

**PUBLIC RECORD**



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

# TERMINATION REPORT NO. 350

ALLEGED DUMPING OF RESEALABLE CAN END CLOSURES  
EXPORTED FROM THE REPUBLIC OF INDIA, MALAYSIA,  
THE REPUBLIC OF THE PHILIPPINES AND  
THE REPUBLIC OF SINGAPORE

**February 2017**

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## Abbreviations

\$	Australian dollars
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant	Marpac Pty Ltd (Marpac)
CFR	Cost and freight
COGS	Cost of goods sold
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
DIBP	Department of Immigration and Border Protection
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EBIT	Earnings before interest and tax
EDITA	Earnings before interest, tax, depreciation and amortisation
FOB	Free On Board
GAAP	Generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Genpacco	Genpacco Ltd
GOI	Government of India
Hindustan	Hindustan Tin Works Ltd
PAD	Preliminary Affirmative Determination
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
SEF	Statement of Essential Facts
TRF	Tagger, ring, foil ends, also known as resealable can end closures
VIP	VIP Packaging Pty Ltd

**Table 1:** Abbreviations

# 1. Findings and investigation summary

## 1.1 Introduction

This *Anti-Dumping Commission Termination Report No. 350* (TER 350) has been prepared as part of *Anti-Dumping Investigation No. 350* (INV 350) concerning the export of resealable can end closures (referred to as tagger, ring and foil (TRF) ends, or TRFs) (the goods) exported to Australia from the Republic of India (India), Malaysia, the Republic of the Philippines (the Philippines) and the Republic of Singapore (Singapore).

This report relates to the termination of Hindustan Tin works Ltd. (Hindustan) an exporter from India.

This report follows publication by the Commissioner of the Anti-Dumping Commission (the Commissioner) of his Statement of Essential Facts (SEF) and Preliminary Affirmative Determination (PAD).

## 1.2 Findings

As a result of his investigation, the Commissioner is satisfied that during the investigation period:

- the goods exported from India by Hindustan were not dumped, and therefore the investigation must be terminated in accordance with subsection 269TDA(1) of the *Customs Act 1901* (the Act)<sup>1</sup> in so far as it relates to this exporter; and
- in relation to all other exporters of the goods from India, the total volume of goods that have been dumped is negligible and therefore the investigation must be terminated in accordance with subsection 269TDA(3) of the Act in so far as it relates to this country.

Public notice of the Commissioner's termination decision was published on the Anti-Dumping Commission's (Commission's) website on [www.adcommission.gov.au](http://www.adcommission.gov.au) (Anti-Dumping Notice (ADN) No. 2017/16) refers.

All other matters as part of INV 350 are ongoing and subject to continuing enquiry.

## 1.3 Authority to make decision

Division 2 of Part XVB of the Act describes, among other matters, the procedures to be followed and the matters to be considered by the Commissioner when conducting anti-dumping investigations<sup>2</sup> for the purpose of making a report to the Parliamentary Secretary.

Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

## 1.4 Initiation

The Commissioner published public notification of the initiation of this investigation on the Commission's website via Anti-Dumping Notice (ADN) No. 2016/54<sup>3</sup> on 18 May 2016. The

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

<sup>2</sup> In relation to the goods covered by an application under subsection 269TB(1)

<sup>3</sup> Available on Investigation 350 case page on the Commission's website [www.adcommission.gov.au](http://www.adcommission.gov.au)

background relating to the initiation of this investigation is contained in *Anti-Dumping Commission Consideration Report No. 350* (CON 350).<sup>4</sup>

The investigation is in response to an application by Marpac Pty. Ltd. (Marpac) into the alleged dumping of TRFs exported to Australia from India, Malaysia, the Philippines and Singapore.

## 1.5 Preliminary Affirmative Determination and Statement of Essential Facts

In accordance with the *Customs (Preliminary Affirmative Determinations) Direction 2015* (the PAD Direction) the Commissioner published a Status Report in lieu of a PAD on day 60 of the investigation. Details of the Commissioner's reasons for doing so are in the Status Report dated 18 July 2016.<sup>5</sup>

The Commissioner reconsidered making a PAD after the publication of the Status Report<sup>6</sup> and a combined *Statement of Essential Facts No. 350 and Preliminary Affirmative Determination* (SEF 350) was published on 5 October 2016 and set out the essential facts on which the Commissioner proposed to base his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary).<sup>7</sup>

In making the PAD, the Commissioner was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported from India, Malaysia, the Philippines and Singapore and was satisfied that it was necessary for the Commonwealth to require and take securities under section 42 of the Act in respect of interim dumping duty that may become payable in respect of the goods exported from India, Malaysia, the Philippines and Singapore and entered for home consumption on or after 6 October 2016.

