



Australian Government
Anti-Dumping Review Panel

▶ **ADRP REPORT No. 27**



WWW.ADREVIEWPANEL.GOV.AU



ADRP Report No. 27

NEWSPRINT EXPORTED FROM FRANCE

Review of a decision of the Parliamentary Secretary to the former Minister for Industry and Science to publish a dumping duty notice in relation to newsprint exported to Australia from France.

Contents

Introduction.....	2
Background.....	2
Conduct of the Review.....	3
Grounds for Review.....	4
Consideration of Grounds.....	5
NSIA not suffering material injury.....	5
No evidence of price related injury	5
Price Depression	6
Price Suppression.....	10
Reduced Sales Volumes/Revenues caused by market contraction.....	11
Sales Volumes	11
Sales Revenue	14
Reduced Profits/Profitability.....	14
Reinvestigation: Summary on Causation	15
Non-Compliance with S.269TG.....	17
Recommendations/Conclusion.....	18



Introduction

1. UPM Kymmene Pty Ltd (UPM) has applied pursuant to s.269ZZC of the Customs Act 1901 (the Act) for review of a decision of the Parliamentary Secretary to the former Minister for Industry and Science (the Parliamentary Secretary) to publish a dumping duty notice in respect of newsprint exported to Australia from France.
2. UPM is a member of the group of companies owned by UPM Kymmene Corporation, a corporation based in Finland. This group is involved in the manufacture and export of newsprint to Australia from France. As the Commissioner of the Anti-Dumping Commission (the ADC) referred to the companies in the group as one entity¹, this report will also do so.
3. The application for review was accepted and notice of the proposed review as required by s.269ZZI was published on 29 June 2015. The Senior Member of the Review Panel at that time directed in writing pursuant to s.269ZYA that the Review Panel for the purpose of this review be constituted by me.

Background

4. On 24 March 2014, Norske Skog Industries Australia Limited (NSIA) lodged an application under s.269TB of the Act with the ADC for the publication of a dumping duty notice in respect of newsprint exported to Australia from France and Korea. The application by NSIA was not rejected by the ADC and on 22 April 2014 notice of the initiation of the anti-dumping investigation was published by the ADC.
5. The notice initiating the investigation stated that the investigation period would be 1 April 2013 to 31 March 2014. The injury analysis period was stated to be from 1 April 2010.
6. After a number of extensions of time were granted by the Parliamentary Secretary, the Statement of Essential Facts and a Preliminary Affirmative

¹ Anti-Dumping Commission Final Report No. 242 dated 23 March 2015, section 6.4.1, page 21



Determination were published on 30 January 2015 by the ADC. The ADC terminated the investigation in relation to exports from Korea on 20 March 2015.

7. The final report to the Minister was made by the ADC on 23 March 2015 (the ADC Report). The ADC recommended to the Parliamentary Secretary that the Parliamentary Secretary determine that a dumping duty notice be published in respect of newsprint exported to Australia from France.²
8. The Parliamentary Secretary accepted the recommendation of the ADC and on 20 April 2015 the Parliamentary Secretary made declarations under s.269TG of the Act that section 8 of the Dumping Duty Act applied to exports of newsprint from France.
9. The decision of the Parliamentary Secretary was published on 30 April 2015.

Conduct of the Review

10. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister (in this case the Parliamentary Secretary) either affirm the decision under review or revoke it and substitute a new specified decision. In undertaking the review, s.269ZZ requires the Review Panel to determine a matter required to be determined by the Minister in like manner as if it was the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.
11. In carrying out its function the Review Panel is not to have regard to any information other than to “relevant information” as that expression is defined in s.269ZZK(6). For the purpose of the review, the relevant information is that to which the ADC had, or was required to have, regard when making the findings set out in the report to the Minister³. In addition to relevant information, the Review Panel is only to have regard to conclusions based on relevant information that are contained in the application for review and any submissions received under s.269ZZJ⁴.
12. Unless otherwise indicated, in conducting this review, I have had regard to the application (including documents submitted with the application or referenced in the application) and the submissions received pursuant to s.269ZZJ, insofar as they contained conclusions based on relevant information. I have also had regard to the ADC Report, and information relevant to the review which was referenced in the ADC Report and to information created during the investigation, such as visit reports.
13. The ADC was asked to provide comments on the grounds raised in the applications for review⁵ and in response the ADC provided written comments on

² As above, section 1.2, page 5.

