



# Application for review of a Ministerial decision

## *Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 11 July 2018 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

### **Time**

Applications must be made within 30 days after public notice of the reviewable decision is first published.

### **Conferences**

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

### **Further application information**

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10 and/or 11 of this application form (s269ZZG(1)). See the ADRP website for more information.

### **Withdrawal**

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

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<sup>1</sup> By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

## Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

## PART A: APPLICANT INFORMATION

### 1. Applicant's details

Applicant's name:	Mondi SCP a.s. ("Mondi SCP")
Address:	Tatranská cesta 3 034 17 Ružomberok Slovakia
Type of entity (trade union, corporation, government etc.):	Mondi SCP is a joint stock company incorporated under the laws of the Slovak Republic.

### 2. Contact person for applicant

Full name:	Daniel Moulis
Position:	Partner Director
Email address:	daniel.moulis@moulislegal.com
Telephone number:	+61 2 6163 1000

### 3. Set out the basis on which the applicant considers it is an interested party:

Pursuant to Section 269ZZC of the Customs Act 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision.

The reviewable decision in this case relates to an application made to the Commissioner under Section 269TB requesting that the Minister publish a dumping duty notice.

Under Section 269T of the Act an "interested party" for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Mondi SCP is a manufacturer of the goods to which the decision relates, namely A4 copy paper which were exported to Australia via Mondi Paper Sales GmbH during the investigation period. Mondi SCP is thus an "interested party" for the purposes of the Act and this application.

### 4. Is the applicant represented?

Yes  No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

***\*It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.\****

## PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

**5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

**6. Provide a full description of the goods which were the subject of the reviewable decision:**

The goods the subject of the reviewable decision are:

*uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).*

The Anti-Dumping Commission also advised interested parties that:

*The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.*

**7. Provide the tariff classifications/statistical codes of the imported goods:**

The goods are classified to the following tariff subheadings:

- 4802.56.10 (statistical code 03); and
- 4802.56.10 (statistical code 09)

of Schedule 3 to the Customs Tariff Act 1995.

**8. Anti-Dumping Notice details:**

Anti-Dumping Notice (ADN) number:	<b>Anti-Dumping Notice No 2019/37</b>
Date ADN was published:	<b>10/04/2019</b>

***\*Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application\****

**Please refer to Attachment A – Section 269TG(1) and (2) notice (ADN 2019/37).**

## **PART C: GROUNDS FOR THE APPLICATION**

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

**9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

**10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

**11. Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:**

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

## PART D: DECLARATION

The applicant authorised representative declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name:

**Daniel Moulis**

Position:

**Partner Director**

Organisation:

**Moulis Legal**

Date:

**10 May 2019**



## PART E: AUTHORISED REPRESENTATIVE

*This section must only be completed if you answered yes to question 4.*

### Provide details of the applicant's authorised representative:

Full name of representative:	<b>Daniel Moulis</b>
Organisation:	<b>Moulis Legal</b>
Address:	<b>6/2 Brindabella Circuit Brindabella Business Park Canberra International Airport Australian Capital Territory 2609 Australia</b>
Email address:	<b>daniel.moulis@moulislegal.com</b>
Telephone number:	<b>+61 2 6163 1000</b>

### Representative's authority to act

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

**See Attachment C – Mondi SCP letter of authority**

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date:     /     /



Customs Act 1901 – Part XVB

## A4 Copy Paper

Exported from Austria, Finland, the Republic of Korea, the  
Russian Federation and the Slovak Republic

### Findings in Relation to a Dumping Investigation

Public notice under subsections 269TG (1) and (2) of the *Customs Act 1901*<sup>1</sup>

#### *Anti-Dumping Notice (ADN) 2019/37*

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of A4 copy paper, exported to Australia from Austria, Finland, the Republic of Korea (Korea), the Russian Federation (Russia) and the Slovak Republic (Slovakia).

