



IRWIN PACKAGING
SINCE 1934

21 July 2019

Director Operations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Review of measures – Resealable Can End Closures (TRF) exported from the Philippines

Dear Director,

This submission is made on behalf of Irwin Packaging Pty Ltd (IP) to the current review of measures on exports of TRFs from the Philippines. It presents strong grounds for the application of the lesser duty rule on the basis of a non-injurious price which has regard to directly compatible and confirmed non-dumped TRF imports from India, and/or imports directly made by the Australian industry.

The non-injurious price (NIP) is relevant to subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, which requires consideration of the desirability of fixing a lesser amount of duty if sufficient to remove injury to the Australian industry. 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 Dumping and Subsidy Manual also explains that *'...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 and unsubsidised imports in the Australian market will be used.'*

To that end, IP notes that the Commission opted to calculate the USP during the original investigation having regard to *'Marpac's weighted average price of direct market sales of 73mm TRFs for the quarter immediately preceding the investigation period.'* This was despite IP's views that the non-injurious price should be set equal to the weighted average non-dumped normal value determined for the Indian exporter, Hindustan Tin Works Ltd (HTW). IP highlighted that [REDACTED]

[Confidential import information]

During the current review period, IP [REDACTED] source TRFs from [REDACTED] but at prices [REDACTED] than those sourced from Genpacco in the Philippines. Copies of import documentation relevant to IP's purchases are contained in **Confidential Attachment 1**. It shows that unit prices [REDACTED] throughout the review period at A\$ [REDACTED] per 1000 pieces at [REDACTED] delivery terms. This compares to Genpacco's equivalent preliminary weighted average normal value calculated by the Commission of A\$ [REDACTED] per 1000 pieces at [REDACTED] delivery terms. This strongly supports the view that non-injurious prices for TRFs exported from India, should be the benchmark for non-injurious export prices from the Philippines.

The TRFs supplied from India were [REDACTED]. This confirms and supports IP's previous statements to the original investigation that imposition of dumping duties on imports from the Philippines would provide no relief to Marpac as importers would have continued access to non-dumped imports from India and alternative export markets that were not subject to dumping duties.

In considering the option of non-dumped imports as the basis for unsuppressed selling prices, the Commission states in SEF 496 that *'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.'* IP notes that the Commission offers no view or assessment of non-dumped exports from India which were sourced by IP during the review period.

To that end, IP again urges the Commission to reconsider that imports from India are a true and fair price of non-dumped and non-injurious subject goods into the Australian market. These imports continue to be [REDACTED]. In these circumstances, it is indeed unreasonable to suggest that Marpac would be entitled to, or able to, achieve a price equal to direct market sales of 73mm TRFs for the quarter immediately preceding the original investigation period.

This is especially the case given that Marpac itself claimed that injury during that period was in large part caused by Indian exports, which accounted for the vast majority of total imports. Given the dumping measures imposed on the targeted countries and the lack of dumping duties on Indian exports, it is clear that Marpac is required to compete in a market which continues to be supplied by non-dumped exports from India.

Therefore, IP contends that the unsuppressed selling price for 73mm TRF exported from the Philippines must be based on export prices from India which have been confirmed and verified by the Commission as being non-dumped. As Indian and Philippines imports are [REDACTED], and given that export prices of Indian TRFs are non-dumped and by that very definition non-injurious, Indian TRF export prices are an accurate proxy for export price levels for Philippines TRFs which would themselves also be non-injurious.

In addition to the non-injurious imports from India being a reasonable benchmark for unsuppressed selling prices from the Philippines, IP also contends that TRF imports by Marpac should be considered for the purposes of establishing reasonable unsuppressed selling prices. As mentioned to the Commission during its importer verification visit, IP received strong and highly credible information that Marpac had sourced imported TRFs from china during the review period.

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It is understood that these imports were used to supplement the range of TRF sizes that Marpac does not have the capability to manufacture. This appears to be confirmed by the Commission in SEF 496.

It is unclear to what extent Marpac sourced imported TRFs beyond 127mm TRFs. It is also unclear whether the Commission requested Marpac to provide information relating to all of its TRF imports. To that end, IP urges the Commission to verify all of Marpac's TRF imports during the review period, and undertake a comprehensive price analysis which benchmarks the Marpac's purchase prices to the Genpacco's preliminary normal values for equivalent TRF sizes. In the event that Marpac's import purchase prices are lower than Genpacco's preliminary normal value for equivalent sizes, then those import prices must be considered a reasonable benchmark for non-injurious prices, given that they were imported by the Australian industry.

Finally, IP reiterates its previous statements to the Commission's original investigation regarding Marpac's ability to supply TRFs meeting IP's quality and technical specifications. **Under no circumstances would IP source TRFs with lower specifications than its current standard, and under no circumstances would IP jeopardise and put at risk a supply contract for finished cans on a strong likelihood of increased rates of failed cans.** Both of these circumstances are directly relevant to Marpac's production and supply of TRFs.

Therefore, imposing dumping duties on TRFs imported from the Philippines, which would ensure prices are substantially higher than directly substitutable non-dumped exports from India and other non-injurious countries, would provide no relief to Marpac. Marpac would still be required to compete on price against Indian imports, and regardless of its prices, Marpac would continue to suffer injury by way of lower sales volumes due to its inability to convince the market and its customers that previous quality and performance issues have been addressed and rectified.

In conclusion, the dumping system is not designed to protect an industry from injury caused by non-dumped imports, or provide relief to an industry that is facing financial and economic difficulty due in large part to its quality and limited production capabilities. For this reason, IP urges the Commission to impose a lesser duty rule that ensures that imports from the Philippines are able to be imported at prices consistent with corresponding non-dumped and non-injurious prices from India.

Yours sincerely

John Irwin