



As Trustee for Marpac Unit Trust

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2 January 2019

Reuben McGovern
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Anti-Dumping Commission
GPO Box 2013
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By email: Investigations3@adcommission.gov.au

Dear Rueben

Request to expand review of anti-dumping measures applying to resealable can end closures exported to Australia from the Republic of the Philippines by Genpacco Inc to include all exporters from Malaysia, the Philippines and Singapore

Thank you for your email on 27 November 2018 advising that the Commission has initiated a variables factor review of measures in relation to certain resealable end closures exported to Australia from the Republic of the Philippines by Genpacco Inc.

Marpac notes that the purpose of the review is to ascertain whether the variable factors, specifically the normal value and export price, relevant to the taking of the measures in respect of Genpacco from the Philippines have changed.

Marpac requests that the Commission expand the scope of the review (496) to include all exporters from Malaysia, the Philippines and Singapore and that the variable factors also include the non-injurious price (NIP).

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Tinplate

Marpac support's the following statements in the Commission's investigation report No. 350

The price of TRFs is affected by the costs of manufacture – raw materials, manufacturing overheads and labour. **Tinplate costs are the major portion of the cost of manufacture and hence the price of TRFs.** [emphasis added]

Marpac's position is that there have been movements in global tinplate prices since the initial investigation and this movement in prices has affected the variable factors relevant to the taking of measures with respect to TRF exports from the Philippines, Singapore and Malaysia.

Confidential attachment A shows the spot price of weighted exported prices for 0.21 mm sheet from [REDACTED] [name of subscription service]. The graph illustrates that during the investigation period 1 April 2015 to 31 March 2016 (applicable to Report No 350) world tinplate spot prices fell from around [REDACTED] [USD prices] and during the period for this Review (No 496) 1 October 2017 to 30 September 2018 tinplate prices increased from about [REDACTED] [USD prices].

Marpac supports the basis of this review to **ascertain** contemporary export price and normal values that reflect the **actual** costs of raw materials used in the manufacture of the goods exported to Australia.

Tinplate is a globally traded commodity and as tinplate is not produced in Malaysia, the Philippines or Singapore it is appropriate that all exporters are covered by measures reflecting contemporary tinplate prices.

Confidential Attachment B is a copy of the [REDACTED] [name of subscription service] Tinplate Quarterly Report.

This report shows recent trends in global tinplate prices and tinplate price trends and perspectives for 2018 and 2019. This report forecast the 2018 average price of tinplate for 2018 to be [REDACTED] above the average during 2017 and an average change of [REDACTED] for 2019.

For comparison purposes **Attachment C** shows the trends for the same period of the data supplied by the applicant.

Non-injurious Price (NIP)

The application lodged by Irwin requested the Commission to revise the level of measures because the following variable factors relevant to the taking of measures have changed:

- normal value, and
- export price.

Marpac requests that the non-injurious price NIP be included in this review as a variable factor relevant to the taking of measures that has changed for the following reasons:

- the NIP is the operative measure and therefore the lesser duty rule applied to exports subject to investigation 350 and
- the NIP was re-assessed during the recent Accelerated Review No. 474 (July 2018).

Marpac notes that the Commission reassessed the NIP for the Accelerated Review No 474 which had a review period of April 2017 to March 2018. The Commission based the NIP on Marpac's weighted

average selling prices (127mm TRF models) in the review period on the basis that selling prices at that time are unaffected by dumping. For the purpose of the accelerated review the Commission found that the NIP was higher than the applicant's normal value and the lesser duty rule did not apply.

Exporters' costs

Marpac requests that the Commission take an objective look at the exporters' costs.

The tin can industry is an industry of very low margins and the "TRF component represents a substantial portion of the total cost of manufacturing the complete can body".¹

Marpac's position is that the standard practice for supplying TRF's is that they are a component in the tendered contract price for TRFs and can ends. Furthermore, Marpac supports the following statement by Irwin in its submission to investigation No 350,

*.... The Australian and global can making industry is highly competitive and operating on marginal returns. Therefore, price will always be an important consideration in tendering for and awarding of supply contracts.*²

In our original application the export prices we provided were based on the commercial practice to price/quote TRFs and ends as a single figure. This was the practice in 2016 and it is the practice in 2018 – TRFs and can ends are quoted and invoiced as a single price. However, the TRF and can end although quoted as a complete unit cost are itemised separately at the discretion of the customer. i.e. a [REDACTED]

During the course of the investigation I wrote to the case manager³ about my concerns and asked that the Commission ensure monitoring for potential circumvention activities as it is difficult to have visibility given the tariff classification relating to the goods includes a number of items..