³ S.269ZZK(6)(ca)

⁴ S.269ZZK(4)

⁵ Letter from the Anti-Dumping Review Panel to the ADC dated 30 June 2015



21 July 2015. The ADC also provided copies of confidential documents which were referenced in the ADC Report or were created during the investigation. The request to the ADC and the response were made publicly available. Other correspondence with the ADC and documents provided by the ADC were not made publicly available as they dealt with confidential information.

14. Submissions were received within the 30 days required by s.269ZZJ of the Act from the following parties:
 - Seven West Media Limited
 - NSIA.
15. For the reasons set out below, I required the ADC to re-investigate the finding that newsprint exported from France had caused material injury to the Australian industry producing like goods⁶. The ADC provided a report of its re-investigation on 29 October 2015 (the Reinvestigation Report) and a copy of the report is Attachment A to this report. Pursuant to s.269ZZK(4A), I have had regard to the Reinvestigation Report.

Grounds for Review

16. The grounds relied upon by UPM are set out in a submission by MinterEllison, Lawyers, the non-confidential version of which is Appendix 2 to the application by UPM. There are five grounds, which can be summarised as follows:
 - There is substantial evidence that NSIA is not an Australian industry suffering material injury from any source.
 - There is no evidence of the existence to any significant degree of the two price related forms of injury asserted by the ADC, let alone any evidence of any price related injury caused by UPM's exports to WAN⁷.
 - NSIA's reduced sales volumes and reduced revenues have been primarily caused by the major contraction in the newsprint market, not by imports from France.
 - NSIA's reduced profits have been caused primarily by the major contraction in the newsprint market, not by imports from France; profitability in 2013/14 being higher than at the beginning of the injury investigation period.
 - Further grounds relating to injury, causation and materiality, including an alleged deficiency with the decision of the Parliamentary Secretary in not complying with the terms of s.269TG.

⁶ Letter to the ADC dated 19 August 2015.

⁷ This was taken to be a reference to West Australian Newspapers Ltd.



Consideration of Grounds

NSIA not suffering material injury

17. In support of its contention that NSIA has not suffered any material injury, UPM points to the evidence that NSIA has increased domestic market share, restricted its sales volumes losses (compared to most other suppliers), broadly maintained costs, prices, profitability, production volumes, production utilisation and employment and substantially increased export volumes. UPM argues that this is incompatible with any claim that NSIA is suffering material injury.
18. The ADC found that NSIA had suffered injury in the form of :
 - Reduced sales volumes;
 - Price depression;
 - Price suppression;
 - Reduced profits and profitability; and
 - Reduced revenues.
19. With respect to the finding of reduced sales volumes, the evidence is that the annual sales by NSIA fell by around 25% from 2010/11 to 2013/14⁸. A fall of that magnitude over the injury analysis period is certainly material. There is also some evidence to support the other findings by the ADC as to injury, although it was not as significant as that suffered by NSIA in the form of reduced sales volumes.
20. It is true, as UPM asserts, that the injury suffered by NSIA was in the context of a dramatic reduction in sales for the Australian market as a whole and that compared to other suppliers, NSIA performed relatively well, increasing its market share. This however does not detract from the conclusion that NSIA has suffered material injury.

No evidence of price related injury

21. In its submission on this point, UPM makes two arguments. First, that there is no evidence of the existence to any significant degree of the two price related forms of injury asserted by the ADC. The two price related forms of injury were price depression and price suppression. The second argument is that there is no evidence of any price related injury caused by UPM's exports.
22. As a preliminary point, UPM points to the terms of s.269TAE(1)(e) and (f) of the Act. UPM contends that these provisions reflect the obligation imposed by Article 3.2 of the WTO Anti-Dumping Agreement⁹ (ADA) to consider whether

⁸ ADC Report 242 Section 7.3.1, page 30

⁹ World Trade Organisation Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994



there has been significant price undercutting by the dumped imports. I note that s.269TAE(1) provides that the matters listed in that section are matters to which the Minister may have regard when considering whether dumping has caused material injury to an Australian industry and it is not stated to be mandatory to have regard to such matters.

23. When regard is had to the terms of Article 3.2 of the ADA, I note that there is a positive obligation to consider whether there has been significant price undercutting by the dumped imports “or whether the effects of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred”. It seems that the obligation under Article 3.2 will be satisfied, if the ADC has considered whether or not prices of dumped imports had one of the three price effects set out in Article 3.2.¹⁰
24. It is clear that the ADC did consider whether or not the prices of the dumped imports from France had the one of the three price effects set out in Article 3.2 and concluded that those dumped prices had caused price depression and price suppression.¹¹ There was therefore compliance with Article 3.2.
25. In its submission, UPM deals with its two arguments regarding price effects under the separate headings of price depression and price suppression.

