



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 496

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
RESEALABLE CAN END CLOSURES
EXPORTED TO AUSTRALIA FROM THE REPUBLIC OF THE
PHILIPPINES
BY GENPACCO INC.**

June 2019

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Applicant	Irwin Packaging Pty Ltd (or Irwin)
Australian industry members	Marpac Pty. Ltd and VIP Packaging Pty. Ltd.
CMIA	Can Makers Institute of Australia Inc.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 496	<i>Anti-Dumping Commission Consideration Report No. 496</i>
CTM	cost to make
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
Genpacco	Genpacco Inc.
the goods	the goods the subject of the application (also referred to as the goods under consideration)
IDD	interim dumping duty
the Manual	<i>Dumping and Subsidy Manual</i>
Marpac	Marpac Pty. Ltd.
the Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
OCOT	ordinary course of trade
original investigation	Investigation 350
original investigation period	1 April 2015 to 31 March 2016
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Philippines	the Republic of the Philippines
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 350	<i>Anti-Dumping Commission Report No. 350</i>
REQ	Response to Exporter Questionnaire
RIQ	Response to Importer Questionnaire
review period	1 October 2017 to 30 September 2018
SEF	Statement of Essential Facts
SG&A	selling, general and administrative
Singapore	the Republic of Singapore
TRFs	tagger, ring and foil ends (the goods)

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USP	unsuppressed selling price
VIP	VIP Packaging Pty. Ltd.

SUMMARY

1.1 Introduction

This Statement of Essential Facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a review of anti-dumping measures.

The review examines whether the anti-dumping measures (in the form of a dumping duty notice) applying to certain resealable can end closures (also referred to in this report as tagger, ring and foil ends, TRFs or the goods) exported to Australia from the Republic of the Philippines (the Philippines) by Genpacco Inc. (Genpacco) should be varied.

This review was initiated on 27 November 2018, following an application by Irwin Packaging Pty Ltd (Irwin), an importer of TRFs from Genpacco. Irwin considered it appropriate to review the anti-dumping measures as they relate to exports of TRFs to Australia from the Philippines by Genpacco because one or more of the variable factors relevant to the taking of the anti-dumping measures had changed. The variable factors that were alleged to have changed are the export price and normal value.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that it is proposed to review the anti-dumping measures covered by the application.³

The Commissioner must, within 110 days after the publication of the notice (or such longer period as is allowed)⁴, place on the public record a SEF on which the Commissioner proposes to base his recommendation to the Minister in relation to the review of anti-dumping measures.⁵

¹ For the purposes of this review, the Minister is the Minister for Industry, Science and Technology.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

³ Subsection 269ZC(4)

⁴ Subsection 269ZDA(1). It is noted that, on 14 January 2017, the then Parliamentary Secretary for Industry, Innovation and Science as the relevant Minister at the time delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

⁵ Subsection 269ZD(1)

1.3 Preliminary findings

The Commissioner has examined exports of TRFs from the Philippines by Genpacco for the review period (1 October 2017 to 30 September 2018) and has found that the variable factors have changed.

Specifically, that the ascertained:

- export price has changed;
- normal value has changed; and
- the non-injurious price has changed.

Accordingly the preliminary dumping margin for TRFs exported from the Philippines by Genpacco has changed to **26.2 per cent**.

The non-injurious price has also preliminarily been found to be the operative measure. As such, a lesser rate of duty will be applied. The preliminary effective dumping margin is **17.6 per cent**.

1.4 Proposed recommendation

The Commissioner proposes to recommend to the Minister that the dumping duty notice have effect as if different variable factors had been ascertained in relation to exports of TRFs to Australia from the Philippines by Genpacco.

2 BACKGROUND

2.1 Initiation

Following consideration of the application, the Commissioner decided not to reject the application from Irwin and on 27 November 2018, initiated a review of the anti-dumping measures on the goods exported to Australia from the Philippines by Genpacco.

