

Dr. Ross S. Becroft B.A., LL.B., M.Comm.Law. PhD

Suite 2, Level 3
182-184 Victoria Parade
East Melbourne, Victoria, 3002
Australia
Telephone: (61 3) 9866 5666
Facsimile: (61 3) 9866 5644

Our Ref: RB:KB 3462

Your Ref:

PUBLIC FILE VERSION

19 October 2020

BY EMAIL: Investigations2@adcommission.gov.au

The Director – Investigations 2
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

Dear Sir/Madam,

Re: Review of Anti-Dumping Measures Applying to Resealable Can End Closures ('TRFs') Exported to Australia from Malaysia by Federal Metal Printing Factory Sdn Bhd (Case number 527)

We act for Visy Packaging Pty Ltd (Visy), being the applicant in this Review.

We refer to the Statement of Essential Facts (SEF) dated 29 September 2020 in which the Commission foreshadows the imposition of dumping measures on an ad valorem rate of 11.6 percent.

Visy provides this submission in relation to the Commission's treatment of the Non-Injurious Price (NIP) that is dealt with in section 5 of the SEF.

The SEF confirms that in the current review period Federal Metal exported only two sizes of TRFs to Australia, being 127mm and 153mm diameter TRFs.

We note in section 5.3 of the SEF that the Commission sought data and information from the Australian Industry member, Marpac Pty Ltd for the review period for the determination of the NIP and that Marpac did not respond.

The Commission therefore proposes to base the Non-Injurious Price (NIP) on Unsuppressed Selling Prices (USP) utilizing the following information:

- For 127mm TRFs: Marpac's weighted average selling price for its **imported** 127mm TRFs as assessed in Accelerated Review 474 (which related to a review period 1 April 2017 to 31 March 2018); and
- For 153mm TRFs: written quotes from Marpac to a potential customer from the original investigation (350), with a period of investigation from 1 April 2015 to 31 March 2016.

Visy contends as follows:

1. Marpac **does not manufacture 127mm or 153mm TRFs in Australia**. There is no Australian Industry at all in respect of these goods. This fact was accepted by the Commission in Exemption Inquiry Number EX0073 in which an exemption was granted for imports of TRFs with a diameter of not less than 103mm.
2. The NIP is the minimum price necessary to prevent injury or a recurrence of injury to an Australian Industry manufacturing like goods. Marpac is clearly not suffering any injury as it does not manufacture these goods. Therefore, the NIP should be operative and set at the export prices so that no dumping duty is imposed. It makes no sense whatsoever that the Commission should utilize information related to goods that are not manufactured by the Australian Industry. Further, there should also not be use of Australian Industry information in circumstances where the Australian Industry is not cooperating in this Review. It is also somewhat absurd that information concerning goods not manufactured by the Australian Industry (and which are currently exempted from any dumping duties) may be used by the Commission to impose dumping duties on other TRF sizes (ie 73mm and 99mm TRFs) simply because they fall within the Goods Description.
3. If the Commission does not accept Visy's contention in point 2 above, then a NIP should be based upon **contemporary market pricing**. It is not possible to base the NIP on selling prices of Australian-produced TRFs at a time unaffected by dumping and nor is it possible to use an Australian Industry cost to make and sell plus profit model to determine a USP. We note that the Dumping and Subsidy Manual contemplates the use of selling prices of undumped imports in the Australian market where other USP construction methods are not appropriate.
4. Recalling that the NIP, in accordance with s269TACA, is the minimum price necessary to prevent the injury to an Australian Industry the most reliable market information should be sourced from contemporary information relating to imports of TRFs into Australia from export countries unaffected by dumping. In this regard,
 - (a) Exports of TRFs from India are not presently subject to dumping duties. Visy purchases [REDACTED] **[text deleted – product sizes]** TRF sizes purchases [REDACTED] **[text deleted – product sizes]** from [REDACTED] **[text deleted – supplier details]**, whose exports were examined by the Commission. The original investigation (350) was terminated in respect of exports of TRFs from India. These sales by purchases [REDACTED] **[text deleted – supplier details]** are a much better guide to contemporary market pricing for TRFs purchased for use in Australia. Visy's import prices for 127mm and 153mm are both significantly lower than pricing from [REDACTED] **[text deleted – supplier details]** For example, Visy currently purchases 127mm TRFs from [REDACTED] **[text deleted – supplier and pricing details]** whereas the purchase price from [REDACTED] **[text deleted – supplier and pricing details]**

Visy does not understand how this information cannot be taken into account and would be able to provide further information to assist the Commission in setting the NIP.

- (b) Visy is also aware that Marpac has been importing significant quantities of 127mm TRFs from a Chinese supplier, SZY Packaging, for at least the past 2 years. This first came to Visy's attention in or about June 2018 and Visy provided a submission to the Commission, a copy of which is **attached**. Visy determined that Marpac had imported multiple container loads of 127mm TRFs from this Chinese supplier for USD 127/1000 CFR, which is significantly lower than the prices at which [REDACTED] **[text deleted – supplier and pricing details]** Visy has also recently obtained a quotation from the same Chinese supplier for [REDACTED] **[text deleted – pricing details]**, which we **attach**.

Visy would be able to share further contemporary pricing information and evidence with the Commission should this assist.

5. It is also self-evident that the prices proposed by the Commission to be relied upon should not be used for establishing a NIP for this Review as the pricing for both 127mm and 153mm TRFs is not contemporary and is well out of date. The pricing for establishing a USP for 153mm TRFs is derived from pricing that is up to 5 and a half years old. Further, as Marpac does not manufacture and has never manufactured 153mm TRFs, quotations from 2015/2016 proposed to be used by the Commission for the NIP are not in any way reliable. It is therefore incumbent upon the Commission to base the NIP on contemporary pricing. In this regard, we note that a significant part of the cost of production of TRFs is the raw material tinplate, which, as world-wide traded commodity, fluctuates significantly. We note that spot tinplate prices have indeed fluctuated as much as 30 percent between 2016 and 2020.

For the abovementioned reasons, the NIP should not be calculated based upon the methods proposed by the Commission in the SEF. Instead, it should be based upon Federal Metal's export prices in light of the fact that the Australian Industry does not manufacture 127mm or 153mm TRFs. Alternatively, the NIP may be based upon contemporary import data derived from either [REDACTED] **[text deleted – buyer details]** imports of TRFs from India or Marpac's imports of TRFs from China.

Do not hesitate to contact me should you wish to discuss or require further information.

Yours faithfully

GROSS & BECROFT



Dr. Ross Becroft

Principal

Encl.