



**Australian Government**  
Department of Industry,  
Innovation and Science

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XV B*

**REPORT  
NO. 474**

**ACCELERATED REVIEW OF  
THE DUMPING DUTY NOTICE APPLYING TO  
CERTAIN RESEALABLE CAN END CLOSURES  
EXPORTED TO AUSTRALIA FROM MALAYSIA BY  
FEDERAL METAL PRINTING FACTORY SDN BHD**

**July 2018**

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### ABBREVIATIONS

the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Assistant Minister	the Assistant Minister for Science, Jobs and Innovation
CIF	Cost, insurance and freight
COGS	Cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to Make and Sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Federal Metal Printing Factory, the Applicant	Federal Metal Printing Factory Sdn Bhd
FOB	Free On Board
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Hindustan	Hindustan Tin Works Ltd
IDD	Interim dumping duty
Marpac	Marpac Pty Ltd
NIP	Non-injurious price
OCOT	Ordinary course of trade
REP 350	<i>Anti-Dumping Commission Report No. 350</i>
REQ	Response to the exporter questionnaire
the review period	1 April 2017 to 31 March 2018
SG&A	Selling, general and administrative
TRF	Tagger, ring, foil also known as resealable can end closures
USP	Unsuppressed Selling Price
Visy	Visy Packaging Pty Ltd

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This final report has been prepared in response to an application under section 269ZF of the *Customs Act 1901*<sup>1</sup> (the Act) from Federal Metal Printing Factory Sdn Bhd (Federal Metal Printing Factory, the applicant) seeking an accelerated review of the dumping duty notice (the notice) applying to resealable can end closures (the goods) exported to Australia from Malaysia, in so far as it affects Federal Metal Printing Factory.

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) is basing his recommendations to the Assistant Minister for Science, Jobs and Innovation (Assistant Minister).<sup>2</sup>

## 1.2 Legislative framework

Division 6 of Part XVB provides for eligible parties to apply for an accelerated review. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews for the purpose of making a report to the Assistant Minister; and
- empowers the Assistant Minister, after consideration of such reports, to leave the dumping duty notice unchanged, or to declare that the notice have effect with regard to the applicant as if different variable factors had been specified relevant to the determination of duty.

Subsection 269ZE(1) sets out that a new exporter may apply for an accelerated review. A new exporter is defined in subsection 269T(1) as an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application for anti-dumping measures.

## 1.3 Findings and recommendations

Based on all relevant and available information, the Commissioner, in relation to variable factors in so far as Federal Metal Printing Factory is affected, recommends that:

- the normal value be determined using the exporter's domestic sales, which were arms length transactions and in the ordinary course of trade during the review period (1 April 2017 to 31 March 2018) with relevant adjustments;<sup>3</sup>
- as Federal Metal Printing Factory's one export sale of the goods to Australia was deemed unreliable for the purpose of ascertaining an export price, insufficient information was available to establish an export price under subsection 269TAB(1). As a consequence, the export price should be determined under subsection

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<sup>1</sup> Unless otherwise specified all legislative references in this report are to the *Customs Act 1901*.

<sup>2</sup> On 20 December 2017 the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this decision the Minister is the Assistant Minister.

<sup>3</sup> Subsections 269TAC(1) and (8).

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269TAB(3), having regard to all relevant information, in this instance being equal to the normal value;

- the non-injurious price (NIP) should be determined having regard to the Australian industry's weighted average selling price in the review period, for the model of the goods subject to the application;
- because the NIP is higher than the ascertained normal value, the lesser duty rule does not apply; and
- the amount of interim dumping duty (IDD) payable be calculated by reference to the floor price duty method.<sup>4</sup>

The Anti-Dumping Commission (the Commission) considers that, where it has not been found that an exporter has dumped the goods as part of an accelerated review period, the floor price duty method is the most appropriate form of duty. As a result, dumping duty will only be payable if Federal Metal Printing Factory exports the goods to Australia at a price below the ascertained normal value.

