



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

REPORT NO. 527

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
RESEALABLE CAN END CLOSURES
EXPORTED TO AUSTRALIA FROM MALAYSIA
BY FEDERAL METAL PRINTING FACTORY SDN BHD**

20 November 2020

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
Accelerated Review 474	the previous review of Federal Metal's exports to Australia
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AEP	ascertained export price
ANV	ascertained normal value
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
the exemption goods	TRFs with diameters not less than 103 mm
Federal Metal	Federal Metal Printing Factory Sdn Bhd
the goods	the goods the subject of the application
IDD	interim dumping duty
KJ Singapore	KJ Can (Singapore) Pte Ltd
the Manual	Dumping and Subsidy Manual
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
mm	millimetres
NIP	non-injurious price
OCOT	ordinary course of trade
original investigation	the investigation that resulted in REP 350
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 2018 to 30 September 2019
SEF	statement of essential facts
SEF 527	<i>Statement of Essential Facts No. 527</i>
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
Visy	Visy Packaging Pty Ltd

1 SUMMARY

1.1 Introduction

This report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases his recommendations to the Minister for Industry, Science and Technology (the Minister)¹ in relation to a review of 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 Malaysia by Federal Metal Printing Factory Sdn Bhd (Federal Metal).

This review of measures was initiated on 1 October 2019, following an application by Visy Packaging Pty Ltd (Visy), an importer of TRFs from Federal Metal. Visy considered it appropriate to review the anti-dumping measures as they relate to exports of TRFs to Australia from Malaysia by Federal Metal 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*² enables affected parties (including exporters and industry) to apply for review of anti-dumping measures. It sets out, among other things, the procedures to be followed by the Commissioner when undertaking a review of anti-dumping measures. The division, among other matters:³

- sets out the circumstances in which applications for a review of anti-dumping measures can be brought;
- sets out the procedures to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

The Commissioner must, after conducting a review of anti-dumping measures involving the publication of a dumping duty notice under Division 5, give the Minister a report recommending that the dumping duty notice:⁴

- (i) remain unaltered;
- (ii) be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- (iii) have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

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 stated.

³ Section 269Z

⁴ Section 269ZDA(1)

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1.3 Findings

The Commissioner examined exports of TRFs from Malaysia by Federal Metal for the period 1 October 2018 to 30 September 2019 (the review period) and found that the variable factors have changed. Specifically, that the:

- ascertained export price (AEP) has changed;
- ascertained normal value (ANV) has changed; and
- non-injurious price (NIP) has changed.

The dumping margin for TRFs exported from Malaysia by Federal Metal during the review period is **7.9 per cent**.

1.4 Recommendations

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 Malaysia by Federal Metal, and that duties be calculated using the *ad valorem* duty method.

2 BACKGROUND

2.1 Application and initiation

Following consideration of the application from Visy, the Commissioner decided not to reject the application and on 1 October 2019, initiated a review of the anti-dumping measures on the goods exported to Australia from Malaysia by Federal Metal.

Notification of the initiation of the review was made via Anti-Dumping Notice (ADN) No. 2019/122, which was published on 1 October 2019.⁵ *Consideration Report No. 527* details the Commissioner's reasons for not rejecting the application.⁶

2.2 The current 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 following consideration of *Anti-Dumping Commission Report No. 350* (REP 350).⁷ These measures are applicable to all exporters from Malaysia, the Philippines and the Republic of Singapore (Singapore).

On 16 August 2018, the then Assistant Minister for Science, Jobs and Innovation altered the notice as it applied to exports from Federal Metal.⁸

Exports of TRFs from Malaysia by Federal Metal are currently subject to the floor price duty method of interim dumping duty (IDD).

