



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**ANTI-DUMPING COMMISSION REPORT
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.**

August 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>
the Duty Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty</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, November 2018</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

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TRFs	tagger, ring and foil ends (the goods)
USP	unsuppressed selling price
VIP	VIP Packaging Pty. Ltd.

1 SUMMARY

1.1 Introduction

This report sets out the recommendations of the Anti-Dumping Commissioner (Commissioner) to the Minister for Industry, Science and Technology (the Minister)¹ regarding a review of anti-dumping measures. The report also sets out the reasons for those recommendations.

The review examined anti-dumping measures (in the form of a dumping duty notice²) 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).

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

1.2 Legislative framework

Division 5 of Part XVB of the *Customs Act 1901* (the Act)³ 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.⁴

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.⁵

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

² adcommission.gov.au – refer Anti-Dumping Notice (ADN) No. 2017/20 on the electronic public record (EPR) for Investigation No. 350

³ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

⁴ Subsection 269ZC(4)

⁵ Subsection 269ZDA(1)

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During the course of a review, the Commissioner will examine whether the variable factors relevant to the determination of duty payable on particular goods subject to a notice have changed. Variable factors in this particular review are a reference⁶ to:

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

as ascertained by the Minister for the purpose of the notice.

In deciding on the recommendations to be made to the Minister in this report, the Commissioner must have regard to:⁷

- 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.⁸

At the conclusion of a review, the Commissioner must provide a final report to the Minister. In that report, the Commissioner must make a recommendation to the Minister that the dumping duty notice:⁹

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

After considering this report of the Commissioner and any other information the Minister considers relevant, the Minister must declare that the dumping duty notice:¹⁰

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

⁶ Subsection 269T(4E)(a)

⁷ Subsection 269ZDA(3)(a)

⁸ Subsection 269ZDA(3)(b)

⁹ Subsection 269ZDA(1)(a)

¹⁰ Subsection 269ZDB(1)(a)

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The Minister must give notice of the declaration.¹¹

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 appropriate.¹²

1.3 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, the Commissioner found that the:

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

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

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

1.4 Recommendation

The Commissioner recommends 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; and
- amount of interim dumping duty (IDD) is worked out in accordance with the *ad valorem* duty method.

¹¹ Subsection 269ZDB(1)

¹² Subsection 269ZDB(1A)

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 2018.¹³

Consideration Report No. 496 (CON 496)¹⁴ 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.

Marpac Pty. Ltd. (Marpac), a member of the Australian TRF industry, requested¹⁵ that this review be extended to all exporters of TRFs. 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 474¹⁶, 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 extended.

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*

¹³ adcommission.gov.au – refer document 3 on the electronic public record (EPR) for Review No. 496

¹⁴ adcommission.gov.au – refer document 2 on the electronic public record (EPR) for Review No. 496

¹⁵ adcommission.gov.au – refer document 4 on the electronic public record (EPR) for Review No. 496

¹⁶ 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.

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No. 350 (REP 350).¹⁷ 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 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 2019/41¹⁸ refers). The final report and recommendations must now be provided to the Minister on or before **13 August 2019**.

2.5 Statement of essential facts

On 1 July 2019, the Commissioner placed on the public record the *Statement of Essential Facts No. 496* (SEF 496)¹⁹ to inform all interested parties of the essential facts on which the Commissioner proposed to base his final recommendations to the Minister in relation to this review.

2.6 Submissions received during this review

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

- Marpac Pty Ltd (Marpac)²⁰, a member of the Australian TRF industry; and
- Can Makers Institute of Australia Inc. (CMIA)²¹, a representative body.

In response to the publication of SEF 496, the Commission received a further 3 submissions from:

- Marpac;
- Irwin; and
- Genpacco

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

¹⁷ adcommission.gov.au – refer document 81 on the electronic public record (EPR) for Investigation No. 350

¹⁸ adcommission.gov.au – refer document 7 on the EPR for Review No. 496

¹⁹ adcommission.gov.au – refer document 11 on the EPR for Review No. 496

²⁰ adcommission.gov.au – refer document 4 on the EPR for Review No. 496

²¹ adcommission.gov.au – refer document 6 on the EPR for Review No. 496

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).²²

The Commission verified that Genpacco did not sell like goods in the Philippines and there are no other identified sellers of like goods in the country of export.

