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Your Ref:

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BY EMAIL: Investigations3@adcommission.gov.au

Reuben McGovern
Case Manager
Investigations 3
Anti-Dumping Commission

Re: Accelerated Review 474 – Resealable Can End Closures exported from Malaysia

Dear Sir

We act for Visy Packaging Pty Ltd.

We refer to the submission filed by Marpac Pty Ltd dated 18 May 2018 which was loaded onto the ADC's electronic record on 29 May 2018.

Whilst we note the due date for submissions by interested parties was 28 May 2018 Visy has not been afforded the right to respond to Marpac's assertions only made publicly available on 29 May 2018 regarding the calculation of the Non-Injunction Price and hence this letter should be taken into account by the ADC.

We wish to raise the following matters:

1. The Non-Injurious Price (NIP) is only relevant where the exporter is assessed to be dumping. The ADC is still assessing Federal Metal Printing Factory Sdn Bhd (FMPF) as a new exporter. We understand at this time FMPF only exports 127mm TRFs to Australia and it does not export other sizes at this time.
2. In its submission, Marpac contends that the NIP should be calculated by reference to an unsuppressed selling price (USP) derived from Marpac's cost to make and sell plus a profit margin and that the USP should not be based upon Marpac's selling prices. Visy does not agree. In Visy's view, a constructed price approach is not reliable. Instead, Visy contends

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that the ADC should use selling prices of Hindustan Tin Works (**HTW**) for its exports of 127mm TRFs to Australia. In support of this proposition, Visy notes:

- HTW was found not to be dumping in the original dumping investigation (350);
- Marpac does not manufacture 127mm TRFs and its costings cannot be relied upon as being accurate;
- The ADC will not use a constructed price approach where:
 - A reasonable rate for historical profit could not be established;
 - The industry CTMS data was unsuitable for a construction approach;
 - The result is an unreasonable level of USP (for example the resultant USP may be unreasonable when contrasted with the prices obtained historically) (*refer ADC manual – pg 135*).
- The ADC may use the prices of undumped imports in Australia as suitable for a USP – this approach would normally be adopted where exports from a particular exporter were found not to be dumped (*refer ADC manual – pg 136*).

In the original dumping investigation we note that the ADC did not use a constructed price and instead used historical selling prices by Marpac for 73mm TRFs. Visy does not agree with Marpac's assertion that Marpac's prices were suppressed during the investigation period (inv 350). We note on page 51 of REP 350 that imports from Malaysia and Singapore were below Marpac's pricing in one financial quarter only, being Q4 of 2015. [REDACTED]

[REDACTED] [Confidential sourcing information] *Visy therefore submits that a more reliable and accurate approach would be to use contemporary sales prices of 127mm exports to Australia by HTW.*

By contrast it would be illogical for the NIP to be based upon an artificial constructed price derived from costing and profit information provided by Marpac in preference to HTWs contemporary market prices. The NIP is defined in s269 TACA of the Customs Act as the minimum price necessary to prevent injury or a recurrence of injury. Given a significant proportion of imports of TRFs into Australia are sourced from HTW (which is not dumping) we fail to see how a NIP could be calculated based on Marpac's constructed prices which Visy reasonably infers are higher than HTW prices, as it could not be said that a NIP that is higher than HTW prices is in any way causing material injury to the Australian industry.

We also point out that Marpac has made a number of statements in its submissions on the NIP that are irrelevant to the calculations of the NIP. There are various random quotations from Report 350 that are not simply relevant and made completely out of context. Equally its asserted capability to produce 73mm and 99mm TRFs is not relevant and nor is there any requirement for TRF purchasers to engage with and purchase TRFs from Marpac.

[REDACTED]
[REDACTED]
[REDACTED] [confidential pricing information]

We trust these matters shall be taken into consideration and adopted by the ADC and applied should the NIP become an operative factor in this accelerated review.

Do not hesitate to contact the writer should you wish to discuss this matter or if there is any further information that we may provide to assist.

Yours faithfully
GROSS & BECROFT



DR ROSS BECROFT
Principal