On 15 March 2019, the Commissioner terminated his dumping investigation into the goods exported from Austria. Anti-Dumping Notice (ADN) 2019/36 sets out the reasons for this termination. This ADN is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

The goods the subject of the investigation (the goods) are:

*uncoated white paper of a type used for writing, printing or other graphic purposes, in the nominal basis weight range of 70 to 100 gsm and cut to sheets of metric size A4 (210mm x 297mm) (also commonly referred to as cut sheet paper, copy paper, office paper or laser paper).*

Further information on the goods:

*The paper is not coated, watermarked or embossed and is subjectively white. It is made mainly from bleached chemical pulp and/or from pulp obtained by a mechanical or chemi-mechanical process and/or from recycled pulp.*

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff classification (Schedule 3 of the <i>Customs Tariff Act 1995</i> ) <sup>2</sup>				
Tariff code	Statistical code	Unit	Description	Duty rate*
4802.56.10	03	Tonnes	A4 paper 40-89 gsm white	5%
4802.56.10	09	Tonnes	A4 paper 90 to less than 150 gsm	5%

<sup>1</sup> All legislative references are to the *Customs Act 1901* (the Act), unless otherwise stated.

<sup>2</sup> Source – Schedule 3 of the *Customs Tariff Act 1995*.

\* Imports of the goods from Korea are not subject to duties.

These tariff classifications and statistical codes may include goods that are both subject and not subject to this investigation. The listing of these tariff classifications and statistical codes are for convenience or reference only and do not form part of the goods description.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No. 463 (REP 463)*, in which he outlines the investigation carried out and recommends the publication of a dumping duty notice in respect of the goods. The report is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Particulars of the dumping margins established and an explanation of the methods used to compare export prices and normal values to establish each dumping margin are set out in the following table:

Country	Exporter (and other exporters)	Dumping Margin	Method to establish dumping margin
Austria	Mondi Neusiedler GmbH	1.7%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in terms of subsection 269TACB(2)(a) of the Customs Act 1901.
	Uncooperative and all other exporters	4.2%	
Finland	Uncooperative and all other exporters	16.3%	
Korea	Hankuk Paper Mfg. Co. Ltd	3.8%	
	Uncooperative and all other exporters	16.4%	
Russia	Uncooperative and all other exporters	14.4%	
Slovakia	Mondi SCP a.s.	5.8%	
	Uncooperative and all other exporters	14.6%	

I, KAREN ANDREWS, Minister for Industry, Science and Technology, have considered, and accepted, the recommendations of the Commissioner, the reasons for the recommendations, the material findings of fact on which the recommendations are based and the evidence relied on to support those findings in REP 463.

I am satisfied, as to the goods that have been exported to Australia, that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore under subsection 269TG(1) and section 45 of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

- (i) the goods; and
- (ii) like goods that were exported to Australia four months prior to the publication of this notice.

I am also satisfied 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 to Australia in the future may be less than the normal value of the goods and, because of that, material injury to the Australian industry producing like goods is being caused. Therefore under subsection 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of this notice.

This declaration applies in relation to all exporters of the goods and like goods from Finland, Korea, Russia and Slovakia.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry, including:

- price suppression in 2017 and 2018;
- price depression in 2017;
- reduced revenue in 2017 and 2018;
- decreased profits and profitability in 2017 and 2018;
- reinvestment unattractiveness; and
- reduced return on investment/sales.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by a factor other than the exportation of dumped goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices, and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice as they may reveal confidential information.

Clarification about how measures securities are applied to 'goods on the water' is available in ACDN 2012/34, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

REP 463 and other documents included in the public record may be examined at the Anti-Dumping Commission office by contacting the case manager on the details provided below. Alternatively, the public record is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Enquiries about this notice may be directed to the case manager on telephone number, fax number +61 3 8539 2477 or [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au).

Dated this 2<sup>nd</sup> day of April 2019



KAREN ANDREWS  
Minister for Industry, Science and Technology



## In the Anti-Dumping Review Panel

**Application for review  
A4 copy paper exported from Austria, Finland, the  
Republic of Korea, the Russian Federation and the  
Slovak Republic**

### Mondi SCP a.s.

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### Introduction

By way of an application to the Anti-Dumping Commission (“the Commission”) dated “February 2018” Paper Australia Pty Ltd (“Paper Australia”) applied for a dumping investigation into imports of certain A4 copy paper (“A4 paper”) from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic.

In response to that application, the Commission initiated the subject anti-dumping investigation in respect of A4 paper exported from the subject countries on 19 March 2018.

Mondi SCP a.s. (“Mondi SCP”) is a manufacturer of A4 paper in the Slovak Republic (“Slovakia”). Mondi SCP exported A4 paper to Australia during the investigation period. Mondi SCP, and its related sales company Mondi Paper Sales GmbH participated fully in the investigation.