Price Depression

26. UPM’s first point that there was no price depression relies on the acknowledgment in the ADC Report at page 31 to the effect that the prices in 2013/2014 were higher than at the beginning of the injury investigation period. This is true. However, the prices in 2013/14 were lower than those prevailing in the preceding two years. UPM asserts that the drop in prices was less than 4% and this cannot be characterised as a depression of prices to a significant degree. While the ADC did not specifically consider whether or not that percentage of a drop in prices was significant, I do not believe that it is insignificant or that its impact on NSIA would have been immaterial, particularly in the context of the reduced sales volumes.
27. With its second argument, that there no evidence of price related injury caused by the dumped imports, UPM contends that there was no positive evidence to support a conclusion that any price adjustment resulting from the price negotiations was caused or influenced by the price of UPM’s exports to WAN during the investigation period.
28. The reference by UPM to price negotiations is to the renegotiation of contracts by NSIA’s traditional customers which took place during the investigation period. As a result of these renegotiations, NSIA secured supply at reduced

¹⁰ WTO Panel Report, Korea-Anti-Dumping Duties on Import of Certain Paper from Indonesia WT/DS312, para 7.253

¹¹ ADC Report 242 Section 8.6.3, page 3



prices and volumes.¹² The issue then is whether or not this decline in prices as a result of the renegotiations was caused or contributed to by the dumped imports from France.

29. The finding of causation against the imports from France with respect to the price effects injury is found in section 8.6.3 of the ADC Report. The ADC found that in a price sensitive market, the competitive advantage from dumping allowed UPM to secure sales when competing directly with NSIA and that it was reasonable to conclude that NSIA's other contracts were influenced by the competition with the dumped imports from France. The difficulty with this conclusion is the lack of reference to the material relied upon. The only references are to the WAN contract and to the fact that France was the second largest source of newsprint imports.
30. The only contract which UPM secured during the investigation period was that with WAN for the supply of newsprint from 2014/15 onwards. It is difficult to see how that evidence could have caused the price effects injury identified during the investigation period. The prices quoted in the tender were for the supply of newsprint after the investigation period and the contract for the WAN supply was not awarded until nearly the end of the investigation period. NSIA was advised it was unsuccessful with its tender in March 2014¹³. Further the prices at least for the supply in the first year (2014/15) would not indicate that any downward pressure was coming from UPM.¹⁴ Indeed any such price pressure would appear to be coming from the Korean exporter, Jeonju Paper Corporation (Jeonju). The ADC Report also does not indicate how the negotiations in the other contracts were influenced by the prices in the WAN tender.
31. The contract with WAN, pursuant to which the dumped imports were made, was awarded in 2010. While it is true that France was the second largest source of imports, imports from France were still only a very small percentage of the market during the investigation period¹⁵.
32. The relevant finding on the issue of causation is that the ADC considered that it was reasonable to conclude that NSIA's prices in other contracts were influenced by the competition with the dumped imports from France. It is not clear what evidence there is to support this finding. Again, the only tender by UPM which was analysed in the ADC Report is the WAN tender in 2013 for the supply of newsprint for three years from 2014/15 and, for the reasons above, it is not clear how the pricing in this tender influenced pricing during the investigation period.
33. As I was concerned at the lack of evidence to show the causal link between the dumping and the injury sustained by NSIA, I required the ADC to reinvestigate

¹² As above, Section 8.6.1, page 38

¹³ Letter from NSIA to ADC dated 1 December 2014, document 31 of EPR (confidential version)

¹⁴ Confidential Appendix 9 to ADC Report 242

¹⁵ Confidential Appendix 1 to ADC Report 242



the issue of causation.¹⁶ The response from the ADC in its Reinvestigation Report¹⁷ does not however resolve the concerns I had.

34. With regard to the impact of the award of the WAN contract in February 2014, the ADC notes that UPM's price was higher in the first year of that contract than the Australian industry price. However, the ADC did not consider it appropriate to look at the first year in isolation and it analysed the terms for the entire contract. Based on that analysis, it considered that UPM had a competitive advantage over NSIA by offering newsprint at prices that were lower than those of NSIA.¹⁸

35. The Reinvestigation Report refers to the fact that the WAN contract was negotiated in the context of a market that included the supply of newsprint at dumped prices. It then states:

“The Commission considers that the price that had been and is likely to be paid for newsprint manufactured by NSIA and sold in Australia had been affected by the prices of newsprint by UPM as indicated in its contract with WAN. That is, dumped newsprint resulted in lower prices being achieved at the time and in the future by NSIA.”¹⁹

36. The exported newsprint which was found to have been exported at dumped prices by UPM was supplied to WAN pursuant to an earlier WAN contract negotiated in 2009/10²⁰. I am unable to understand how these exports pursuant to that contract affected the price which NSIA was able to obtain during the investigation period for its product. The fact that the WAN contract for supply from 2014/15 onwards was negotiated in the context of the dumping of exports pursuant to the earlier contract does not explain how the prices in the WAN tender affected the price which NSIA was able to obtain for its newsprint in 2013/14, the investigation period.