²² Available at adcommission.gov.au

4 VARIABLE FACTORS

4.1 Finding

The Commissioner finds that the variable factors (being the export price, normal value and non-injurious price) 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)²³ 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.²⁴

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.²⁵

4.2.3 Determination of the exporter

The Commission will generally identify the exporter²⁶ 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.

²³ adcommission.gov.au – refer document 5 on the EPR for Review No. 496

²⁴ adcommission.gov.au – refer document 9 on the EPR for Review No. 496

²⁵ adcommission.gov.au – refer document 8 on the EPR for Review No. 496

²⁶ adcommission.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 verified 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 by Genpacco in the Philippines and exported to Irwin in 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 their current state.

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 (the re-exported TRFs and newly manufactured TRFs) to Australia during the review period.

Genpacco did not dispute²⁷ the Commission's summary of events in relation to the re-exported TRFs at chapter 4.3 above, however it did claim the re-exported TRFs remained the property of Irwin whilst being held by Genpacco for inspection. Supporting its view, Genpacco quoted the Commission's definition of sale in the Manual "...as a contract for the transfer of property"²⁸ and as Irwin maintained its ownership of the TRFs there was no change in ownership or transfer of property. Accordingly, there could be no sale and therefore the re-exported TRFs should not be considered as an export sale by Genpacco to Irwin in the review period.

The Commission refers to the definition of the exporter at chapter 4.2.3 above and notes that:

- Genpacco is the manufacturer and principal in the transaction located in the country of export which knowingly re-shipped the TRFs;

²⁷ adcommission.gov.au – refer document 13 on the EPR for Review No. 496

²⁸ adcommission.gov.au – the Manual, page 17

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- this principal (Genpacco) can be, but need not be, the owner of the goods at the time of export; and
- a transaction between Genpacco and Irwin took place in relation to the exchange of money (a purchase) for the re-exported TRFs in Genpacco's possession in 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 Genpacco is the exporter and that the:

- 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.²⁹

Therefore the Commission is satisfied that the export price of all TRFs (including the re-exported TRFs) exported to Australia by Genpacco is the price paid or payable for the goods by Irwin.

The export price has been calculated according to subsection 269TAB(1)(a) using the ex-works (EXW) invoice price, of all exports of TRFs in the review period.

The Commission's export price calculation is at **Confidential Attachment 1 - Summary of the export price, normal value and dumping margin.**

Marpac submitted³⁰ that it was concerned that the export price of TRFs was influenced by the export price of can ends³¹, which it claimed are negotiated as a "package of components"³² 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 examined invoices and customs declarations from the original investigation period through to this review period and 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.

²⁹ adcommission.gov.au – refer document 9 on the EPR for Review No. 496

³⁰ adcommission.gov.au – refer document 4 on the EPR for Review No. 496

³¹ "Can end" is a reference to a separate can component, being the bottom or non-closure component of a can.

³² adcommission.gov.au – refer to item 004 on the EPR for Review No. 496, p. 5

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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 have been constructed under subsection 269TAC(2)(c).

Subsections 269TAC(5A) and 269TAC(5B) of the Act require that where the normal value has been constructed, the amounts for CTMS and profit of the goods should be calculated in accordance with Regulations 43, 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 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).

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Provision	Normal value element	Calculation
269TAC(2)(c)(i) 269TAC(5A) 269TAAD(4)(a) Regulation 43(2)	CTM	<ul style="list-style-type: none"> • Genpacco’s records were kept in accordance with the generally accepted accounting principles in the Philippines and reasonably reflected competitive market costs; • therefore the requirements of Regulation 43(2) were satisfied, and 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 CTM data for the manufacture of Australian exported TRFs in the review period.
269TAC(2)(c)(ii) 269TAC(5A) 269TAAD(4)(b) 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 being a good in the same general category of goods, which may have allowed calculation of SG&A under Regulation 44(3)(a); • however, Genpacco’s records did not permit isolation of the domestic SG&A costs for those goods, thus preventing the use of Regulation 44(3)(a); • there are no other exporters of TRFs from the Philippines to calculate SG&A under Regulation 44(3)(b); • therefore an amount of EXW SG&A costs was 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 export SG&A costs and all freight charges), in accordance with Regulation 44(3)(c); and • accordingly, the amount of EXW SG&A has been calculated as a general expense allocated across all of Genpacco’s sales (including domestic and export).
269TAC(2)(c)(ii) 269TAC(5B) 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 being a good in 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.