Notification of the initiation of the review was made via Anti-Dumping Notice (ADN) No. 2018/180, which was published on 27 November 2018.⁶

*Consideration Report No. 496 (CON 496)*⁷ details the Commissioner's reasons for not rejecting the application.

For the purposes of assessing the variable factors in this review, the period from 1 October 2017 to 30 September 2018 (the review period) was examined.

2.2 Scope extension request

Subsection 269ZC(4)(b) provides that if the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Minister that the review be extended accordingly.

After a review of importation data from the Australia Border Force (ABF) import database for the review period from the countries subject to measures, along with other data and information obtained from relevant duty assessment applications and Accelerated Review 474⁸, the Commissioner did not consider that the review should be extended to other exporters subject to the notice.

Accordingly, the Commissioner decided not to recommend to the Minister that the review be extended⁹.

2.3 The current anti-dumping measures

The current anti-dumping measures were initially imposed by public notice on 24 March 2017 by the then Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary) following consideration of *Anti-Dumping Commission Report No. 350 (REP*

⁶ www.industry.gov.au – refer document 3 on the electronic public record (EPR) for Review No. 496

⁷ www.industry.gov.au – refer document 2 on the electronic public record (EPR) for Review No. 496

⁸ Accelerated Review 474 was a subsequent review of the current anti-dumping measures, as they applied to a new Malaysian exporter, Federal Metal Printing Factory Sdn Bhd.

⁹ Marpac Pty. Ltd. (Marpac), a member of the Australian TRF industry, requested (refer document 4 on the EPR for review 496) that this review be extended to all exporters of TRFs.

350).¹⁰ These measures are applicable to all exporters from Malaysia, the Philippines and the Republic of Singapore (Singapore).

Exports of TRFs from the Philippines by Genpacco are currently subject to a 17.4 per cent ad valorem rate of interim dumping duty (IDD).

2.4 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,¹¹ or the Minister may request that the Commissioner conduct¹² a review of those measures if one or more of the variable factors has changed.

The Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice declaring the outcome of the last review of the dumping or countervailing duty notice.¹³

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as is allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.¹⁴

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference¹⁵ to:

- the ascertained export price;
- the ascertained normal value; and
- the ascertained non-injurious price (NIP).

Within 110 days of the initiation of a review, or such longer time as allowed,¹⁶ the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Minister concerning the review of the anti-dumping measures.¹⁷

¹⁰ www.industry.gov.au – refer document 81 on the electronic public record (EPR) for Investigation No. 350

¹¹ Subsection 269ZA(1)

¹² Subsection 269ZA(3)

¹³ Subsection 269ZA(2)(a)

¹⁴ Subsection 269ZDA(1)

¹⁵ Subsection 269T(4E)

¹⁶ On 14 January 2017, the then Parliamentary Secretary delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to ADN No. 2017/10 for further information.

¹⁷ Subsection 269ZD(1)

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For this review, in making recommendations in his final report to the Minister, the Commissioner must have regard to:¹⁸

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.¹⁹

At the conclusion of the review, the Commissioner must provide a final report to the Minister. In his final report he must make a recommendation to the Minister that the dumping duty notice:²⁰

- remains unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Minister must make a declaration within 30 days of receiving the report or, if the Minister considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Minister considers appropriate²¹ that the dumping duty notice:²²

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Minister must give notice of the decision.²³

¹⁸ Subsection 269ZDA(3)(a)

¹⁹ Subsection 269ZDA(3)(b)

²⁰ Subsection 269ZDA(1)(a)

²¹ Subsection 269ZDB(1A)

²² Subsection 269ZDB(1)(a)

²³ Subsection 269ZDB(1)

2.5 Extension of time

On 26 March 2019, the Commissioner approved an extension of time to publish the SEF and final report for this review (ADN 2019/41²⁴ refers). As a result of the extension, the SEF must now be published on the public record on or before 1 July 2019²⁵.