I write again seeking the Commission's assistance that when it is reviewing the export prices for TRFs that it can be confident that the export prices of the can end have not been influenced to produce an outcome of 'no dumping' for TRFs for duty assessment/review purposes. In particular we ask that the Commission review the established trading practices of TRFs and can ends.

As you would appreciate, we do not have access to information that will either confirm or deny that the export prices for TRFs and can ends have been altered to produce an outcome of 'no dumping'. What we do know is that

- During investigation 350 Genpacco made a late formal submission⁴ (dated 10 November 2016) regarding the dumping margin. Genpacco was concerned about the Commission's allocation of certain costs to the production or sale of resealable end closures.
- On 15 December 2016 Genpacco made a further submission⁵ which stated that:
*Although the re-computation shows that **our cost is still slightly higher than the selling price**, it is still far from the 17.4% dumping charge that is being imposed to us. Nonetheless, since this is a relatively new product and a start-up export venture for us, said price difference in not substantial view that we were still in the learning process a year ago when we started the production of the TRFs.* [Emphasis added]

¹ [CMIA submission, ADC EPR EX0073, No. 4](#)

² [Irwin Submission, ADC EPR 350, No 73, page, 2](#)

³ [Marpac Submission, ADC EPR 350, No. 63](#)

⁴ [Genpacco submission, EPR 350, No 46](#)

⁵ [Genpacco submission, EPR 350, No 78](#)

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- On 24 March 2017 the Commission published the report for investigation 350 (investigation period 1 April 2015 to 31 March 2016) where it assessed a dumping margin of 17.4% however due to the lesser duty rule measures the effective rate of duty was 12.8%.
- On 11 October 2017 the ADRP published its report in which it cites the following from Genpacco's verification report

*"Genpacco proposed allocating costs certain manufacturing overhead costs to TRFs using a different cost allocation methodology relative to the methodology it uses to allocate costs to all other products and the methodology it outlined in its response to the exporter questionnaire."*⁶

The ADRP Report then notes that

*.....the verification team amended the CTMS spreadsheet relative to some TRF models to reflect the costs recorded in Genpacco's management reports and supporting worksheets.....Genpacco disagreed with the amendments to the CTMS but the ADC team found that **there was no supporting evidence for these comments**[emphasis added]*

- Irwin Packaging Duty Assessment (DA 123) – importation period 25 March 2017 to 24 September 2017 – full refund of dumping duties. The Commission determined contemporary normal values⁷. (There is no mention of the Commission determining a contemporary NIP.)

UAE Steel prices

Marpac is extremely concerned that Irwin's application for this review considers that a graph of movements in UAE tinplate 0.32mm is relevant to Genpacco's normal value. Referencing this graph is disingenuous on a number of levels.

Firstly, to meet the Australian food grade standard manufacturers should be sourcing from first tier tinplate mills that comply with International Food Grade Standards - JIS G3303 or EN 10202, or equivalent. No one sells first tier tinplate at USD 600 per tonne. Pricing for the first-tier tin plate ranges from [REDACTED] per tonne.

Secondly 0.32mm tinplate is not appropriate for the manufacture of TRFs. 0.32 mm tinplate may be cheaper by [REDACTED] than 0.21 mm but no manufacturer would use it because there would be a yield loss of [REDACTED] which would effectively increase the cost of tinplate consumed during the manufacturing process.

It is somewhat mischievous to quote 0.32-gauge tinplate, knowing full well that the standard used is between 0.18 and 0.21 for 73mm TRF's. It would not be possible to use 0.32 gauge for this application. All TRFs manufactured by Marpac are made from 0.19 tinplate.