37. An explanation given in the Reinvestigation Report is that the “influence of prices negotiated in the contract between WAN and UPM was a factor that influenced prices negotiated between NSIA and its other customers”.²¹ To support this finding, the ADC refers to the renegotiation of the contract which NSIA had with News Corp Australia and Fairfax. The Reinvestigation Report states that:

“The 2013 requests for re-negotiation of the contracts with News Corp Australia and Fairfax were made in the context of competition with dumped newsprint. NSIA was required to prepare its bids and conduct its negotiations

¹⁶ Letter to the ADC dated 19 August 2015

¹⁷ Reinvestigation of Certain Findings Report 308 October 2015

¹⁸ Reinvestigation Report page 9

¹⁹ Above page 9

²⁰ Letter from Clayton Utz to ADC dated 3 July 2014, section 8.28 of confidential version; Reinvestigation Report 308, section 3.2.1, page 6

²¹ Above page 10



in this context. The Commission had found that this context included the supply of newsprint from France at dumped prices.”²²

38. The difficulty which I have with this is that there was no competition from dumped newsprint for these contracts. UPM did not tender for them. While there was the supply of dumped product by UPM during the investigation period it was only to WAN pursuant to a contract which had been awarded in 2010. UPM did not bid for the News Corp Australia and Fairfax contracts.
39. The ADC did not consider that it was necessary for UPM to have bid for these contracts in order to make the finding that the lower price achieved by NSIA in the renegotiations had been influenced by the dumped prices. This is because it considered that “the presence and practices of all importers, including UPM, in the market, were factors that NSIA considered when preparing its bids and negotiating its contracts”.²³ This seems to be saying that the supply by UPM to WAN of newsprint at prices pursuant to a contract it was awarded some years before, influenced NSIA in the price it tendered for contracts for which UPM was not even bidding. There is no evidence to support this and without some evidence, it is speculation.
40. NSIA would not of course have been aware of the second WAN contract prices. That contract was not awarded until after the News Corp and Fairfax contracts were renegotiated²⁴. How NSIA knew the bid prices of the other competitors for the WAN contract is not explained. There is also no explanation as to why UPM’s prices would have affected NSIA’s bid when competing with other importers and not UPM.
41. Without some answers to these queries, I am unable to understand how the ADC reaches the conclusion that “the context of the Australian market is such that the bidding and supply of newsprint at dumped prices to WAN by UPM is linked to the fall in prices achieved by NSIA to its other customers, including its largest customers, News Corp Australia and Fairfax”.²⁵ There is no evidence of how the prices of the newsprint supplied pursuant to the earlier WAN contract or to be supplied pursuant to the new WAN contract influenced the prices NSIA was obtaining during the investigation period.
42. In its submission, NSIA claimed that it had reduced its price offer to APN News and Media Ltd (APN) on the basis of available price offers of dumped imports from UPM²⁶. NSIA does not reference any material before the ADC in which this claim was previously made. I am concerned that this may be new information and therefore information to which I cannot have regard under s.269ZZK(4). I was unable from my review of material before the ADC to

²² Reinvestigation Report page 10

²³ As above

²⁴ Non-confidential Attachment A to the Reinvestigation Report 308

²⁵ Reinvestigation Report page 11

²⁶ Letter from Norske Skog dated 24 July 2015



confirm this assertion by NSIA and it seems contrary to other information which is outlined below. However, the ADC did not advise me that it was not relevant information.