At the conclusion of the investigation, in a decision published on 10 April 2019, the Minister for Industry, Science and Technology (“the Minister”) decided to impose dumping duties on A4 paper exported to Australia from, *inter alia*, Slovakia.<sup>1</sup> Specifically, the Minister published a notice or notices under Sections 269TG(1) and (2) of the *Customs Act 1901* (“the Act”) declaring that Section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* applied in relation to A4 paper exported from Slovakia.<sup>2</sup> These notices had the effect of imposing dumping duties on the importation into Australia of Mondi SCP’s exports of A4 paper from Slovakia.

Mondi SCP seeks review by the Anti-Dumping Review Panel (“the Review Panel”), under Sections 269ZZA(1)(a) and 269ZZC, of the decision (or decisions) made by the Minister to impose dumping measures against Mondi SCP’s exports of A4 paper to Australia, as outlined in this application.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to Mondi SCP’s grounds of review, being those requirements not already addressed within the text of the approved form itself, which Mondi SCP has also completed and lodged with the Review Panel.

## **A First ground – not correct or preferable to find that Mondi SCP’s exports may be dumped in the future**

### **9 Grounds**

**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

At paragraph 9.3.2.3 of Report 463, the Commission found as follows:

*The Commission considers that Mondi SVK’s export pricing behaviour demonstrates that in the absence of measures, Mondi is likely to resume dumping the goods into Australia in the future.*

For the purposes of forming the satisfaction referred to in Section 269TG(2)(a), the Minister must find, with respect to the goods exported by an exporter to which the relevant Notice is to apply, that:

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<sup>1</sup> Based on the recommendations contained in *Report No.463, Alleged Dumping of A4 Copy Paper Exported from Austria, Finland, the Republic of Korea, the Russian Federation and the Slovak Republic* (“Report 463”)

<sup>2</sup> A reference in this Application to “the Act”, or to a “Section”, “Subsection” or “Subparagraph” is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

*the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods of [that] exporter.*

From Report 463, it appears that the facts and assumptions underlying that finding were as follows:

- (a) that *“Mondi can export the goods to Australia from a number of its mills globally”*;<sup>3</sup>
- (b) that *“the emergence of exports from Russia and Slovakia are directly related to the securities and measures imposed as a result of Investigation 341”*;<sup>4</sup>
- (c) that *“the previous [lower] 2017 prices are indicative of export prices from [Mondi SCP]”*;<sup>5</sup>
- (d) that Mondi SCP *“may return to exporting the goods to Australia where market conditions were [sic.] suitable”*;<sup>6</sup>
- (e) that Mondi SCP’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”*;<sup>7</sup>
- (f) that *“Slovakia has increased production capacity and will continue to do so over the next five years”*;<sup>8</sup>
- (g) that *“Slovakia is now an established supply source and was exporting at the lowest prices in 2017 and 2018”*;<sup>9</sup>
- (h) that Mondi SCP *“has historically exported at similar prices to its Russian mill”*;<sup>10</sup>
- (i) that Mondi SCP *“has not entered into annual or multiple year contracts with any Australian customers, such as is typically required by Officeworks and other larger entities”*;<sup>11</sup>
- (j) that Mondi SCP *“trades with Australian customers via forward orders and is not limited by contractual arrangements”*;<sup>12</sup>

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<sup>3</sup> Report 463, page 89.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, pages 89 and 90.

<sup>8</sup> Ibid, page 90.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

- (k) that Mondi SCP “has increased domestic prices significantly since 2017 such that given its export price history, is still likely to be less than its normal value”.<sup>13</sup>

Various, these facts and assumptions do not go to the proposition that “the amount of the export price of [Mondi SCP’s] goods that may be exported to Australia in the future may be less than the normal value [of Mondi SCP’s goods]”, or are simply incorrect or unsupported.

Our submissions with respect to each of the considerations taken into account by the Commission in making its recommendation to the Minister are set out below:

Para.	Consideration	Submissions
(a)	Mondi can export the goods to Australia from a number of its mills globally.	This does not go to the proposition that Mondi SCP might dump A4 paper in the future. It is nothing more than a finding that the Mondi group of companies exists.
(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 SCP 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.
(c)	The previous 2017 prices are indicative of export prices from Mondi SCP.	The context for this finding is that Mondi SCP’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 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. <sup>14</sup> Mondi SCP’s prices in the second half of the investigation period are facts that cannot be ignored.
(d)	Mondi SCP may return to exporting the goods to Australia	This does not go to the proposition that Mondi SCP might dump A4 paper in the future. It only goes to the proposition

<sup>13</sup> Ibid, page 91.