Thirdly, the steel mills in the UAE do not export tinplate to the Philippines

Noting the second point above, concerning the yield loss attributable to the use of 0.32 mm tinplate we request that the Commission undertake an objective examination of the type of steel used in the manufacture, the yield loss and the cost of tin plate scrap when reviewing the exporter's cost to make and sell the exported goods. This can be easily achieved with reference to the detailed

⁶ Verification Report, Section 4.1.1 (page7), EPR 350, No 31

⁷ [Application, EPR 496, No 1](#)

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calculation sheets provided by Marpac in Marpac Confidential Response 1-11-17 to 31-10-18_V211218 in tab – [REDACTED].

Export prices

In its report No 350 the Commission found for the period, **1 April 2015 to 31 March 2016**, the goods exported by Genpacco to the importer were arms lengths transactions and calculated the price under subsection 269TAB(1)(a) as the price paid by the importer to the exporter. Normal values were based on costs and determined under section 269TAC(2)(c). The Commission assessed a dumping margin of 17.4% however due to the lesser duty rule measures the effective rate of duty was 12.8%.

Marpac requests that the Commission take an objective look at the importers' costs noting that the TRFs are part of a tendered contract price for can components in an industry that is highly competitive and operating on marginal returns. It is not uncommon, as noted above, to quote a single price for a "package" of components. The TRF and can end are generally quoted as a complete unit cost but itemised separately at the discretion of the customer

i.e. [REDACTED]

Our concern has been highlighted before that this combination can be manipulated to provide any desired outcome.

Can Makers Institute of Australia (CMIA)

Once again Marpac would like to educate the Commission as to the nature of this body. Essentially CMIA was set up and facilitated by BHP to represent the general line can industry. A similar organisation, the Can Food Industry Association (CFIA) was also facilitated by BHP for the food can industry.

Previous to this dumping case the last known meeting of the CMIA was in August 2007. The record of Minutes from that August 2007 meeting includes the following:

That clause 3(1) of the Rules of CMIA be amended by deleting the words in that clause and inserting in lieu as clause 3(1) the following words:

A natural person, incorporation or other legal entity may only be eligible for membership of the Institute if the candidate is actively or regularly engaged in Australia in any of the following activities:

- (i) the manufacture or production or importation or sale or distribution of cans or drums or containers made of metal or a composite which includes metal as a component
- (ii) Supplying goods or services to the canmaking industry or the metal composite packaging industry.

Marpac has made several attempts to join this organisation that purports to represent the Australian can making industry. Despite Marpac being **the only Australian manufacturer of steel cans, composite cans, and can ends** our membership requests have been ignored.

Although it was resolved at the 2007 meeting to continue to represent the industry there are no known subsequent activities until this Dumping case. The sudden resurrection of the CMIA would appear to only represent the interests of two importers of can components, Visy and Irwin.

The CMIA purports to include membership of [REDACTED] (Amongst Australia's largest manufacturers) however Marpac has been in contact with these companies and it is Marpac's understanding that neither of these companies are in fact members.

Australian market

Marpac has reached out to the Australian importers to negotiate contracts to supply TRFs. At this stage the importers are only interested in buying TRFs overseas and will not correspond with Marpac regarding sourcing Australian made food grade TRFs.

Should the Commission have any questions regarding the above, or any other matter relevant to the review, Marpac would welcome the opportunity to address them with the Commission.