The final report and recommendations must now be provided to the Minister on or before 13 August 2019 or within such longer period as may be allowed.

2.6 Submissions received in relation to the initiation of the review

Following the initiation of the review, the Commission received two submissions from interested parties:

- Marpac Pty Ltd (Marpac)²⁶, a member of the Australian TRF industry; and
- Can Makers Institute of Australia Inc. (CMIA)²⁷, a representative body.

The Commission has dealt with these submissions in the relevant sections of this report.

2.7 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final findings of the Commissioner. The final report will recommend whether or not the dumping duty notice should be varied, and the extent of any IDD that is, or should be, payable.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is **21 July 2019**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.²⁸

Submissions should preferably be emailed to ADCQualityAssurance.&VerificationTeam@adcommission.gov.au. Alternatively, they may be posted to:

²⁴ www.industry.gov.au – refer document 7 on the EPR for Review No. 496

²⁵ As the extension resulted in the due date falling on 29 June 2019, which is a Saturday, the SEF must be published on the next business day.

²⁶ www.industry.gov.au – refer document 4 on the EPR for Review No. 496

²⁷ www.industry.gov.au – refer document 6 on the EPR for Review No. 496

²⁸ Subsection 269ZDA(4)

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Director, ADC Quality Assurance and Verification
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at www.industry.gov.au.

The public record contains non-confidential submissions by interested parties and other publicly available documents online at www.industry.gov.au

Documents on the public record should be read in conjunction with this SEF.

2.8 Final report

The Commissioner's final report and recommendations must be provided to the Minister by **13 August 2019** or within such longer period as may be allowed.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject to the anti-dumping measures 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.*

Further details regarding the goods are as follows:

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.

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.

Exclusions:

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

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

3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff	Statistical code	Description
8309.90.00	10	Base metal stoppers, caps and lids (other than crown corks), threaded bungs, bung covers, seals, other packing accessories and parts

Table 1: tariff classification of the goods

3.3 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”.

The definition of like goods is relevant in the context of this review in determining the normal value of the goods exported to Australia (section 4.5 refers). The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidy Manual* (the Manual).²⁹

²⁹ Available at www.industry.gov.au

4 VARIABLE FACTORS

4.1 Finding

The Commissioner finds that the variable factors (being the ascertained export price and ascertained normal value) relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

4.2 Cooperation with this review

4.2.1 Exporter questionnaires and verification

Upon initiation of this review, the Commission provided Genpacco with an exporter questionnaire to complete. Genpacco provided a complete response to the exporter questionnaire (REQ)³⁰ which was suitable for the purposes of conducting an onsite verification.

The Commission conducted an on-site verification of the information provided in Genpacco's REQ. The verification visit report for Genpacco is available on the EPR.³¹

4.2.2 Importer questionnaires and verification

The Commission performed a search of the ABF import database and identified Irwin as the sole importer of TRFs from Genpacco during the review period.

The Commission requested that Irwin provide a response to an importer questionnaire (RIQ). Irwin provided a complete RIQ.

The Commission conducted an on-site verification of the information provided in Irwin's RIQ. The verification visit report for Irwin is available on the EPR.³²

4.2.3 Determination of the exporter

The Commission will generally identify the exporter³³ as:

- a principal in the transaction located in the country of export from where the goods were shipped who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

³⁰ www.industry.gov.au – refer document 5 on the EPR for Review No. 496

³¹ www.industry.gov.au – refer document 9 on the EPR for Review No. 496

³² www.industry.gov.au – refer document 8 on the EPR for Review No. 496

³³ www.industry.gov.au – the Manual, p. 29

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Where there is no principal in the country of export, the Commission will normally consider the exporter to be the person who gave up responsibility for the goods as described above.