<sup>14</sup> In this regard we note our submissions below regarding Figure 14 in Report 463, which we submit gives a misleading impression of Mondi SCP’s export prices and their timing in the investigation period.



Para.	Consideration	Submissions
	where market conditions were suitable.	that Mondi SCP might export A4 paper to Australia in the future.
(e)	Mondi SCP'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 SCP 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.
(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 SCP was of capacity utilisation of <b>[CONFIDENTIAL TEXT DELETED – number]</b> % in 2016 and <b>[CONFIDENTIAL TEXT DELETED – number]</b> % in the investigation period of 2017, and where the only future project proposed by Mondi SCP is for investment in a kraft top white 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"> <li>• Mondi SCP exported A4 paper to Australia in 2014 and then in 2017. This means that Mondi SCP has been a supplier to the Australian market. Although we do not think that adding the word “established” makes any difference, Mondi SCP is certainly less “established” than longer term suppliers who have more continuously supplied the Australian market.</li> <li>• Mondi SCP was not “<i>exporting at the lowest prices in 2017 and 2018</i>”. Figure 14 in Report 463 disproves this. Indeed, in 2017 Mondi SCP exported at the highest prices. Moreover Mondi SCP had no exports in 2018,<sup>15</sup> which is also as stated in Report 463.</li> </ul>

<sup>15</sup> Please refer to previous footnote.

Para.	Consideration	Submissions
(h)	Mondi SCP has historically exported at similar prices to its Russian mill.	This does not go to the proposition that Mondi SCP might dump A4 paper in the future. Mondi SCP 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 SCP's 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.
(i)	Mondi SCP 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 SCP 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 SCP 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?
(j)	Mondi SCP trades with Australian customers via forward orders and is not limited by contractual arrangements.	We repeat our previous comments with respect to Consideration (i).
(k)	Mondi SCP 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?

Accordingly, we see nothing in the Commissions analysis in Report 463 which substantiates the opinion that Mondi SCP would engage in dumping as required by the stipulation in Section 269TG(2)(a) that “*the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods of [that] exporter*”. Some of the considerations are simply incorrect. Others go to the proposition that Mondi SCP might in the future supply the Australian market, however future participation in the Australian market is not the point. The Commission may desire to exclude as many exporters as possible from the Australian market in the future, but that is not the objective of Section 269TG(2) and cannot be achieved by way of Section 269TG(2). 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 SCP in the future. This is a question which should be based on evidence of an exporter’s behaviours and not simply assumed because of a finding of past dumping or because the exporter “exists”.

Instead, we wish to refer the Review Panel to what the evidence does establish. By way of submission dated 28 May 2018, entitled *Verification note – Mondi’s exemplary sales behaviour*, our client advised the Commission of certain facts and circumstances that were relevant to that claim. Without repeating the contents of that document entirely, but recommending it in full to the Review Panel for the purposes of its review, we note that the document contains evidence of the following:

- third party criticism of Mondi SCP’s pricing – that it was too high;
- Mondi SCP’s premium price position, again underlining its focus on profitability and a disinclination to reduce prices to non-profitable levels;
- Mondi’s announcement of price increases, during the investigation period when, going by Figure 14, other exporters’ prices were either reducing or only increasing marginally.

The document also draws the attention of the Commission to Mondi’s sales behaviour generally, and to the high capacity utilisation of Mondi SCP.

With respect to Figure 14 in Report 463,<sup>16</sup> we would like to point out that it does not appear to reflect export prices, as it claims to do. Figure 14 presents this picture of export price activity:

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<sup>16</sup> This is the second of two Figure 14s in the Report, this one on page 84.