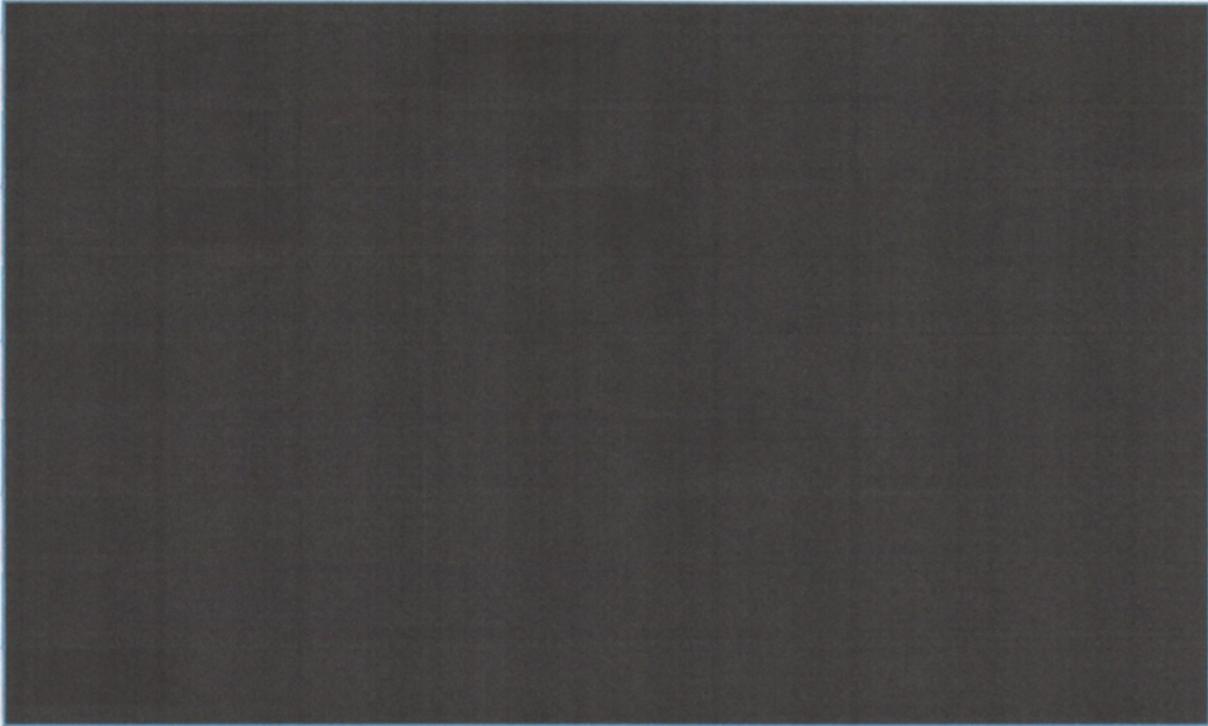
Regards

Charlie Maher

Managing Director

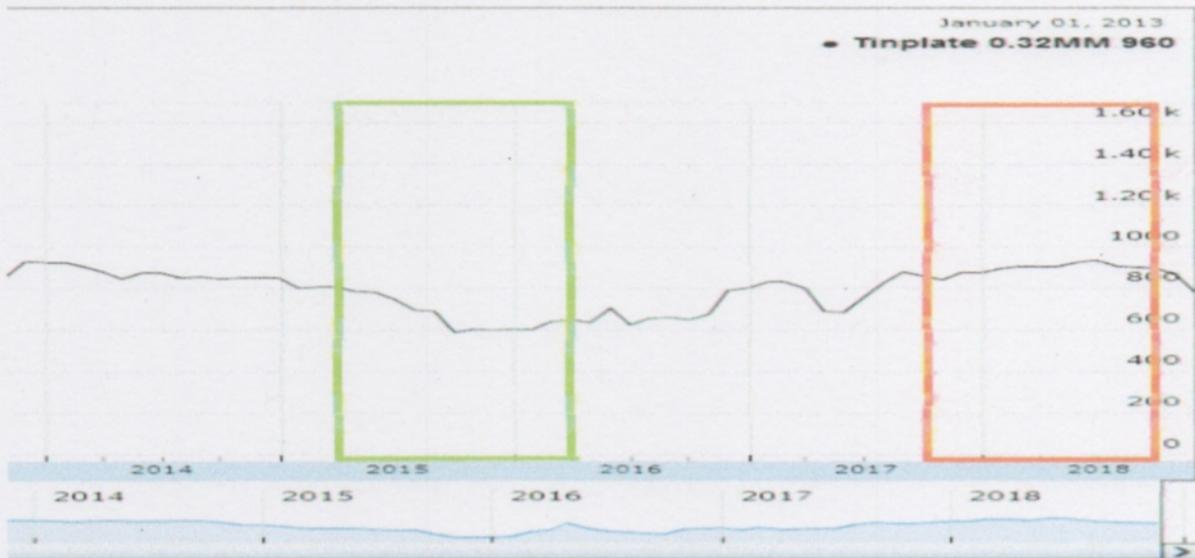
Confidential Attachment A

World tinplate spot price – highlighting investigation period (Inv 350) and period of the review⁸



Attachment B

UAE Steel Price Graph – Tinplate 0.32mm – extract showing investigation period (Inv 350) and period of the review⁹



⁸ [Name of Report]

⁹ <http://www.mesteel.com/cgi-bin/w3-msql/goto.htm?url=http://www.mesteel.com/prices/steel.html>