Table 2: Normal value calculation method

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Marpac requested³³ that the Commission examine the type and thickness (gauge) of tinplate used in Genpacco's manufacture of TRFs, citing concerns that the tinplate 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 tinplate in the manufacture of TRFs, despite Irwin using this tinplate gauge in an example of tinplate price increases in its application for this review.

Genpacco claimed³⁴ that the Commission incorrectly included and excluded certain SG&A costs from its calculation of domestic SG&A under Regulation 44(3)(c). The specific costs claimed have been addressed individually below.

1. Interest expenses incorrectly included: Genpacco stated that the Commission incorrectly included interest expenses incurred in relation to the purchase of materials under loans from its bank. Genpacco stated in its submission that this interest was incurred as part of the finance for the cost of manufacture of TRFs exported to Irwin and should therefore be excluded. The Commission verified Genpacco's raw material purchases for both Australian and domestic production and sales and observed that the same bank loan facility was used by Genpacco for the purchase of all raw materials, regardless of product destination.

Genpacco claimed that the repayment of these loans was tied to it receiving payment for goods sold and accordingly the interest incurred is also the cost of financing sales to customers between the period of invoicing to payment received by Genpacco.

The Commission does not consider that the interest incurred as a direct result of its loan repayments for purchases of raw materials can be considered a financing cost for customers, because Genpacco made a decision to pay its bank loan when cash flow improved as a result of customer payments. Further, Genpacco was unable to identify from its accounts its specific domestic SG&A costs from Australian export and third country exports at the verification. Accordingly, the Commission considered it appropriate to calculate domestic SG&A as detailed in Table 2 above, which is a general expense calculation. As the Commission verified that the interest expense applies to all Genpacco's raw material purchases, it is therefore properly accounted for as a general expense for the purposes of the domestic SG&A calculation.

2. Export credit upwards adjustment incorrectly included: Genpacco claimed that the upwards adjustment to the normal value for export credit was a double count and should be removed as this cost has already been included as part of the interest expenses described above.

³³ adcommission.gov.au – refer document 4 on the EPR for Review No. 496

³⁴ adcommission.gov.au – refer document 13 on the EPR for Review No. 496

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The Commission has concluded that the interest expenses described were incurred as a result of loan repayments for raw material purchases and are not considered a cost of financing customers.

As described at chapter 4.5.3 below, the upwards adjustment for the costs of export sales to ensure the comparability of the normal value to the export price is a separate adjustment and therefore, there has been a double-count of the cost of credit as described by Genpacco.

3. Customer charges incorrectly included: The domestic SG&A calculation methodology includes all SG&A costs, excluding export-related SG&A and freight costs as detailed in Table 2 above. Genpacco provided a claim that this customer charge should not be included in the calculation of SG&A but provided no explanation of what this charge related to or how it should be treated. As the customer charge identified was accounted for under Genpacco's audited operating expenses and relates to a domestic customer, the Commission considers that it is reasonable to include this cost in its calculation of domestic SG&A.
4. Retirement benefits incorrectly included: Genpacco claimed that the reported amount for retirement benefits is the accrual amount for the review period for Genpacco's retirement fund. As there were no retirements in the review period, Genpacco claimed the retirement benefit is an unrealised expense which should not have been included in the calculation of domestic SG&A. The Commission examined Genpacco's Income Statement, Trial Balance and 2017 and 2018 audited financial statements and found that this retirement benefit amount was accounted for under its audited operating expenses. Further, the Commission considers that the amount was expensed in order to fund Genpacco's pension plan liability for the period and that the amount is correctly classified as an expense.
5. Miscellaneous costs incorrectly included: Genpacco claimed an amount was incorrectly included in its miscellaneous expenses and accordingly the calculation of domestic SG&A. Genpacco claimed that the amount was a post-financial year audit adjustment. As Genpacco did not raise this post-financial year adjustment at the verification and has not provided any evidence or other information in relation to what the amount is and how it should be treated, the Commission considers that the verified income statement and audited financial statements is reliable for the calculation of domestic SG&A in the absence of evidence to support Genpacco's accounting error and subsequent adjustment after its audited financial statement was prepared and signed.
6. Foreign exchange gains and losses incorrectly excluded: Genpacco claimed that its foreign exchange gains resulting from:
 - a. sales of TRFs to Australia; and
 - b. purchases of imported raw materials,