43. As there was no analysis in the ADC Report of the APN tender, I raised this submission with the ADC in the request for reinvestigation. In the Reinvestigation Report, the ADC advised that after being initially unsuccessful with its bid, NSIA reduced its tender price and was consequentially the successful bidder for the supply of 50% of newsprint to APN.
44. The ADC considered that the more aggressive bid by NSIA allowed it to determine the range in which UPM's bid must have been. Further, the ADC found that the success of NSIA in winning the APN contract on the basis of reduced prices supports the finding that NSIA suffered injury in the form of price effects.
45. The difficulty with the above analysis is that it ignores the role of the Korean exporter, Jeonju in the APN tender. In the Visit Report²⁷ made by the ADC as a result of its verification visit to APN on 3 June 2014, there is no mention of UPM in the APN tender. The report records APN advising that "NSIA was chosen over Jeonju based on pricing competitiveness".²⁸ The report also provides the price difference between the tender prices of NSIA and Jeonju.²⁹ From this it is clear that it was Jeonju which had underbid NSIA's initial tender price and also UPM's. NSIA had to reduce its price to win the APN business from Jeonju.
46. The information in the APN Visit Report is also consistent with the information provided by NSIA to the ADC during the verification visit the ADC made to NSIA in May 2014³⁰. This information indicates that NSIA considered the competition for the APN business was from Jeonju.
47. I agree with the statement in the ADC Reinvestigation Report that the APN tender process shows the competitive nature of the newsprint industry. I also agree that the success of NSIA in winning the APN contract caused it injury to the extent that it achieved a lower price. However, it does not show that the injury was caused by the export of newsprint from France at dumped prices, as is stated in the Reinvestigation Report. The competition and injury came from Jeonju's tender price.

Price Suppression

48. The ADC Report found that NSIA's unit price had decreased in 2013/14 and its cost to make and sell (CTMS) had also decreased but less so than its unit prices.

²⁷ APN Visit Report Document 018 of the EPR

²⁸ As above, page 8 section 3.3

²⁹ As above, page 10, section 5.1

³⁰ NSIA Visit Report, page 32, section 8.1, document 19 of EPR (confidential version)



A graph in the ADC Report shows that the total revenue and the total CTMS for NSIA had been declining with the margin between revenue and costs decreasing.³¹ UPM asserts that the net decline in NSIA's margin, which in the case of 2012/13 to 2013/14 was less than 3%, could not be characterised as a suppression of prices to a significant degree. I do not agree with this contention. Such a reduction in margin is not insignificant, particularly in a declining market. Over the injury analysis period, the annual sales of newsprint in Australia had fallen 37%.³²

49. As with its submission in relation to price depression, UPM contends that there are no grounds for claiming that UPM's pricing was the cause of any price suppression. The ADC Report did not distinguish between the cause of the price depression and price suppression in its analysis of the causation of the price effects injury. Consequently, for the reasons given above on the cause of the price depression suffered by NSIA, I agree with the submission by UPM.

Reduced Sales Volumes/Revenues caused by market contraction

Sales Volumes

50. In the ADC Report when analysing whether the dumped exports by UPM caused injury in the form of reduced sales volumes, the ADC makes a reference to the decline in sales volumes by NSIA being greater than the decline of imports from UPM. UPM claims that this observation by the ADC was incorrect. This was because the ADC made an error in finding that the exports by UPM had increased by around 45%. Contrary to this finding, UPM asserts that its sales volumes declined by a similar amount to NSIA's.
51. The basis for this assertion by UPM is that the WAN contract required delivery of specified quantities on a financial year basis and that as the ADC's calculations did not relate to a financial year, they involved distortion and misleading outcomes. I do not believe it is necessary to resolve this issue as it does not appear to be determinative of the issue of causation. While an increase in the quantity of the exported goods is a factor to be considered in determining whether dumping has caused injury, the increase of around 45% found by the ADC was still only from a very small, almost negligible, base, as is clear from Confidential Appendix 1 to the ADC Report.
52. Even if NSIA's sales did decline considerably more than the imports from UPM during the investigation period, this did not result in NSIA losing market share³³. The relevant issue is what factors caused the reduced volume of sales which

³¹ ADC Report section 7.4.1, pages 31 and 32

³² As above section 7.3.1, page 30

³³ ADC Report 242, section 7.3.2, page 30



NSIA suffered and whether or not the dumped exports from UPM was a contributing factor.