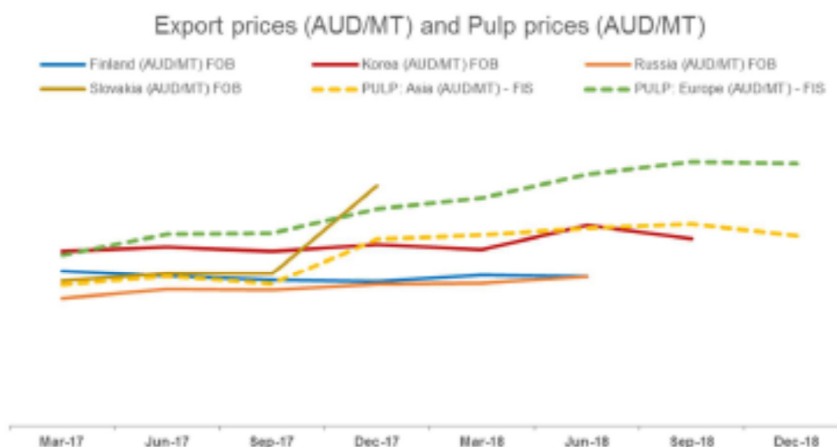


Figure 14: Export prices from countries found to be dumping in 2017

However, our client’s evidence, as verified by the Commission,<sup>17</sup> establishes that Mondi SCP’s export prices (EUR at FOB) followed the pattern shown below:

**[CONFIDENTIAL CHART DELETED – showing a similar pattern to Figure 14 with respect to Slovakian exports, but earlier in time]**

This presents a different picture and, we submit, an accurate one. First, it shows a **[CONFIDENTIAL TEXT DELETED – number]**% higher price. In the circumstances of an overall dumping margin of around 6%, the conclusions to be drawn from this are as follows:

- Mondi SCP’s dumping margin was 5.8%. The price increase that it sought in the Australian market, and temporarily obtained, would have put it in a position whereby it would not have been found to have engaged in actionable dumping had it continued to make sales into the Australian market.
- However, it did not make further sales, because its prices were too high. This distinguishes Mondi SCP from every other exporter, because Figure 14 indicates that every other exporter continued to export to Australia at lower prices.

In Report 463, the Commission refers to this price increase as being *“the result of a considerably smaller shipment by volume and therefore less favourable pricing”*.<sup>18</sup> This misses the point. Worse, it suggests that no matter what the evidence is, the Commission would not objectively appraise it. Against the backdrop of the pricing evidence referenced in paragraph 23 of the verification note referred to above, it

<sup>17</sup> Modi SCP EQ, Annex B-4 – MPS Australian sales.

<sup>18</sup> Report 463, page 89.

is unreasonable and unfair to suggest that Mondi SCP’s price increase was unrelated to a clear intention and policy to seek higher, profitable prices, and therefore not to be found to have engaged in dumping.

Further, one of the reasons that caused Mondi SCP to increase its prices, leading to an inability to export to the Australian market because it could not secure any contracts at its increased pricing levels, was the depreciation of the Australian dollar against the Euro. The Euro strengthened further after mid-2017, and has continued to strengthen over 2018 and 2019, as can be seen from the below chart:<sup>19</sup>



For all of the above reasons we submit that the finding made in Report 463, that Mondi SCP may dump in the future, is neither correct nor preferable, because the evidence of Mondi SCP’s sales behaviour contradicts that proposition.

## 10 Correct or preferable decision

**Identify what, in the applicant’s opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

Mondi SCP submits that the correct and preferable decision is that the Minister should not be satisfied of the condition in Section 269TG(2)(a) that *“the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods”*. On that basis the Minister would not have reached the satisfaction required for the purposes of declaring that Section 269TG(2) applies to Mondi SCP’s exports to Australia after the date of the notice, and the notices should be revoked.

<sup>19</sup> Source - <https://www.xe.com/currencycharts/?from=EUR&to=AUD&view=5Y>

For completeness, we note that the Minister also declared that Section 269TG(1) applied to Mondi SCP's exports that had been exported to Australia four months prior to the publication of the notice. Mondi SCP had no exports to Australia in that period. Thus, in the context of this first ground of review, and from a practical perspective, revocation of the declaration under Section 269TG(2) has no implications for the declaration under Section 269TG(1).

That is not the case with respect to the second ground which, if accepted by the Review Panel, would lead to the revocation of both declarations.

## 11 Material difference between the decisions

**Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

The notices have an adverse effect on Mondi SCP, as they impose a cost, in the form of an interim dumping duty that importers would need to pay on the importation of A4 paper from Mondi SCP at any time in the future. That duty would comprise an amount of 5.8% of the export invoice price, or of the ascertained export price (whichever is the higher) and any amount by which the export invoice price is less than the ascertained export price.

The interim dumping duty has adverse effects on Mondi SCP's ability to supply the Australian market in the future. The proposed decision - revocation of the Section 269TG(2) notice - will remove those adverse effects and is therefore materially different from the reviewable decision.