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<sup>4</sup> Subsections 5(4) and (5) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

## **2 BACKGROUND**

### **2.1 The goods**

#### **2.1.1 Description**

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

Resealable can end closures (TRFs) comprising:

- a tinplate outer ring with or without compound;
- an aluminium foil membrane for attachment to the outer ring; and
- a plug or tagger, which fits into the outer ring.

The goods are referred to locally as TRF ends (Tagger, Ring and Foil ends, or TRFs) and can also be known as RLTs (Ring, Lid, Tagger), RLFs (Ring, Lid, Foil) or Penny Lever Ends.

TRFs are commonly manufactured by the TRF industry in the following nominal sizes (diameters):

- 73 mm;
- 99 mm;
- 127 mm; and
- 153/4 mm.

The goods may be coated or uncoated and/or embossed or not embossed.

Goods specifically excluded from the description of the goods are TRFs of nominal size:

- 52 mm;
- 65 mm;
- 189 mm; and
- 198 mm.

#### **2.1.2 Tariff classification**

The goods may be classified to sub heading 8309.90.00 (statistical code 10) in Schedule 3 to the *Customs Tariff Act 1995*.

<b>Tariff Subheading</b>	<b>Statistical Code</b>
8309.90.00	10

## **2.2 The accelerated review process**

If a dumping duty notice or a countervailing duty notice has been published in respect of certain goods, a new exporter, as defined in subsection 269T(1), may request an accelerated review of those measures in so far as they affect that exporter.

If an application for an accelerated review of anti-dumping measures is received and not rejected, the Commissioner has up to 100 days after the application is lodged to conduct his review and complete a report to provide to the Assistant Minister.<sup>5</sup>

Under subsection 269ZG(1), the Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, recommend to the Assistant Minister that the notice the subject of the application:

- remain unaltered; or
- be altered so as to apply to the applicant as if different variable factors had been fixed.

Following the Assistant Minister's decision, a notice is published on the Commission's website advising of the decision.

## **2.3 Existing measures**

On 18 May 2016, an investigation into the alleged dumping of resealable can end closures exported to Australia from various countries including Malaysia was initiated following an application lodged by Marpac Pty Ltd (Marpac). In that investigation, as outlined in *Anti-Dumping Commission Report No. 350 (REP 350)*, it was found that, in relation to Malaysia:

- dumped TRFs have materially hindered the establishment of an Australian TRF industry; and
- exports of TRFs will continue at dumped prices and that continued dumping will prolong the market exclusion experienced by the Australian industry as a result of that dumping, and hence cause ongoing material hindrance to the establishment of an Australian TRF industry.

Accordingly, the Commissioner recommended that the Assistant Minister impose anti-dumping measures on the goods exported from Malaysia. The recommendation was accepted and, on 24 March 2017, public notice of the decision was published on the Commission's website (Anti-Dumping Notice (ADN) No. 2017/20 refers).

## **2.4 The current review**

On 6 April 2018, Federal Metal Printing Factory lodged an application for an accelerated review of the dumping duty notice that applies to resealable can end closures exported to Australia from Malaysia, in so far as the notice affects the applicant.

The Commission examined the application and considered that:

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<sup>5</sup> Subsection 269ZG(2) refers.

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- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the Commissioner was not required to reject the application under subsection 269ZE(2);
- the application was in writing and contained a description of the kind of goods to which the notice relates and a statement of the basis on which Federal Metal Printing Factory considers that the notice is inappropriate in so far as it is concerned (subsection 269ZF(1));
- the application was lodged in accordance with subsection 269ZF(2); and
- Federal Metal Printing Factory is a new exporter as defined by subsection 269T(1) of the Act.

Accordingly, the Commissioner did not reject the application and commenced the accelerated review. The Commissioner's decision and commencement of the accelerated review was publicly notified in ADN No. 2018/68, which was published on 23 April 2018 and provides further details in relation to the Commission's consideration of the application. ADN No. 2018/68 should be read in conjunction with this report and is available on the public record. The review period for this accelerated review is 1 April 2017 to 31 March 2018 (review period).