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should be included in the calculation of domestic SG&A. It cited the Commission's treatment of non-operating income for the purposes of calculating domestic SG&A in the Manual.

The Commission verified Genpacco's raw material purchases and confirmed that Genpacco purchased its imported raw materials in Philippine peso (PHP) using loans from its bank. The bank paid the foreign currency invoice and charged Genpacco in PHP. Additionally, the Commission also confirmed with Genpacco at the verification that there were no other foreign exchange gains or losses relating to purchases of raw materials or other input costs. Genpacco confirmed at the time that there were none. The Commission remains satisfied that Genpacco did not incur foreign currency gains and losses on its purchases of raw materials.

The Commission considers that the foreign currency gains and losses resulted from exports sales (from invoices in multiple currencies and to multiple countries) and therefore are appropriately excluded from the calculation of domestic SG&A costs.

7. Rental income incorrectly excluded: Genpacco claimed that its rental income derived from the lease of part of its manufacturing facility should be included in its SG&A cost. The Commission disagrees and considers that rent paid by a third party is a separate income stream that cannot be attributed to Genpacco's own manufacturing and selling activities.

The Commission has considered an alternate approach to Genpacco's submission, whereby the relevant portion of depreciation for this rented portion of Genpacco's warehouse could be excluded from the calculation of SG&A costs. However no evidence was provided by Genpacco to enable the Commission's calculation of this.

4.5.3 Adjustments to normal value

To ensure the normal value is comparable to the export price at EXW (cash) 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- Summary of the export price, normal value and dumping margin**.

4.6 Dumping margin

The Commission has calculated a dumping margin based on the revised variable factors for the review period. The dumping margin has been calculated by comparing the

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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 – Summary of the export price, normal value and dumping margin**.

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.³⁵

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. Further, the NIP calculated from 474 is in relation to another country and therefore is not comparable with the normal value and export price calculated for Genpacco.

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.

³⁵ 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.

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The Manual provides the Commission with a hierarchical approach for establishing a USP³⁶:

- 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.

The verified exporter data for this review period demonstrates an increased margin of dumping by Genpacco (as compared to the original investigation period and current measures). As a result, the Commission is unable to establish a price in the review period in the market unaffected by dumping.

Accordingly, the Commission considers that the USP from the original investigation period remains as a reasonable price of the Australian industry in a period unaffected by dumping and satisfies the Commission's preferred approach for establishing a USP as the price from the original investigation period:

- is less than five years old; and
- includes the range of TRFs required to enable calculation of NIP that is comparable to Genpacco's normal value.

Irwin submitted³⁷ that the USP and NIP should be based on the price or market approach of undumped imports because:

- TRFs exported from India, a country not subject to measures and found not to be dumping in the original investigation period remain in the Australian market;
- Irwin imports TRFs from both India and the Philippines and these TRFs are used interchangeably as a component of the complete can units sold under the same supply contracts in the Australian market; and
- as TRFs exported from India were found to be undumped in the original investigation period, they are by definition not injurious to the Australian industry.

Whilst the Commission has considered Irwin's approach, the export price of TRFs from India is not preferred as:

- Irwin's imported TRFs are seamed onto complete can units and sold as a complete can unit in the Australian market. Therefore there are no selling prices of imports of TRFs from India sold in the same condition as imported in the Australian market;
- because there are no prices there can be no USP calculated from TRFs imported from India;
- exportation costs associated with exports from India and the Philippines are significantly different and so the export price of TRFs from India is not comparable for the use as a NIP for the Philippines; and

³⁶ adcommission.gov.au – the Manual, pp. 137-140

³⁷ adcommission.gov.au – refer document 12 on the EPR for Review No. 496

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- the Commission cannot be confident that the export price of TRFs from India in the review period is an undumped price.