The Commissioner sought submissions from interested parties in relation to the findings detailed in SEF 350. The Commissioner must have regard to the application, any submissions concerning the publication of the initiation notice to which the Commissioner had regard in formulating the SEF, the SEF and any submission made in response to the SEF that were received within 20 days after the SEF was placed on the public record.<sup>8</sup> The Commissioner may have regard to any other matters that the Commissioner considers relevant.<sup>9</sup>

The Commissioner is not required to have regard to any submission made in response to the SEF that is received after the end of the 20 day period following publication of the SEF if the Commissioner considers that to do so would prevent the timely preparation of the final report.<sup>10</sup>

As a result of considering submissions to this investigation, the Commissioner is satisfied that he is required to terminate this investigation in part for the reasons set out below.

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<sup>4</sup> Ibid

<sup>5</sup> *Op cit* (3)

<sup>6</sup> As required by section 9 of the PAD Direction

<sup>7</sup> On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this investigation the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

<sup>8</sup> Subsection 269TEA(3)(a)

<sup>9</sup> Subsection 269TEA(3)(b)

<sup>10</sup> Subsection 269TEA(4)

## 2. The goods

### 2.1 The goods subject of the application

#### 2.1.1 The goods description

The goods the subject of the application (the goods) are resealable can end closures (referred to as tagger, ring and foil (TRF) ends, or 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.

#### 2.1.2 Further information

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

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

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

The goods can also be known as RLTs (ring, lid tagger), RLFs (ring, lid, foil) or Penny Lever ends.

#### 2.1.3 Goods specifically excluded

Goods specifically excluded from this application are TRFs of nominal size:

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

### 2.2 Tariff classification

The goods are classified to tariff subheading 8309.90.00, statistical code 10, in Schedule 3 to the *Customs Tariff Act 1995* and are subject to customs duty of five per cent for exports from India and free for exports from Malaysia, the Philippines and Singapore.

## 3. Dumping investigation

### 3.1 Finding

The Commissioner finds that TRFs exported to Australia from India by Hindustan are not dumped. Hindustan's dumping margin has been calculated at negative 12.86%.

### 3.2 Consideration of Hindustan's submission

The Commission attempted in-country verification of Hindustan's response to the exporter questionnaire (REQ), as it submitted an REQ that was considered sufficient for the purposes of verification. The verification team was unable to obtain complete and relevant information within a reasonable time period to complete a timely and efficient verification, which was necessary for the purposes of the investigation.

The Commissioner is required under subsection 8(b) of the Customs (Extensions of Time and Non-cooperation) Direction 2015 (the Direction) to determine an exporter to be an uncooperative exporter within the meaning of subsection 269T(1) of the Act in certain circumstances. Specifically, the Commissioner must determine Hindustan to be an uncooperative exporter under subsection 8(b)(ii) of the Direction on the basis that no relevant information was provided in a reasonable period because whilst Hindustan provided a response within the legislated period, the Commissioner considered Hindustan did not provide information relevant to the case.

Hindustan did provide some information to the case, but other relevant information was not provided and remained outstanding. Accordingly, Hindustan's response did not provide information relevant to the case within that legislated period.

The Commissioner's detailed reasons are outlined in SEF 350.

The Commission received three submissions from or on behalf of Hindustan following the Commissioner's determination of Hindustan as an uncooperative exporter in the SEF from:

- the Government of India (GOI)<sup>11</sup>; and
- Hindustan (two submissions)<sup>12</sup>

These submissions were received within the legislated period and accordingly the Commissioner had an obligation to consider the submissions in accordance with subsection 269TEA(3)(a).

Hindustan's detailed submission<sup>13</sup> provided 26 confidential attachments with over 100 individual new documents that were not provided during the verification.

The Commission accepted Hindustan's offer to explain its submission and related confidential attachments in person and this meeting occurred on 20 – 21 December 2016<sup>14</sup>.

As a result of considering its submissions, the Commissioner has come to a view that Hindustan's submission provided complete and accurate data, resulting in the calculation of a normal value different to the finding made in SEF 350.

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<sup>11</sup> Document 34 on the public record

<sup>12</sup> Documents 36 and 38 on the public record

<sup>13</sup> Document 36 on the public record – post-PAD/SEF submission responding to the Commission's calculation of Hindustan's preliminary dumping margin.

