



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

**Anti-Dumping  
Commission**

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

**CONSIDERATION REPORT  
NO. 527**

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

**Resealable can end closures**

**exported to Australia from Malaysia  
by Federal Metal Printing Factory Sdn Bhd**

**1 October 2019**

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**ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full title</b>
ABF	Australian Border Force
the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Federal Metal	Federal Metal Printing Factory Sdn Bhd
the goods	resealable can end closures (also known as tagger, ring and foil ends)
IDD	interim dumping duty
NIP	non-injurious price
REP 350	<i>Anti-Dumping Commission Report No. 350</i>
REP 474	<i>Anti-Dumping Commission Report No. 474</i>
TRF	tagger, ring and foil ends
Visy	Visy Packaging Pty Ltd

## 1 SUMMARY AND RECOMMENDATIONS

### 1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Visy Packaging Pty Ltd (Visy). Visy's application requests a review of the anti-dumping measures (in the form of a dumping duty notice) applying to resealable can end closures (the goods) exported to Australia from Malaysia by Federal Metal Printing Factory Sdn Bhd (Federal Metal).

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

### 1.2 Legislative background

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

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

### 1.3 Findings and conclusions

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

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

### 1.4 Recommendation

The Commission recommends that the Commissioner not reject the application for the reasons outlined at chapter 3 of this report.

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<sup>1</sup> Section 269ZA(1)(b)(i) of the *Customs Act 1901*.

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

## 2 BACKGROUND

### 2.1 Current anti-dumping measures

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

In relation to the goods exported from Malaysia, that investigation found that:

- dumped tagger, ring and foil ends (TRF) have materially hindered the establishment of an Australian TRF industry; and
- exports of TRF will continue at dumped prices and that continued dumping will prolong the market exclusion experienced by the Australian industry as a result of that dumping, and hence cause ongoing material hindrance to the establishment of an Australian TRF industry.<sup>3</sup>

Accordingly, the Commissioner recommended that the relevant Minister impose anti-dumping measures on the goods exported from Malaysia. The recommendation was accepted and, on 24 March 2017, public notice of the decision was published on the Commission website.<sup>4</sup>

Following an application from Federal Metal, in 2018 the Commissioner completed an accelerated review of the dumping duty notice applying to the goods exported to Australia from Malaysia by Federal Metal.

The Commissioner recommended to the relevant Minister that the dumping duty notice in respect of exports of the goods to Australia from Malaysia have effect in relation to Federal Metal as if different variable factors had been ascertained. The Commissioner also recommended that the interim dumping duty (IDD) payable on the goods be an amount worked out in accordance with the floor price duty method, pursuant to section 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. This meant that IDD would be payable on exports by Federal Metal if the actual export price was below the ascertained normal value, which is a specified (confidential) amount per TRF.

These recommendations were accepted and, on 16 August 2018, public notice of the relevant Minister's decision was published.<sup>5</sup>

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<sup>3</sup> *Anti-Dumping Commission Report No. 350* refers.

<sup>4</sup> Anti-Dumping Notice (ADN) No. 2017/20 refers, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

<sup>5</sup> ADN No. 2018/116 and *Anti-Dumping Commission Report No. 474* (REP 474) refer.

## **2.2 The current application**

On 9 September 2019, the Commission received an application from Visy for a review of the anti-dumping measures applying to the goods exported to Australia from Malaysia by Federal Metal. The application claims there has been a change in one or more variable factors.

The application is not prevented by section 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a dumping duty notice or a notice declaring the outcome of the last review of the dumping duty notice.<sup>6</sup>

Pursuant to section 269ZC(1), the Commissioner must examine the application and, within 20 days, decide whether to reject the application. As such, the decision to reject the application must be made no later than 29 September 2019.<sup>7</sup>

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

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

### **2.3.1 The goods description**

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

- a 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 information

The goods are commonly manufactured in the following nominal sizes (diameters):

- 73 mm;
- 99 mm;
- 127 mm; and
- 153 / 154 mm.

The goods may be coated or uncoated and / or embossed or not embossed.