Irwin also requested that Marpac's sales of imported 127mm TRFs in the review period be examined for inclusion in the calculation of the USP. The Commission considers that the USP is based on the Australian industry's sales of manufactured goods and accordingly, it is not appropriate to include one imported product as part of the USP calculation.

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. Marpac submitted³⁸ that the NIP should not be the operative measure in circumstances where it is still unable to increase sales volumes and market share as a direct result of TRF exports from the Philippines.

The assessment of whether the NIP is the operative measure is an objective calculation based on the available data. In this case, the calculated NIP is lower than the ascertained normal value and therefore is the operative measure.

The assessment of the USP and NIP is provided at **Confidential Attachment 2 - Assessment of the USP / NIP for the review period and the effective rate of duty.**

4.7.3 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 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.³⁹

Marpac requested⁴⁰ that the Minister reconsider the desirability of fixing a lesser amount of duty as Marpac is a small family business, which it claims has not seen a translation of the existing measures on domestic prices and where the dumping margin from Genpacco has doubled since the original investigation period.

Irwin supported⁴¹ the use of the lesser duty rule.

Marpac has not provided any evidence to support its claim that the NIP (and therefore the effective rate of IDD) is inadequate as the minimum price necessary to remove the injurious effects of dumping.

³⁸ adcommission.gov.au – refer document 11 on the EPR for Review No. 496

³⁹ Refer to REP 350 at adcommission.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.

⁴⁰ adcommission.gov.au – refer document 11 on the EPR for Review No. 496

⁴¹ adcommission.gov.au – refer document 12 on the EPR for Review No. 496

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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 effects of dumping to the Australia industry. The recommended IDD payable is the difference between the ascertained export price and NIP for Genpacco.

The recommended 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 - Assessment of the USP / NIP for the review period and the effective rate of duty**.

5 FORM OF MEASURES

5.1 Finding

The Commissioner 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 has had regard to the *Guidelines on the Application of Forms of Dumping Duty*⁴² (the Duty Guidelines) and relevant factors in the market for the goods.

Marpac requested that the current form of measures change from the *ad valorem* to the combination duty method (*ad valorem* and floor price) as it was "...concerned the importer [Irwin] is absorbing the dumping duty costs and not passing them on as a cost of selling the can unit with TRF to the customer."⁴³ Marpac asserted that this activity rendered the current form of measures ineffective.

A key consideration for imposing an *ad valorem* duty method (the current form of duty) is that it has an advantage where there are many models, however it has a potential disadvantage in that export prices might be lowered to avoid the effects of this duty, however the Commission confirmed (refer chapter 4.4) that there is no evidence before it to demonstrate that export prices have been manipulated to avoid the intended effect of the current *ad valorem* duties.

In considering whether to change the form of duty, the Commission has considered whether there have been any changes to the Australian market since the original investigation period, such that there have been changes in demand for the range of TRF sizes. As discussed above, the Commission verified that Genpacco continued to export a range of TRF sizes to Irwin in the review period and each of the sizes purchased had a different invoice value which increased with size.

As per the Duty Guidelines, the floor price element or the "fixed duty element" of the combination duty method "...may not suit those situations where there are many models or types of the good with significantly different prices."⁴⁴ During the review period, Genpacco exported multiple sizes and each size had a significantly different price.

⁴² Available at adcommission.gov.au

⁴³ adcommission.gov.au – refer document 11 on the EPR for Review No. 496

⁴⁴ adcommission.gov.au – The Duty Guidelines, November 2013, p.4

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The floor price element requires that the Minister set a floor price value with reference to the ascertained export price. In this case, the single ascertained export price (and accordingly the dumping margin) has been calculated according to the weighted average export price of the *range* of TRF sizes exported.