### 2.5 Response to the exporter questionnaire

Following receipt of the application, the Commission sent an exporter questionnaire to Federal Metal Printing Factory for completion. Federal Metal Printing Factory provided a response to the exporter questionnaire (REQ) within the requested timeframe. A non-confidential version of the REQ is available on the public record.<sup>6</sup>

Federal Metal Printing Factory has cooperated with the accelerated review and has provided detailed financial data and additional information requested within the required timeframes.

### 2.6 Exporter questionnaire verification

The Commission verified the completeness and relevance of the data reported by Federal Metal Printing Factory in its REQ by undertaking a desktop verification having regard to the procedures outlined in ADN. No 2016/30.

Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

### 2.7 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

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<sup>6</sup> Case No.474 Public Record Item No.3



## **3 ASSESSMENT OF VARIABLE FACTORS**

### **3.1 Findings**

On the basis of Federal Metal Printing Factory's REQ and the Commission's verification of information in the REQ, the Commissioner is satisfied that Federal Metal Printing Factory is a manufacturer of like goods. The Commissioner is satisfied that the variable factors insofar as they affect Federal Metal Printing Factory, have changed.

### **3.2 Circumstances of Federal Metal Printing Factory's production and sale of like goods**

#### **3.2.1 Status as a manufacturer**

Federal Metal Printing Factory provided evidence of its production volumes, sales data, and details of CTMS in its REQ. The information provided was sufficient for the Commission to determine the sales of like goods by Federal Metal Printing Factory and the costs association with the production of like goods.

#### **3.2.2 Like goods**

Subsection 269T(1) defines like goods as:

*goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.*

Federal Metal Printing Factory exported the goods to Australia during the review period and had domestic sales of the goods. The goods sold to Australia were compared to the goods produced by Federal Metal Printing Factory for sale on its domestic market to assess whether the goods it produces ought to properly be considered "like".

An examination of Federal Metal Printing Factory's production and sales found that goods produced by Federal Metal Printing Factory for domestic and export sale followed the same production process, were of the same model and specifications and included the same components.

In the Commission's view, the products sold on the domestic market either are identical or have characteristics that closely resemble the goods that Federal Metal Printing Factory exported to Australia. Accordingly, the Commission is satisfied that the goods produced by Federal Metal Printing Factory for sale on its domestic market are "like goods".

### **3.3 Export price**

#### **3.3.1 Export sale of like goods**

The Commissioner found that Federal Metal Printing Factory had one export sale of the goods to Australia during the accelerated review period. However, information was provided to the Commission during verification to demonstrate that, for a range of facts specific to the transaction, this was an irregular sale. The Commission has compared the export price of the single export sale in the review period with sales that have occurred

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since the accelerated review has been initiated and is satisfied that the sale is not representative of a regular export price. The price relating to this sale was therefore disregarded as being unreliable in accordance with subsection 269TAB(4).

The Commission is unable to establish an export price under subsection 269TAB(1) for the purposes of this accelerated review.

Specifically, there is insufficient information to determine the export price of the goods using:

- the price paid or payable by the importer;<sup>7</sup>
- the price in Australia less prescribed deductions (deductive export price);<sup>8</sup> or
- the price having regard to all the circumstances of the exportation.<sup>9</sup>

### 3.3.2 Export price - subsection 269TAB(3) - all relevant information

The Commission considered whether an export price could be determined, for the purposes of this accelerated review, having regard to all relevant information.<sup>10</sup>

The Commission considers it appropriate to determine the ascertained export price to be the same amount as that determined to be the normal value for the purposes of this accelerated review.

The Commission's export price calculation based on all relevant information under subsection 269TAB(3) of the Act is provided in **Confidential Appendix 5** and the Commission's assessment of the irregularity of the export sale during the period is provided in **Confidential Attachment 1**.

