its 2017 export price, at a time when pulp prices were considerably lower in 2014 than in 2017.	This does not go to the proposition that Mondi SVK might dump A4 paper in the future. It only goes to the proposition that economic conditions in world markets are different at different times, such that sales may be more profitable at one time than at another time.	The Commissioner accepts that Mondi SVK disagrees with the Commission's view. In any case, absent this factor, the Commissioner is still satisfied that Mondi SVK may export like goods to Australia at dumped prices in the future for the reasons outlined in the Commissioner's submission.
(f)	Slovakia has increased production capacity and will continue to do so over the next five years.	The Commission seeks to draw conclusions from an FAO Survey with respect to Slovakia, when the evidence with respect to Mondi SVK was of capacity utilisation of [REDACTED] in 2016 and [REDACTED] in the investigation period of 2017, and where the only future project proposed by Mondi SVK is for investment in a kraft top white	Please see the Commissioner's response for paragraph (a).

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Para	Excerpt from Report 463	Mondi SVK submission	Commissioner's response
		machine which is for container board production, not A4 paper production.	
(g)	Slovakia is now an established supply source and was exporting at the lowest prices in 2017 and 2018.	<p>These statements are untrue:</p> <ul style="list-style-type: none"> Mondi SVK exported A4 paper to Australia in 2014 and then in 2017. This means that Mondi SVK has been a supplier to the Australian market. Although we do not think that adding the word “established” makes any difference, Mondi SVK is certainly less “established” than longer term suppliers who have more continuously supplied the Australian market. Mondi SVK was not “<i>exporting at the lowest prices in 2017 and 2018</i>”. Figure 14 in Report 463 disproves this. Indeed, in 2017 Mondi SVK exported at the highest prices. Moreover Mondi SVK had no exports in 2018,¹⁵ which is also as stated in Report 463. 	<p>The Commissioner agrees that the comments in this sentence are partially incorrect. The reference to 2018 is an error. As acknowledged elsewhere in Report 463, Mondi SVK ceased exporting to Australia in late 2017.</p> <p>The Commissioner's analysis shows that Mondi SVK's export prices to Australia were the lowest for the first quarter of 2017 and not the remaining quarters of 2017.</p> <p>The Commissioner remains satisfied that, based on Mondi SVK's export history, it has an ability to export like goods to Australia should the conditions suit. This factor supports the Commissioner's position that Mondi SVK may begin resuming exports of like goods to Australia in the future.</p>
(h)	Mondi SVK has historically exported at similar prices to its Russian mill.	This does not go to the proposition that Mondi SVK might dump A4 paper in the future. Mondi SVK and Mondi Group's Russia paper mill, Joint Stock Company Mondi Syktyvkar, are in the same world region, so the similarity of their prices would not appear to us to be noteworthy, and certainly not indicative of the proposition that the amount of the export price of Mondi SVK's	The Commission agrees that Mondi Group's Russian Mill(s) did not export like goods to Australia during 2018. However, like goods from its Russian Mill(s) were exported in December 2016, arriving in Australia during February 2017. The Commission notes that the export prices of these goods from Russia were ■ per cent lower

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Para	Excerpt from Report 463	Mondi SVK submission	Commissioner's response
		A4 paper that may be exported to Australia in the future may be less than the normal value of that A4 paper. Further, in so far as the Commission thinks that similarity might have some relevance to the exercise, Joint Stock Company Mondi Syktyvkar did not export during the investigation period, a fact which does not suggest similarity.	<p>than Mondi SVK's export prices for the same month.</p> <p>The Commissioner considers that the fact Mondi SVK has a global presence, it has an ability to export like goods to Australia should the conditions suit. This factor supports the Commissioner's position that Mondi SVK may begin resuming exports of like goods to Australia in the future.</p>
(i)	Mondi SVK has not entered into annual or multiple year contracts with any Australian customers, such as is typically required by Officeworks and other larger entities.	With respect, relating this fact to the proposition that Mondi SVK may engage in dumping in the future makes no sense at all. We submit that it is more sensible to conclude that the avoidance of annual or multiple year contracts is testament to the fact that Mondi SVK does not want to be locked into long term arrangements, pursuant to which it might inadvertently engage in dumping, if and when market conditions were to change in either Europe or Australia or there were to be currency fluctuations affecting export prices?	<p>The Commissioner considers that due to the fact Mondi SVK is not locked into prices into the future, it has at the option of exporting like goods to Australia at dumped prices.</p> <p>In any case, absent this factor, the Commissioner is still satisfied that Mondi SVK may export like goods to Australia at dumped prices in the future for the reasons outlined in the Commissioner's submission.</p>
(j)	Mondi SVK trades with Australian customers via forward orders and is not limited by contractual arrangements.	We repeat our previous comments with respect to Consideration (i).	Please see the Commissioner's response for paragraph (i).

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Para	Excerpt from Report 463	Mondi SVK submission	Commissioner's response
(k)	Mondi SVK has increased domestic prices significantly since 2017 such that given its export price history, is still likely to be less than its normal value.	A finding that Mondi's avoidance of exportation to Australia at a time when its domestic prices are high is evidence that it may dump in the future is counterintuitive in the extreme. Would a reasonable person not conclude that this indicated the awareness of an exporter of the importance of seeking profit in its most profitable markets, and to not engage in discriminatory pricing in lower priced foreign markets?	<p>The Commissioner accepts that Mondi SVK disagrees with the Commission's view.</p> <p>In any case, absent this factor, the Commissioner is still satisfied that Mondi SVK may export like goods to Australia at dumped prices in the future for the reasons outlined in the Commissioner's submission.</p>