<sup>14</sup> Documents 62 and 74 on the public record

### 3.3 Methodology for calculating Hindustan’s dumping margin

#### 3.3.1 Export price

The export price for Hindustan was determined under subsection 269TAB(3), as required by subsection 269TACAB(1)(d). Specifically, export price has been calculated as the price paid or payable by the importer less transport and other costs arising after exportation.

The Commission’s calculation of Hindustan’s export price is at **Confidential Appendix 1**.

#### 3.3.2 Normal value

The normal value for Hindustan was determined under subsection 269TAC(6), as required by subsection 269TACAB(1)(e). Specifically, the normal value has been calculated using the costs of production and if sold in the ordinary course of trade for home consumption by the exporter in India in sales that are arms length and in sufficient quantities.

The Commission’s calculations of Hindustan’s cost to make (CTM), selling, general and administrative (SG&A) expenses and normal value are at **Confidential Appendices 2 and 3**.

Claim	Effect on normal value
Hindustan was eligible and received excise duty, service and VAT tax rebates on raw material purchases and input services used in the manufacture and export of TRFs to Australia.	Decrease cost to make
Hindustan does not charge excise duty on exports of TRFs to Australia.	Removal of upwards adjustment
Hindustan is not charged interest for purchases of discounted tinplate.	Decrease cost to make
Removal of double-counting of working capital costs.	Decrease SG&A
Purchase of copper wire added which offset sales revenue of scrap copper wire in the calculation of SG&A.	Increase SG&A and decrease profit
Other income from non-manufacturing activities removed from the total sales revenue for the purposes of calculating SG&A and profit.	Increase SG&A and decrease profit

**Table 2:** claims affecting Hindustan’s normal value

#### 3.3.3 Dumping margins

The dumping margin for Hindustan was calculated by comparing the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with subsection 269TACB(2)(a).

The Commission has recalculated Hindustan’s normal value and accordingly its dumping margin. Hindustan’s dumping margin is negative 12.86%.

The Commission’s detailed assessment of Hindustan’s dumping margin is at **Confidential Appendix 4**.

### 3.4 Volumes of imported goods

Subsection 269TDA(3) requires the Commissioner to terminate an investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been, or may be, exported to Australia over a reasonable examination period from a particular country that are dumped is negligible. Subsection 269TDA(4) defines a negligible volume as less than 3 per cent of the total

volume of goods imported into Australia over the investigation period if subsection 269TDA(5) does not apply<sup>15</sup>.

For the purposes of subsection 269TDA(3), the Commissioner considers that the investigation period is a reasonable period in which to examine the volume of dumped goods exported to Australia from India. DIBP data has not identified other exporters of the goods from India during the investigation period. The Commission has also verified that importers that import TRFs from India have a commercial relationship with Hindustan only.

### **3.5 Conclusion**

Hindustan was not dumping the goods during the investigation period and subsection 269TDA(1)(b)(i) requires the Commissioner to terminate the investigation as it relates to Hindustan under subsection 269TDA(1).

The Commission confirms that Hindustan is the sole exporter of the goods from India during the investigation period. As Hindustan was not dumping the goods and the investigation was terminated in relation to Hindustan, there is a negligible volume of the goods exported from India during the investigation period. Accordingly, the investigation must be terminated with respect to India.

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<sup>15</sup> As there are no other exporters of the goods from India and exports of the goods from each of Malaysia, Singapore and the Philippines is greater than 3 per cent

## 4. Conclusions

The Commissioner is satisfied that:

- Hindustan has not dumped the goods exported to Australia.
- Hindustan is the sole exporter of the goods from India to Australia.
- as a result of terminating the investigation as it relates to Hindustan due to Hindustan's negligible dumping margin, the total volume of dumped goods exported to Australia from India is negligible (within the meaning of subsection 269TDA(4), as explained above).
- the investigation must be terminated as it relates to India.

Accordingly, the Commissioner concludes that:

- the investigation must be terminated with respect to Hindustan in accordance with subsection 269TDA(1); and
- the investigation must be terminated with respect to all exports from India in accordance with subsection 269TDA(3).

As a result of these termination decisions, the Commissioner will not recommend that the Parliamentary Secretary impose interim dumping duty in respect of TRFs exported to Australia from India, and provisional measures in the form of securities taken in relation to Hindustan under section 42 are to be cancelled.

## 5. Appendices and attachments

Document Type	Name
Confidential Appendix 1	The Commission's calculation of export price
Confidential Appendix 2	The Commission's calculation of cost to make (CTM and SG&A)
Confidential Appendix 3	The Commission's calculation of normal value
Confidential Appendix 4	The Commission's dumping margin calculation