“Where the ‘ascertained’ export price component of the combined duty must be determined as an average for all the models the ‘broad brush’ nature of this calculation can make the combined duty unsuitable.”⁴⁵

TRF export prices are size-dependent, i.e. smaller diameters such as the 73mm TRF are cheaper than larger diameters such as the 153mm TRF, and are invoiced this way. Therefore, when the interim dumping duty payable is calculated on each consignment at the point of entry in Australia, the floor price element will be too low for certain TRF sizes in the consignment (such as the 153mm) and therefore diminish the effectiveness of the measure or too high for other TRF sizes in the consignment (such as the 73mm) which would be punitive.

Therefore, the Commission does not consider that it is appropriate to revise the current form of measures and recommends that the *ad valorem* duty method provided for in subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Dumping Duty Regulation) remains appropriate for TRF imports.

Whilst the Commission notes the concern raised by Marpac that dumping duty costs are being absorbed by Irwin, a review of measures does not allow for investigation of these claims. There are, however, other avenues of redress if Marpac considers it appropriate.

⁴⁵ adcommission.gov.au – The Duty Guidelines, November 2013, p.6

6 FINDINGS AND EFFECT OF THIS REVIEW

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 Effect of this review

If the Minister accepts the Commissioner's recommendations, exports of TRFs from the Philippines by Genpacco will have effect as if different variable factors had been ascertained, resulting in an effective *ad valorem* rate of IDD of **17.6 per cent**.

A summary of the variable factors is at **Confidential Attachment 1 – Summary of the export price, normal value and dumping margin**.

7 RECOMMENDATIONS

The Commissioner recommends that the Minister, after considering this report, **declare**, under subsections 269ZDB(1)(a)(iii), by notice published on the Commission's website, that for the purposes of the Act and the Dumping Duty Act:

- that, with effect from the date of the declaration, the dumping duty notice is taken to have effect as if the Minister had fixed different variable factors in respect of Genpacco, relevant to the determination of duty payable under the Dumping Duty Act on TRFs exported to Australia from the Philippines.

The Commissioner recommends that the Minister **be satisfied** that:

- the normal value of like goods sold in the domestic market of the Philippines could not be ascertained under subsection 269TAC(1) because of the operation of subsection 269TAC(2)(a)(i), being that there was an absence of sales of TRFs in the Philippines market.

The Commissioner recommends that the Minister **determine** that:

- subsection 269TAB(1)(a) applies such that the export price of goods exported to Australia from the Philippines by Genpacco, is the price paid or payable for the goods by Irwin, other than any part of that price that represents a charge in respect of any other matter arising after exportation; and
- in accordance with subsection 269TAB(1)(a), the export price of TRFs exported to Australia from the Philippines by Genpacco are as set out in Confidential Attachment 1 - Summary of the export price, normal value and dumping margin.

The Commissioner recommends that the Minister **determine** that:

- the normal value is ascertained according to subsection 269TAC(2)(c) because of the operation of subsection 269TAC(2)(a)(i), being that there was an absence of sales of TRFs in the Philippines market;
- pursuant to subsection 269TAC(9), an adjustment for export credit terms as set out in Confidential Attachment 1 are necessary to ensure that the normal value is properly comparable with the export price of the TRFs exported by Genpacco; and
- in accordance with subsection 269TAC(2)(c), the normal value of TRFs exported to Australia from the Philippines by Genpacco are as set out in Confidential Attachment 1 - Summary of the export price, normal value and dumping margin.

The Commissioner recommends that the Minister **determine**:

- in accordance with subsection 269TACB(2)(a), that the goods exported to Australia from the Philippines is the review period were dumped, and that the dumping margins in respect of those goods is the difference between the weighted average export prices of the goods over the review period and the weighted average of

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- corresponding normal values over that period; and
- the non-injurious price as set out in Confidential Attachment 2 - Assessment of the USP / NIP for the review period and the effective rate of duty, is the minimum price necessary to prevent injury to the Australian industry from the export of TRFs to Australia from the Philippines by Genpacco.

The Commissioner recommends that the Minister, by signed notice, **determine:**

- pursuant to subsection 8(5) of the Dumping Duty Act, that the dumping duty payable on the goods exported to Australia from the Philippines by Genpacco, is an amount that has been worked out in accordance with the *ad valorem* duty method as provided for in subsection 5(7) of the Dumping Duty Regulation, with effect from the date of publication of the signed notice.

8 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