53. UPM contends that it is only a reduction in sales volumes that constitutes a form of injury and that the outcome of the second WAN tender did not contribute to any reduction in sales for NSIA as it was not the incumbent supplier. I understand the reference to the second WAN tender to be to the tender process which took place from November 2013 to February 2014 for the supply of newsprint to WAN from July 2014.
54. With respect to the first WAN tender, UPM claims that NSIA concedes that it did not cause injury. It does not reference this assertion to any material before the ADC. It is perhaps referring to the statement by NSIA in its application that it considered that it began to experience material injury from the dumped newsprint exports from France and Korea during 2013/14.³⁴ I note that in the Visit Report of the verification visit by the ADC to NSIA in May 2014, NSIA claimed that it began to suffer injury from dumped goods during the 12 month period to 31 March 2014.³⁵
55. In the analysis of the effect of the dumped imports from UPM on NSIA's reduced sales volumes, the ADC Report does not address the issue that the sales by UPM were pursuant to a contract with WAN issued some time before the investigation period. The relevant finding was that in the absence of dumping, NSIA would have been in a position to achieve sales to WAN because the UPM price offer would have been less competitive. This is apparently a reference to the WAN contract which was awarded in February 2014 for the supply of newsprint to WAN from July 2014. Jeonju and UPM were the successful bidders.
56. UPM takes issue with the finding by the ADC with respect to the second WAN tender that, in the absence of dumping, "NSIA would have been in a stronger position to achieve sales to WAN because the UPM price offer would have been less competitive". UPM argues that this involves two presumptions, namely that UPM was successful because of its delivered price and that NSIA would have been WAN's alternative choice to UPM. UPM asserts that neither presumption is correct as it was the over bidder and Jeonju could have satisfied all of WAN's volume requirements and product specifications.
57. Whether or not UPM is correct in these assertions, it is difficult to understand how the award of the second WAN contract caused the injury in the form of reduced sales volumes suffered by NSIA during the investigation period. This is because the second WAN contract was for the supply of newsprint from 2014/15 onwards. It is the decline in sales volumes from 2010/2011 through to 2013/14 which is the injury identified in the ADC Report. During this time, NSIA's

³⁴ NSIA Application. Document 1 in the ADC EPR at page 23, section A-8

³⁵ NSIA Visit Report Document 019 in the EPR at page 27, section 7.2



annual sales fell by around 25%, although the market for newsprint fell by about 37% in annual sales.

58. As noted above, because of the concerns I had with the finding that the dumped exports by UPM had caused injury, I required the ADC to conduct a reinvestigation of this finding. While on different grounds to that in the original investigation, the ADC in the Reinvestigation Report still finds that the dumped exports from UPM caused injury in the form of reduced sales volumes.
59. The first point the Reinvestigation Report makes is that even though the contract terms between WAN and UPM were agreed in 2010, the supply of newsprint by UPM to WAN according to the terms of that contract included exports at dumped prices. This does not explain though how those dumped exports could have caused the reduced volume of sales identified during the investigation period.
60. UPM remained the incumbent supplier under the first WAN contract until June 2014³⁶. Given that UPM had already been awarded the WAN contract, the sales pursuant to that contract would not have been available to NSIA. NSIA had already lost that contract and the reduction in sales suffered by NSIA during the investigation period could not be due to the exports by UPM during that period pursuant to the WAN contract.
61. The Reinvestigation Report then refers to the second WAN contract and notes that the prices for this contract were negotiated during the investigation period. The Reinvestigation Report then states:
- “This renegotiation occurred in the context of a market supplied by dumped newsprint from France. As a result, the Australian industry was in a weak position relative to UPM to secure new contracts. This resulted in NSIA failing to make sales that it may have otherwise achieved in a market not affected by dumping. The Commission considers that these lost sales represent injury in terms of lost sales volume.”³⁷
62. The difficulty I have with this conclusion is that it does not explain how NSIA in failing to obtain the second WAN contract suffered the loss of sales during the investigation period. The sales which NSIA did not achieve in losing the WAN tender were sales which would not have taken place until after the investigation period, as the WAN contract did not start until July 2014. Indeed, at another part of the Reinvestigation Report, it is agreed that “the 2013 WAN contract negotiations for supply from July 2014 could not have caused injury in the form of lost sales volumes prior to that time”.³⁸
63. It seems that, perhaps contrary to what is stated earlier in the Reinvestigation Report, the crux of the finding that the dumped exports from UPM caused injury

³⁶ Reinvestigation Report section 3.2.1, page 6

³⁷ Reinvestigation Report 308, page 6

³⁸ As above, page 7



to NSIA in the form of reduced sales volumes is the loss of the WAN contract in 2010. In this respect the Reinvestigation Report appears to differ from the original finding in the ADC Report. The Reinvestigation Report finds that “the fall in NSIA’s annual sales from 2010–11 through to 2013–14 was partly due to the lost sales volume resulting from sales to WAN being lost to UPM after the 2010 bidding process”.³⁹

64. It is possible that if NSIA had won the tender for the 2010 WAN contract, it could have been making sales pursuant to that contract during the investigation period and may not have suffered reduced sales volumes to the same extent. However, the fact that it was not making those sales to WAN was because it did not win that tender.
65. The tender process for the earlier WAN contract was not analysed during the investigation. Hence, I do not know why Jeonju and UPM were awarded the contract for the supply of newsprint to WAN over NSIA. However, the issue is whether or not the dumped exports by UPM to WAN during 2013/14 caused the loss in volume of sales for NSIA. Those dumped exports cannot have caused a loss of sales for NSIA during that period as it could not have obtained those sales, irrespective of whether or not UPM’s prices were dumped. NSIA lost the WAN business well before the dumped exports took place.

