



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

**Anti-Dumping  
Commission**

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***CUSTOMS ACT 1901 - PART XVB***

**CONSIDERATION REPORT  
NO. 496**

**Consideration of an application for  
a review of variable factors  
in relation to the anti-dumping measures applying to**

**Resealable can end closures  
Exported to Australia from  
the Republic of the Philippines by Genpacco Inc.**

**November 2018**

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### ABBREVIATIONS

<b>Abbreviation</b>	<b>Full title</b>
ADN	Anti-Dumping Notice
the Act	the <i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Genpacco	Genpacco Inc.
IDD	interim dumping duty
India	the Republic of India
Irwin	Irwin Packaging Pty Ltd
NIP	non-injurious price
the then Parliamentary Secretary	the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Philippines	the Republic of the Philippines
REP 350	<i>Anti-Dumping Commission Report No. 350</i>
review period (for this review)	1 October 2017 to 30 September 2018
Singapore	the Republic of Singapore
TER 350	<i>Anti-Dumping Commission Termination Report No. 350</i>

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Irwin Packaging Pty Ltd (Irwin or 'the applicant'). Irwin's application requests a review of the anti-dumping measures (in the form of a dumping duty notice) applying to resealable can end closures (the goods) exported to Australia from the Republic of the Philippines (the Philippines) by Genpacco Inc. (Genpacco).

Irwin considers it appropriate to review the anti-dumping measures on the basis that one or more of the variable factors relevant to the anti-dumping measures have changed<sup>1</sup>. The variable factors that have allegedly changed are the export price and the normal value.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in assessing applications for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject such applications. If the Commissioner does not reject an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

### 1.3 Findings and conclusions

The Commission is satisfied that, in relation to Irwin's application for a review of variable factors:

- the application complies with subsections 269ZB(1) and (2); and
- there appears to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

### 1.4 Recommendation

The Commission recommends that the Commissioner not reject the application by Irwin seeking a review of the variable factors in respect of Genpacco from the Philippines, for the reasons outlined at chapter 3 of this report.

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<sup>1</sup> Subsection 269ZA(1)(b)(i).

<sup>2</sup> All legislative references are to the *Customs Act 1901*, unless otherwise stated.

## 2 BACKGROUND

### 2.1 Current anti-dumping measures

On 18 May 2016, the Commissioner initiated an investigation into the alleged dumping of the goods exported to Australia from the Republic of India (India), Malaysia, the Philippines and the Republic of Singapore (Singapore). The investigation was initiated in response to an application by Marpac Pty Ltd.

The Commissioner terminated the investigation in part with respect to exports of the goods from India. Public notice of his decision was published on 17 February 2017 on the Commission's website via Anti-Dumping Notice (ADN) No. 2017/16. The reasons for the Commissioner's decision are outlined in *Anti-Dumping Commission Termination Report No. 350* (TER 350).<sup>3</sup>

The Commissioner recommended to the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) that measures in the form of a dumping duty notice be imposed on imports of the goods from Malaysia, the Philippines and Singapore. The Commissioner recommended that the interim dumping duty (IDD) be calculated in accordance with the ad valorem duty method. The Commissioner determined that the lesser duty rule applied and the non-injurious price (NIP) should be the operative measure for determining the effective rate of duty. The reasons for the Commissioner's recommendations are outlined in *Anti-Dumping Commission Report No. 350* (REP 350).<sup>4</sup>

On 20 March, 2017, the then Parliamentary Secretary accepted the Commissioner's recommendations and published a dumping duty notice in respect of the goods exported to Australia from Malaysia, the Philippines and Singapore.

As a result of this investigation, exports of the goods from the Philippines by Genpacco are subject to an IDD at the ad valorem rate of 12.8 per cent.

### 2.2 The current application

On 7 November 2018, the Commission received an application from Irwin for a review of the anti-dumping measures applying to the goods exported to Australia from the Philippines by Genpacco.

The application claims there has been a change in one or more variable factors.

The application is not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than

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<sup>3</sup> Document 79 on the electronic public record for Investigation 350.

<sup>4</sup> Document 81 on the electronic public record for Investigation 350.

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12 months after the publication of a dumping duty notice or a notice declaring the outcome of the last review of the dumping duty notice.

Pursuant to subsection 269ZC(1), the Commissioner must examine the application and, within 20 days, decide whether to reject the application. As such, the decision to reject the application must be made no later than 27 November 2018.

If the Commissioner is not satisfied, having regard to the application and to any other information that he considers relevant, of one or more of the matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

### **2.3 The goods subject to the anti-dumping measures**

#### **2.3.1 The goods description**

The goods are resealable can end closures (also referred to as tagger, ring and foil (TRF) ends, or TRFs) comprising:

- a tinsplate 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.

#### **2.3.2 Further information**

The goods are commonly manufactured 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.