## 3.4 Normal value

### 3.4.1 Domestic sale of like goods

Federal Metal Printing Factory's REQ identified one domestic sale of like goods within the review period, to a related party.

Subsection 269TAC(1) provides that:

*the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length by the exporter or, if the goods are not sold by the exporter, by other sellers of the like goods.*

### 3.4.2 Related party customers

As Federal Metal Printing Factory did not have domestic sales of the goods to unrelated parties, the Commission sought and verified additional data relating to domestic sales of

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<sup>7</sup> Subsection 269TAB(1)(a)

<sup>8</sup> Subsection 269TAB(1)(b)

<sup>9</sup> Subsection 269TAB(1)(c)

<sup>10</sup> Subsection 269TAB(3)

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the same general category of goods (TRFs not covered by the measures) to test and compare the profitability and arms length nature of the domestic sales.

### 3.4.3 Arms length

In respect of the domestic sale of like goods made by Federal Metal Printing Factory during the accelerated review period, the Commission found no evidence in Federal Metal Printing Factory's REQ, sales data or audited financial statements, that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>11</sup>

The Commission therefore considers that the domestic sale of like goods made by Federal Metal Printing Factory during the accelerated review period was an arms length transaction.

### 3.4.4 Ordinary course of trade assessment

The Commission is satisfied that there is a sufficient volume of domestic sales of like goods that were arms length transactions and at prices that were in the ordinary course of trade. The Commission is therefore satisfied that the prices paid in respect of domestic sales of like goods are suitable for assessing the normal value under subsection 269TAC(1).

The Commission's assessment of domestic sales is at **Confidential Appendix 3**.

### 3.4.5 Adjustments to normal value

To ensure the normal value is comparable to an export price at free on board (FOB) terms, the Commission made the following adjustments in accordance with subsection 269TAC(8):

#### Downwards adjustment for inland transport

Federal Metal Printing Factory delivered the domestic sales of like goods to its customers in Malaysia. The Commission considers that a downwards adjustment to the normal value for domestic inland transport costs is necessary, to ensure a fair comparison to the FOB export price.

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<sup>11</sup> Section 269TAA refers.

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### Upwards adjustments – export packaging

As Federal Metal Printing Factory paid a packaging cost for its export sale of the goods in the review period, the Commission considers it necessary to make an equivalent upward adjustment to the normal value under subsection 269TAC(8).

### Upwards adjustments – export inland transport and handling

As Federal Metal Printing Factory paid an export inland transport cost for its export sale, the Commission considers it necessary to make an upward adjustment to the normal value under subsection 269TAC(8).

Additionally, noting that Federal Metal Printing Factory paid handling charges in relation to its export sale, the Commission considers it necessary to make an upwards adjustment to the normal value under subsection 269TAC(8) to account for the handling charges on its export sale.

### Upwards adjustments – export sales commission (trading company)

Federal Metal Printing Factory's export sales are made through a related intermediary (trading company) – with a certain mark-up applied to the purchase price whereas the domestic sale used to determine the normal value was negotiated directly by the company. Therefore the Commission considers it necessary to make an upward adjustment to the normal value, equivalent to the export sales commission under subsection 269TAC(8).

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Domestic inland transport	<b>Deduct</b> the cost of domestic inland transport
Export packaging	<b>Add</b> the cost of export packaging
Export inland transport	<b>Add</b> the cost of export inland transport
Export handling	<b>Add</b> the cost of export handling
Export sales commission - intermediary (trading company)	<b>Add</b> the sales commission received by the intermediary (trading company)

The Commission's normal value calculation is provided at **Confidential Appendix 4**.

## **3.5 Non-injurious price**

### **3.5.1 Investigation 350**

Under subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), if the NIP is less than the normal value, the Assistant Minister must have regard to the desirability of specifying a method such that the sum of the export price and the IDD payable does not exceed the NIP (the "lesser duty rule").

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Subsection 269TACA(a) identifies the NIP of the goods exported to Australia as the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance caused by the dumping.