Sales Revenue

66. UPM contends that there was no separate analysis of the injury in the form of lost sales revenues suffered by NSIA or its cause. I agree that the ADC Report does not contain a separate analysis of the cause of the lost sales revenues. The closest appears to be the analysis in section 8.6.3 that found that along with injury in the form of price depression and price suppression, the dumping of newsprint from UPM caused injury in the form of lost sales revenue.
67. Given that there is no separate reason given for the dumping causing lost sales revenue, the reason must be that it flows from the other forms of injury which were analysed. The same difficulties therefore exist with any finding that the dumped exports caused this form of injury as exist with the findings in relation to reduced sales volumes, price depression and price suppression.

Reduced Profits/Profitability

68. At section 8.7.3 of the ADC Report, the ADC notes the injury suffered by NSIA in the form of price depression and price suppression and reduced sales volumes. The ADC found that the price suppression demonstrated by the lower margin between unit prices and costs resulted in lower profitability for NSIA. The lower profitability and lower sales volumes resulted in reduced profits. Consequently,

³⁹ As Above



the ADC found that NSIA had suffered injury in the form of reduced profit and profitability due to dumped imports of newsprint from France.

69. UPM contends that the lower sales volumes cannot be attributed to UPM's exports and that as there was no evidence of significant price depression or suppression, any reductions in profits and profitability cannot be linked to UPM's sales to WAN.
70. I do not agree with UPM that there was no evidence of significant price depression or suppression. However, I do agree, for the reasons given above, that any such injury, along with reduced sales volumes has not been linked with UPM's exports.

Reinvestigation: Summary on Causation

71. I agree with the comments in the Reinvestigation Report to the effect that the dumped exports from UPM do not need to be the sole cause of the injury to the Australian industry. However, there must be a basis for a finding that those dumped exports have been a cause of the injury identified during the investigation. While the investigation established that NSIA had suffered injury in the form of price depression, price suppression, reduced sales volumes and consequential injury, it did not establish a link between such injury and the dumped exports.
72. There were causes for the injury identified during the investigation. These were the massive decline in the newsprint market in Australia, and indeed globally, and the competition from undumped imports, particularly from Korea.
73. In the Reinvestigation Report, the ADC listed its reasons for finding that the dumping of newsprint from France caused material injury to the Australian industry⁴⁰. I need to address these.
74. The first finding made by the Reinvestigation Report is that newsprint exported to Australia from France by UPM influenced News Corp Australia and Fairfax to request contract re-negotiations with NSIA. The basis for this finding is that the NSIA contract with News Corp Australia was not due to expire until 2016. However, in December 2013 News Corp Australia and Fairfax separately requested a renegotiation for supply⁴¹.
75. The difficulty with this finding is that there is no evidence to support the link between the dumped exports from UPM and the decision by News Corp Australia and Fairfax to renegotiate their contracts. The evidence provided by the Reinvestigation Report is the comment in the Visit Report of the verification visit to News Corp Australia to the effect that given that NSIA is the only Australian producer of newsprint, the only option for alternative supply is importation. There

⁴⁰ Reinvestigation Report 308, page 12, section 3.2

⁴¹ As above, pages 9 to 10, section 3.5.1



is then a deduction from this comment that “as such, News Corp Australia was aware of prices being offered in the Australian market by exporters of newsprint”.

76. The comment noted by the Reinvestigation Report would appear to be from the following in the Visit Report:
- “We were informed that following a senior management change approximately three years ago NEWS changed supply strategies and considered that a second supplier of newsprint essential to mitigate the risk of supply chain disruptions. NEWS also noted that it is common practice to have more than one supplier of newsprint to mitigate against shortages. Given that NSIA is the only domestic producer, importing newsprint is the only option for NEWS to diversify its supply of newsprint.”⁴²
77. The Visit Report for News Corp Australia also notes that “Apart from NSIA, NEWS noted that the only imported newsprint it sources is from Jeonju”⁴³. I cannot understand how the fact that News Corp sources part of its newsprint from Korea means it is aware of or influenced by the prices of UPM’s exports to WAN. This is not explained. There is also no explanation as to how Fairfax was aware of the prices of the UPM exports or was influenced by them.
78. The only other evidence relied upon by the Reinvestigation Report is that the request for re-negotiation and the preparation of the bids and the negotiations were made in the context of competition with dumped imports. However, UPM did not compete for either the News Corp Australia or the Fairfax contracts.
79. It is likely that the two news publishers decided to renegotiate their contracts for supply of newsprint to get better prices for the newsprint. However, the evidence does not link this decision with knowledge of the dumped prices of the UPM exports. I also note that in the NSIA Visit Report there is a comment by NSIA as to the reason for the early end of the contracts with its customers in 2013⁴⁴. This comment does not support a link with the dumped imports from UPM being the trigger.
80. The second finding is that the dumped exports influenced the prices quoted in the negotiations with News Corp Australia and Fairfax and caused NSIA to achieve lower prices. As noted above, UPM did not compete for the News Corp Australia and Fairfax tenders and there is no evidence as to how the prices in those contracts were influenced by the prices of the UPM exports to WAN.
81. The third reason is that the dumped newsprint from France by UPM gave UPM an advantage over NSIA in terms of pricing in negotiations to supply WAN. I do not understand how the dumped exports during the investigation period gave UPM this advantage. In any event, that contract was for the supply of newsprint