## B Second ground – not correct or preferable to find that Mondi SCP's exports caused material injury

### 9 Grounds

**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

To declare that Section 269TG(1) or (2) applies to goods the Minister must address, and be satisfied that, a required combination of the matters set out in subparagraphs (a) and (b) of the Sections apply.

Subparagraph (a) refers to a satisfaction that dumping has occurred (Section 269TACB refers) together (in the case of Section 269TG(2)) with a satisfaction that dumping may occur in the future (as to which, see the first ground).

Subparagraph (b) refers to the requirement of a causative connection between the matters of which the Minister is satisfied under subparagraph (a) and one or other of the relevant conditions referred to in subparagraph (b).

In Report 463, the Commission bases its finding of injury on the proposition that although dumping found to have occurred in 2017 did not cause material injury to the Australian industry in 2017, it did cause material injury to the Australian industry in 2018.

Mondi SCP takes issue with that finding.

The Commission's no injury finding in 2017 was explained in Report 463 as follows:

*...the Commissioner considers that the dumped imports from Finland, Korea, Russia and Slovakia in 2017 did not cause material injury in 2017, as:*

- *Australian Paper's pre-2017 supply agreements established a low base price from which its periodic price reviews were calculated in 2017;*
- *the timing of price reviews meant that base prices for a significant portion of Australian paper's business by volume were contractually fixed prior to 2017; and*
- *the dumped import prices from Finland, Korea, Russia and Slovakia in 2017 impacted 7 per cent of Australian Paper's business by volume, causing Australian Paper's unit price to be half a per cent lower than what it otherwise would have been.*

Mondi SCP's last exports to Australia over the period of 2017 and 2018, were in July and October 2017.<sup>20</sup> As recognised by Report 463, Mondi SCP had no exports after that. The exports from Mondi SCP ceased. This is also an explicit finding of the Commission, as the Report says "import volumes from Slovakia ceased at the end of 2017".

These July and October shipments were small shipments, sold on an indent basis, and fast-moving. The stock went directly from the ship to the customer and was not stocked by the Australian importer. There is no argument available that the Mondi SCP A4 paper was "in" Australia and was sold "in opposition to" the Australian industry's paper in 2018. There is no indication in the Report that the Commission thinks otherwise.

The Commission makes a finding that Slovakian imports undercut the Australian industry's prices. However this was limited to the first three quarters of 2017, which is within the period in which the Commission is on record as saying there was no material injury:

*Selling prices of imports of A4 copy paper from Slovakia undercut the Australian industry for the first three quarters of the investigation period, but did not undercut the Australian industry in the final quarter of the investigation period.<sup>21</sup>*

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<sup>20</sup> They were a shipment exported on [CONFIDENTIAL TEXT DELETED – date] 2017 of [CONFIDENTIAL TEXT DELETED – number]MT, and a shipment on [CONFIDENTIAL TEXT DELETED – date] 2017 of [CONFIDENTIAL TEXT DELETED – number]MT.

<sup>21</sup> Report 463, page 70.

The Commission also makes a finding, in an implied way, that there was no price undercutting by Slovakian imports in 2018 (of course, how could there be, because none were exported) in this extract from the Report:

*The Commissioner has also found that in 2018 imports of A4 copy paper from:*

- *Russia undercut Australian Paper's prices;*
- *Finland undercut Australian Paper's prices; and*
- *Korea undercut Australian Paper's prices for the first quarter of 2018 and did not undercut for the remainder of the year.<sup>22</sup>*

As can be seen, Slovakia is not mentioned. The manner in which Report 463 includes exports from Slovakia (ie those from Mondi SCP) in the Section 269TG(1) and (2) notices is by saying that the material injury that happened in 2018, which was *after* the investigation period in which dumping was found, is to be blamed on what happened in 2017, which was the investigation period in which dumping was found. That finding was described in the Report as follows:

*In the 2018 counterfactual scenario, Figure 11 demonstrates that in the absence of the dumped imports from Finland, Korea, Russia and Slovakia in 2017, Australian Paper would have experienced less price suppression in 2018 (as a weighted average of all brand segments and grades). The Commissioner has found that the level of price undercutting in the Australian market was material in 2017 and that the dumped imports in the Australian market affected the pricing decisions made by Australian Paper in 2017, which affected 2018 prices.*

*The 2018 counterfactual shows that customer prices agreed in 2017 for supply in 2018 were influenced by the depressed import prices from dumped imports from Finland, Korea, Russia and Slovakia 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.<sup>23</sup>*

Later in the Report the Commission states that the net sales revenue that Australian paper could have achieved in 2017 "but for" the price undercutting from Finland, Korea, Russia and Slovakia was an additional 0.5%, but that in 2018 the price undercutting that took place in 2017 meant that sales revenue was 2% lower than it otherwise would have been.