Based on the information available, the Commission verified that:

- Genpacco manufactured the goods;
- Genpacco was listed as the seller of the exported goods on its commercial invoices;
- Genpacco was named as the shipper of the goods on the bill of lading for each consignment;
- Genpacco was named as the seller on the packing lists, purchase order and packing declaration; and
- documents provided in relation to payment of the goods established that Genpacco received payment for the consignments of goods that it exported.

Having regard to all the information obtained, the Commission considers that Genpacco is the exporter of the goods the subject of this review.

4.2.4 Determination of the importer

Subsection 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the shipping port or airport in Australia at which they landed.

Based on the information available, the Commission observed that Irwin:

- is named as the customer on supplier invoices from Genpacco;
- is named as the consignee on the bills of lading;
- declares itself as the owner of the goods for entry to ABF;
- negotiates with Genpacco for the purchase of TRFs;
- arranges overseas freight, and shipping, insurance, customs clearance, logistics, and storage of the goods after they have been delivered to the Australian port; and
- pays all duties associated with the importation of the goods, including IDD.

Having regard to the definition of importer in subsection 269T(1), the Commission considers that Irwin was the beneficial owner of the goods at the time of their arrival in Australia and, as such, was the importer of the goods.

4.3 Re-exported TRFs

Genpacco advised the Commission that during the review period, it re-exported TRFs to Australia (the re-exported TRFs) that were originally manufactured and exported to Australia during the original investigation period.

After the original exportation in 2015-2016 and after taking ownership of the TRFs, Irwin made a quality claim and returned the TRFs to Genpacco in 2017.

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After physically inspecting the returned TRFs, Genpacco found that the quality issues were such that a small number of TRFs were defective, but that the majority could be returned to Irwin in the current state when manufactured in the 2015-2016 period.

The returned TRFs were re-exported along with batches of newly manufactured TRFs in the review period.

Invoices for each shipment, including a mixture of the re-exported TRFs and new TRFs were generated and Irwin paid the full invoice price.

The Commission reconciled Genpacco's data and records in relation to the re-exported TRFs from this review period to the original investigation period, such that it was possible to identify:

- the invoices for the re-exported TRFs when first exported in the original investigation period;
- Irwin's returned goods statement, identifying the TRFs and the same invoice numbers when first exported;
- the invoices in the review period containing a mixture of the re-exported and new TRFs; and
- the quarter in the original investigation period that the re-exported TRFs were originally manufactured.

The Commission is satisfied that the re-exported TRFs and the new TRFs can be identified in Genpacco's data.

4.4 Export price

The Commission found that Genpacco exported the goods to Australia during the review period.

Based on information obtained as part of the exporter verification visit, as well as information obtained from Irwin's importer verification visit, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- the purchase of the goods by the importer were arms length transactions.³⁴

The export price (paid or payable) of the TRFs exported to Australia by Genpacco has therefore been calculated under subsection 269TAB(1)(a) using the ex-works (EXW) invoice price, of all exports of TRFs in this review period, including the re-exported TRFs and newly manufactured TRFs.

³⁴ www.industry.gov.au – refer document 9 on the EPR for Review No. 496

The Commission's export price calculation is at **Confidential Attachment 1**.

Marpac submitted³⁵ that it was concerned that the export price of TRFs was influenced by the export price of can ends³⁶, which it claimed are negotiated as a "package of components"³⁷ and invoiced as a single price – effectively, that itemisation of the TRF export price on the invoice is a notional value, which could be documented as lower in order to avoid the full payment of IDD on importation by Irwin.

The Commission found no evidence from either Genpacco or Irwin that invoiced export prices for TRFs were notional or manipulated.

4.5 Normal value

4.5.1 Applicable legislation

Under subsection 269TAC(1) the normal value of the goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export, for sales that are arms length transactions.

Subsection 269TAC(2)(a)(i) provides that the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1), where the Minister is satisfied:

... of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1)...

4.5.2 Normal value method

The Commission verified that Genpacco did not sell like goods in the Philippines and as there are no other sellers of like goods in the country of export, the normal value of the like goods was not determined under subsection 269TAC(1).