⁴² Importer Visit Report – News Limited, page 9, section 4, Document 16 in the EPR

⁴³ As above,

⁴⁴ NSIA Visit Report, page 16, section 4.3.2



from July 2014 and it has not been shown in either the original ADC Report or the Reinvestigation Report how the loss of that contract caused the injury suffered by the Australian industry during the investigation period.

82. The fourth reason is that the newsprint exported from France by UPM influenced negotiations to supply APN which in turn caused NSIA to achieve lower prices. There is some evidence that NSIA did lower its prices to secure the APN contract. However, the competition in that tender was from Jeonju which was the under bidder, not UPM.
83. The fifth reason given is that lower prices achieved by NSIA resulted in reduced profits and profitability for NSIA. This is probably the case. However, it has not been established that the reduced prices were as a result of the dumped exports from France.
84. Lastly, the Reinvestigation Report makes the point that the other causes of the injury to the Australian industry, such as un-dumped imports, imports from other countries and contractions in demand for newsprint and changes in patterns of consumption do not detract from the finding that dumped imports from France caused injury to the Australian industry. I accept that the dumped exports do not have to be the sole cause of the injury, but there has to be some evidence linking the dumping to the injury. In this case, the original investigation and the reinvestigation have not disclosed such evidence.

Non-Compliance with S.269TG

85. The final reason given by UPM in its application for review is that the Parliamentary Secretary did not comply with the provisions of s.269TG(1) and (2) of the Act. In its submission, UPM contends that the Parliamentary Secretary did not declare that she was satisfied that the dumping of the specific goods exported by UPM from France had caused material injury. Consequently, UPM contends that the declaration under s.8 of the Dumping Duty Act was unlawful and must be set aside.
86. The application by UPM in this respect mistakes the role of the Review Panel in a review. The Review Panel does not have the power to set aside decisions of the Parliamentary Secretary. The Review Panel's power under the Act is to make one of the recommendations set out in s.269ZZK.
87. UPM makes a further submission that because of the invalidity of the notice under s.269TG(1), the Parliamentary Secretary's declaration under s.269TG(2) cannot be sustained. Further, UPM contends that even if the s.269TG(1) notice is valid, there are separate grounds on which the notice under s.269TG(2) must be set aside.
88. Given that the role of the Review Panel is merits review, it is not appropriate for me to consider the submissions on the validity of the notices under s.269TG.



89. UPM also submits that there were no grounds or insufficient grounds for the publication of the notice under s.269TG(2)(b). As the ADC Report notes⁴⁵, under s.269TG(2) when the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and material injury may continue. As I have not agreed with the findings by the ADC with respect to the issue of causation, I do not consider it necessary to examine the submission by UPM in this regard.
90. UPM's submission makes further contentions on the issues of causation and materiality. Again, given that I have agreed with the other submissions by UPM on the issue of causation, it is not necessary for me to consider these issues further.

Recommendations/Conclusion

91. For the reasons outlined above, the material before the ADC and the analysis of that material in the ADC Report and the Reinvestigation Report do not establish that the dumped exports by UPM to WAN caused the injury suffered by the Australian industry during the investigation period which was identified by the ADC. Accordingly, the applicant has established that the decision of the Minister was not the correct or the preferable decision.
92. Pursuant to s.269ZZK of the Act, I recommend that the Parliamentary Secretary revoke the reviewable decision and substitute a new decision not to publish a dumping duty notice in respect of exports of newsprint from France.

A handwritten signature in black ink, appearing to read 'Joan Fitzhenry', written in a cursive style.

Joan Fitzhenry
Acting Senior Member
Anti-Dumping Review Panel
27 November 2015

⁴⁵ ADC Report 242, page 47, section 9.1