Mondi SCP raises the following concerns about the material injury and causation finding made in this way, as relevant to Mondi SCP's exports of A4 paper.

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<sup>22</sup> *Ibid*, page 73.

<sup>23</sup> *Ibid*, page 75.



**(a) The injury and causation finding is not based on facts, instead it is based on assumptions and remote possibilities**

Pursuant to Section 269TAE(2AA):

*A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.*

Those subsections are the subsections setting out the primary considerations that the Minister must take into account for the purposes of making a finding of causation of material injury. One of those factors is set out in Section 2969TAE(1)(f) as follows:

*the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia.*

In Report 463 the Commission has adopted a “counterfactual” based on price and also revenue projections, where those projections are based on movements in the Australian industry’s prices in 2018 that the Commission has attributed to the prices of dumped imports in the Australian market in 2017.

In this regard our client submits that a finding of reduced prices and revenue, which is what the Commission has found, does not achieve the statutory outcome of finding that material injury has been caused, either on a proper substantive or evidentiary basis. A finding of lower prices and an assumption of reduced revenue do not in and of themselves constitute a finding that injury has been caused, without going on to consider what the effects of those things have been on the financial condition of the industry concerned.

Report 463 admits that:

- it did not have evidence of verified cost to make and sell (“CTMS”) data – indeed, it appears to have used no CTMS data at all – with respect to 2018;
- it used the following methodology to work out what the Australian industry’s costs were likely to have been in 2018:

*The Commission obtained Australian Paper’s sales data for 2018. The Commission then calculated the percentage increase in volume, net revenue and cost of goods sold (COGS) from 2017 to 2018 and applied the percentage difference to the 2017 CTMS;<sup>24</sup>*

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<sup>24</sup> Ibid, page 58.

a methodology that the Commission states it considers to be “reasonable as it captures changes in volume, net revenue and CTMS”.<sup>25</sup>

We do not consider that methodology to be reasonable. It is not fact-based, because important facts that would need to be determined with respect to 2018 are missing or have been assumed. It does not cater for differences in the CTMS of different types or grades of A4 paper. It does not adjust for differences in the volume mix of A4 paper that might have been sold in 2018 as compared to 2017.<sup>26</sup> It appears to contradict Figure 13, which shows that Australian Paper’s profit and unit profitability increased between 2017 and 2018, to an extent which certainly appears to have been more than 2% price reduction (although the reader is given no useful indication of the scale of the chart in Figure 13).

Further, our client strongly submits that a finding of material injury at a time where a dumping finding under Section 269TACB has not been made, said to have been caused by market conditions formed at a previous time where there was dumping found but no material injury was caused, would need to be extremely well-articulated to overcome the “remote possibility” test under Section 269TAE(2AA).

Otherwise, the anti-dumping instrument would become an industry assistance measure, rather than a fact-based price adjustment measure arising from circumstances proven to have existed within a specific and confined period of time.

**(b) Mondi SCP’s exports are not appropriately cumulated with other exports, in the circumstances of this case**

Section 269TAE(2C)(e) provides that the Minister should consider the cumulative effect of the exportations only if satisfied that:

*it is appropriate to consider the cumulative effect of those exportations, having regard to:*

- (i) the conditions of competition between those goods; and*
- (ii) the conditions of competition between those goods and like goods that are domestically produced.*

The Commission’s price undercutting finding in Report 463 reads as follows:

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<sup>25</sup> Ibid, page 59.