Pursuant to subsection 269TAC(2)(a)(i), due to the absence of sales of like goods in the domestic market, the normal value of the goods cannot be ascertained under subsection 269TAC(1). Therefore, normal values has been constructed under subsection 269TAC(2)(c).

As required by subsections 269TAC(5A) and 269TAC(5B), the normal value has been constructed according to subsection 269TAC(2)(c) and in accordance with Regulations 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation), using Genpacco's cost of production or manufacture of the TRFs exported to Australia; and, on the assumption that the goods, instead of being exported, had been sold for home

³⁵ www.industry.gov.au – refer document 4 on the EPR for Review No. 496

³⁶ "Can end" is a reference to a separate can component, being the bottom or non-closure component of a can.

³⁷ www.industry.gov.au – refer to item 004 on the EPR for Review No. 496, p. 5

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consumption in the ordinary course of trade in the country of export, the selling, general and administrative (SG&A) costs associated with such a sale and the profit on that sale.

The Commission considers that as the verified export price of the TRFs exported to Australia in the review period included exports of both:

- TRFs manufactured in the original investigation period; and
- TRFs manufactured in this review period,

that the *corresponding* normal values to the export prices are the cost to make (CTM) of the TRFs manufactured in the original investigation period and TRFs manufactured in this review period respectively.

Accordingly, the Commission has identified and used the verified CTM of the re-exported TRFs (from the original investigation period) as part of its normal value calculation under subsection 269TAC(2)(c). Table 2 below outlines the Commission’s method of constructing the normal value under 269TAC(2)(c):

Provision	Normal value element	Calculation
269TAAD(4)(a) 269TAC(5A) 269TAC(2)(c)(i) Regulation 43(2)	CTM	<ul style="list-style-type: none"> • there were no domestic sales of TRFs in the review period; • however, as Genpacco satisfied the requirements of Regulation 43(2), the Commission could determine - <ul style="list-style-type: none"> • Genpacco’s actual CTM data from the original investigation period for the manufacture of the re-exported TRFs (refer sections 4.3 and 4.5.2 above); and • Genpacco’s actual cost to make (CTM) data for the manufacture of Australian exported TRFs in the review period.
269TAAD(4)(b) 269TAC(5A) 269TAC(2)(c)(ii) Regulation 44(3)(c)	SG&A	<ul style="list-style-type: none"> • there were no domestic sales of TRFs in the review period, and accordingly domestic SG&A costs could not be calculated under Regulation 44(2); and • the Commission identified a can body with TRF seamed on and sold domestically in the Philippines, as the same general category of goods, which could have allowed calculation of SG&A under Regulation 44(3)(a); • however, Genpacco’s records did not permit isolation of domestic SG&A costs for the same general category of goods under Regulation 44(3)(a); and • there are no other exporters of TRFs from the Philippines to calculate SG&A under Regulation 44(3)(b); • therefore an amount of SG&A costs were calculated, having regard to Genpacco’s own records, using the total amounts of SG&A costs incurred by Genpacco in the production and sale of all goods in the review period (excluding obvious export SG&A costs), in accordance with Regulation 44(3)(c).

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269TAC(5B) 269TAC(2)(c)(ii) Regulation 45(3)(a)	Profit	<ul style="list-style-type: none"> • there were no domestic sales of TRFs in the review period and accordingly, domestic profit could not be calculated under Regulation 45(2); and • the Commission identified a can body with TRF seamed on and sold domestically in the Philippines, as the same general category of goods, which Genpacco's records could be used to determine an amount of profit; • Therefore, an amount for domestic profit was calculated under Regulation 45(3)(a), using the actual amounts realised by Genpacco from the sale of the same general category of goods in the domestic market of the country of export.
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Table 2: normal value calculation method

Marpac also requested³⁸ that the Commission examine the type and thickness (gauge) of tinsplate used in Genpacco's manufacture of TRFs, citing concerns that the tinsplate price evidence provided by Irwin in its application was not relevant to the manufacture of TRFs, specifically the most common size, 73mm. The Commission verified that Genpacco did not use 0.32mm gauge tinsplate in the manufacture of TRFs, despite Irwin using this tinsplate gauge in an example of tinsplate price increases in its application for this review.