In REP 350 (which examined the period of 1 April 2015 to 31 March 2016) the Commission found that the NIP was the operative measure and therefore the lesser duty rule applied.

In that investigation, the Commission calculated a USP based on Marpac's weighted average price of direct market sales of 73mm TRFs for the quarter immediately preceding the investigation period, as this was deemed to be a selling price that the Australian industry could reasonably achieve in the market in the absence of dumped imports.

The Commission also estimated a USP of other common TRF sizes not manufactured by Marpac at the time based on written quotes from Marpac to a potential customer. The USP was uplifted by a factor difference between the USP for the 73mm sold in the direct market and the price quoted to the potential customer.

### 3.5.2 Submissions – regarding calculation of the NIP

Marpac submitted that the USP should be calculated based on Marpac's constructed CTMS plus a profit margin. It argued, amongst other things, that Marpac's selling prices were not appropriate for determining the USP because the establish of an Australian industry has been materially hindered as a result of dumped imports and therefore sales prices do not reflect those achievable in an established market.

In its response, Visy Packaging Pty Ltd (Visy) submitted, amongst other things, that a constructed price based on estimated costing and profit data would not be reliable and the Commission should instead have regard to contemporary sales prices by Hindustan Tin Works Ltd for its construction of the NIP.

### 3.5.3 Re-assessment of the NIP

The NIP has been reassessed in relation to updated Australian industry data sought during the review period.

The Commission's *Dumping and Subsidy Manual* specifies that;

*"...The Commission will generally derive the NIP from an unsuppressed selling price (USP). The USP is a selling price that the Australian industry could reasonably achieve in the market in the absence of dumped or subsidised imports....."*

The Commission's *Dumping and Subsidy Manual* further provides the following hierarchy for determining a USP;

*"...in calculating the USP, the Australian industry's selling prices will normally be used at a time unaffected by dumping. If there are sound reasons for not using this approach, a price may be constructed based on the industry's cost to make and sell, plus a profit. If either of these methods is not appropriate, the selling prices of undumped imports in the Australian market will be used."*

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The Commission has assessed Marpac's sales data in relation to like goods in the review period, and specifically in relation to 73mm and 99mm TRFs (produced by Marpac), and 127mm TRFs (imported by Marpac). The Commission considers that as measures are currently in place, this can reasonably be considered to be a period unaffected by dumping.

The Commission considers that the USP should be based on the 127mm TRF models, as that is the model produced and sold by the applicant in the period, and 127mm TRFs have a higher cost base than 73mm and 99mm size TRFs.

Accordingly the Commission has calculated the USP with regard to Marpac's weighted average selling price in the review period, being a period of time unaffected by dumping.

The Commission found that the NIP was higher than Federal Metal Printing Factory's normal value and therefore the lesser duty rule does not apply.

The Commission's calculation of the NIP is at **Confidential Attachment 2**.

## **4 FINDINGS AND PROPOSED RECOMMENDATIONS**

### **4.1 Proposed recommendations**

The Commissioner recommends to the Assistant Minister that the dumping duty notice in respect of exports of the goods to Australia from Malaysia have effect in relation to Federal Metal Printing Factory as if different variable factors had been ascertained.

### **4.2 Proposed form of duty**

The Commissioner recommends to the Assistant Minister that the IDD payable on the goods the subject of the dumping duty notice, in respect of Federal Metal Printing Factory, is an amount which will be worked out in accordance with the floor price duty method pursuant to subsection 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

IDD will be payable on exports by Federal Metal Printing Factory, if the actual export price is below the ascertained normal value, which is a specified (confidential) amount per TRF.

**5 APPENDICIES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Australian sales - export price
<b>Confidential Appendix 2</b>	Cost to make and sell
<b>Confidential Appendix 3</b>	Domestic sales
<b>Confidential Appendix 4</b>	Normal value
<b>Confidential Appendix 5</b>	Ascertained export price and dumping margin
<b>Confidential Attachment 1</b>	Verification work program
<b>Confidential Attachment 2</b>	Non-injurious price