<sup>26</sup> The Commission recognises this to be the case, saying in Report 463 at page 73:

*The Commission has considered the specific points raised by Central National and Jackaroo with regards to price undercutting and accepts that Australian Paper produce and sell multiple product grades within their range of A4 copy paper, and that these products are sold at varying prices. Prices are set with regard to the recycled content, the brand (e.g. Reflex is a premium branded product which attracts a higher price), the volumes sold to a particular customer and the specific commercial terms and conditions agreed to between parties. [underlining supplied]*

*The Commissioner has found that dumped imports of A4 copy paper from Finland, Korea, Russia and Slovakia have undercut Australian Paper's prices in 2017.*

*The Commissioner has also found that in 2018 imports of A4 copy paper from:*

- *Russia undercut Australian Paper's prices;*
- *Finland undercut Australian Paper's prices; and*
- *Korea undercut Australian Paper's prices for the first quarter of 2018 and did not undercut for the remainder of the year.<sup>27</sup>*

The Commission finding with respect to price undercutting of A4 paper from Slovakia, all of which was supplied by Mondi SCP, is that

*Selling prices of imports of A4 copy paper from Slovakia undercut the Australian industry for the first three quarters of the investigation period, but did not undercut the Australian industry in the final quarter of the investigation period.<sup>28</sup>*

We submit that this cannot be correct, because Mondi SCP's sales were on an indent basis, meaning that they were committed to a sale in the Australian market before exportation. Therefore the latest time at which any price undercutting by "dumped" exports from SCP could have occurred, so as to cause injury to the Australian industry, is logically the time of exportation. Our client's verified export sales records indicate that the last exportations from Mondi SCP took place in October and November 2017, and were at higher prices than in the first half of the investigation period. Thus, the finding of price undercutting in the first three quarters but not the final quarter is likely to be incorrect. If there was price undercutting then it would only have taken place in the first two quarters of 2017.

What we draw from this is that Mondi SCP's exports of A4 copy paper were competitive with the prices of the Australian industry in the first six months of 2017 but they were not in the second half of 2017. Further, Mondi SCP did not export after October 2017 at all, being a full 14 month period in which apparently every other cooperative exporter subject to investigation did export.

Thus, Mondi SCP did not undercut the Australian industry's prices and did not play any part in the Australian market for a full 18 month period in which every other exporter did. The Commission has exercised its judgement as to whether material injury was caused over a two year period, and Mondi SCP only participated in the market in a manner which undercut the Australian industry's prices in the first six months of the period, ie for 25% of the time. And, with respect to that 25% of the time, the Commission made a finding that no material injury was caused to the Australian industry.

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<sup>27</sup> Report 463, page 73.

<sup>28</sup> Ibid, page 70.

Given those conditions of competition between Mondi SCP's A4 copy paper and the other A4 copy paper, we submit that it is not appropriate to cumulate Mondi SCP's A4 paper exports with those of the other exporters.

## 10 Correct or preferable decision

**Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

Mondi SCP submits that the correct and preferable decision is that the Minister should not be satisfied of the condition in each of Section 269TG(1)(b) and (2)(b) "*that... material injury to an Australian industry producing like goods has been or is being caused*" by Mondi SCP's exports of A4 paper. On that basis the Minister would not have reached the satisfaction required for the purposes of declaring that Sections 269TG(1) and (2) apply to Mondi SCP's exports to Australia, and the notices should be revoked.

## 11 Material difference between the decisions

**Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

The notices have an adverse effect on Mondi SCP, as they impose a cost, in the form of an interim dumping duty that importers would need to pay on the importation of A4 paper from Mondi SCP at any time in the future. That duty would comprise an amount of 5.8% of the export invoice price, or of the ascertained export price (whichever is the higher) and any amount by which the export invoice price is less than the ascertained export price.

The interim dumping duty has adverse effects on Mondi SCP's ability to supply the Australian market in the future. The proposed decision - revocation of the Section 269TG(1) and (2) notices - will remove those adverse effects and is therefore materially different from the reviewable decision.

## Conclusion and request

The decision to which this application refers is a reviewable decision under Section 269ZZA of the Act.

Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Minister and form part of the reviewable decision that Mondi SCP seeks to have reviewed.

Mondi SCP is an interested party in relation to the reviewable decision.

Mondi SCP's application is in the approved form and has otherwise been lodged as required by the Act.

We submit that Mondi SCP's application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decisions that should result from the grounds that Mondi SCP has raised in the application are dealt with A and B above.

Accordingly, being fully compliant with the requirements of the Act, Mondi SCP requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Minister that, in accordance with Section 269ZZM, the reviewable decision (being the decision to publish notices under Sections 269TG(1) and (2)):

- be revoked with effect from 2 April 2019; and
- be substituted by a decision to publish a notice or notices in the same terms as that made on 2 April 2019 and with effect from that date but amended so as to exclude from the notice exports of A4 paper from Slovakia by Mondi SCP.

**Lodged for and on behalf of Mondi SCP a.s. by:**

**Daniel Moulis  
Partner Director**