4.5.3 Adjustments to normal value

To ensure the normal value is comparable to an export price at EXW terms, the Commission made the following adjustments to the normal value in accordance with subsection 269TAC(9):

Adjustment Type	Deduction/addition
Export credit terms	Add the cost of export credit terms

Table 3: normal value adjustments

The normal value calculation is located at **Confidential Attachment 1**.

4.6 Dumping margin

The Commission has calculated a preliminary dumping margin based on the revised variable factors for the review period. The dumping margin has been calculated by comparing the Australian export prices of the goods during the review period, with the corresponding normal values in accordance with subsection 269TACB(2)(a).

The dumping margin in respect of the goods exported to Australia by Genpacco is **26.2 per cent**.

The dumping margin calculation is provided at **Confidential Attachment 1**.

³⁸ www.industry.gov.au – refer document 4 on the EPR for Review No. 496

4.7 Non-injurious price

The applicant did not include the NIP in its application as a variable factor to be reviewed. Subsection 269T(4E)(a) states that a reference to variable factors in a Division 5 review is a reference to the export price, normal value and the NIP. Therefore, it is the Commission's practice to review all variable factors in a review.³⁹

4.7.1 Establishing a NIP

In the original investigation, the Commission used Marpac's actual sales of 73mm TRFs and its genuine offers (and subsequent negotiation) to external customers to provide other TRF sizes, to calculate an unsuppressed selling price (USP) and subsequent NIP.

The Commission considers that the USP should comprise the range of TRFs sold in the Australian market. A NIP, derived from a USP calculated on this basis, will ensure a proper comparison with the normal value and export price calculated for Genpacco.

The Commission considered using the USP and NIP calculated in Accelerated Review 474, however considers that it is not relevant in establishing the NIP for this review. This is due to the USP and NIP calculated in Accelerated Review 474 being based on one TRF size, the 127mm TRF, which is not representative of the range of TRF sizes available in the Australian market. Therefore, use of the USP and NIP from Accelerated Review 474 is not appropriate in this review as it excludes the other sizes sold in the Australian market. In a market that sells a range of TRF sizes, the NIP from 474 is not comparable with the normal value and export price calculated for Genpacco that includes a range of TRF sizes.

4.7.2 The USP for the review period

As the Commission considers that the USP and NIP calculated in Accelerated Review 474 is not appropriate for this review, the Commission has considered whether to update the USP calculated for the original investigation period based on Marpac's sales or cost data in the review period.

The Manual provides the Commission with a hierarchical approach for establishing a USP⁴⁰:

- the price or market approach of the Australian industry in a period unaffected by dumping;
- the constructed approach, using the Australian industry's CTMS data and a reasonable amount for profit; or
- the price or market approach of undumped imports.

³⁹ Marpac made a submission requesting that the NIP also be reviewed despite the applicant not including the NIP in its application refer document 4 on the EPR for Review 496.

⁴⁰ www.industry.gov.au – the Manual, pp. 134-135

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The Commission sought data and information from Marpac and some data was provided in relation to Marpac's manufacture of 73mm and 99mm TRFs and of imported 127mm TRFs. Specifically, Marpac provided:

- sales data (all TRFs sold as individual components to external customers);
- transfers data (market price / cost of TRFs used as part of a complete can unit sold to external customers) data as part of this review; and
- CTMS data for its manufactured TRFs.

The verified data shows an increased preliminary margin of dumping by Genpacco in the review period (as compared to the original investigation period). As a result, the Commission is unable to establish a price in the market unaffected by dumping.