#### **2.3.3 Exclusions from the measures**

Resealable can end closures of the following nominal sizes are excluded from the measures:

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

### **2.4 Tariff classification**

The goods are classified to tariff subheading 8309.90.00, statistical code 10, in Schedule 3 to the *Customs Tariff Act 1995*.

### 3 CONSIDERATION OF THE APPLICATION

#### 3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
  - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
  - the amount by which each such factor has changed; and
  - the information that establishes that amount; and
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appears to be reasonable grounds for asserting either, or both, of the following:
  - that the variable factors relevant to the taking of anti-dumping measures have changed;
  - that the anti-dumping measures are no longer warranted.

#### 3.2 Assessment of the application – compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*), and contains such information as the form requires. This includes evidence in support of the amount by which the variable factors have changed since last ascertained, information on the causes of the change to the variable factors and an opinion of whether these causes are likely to persist;<sup>5</sup>

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<sup>5</sup> Section 3.3.3 of this report refers.

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- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates; and
- provides a description of the anti-dumping measures the subject of the application.

### 3.3 Grounds for a review of variable factors

#### 3.3.1 Ascertained export price

In its application, Irwin notes that Genpacco's ascertained export price was determined in the original investigation in accordance with subsection 269TAB(1)(a) using Genpacco's export invoice prices.

As part of its application, Irwin provided a sample of commercial sales invoices relating to its imports to Australia from Genpacco for the period November 2017 to February 2018. Irwin relied upon these commercial documents to calculate a weighted average export price over that period in accordance with subsection 269TAB(1)(a). Irwin calculated that the weighted average export price over this period differs (by a specified amount) to the ascertained export price from the original investigation.

On the basis of this calculation Irwin considers that there are reasonable grounds to assert that the ascertained export price relevant to the taking of anti-dumping measures has changed.

#### 3.3.2 Ascertained normal value

In its application, Irwin notes that Genpacco's ascertained normal value was determined in the original investigation in accordance with subsection 269TAC(2)(c) due to the absence of domestic sales of like goods.

To calculate contemporary normal values, Irwin relied on the Commission's findings from the recently completed duty assessment (DA 0123). DA 0123 related to Irwin's imports of the goods from Genpacco. As part of DA 0123, the Commission calculated and determined contemporary normal values for the period March 2017 to September 2017. To ensure that these normal values reflected prices covering a similar period to the estimated export prices, Irwin applied a timing adjustment to the Commission's normal values based on the movement in tinsplate prices between the relevant periods.

Irwin calculated that the weighted average normal value over this period differs (by a specified amount) to the ascertained normal value from the original investigation.

On the basis of this calculation Irwin considers that there are reasonable grounds to assert that the ascertained normal value relevant to the taking of anti-dumping measures has changed.



Irwin also note that, in its opinion, normal values at these contemporary levels are likely to persist given current tin place prices appear to reflect their long term historical average.

### **3.3.3 Assessment of the application – review of variable factors**

The Commission has assessed the information provided by Irwin in conjunction with an extract from the Australian Border Force's import data base and other relevant information, which supports Irwin's assertions. The Commission considers that there appears to be reasonable grounds for Irwin to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being the ascertained export price and ascertained normal value, have changed.<sup>6</sup>

Therefore, the Commission is satisfied that, in respect of the variable factors, Irwin's application complies with section 269ZB.

### **3.4 Assessment of the application – section 269ZC**

Based on the Commission's analysis in section 3.3, there appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(i), that the variable factors relevant to the taking of anti-dumping measures have changed.

Therefore, the Commission recommends that the Commissioner not reject the application pursuant to subsection 269ZC(1) as it is satisfied of the matters referred to in subsection 269ZC(2).

### **3.5 Conclusions and recommendations**

The Commission has considered Irwin's application in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application and other relevant information, that:

- Irwin has submitted an application that complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that the variable factors, relevant to the taking of the anti-dumping measures with respect to exports of the goods from the Philippines by Genpacco, have changed.

The Commission recommends that the Commissioner:

- **not reject** the application for a review of variable factors and initiate a review into the current anti-dumping measures applying to exports of the goods to Australia from the Philippines by Genpacco; and
- examine the period from 1 October 2017 to 30 September 2018 for the purpose of reviewing the variable factors.

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<sup>6</sup> As defined in subsection 269T(4E), in relation to a review of a dumping duty notice, the variable factors are export price, normal value and NIP. Although Irwin has not claimed a change in the NIP in the application, the Commission considers it necessary to review all relevant variable factors, including the NIP.

**4 ATTACHMENTS**

<b>Confidential Attachment 1</b>	Commercial Documents – Irwin’s Purchases from Genpacco
<b>Confidential Attachment 2</b>	Irwin’s Export Price Analysis
<b>Confidential Attachment 3</b>	Irwin’s Normal Value Analysis