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<sup>6</sup> On 12 September 2019, the Commission published a notice declaring the outcome of a review of measures (following *Anti-Dumping Commission Report No. 496*) concerning the goods exported from the Republic of the Philippines. Prior to this date, the most recently published notice was on 24 March 2017, more than 12 months prior to Visy's application.

<sup>7</sup> As 29 September 2019 falls on a Sunday, the Commissioner's decision is due on the next working day, 30 September 2019.

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The goods can also be known as RLTs (ring, lid tagger), RLFs (ring, lid, foil) or Penny Lever ends.

### **2.3.2 Exclusions from the measures**

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

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

### **2.4 Tariff classification**

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

### 3 CONSIDERATION OF THE APPLICATION

#### 3.1 Legislative background

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

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

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

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

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

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

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



- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*), and contains such information as the form requires. This includes evidence in support of the amount by which the variable factors have changed since last ascertained, information on the causes of the change to the variable factors and an opinion of whether these causes are likely to persist;<sup>8</sup>
- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates; and
- provides a description of the anti-dumping measures the subject of the application.

### **3.3 Grounds for a review of variable factors**

#### **3.3.1 Ascertained export price**

Visy's application notes that in REP 474, Federal Metal's ascertained export price was determined in accordance with section 269TAB(3). In that accelerated review, the ascertained export price was determined to be equal to the normal value. As part of its application, Visy provided a commercial sales invoice relating to goods exported to Australia by Federal Metal that occurred during the previous twelve months (**Confidential Attachment 1** refers).

Visy considers that this commercial document shows that there are reasonable grounds to show the export price for the goods has changed.

#### **3.3.2 Ascertained normal value**

In its application, Visy states that there has been a significant reduction in the price of tinsplate (the major raw material used to manufacture the goods) from August 2018 to August 2019. Visy also points to a recent purchase of TRF from Federal Metal which indicates a different price for TRF than has previously been paid. Visy concludes that the normal value will therefore differ from the ascertained normal value established in REP 474.

Based on these changes, Visy asserts that there are reasonable grounds to show the ascertained normal value for the goods has changed.

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<sup>8</sup> Section 3.3.3 of this report refers.

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

#### Export price

The Commission has compared the information provided by Visy to relevant consignments of the goods as reported in the Australian Border Force (ABF) import database. The Commission observed that the reported export prices paid between 1 January 2018 and 31 August 2019 were higher than the floor price (as per the anti-dumping measures) in all but one consignment (**Confidential Attachment 2** refers). The Commission therefore considers that the export price has changed.

#### Normal value

The Commission considers that the confidential evidence relied upon by Visy regarding tinplate prices is from a reputable publisher of industry information. The Commission therefore concludes that there is a reasonable basis for Visy to conclude that tinplate prices have declined since REP 474. Noting that tinplate represents a substantial share of the raw material cost of the goods, the Commission is satisfied that the normal value applicable to Federal Metal is likely to have also declined since REP 474.

#### Non-injurious price

As defined in section 269T(4E), in relation to a review of a dumping duty notice, the variable factors are export price, normal value and the non-injurious price (NIP). Although Visy has not claimed a change in the NIP in the application, the Commission considers it necessary to review all relevant variable factors, including the NIP.

#### Conclusion

The Commission considers that there appears to be reasonable grounds for Visy to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being the ascertained export price and ascertained normal value, have changed. Therefore, the Commission is satisfied that, in respect of the variable factors, Visy's application complies with section 269ZB.

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

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

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

### **3.5 Conclusions and recommendations**

The Commission has considered Visy's application in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application and other relevant information listed in section 3.3.3 of this report, that:

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

The Commission recommends that the Commissioner:

- **not reject** the application for a review of variable factors and initiate a review into the current anti-dumping measures applying to exports of the goods to Australia from Malaysia by Federal Metal; and
- **examine** the period from 1 October 2018 to 30 September 2019 for the purpose of reviewing the variable factors.

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**4 ATTACHMENTS**

<b>Confidential Attachment 1</b>	Commercial Documents – Visy Purchase from Federal Metal
<b>Confidential Attachment 2</b>	ABF data analysis