As a USP based on the price or market approach of the Australian industry in a period unaffected by dumping cannot be established, the Commission has considered the constructed approach, using the Australian industry's CTMS data and a reasonable amount for profit.

Marpac provided the Commission with CTMS data for 73mm and 99mm TRFs for the review period. However, the Commission does not have Marpac's costing or price offers for self-manufactured 127mm and 153mm TRFs for the review period. The Commission considers that the CTMS provided does not cover the range of TRFs required to calculate a USP and a subsequent NIP which is comparable with Genpacco's normal value and export price.

As a USP based on the constructed approach using the Australian industry's CTMS data and a reasonable amount for profit cannot be established, the Commission has considered the price or market approach of undumped imports. However, imported TRFs are seamed onto can units by the importer/Australian can manufacturers and sold as a complete can unit in the Australian market. Therefore there are no selling prices of imported TRFs in the Australian market.

Therefore, Commission considers that the USP from the original investigation period is the most preferable for this review because the USP from the original investigation period:

- is less than five years old; and
- includes the range of TRFs required.

4.7.3 The NIP for the review period

Having established that the USP from the original investigation period is appropriate for the review period, the Commission calculated the NIP using Irwin's import costs in the review period, using the same calculation methodology from Investigation 350.

The assessment of the USP and NIP is provided at **Confidential Attachment 2**.

4.7.4 Effective rate of duty

The Commission has compared the NIP to the ascertained normal value and found that the NIP is lower than the ascertained normal value. Accordingly, the Minister must consider the

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desirability of fixing a lesser amount of duty under section 8(5BA) of the *Customs Tariff (Anti-Dumping) Act 1975*, because the conditions under section 8(5BAAA) do not apply.⁴¹

The Commission considers that it is desirable to apply the lesser duty rule such that the sum of the ascertained export price and the interim dumping duty payable on the goods does not exceed the NIP, and that this is adequate to remove the injurious effect of dumping to the Australia industry. The proposed IDD payable is the difference between the ascertained export price and NIP for Genpacco.

The effective rate of duty in respect of the goods exported to Australia by Genpacco is **17.6 per cent**.

The Commission's calculations of the NIP and the effective rate of duty is provided at **Confidential Attachment 2**.

⁴¹ Refer to REP 350 at www.industry.gov.au for further reasons. As stated above, the Commission has sought information from VIP Packaging Pty Ltd (VIP) and is satisfied that it is still a member of the Australian TRF industry.

5 FORM OF DUTY

5.1 Finding

The Commission recommends that the Minister impose anti-dumping duties in the form of the ad valorem duty method.

5.2 Consideration of form of measures

The various forms of dumping duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances more so than others. In considering which form of duty to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty*⁴² and relevant factors in the market for the goods.

Relevantly, key considerations for imposing an ad valorem duty method is that it has an advantage where there are many models or types, however, it has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty.

As the Commission considers that, as there do not appear to be any changes in the Australian market since the original investigation period or changes in demand for the range of TRFs, the current form of the anti-dumping measures (the ad valorem duty method) remains appropriate.

⁴² Available at www.industry.gov.au

6 FINDINGS AND PROPOSED RECOMMENDATIONS

6.1 Findings

The Commissioner finds that, in relation to exports of TRFs to Australia from the Philippines by Genpacco during the review period, that:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the non-injurious price has changed.

6.2 Proposed recommendations

The Commissioner proposes to recommend to the Minister that the dumping duty notice in respect of exports of TRFs from the Philippines by Genpacco have effect as if different variable factors had been ascertained.

Consistent with the current form of anti-dumping measures, the Commissioner proposes to recommend that duties continue to be calculated using the ad valorem duty method.

7 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Summary of the export price, normal value and dumping margin
Confidential Attachment 2	Assessment of the USP / NIP for the review period and the effective rate of duty