2.3 Previous cases

The original measures were imposed following an investigation that resulted in REP 350 (original investigation). A list of selected cases which are relevant to the goods and the present application are summarised below, with full details found on the relevant EPR on the Commission website at www.adcommission.gov.au

⁵ EPR 527, document [3](#)

⁶ EPR 527, document [2](#)

⁷ EPR 350, document [81](#)

⁸ [ADN No. 2018/116](#)

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Case type and report	ADN No.	Date	Country of export	Findings
Investigation REP 350	2017/20	24 March 2017	Malaysia, the Philippines and Singapore	Dumping duties imposed.
Accelerated Review <i>Anti-Dumping Commission Report No. 474</i>	2018/116	16 August 2018	Malaysia	Variable factors determined for Federal Metal.
Review <i>Anti-Dumping Commission Report No. 496</i>	2019/101	11 September 2019	The Philippines	Variable factors amended for Genpacco Inc.
Exemption <i>Anti-Dumping Commission Report No. EX0073</i>	2019/134	30 October 2019	Malaysia, the Philippines and Singapore	Exemption granted for TRFs with diameters not less than 103 millimetres (mm).

Table 1: Summary of key cases relating to TRFs

2.3.1 Exemption EX0073

Subsequent to the commencement of this review, an application for exemption of dumping duties for TRFs with diameters not less than 103 mm (the exemption goods) made by Visy was granted by the Minister.⁹ Although the exemption goods are now exempt from dumping duties upon importation, exports of the exemption goods to Australia are still goods subject to the dumping duty notice. Therefore, export sales of the exemption goods to Australia, and domestic sales of like goods to the exemption goods, are relevant for the purpose of calculating export price and normal value in this review.

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.¹⁰ Accordingly, the affected party may apply for,¹¹ or the Minister may request that the Commissioner conduct,¹² a review of those measures if one or more of the variable factors has changed.¹³

⁹ [ADN No. 2019/134](#)

¹⁰ Section 269ZA(1)

¹¹ Section 269ZA(1)

¹² Section 269ZA(3)

¹³ Sections 269ZA(1)(b)(i) and 269ZA(3)(b)(i)

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The Minister may initiate a review at any time.¹⁴ However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or the notice declaring the outcome of the last review of the dumping duty notice.¹⁵

If an application for a review of anti-dumping measures is received and not rejected, within 110 days of the initiation of a review, or such longer time as the Minister may allow, 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.¹⁶ The Commissioner has up to 155 days, or such longer time as allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.¹⁷

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are a reference¹⁸ to the:

- AEP;
- ANV; and
- NIP.

For this review, in making recommendations in his final report to the Minister, the Commissioner must have regard to:¹⁹

- 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.²⁰

At the conclusion of the review, the Commissioner must provide a final report to the Minister.²¹ In his final report he must make a recommendation to the Minister that the dumping duty notice:²²

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

Following the Minister's decision, the Minister must give notice of the decision.²³

¹⁴ Section 269ZA(3)

¹⁵ Section 269ZA(2)(a)

¹⁶ Section 269ZD(1)

¹⁷ Section 269ZDA(1)

¹⁸ Section 269T(4E)

¹⁹ Section 269ZDA(3)(a)

²⁰ Section 269ZDA(3)(b)

²¹ Section 269ZDA(1)

²² Section 269ZDA(1)(a)

²³ Section 269ZDB(1)

2.5 Extensions of time

The Commissioner has granted four extensions of time for the completion of this SEF and the final report.²⁴ The extensions were granted on 9 January 2020, 18 March 2020, 18 May 2020 and 15 September 2020.²⁵ As a result, the SEF for this review was due to be published on the public record by no later than 29 September 2020 and that the Commissioner's recommendations will be made in a report due to be provided to the Minister on or before **13 November 2020**.

2.6 The SEF

The Commissioner published *Statement of Essential Facts No. 527* (SEF 527) on 29 September 2020. The SEF set out the essential facts on which the Commissioner proposed to base his final recommendations to the Minister based on the information before him at that time.

Interested parties were invited to lodge written submissions in response to the SEF no later than **19 October 2020**.

2.7 Submissions received from interested parties

The Commission received two submissions in response to SEF 527, which have been addressed throughout this report. The submissions are on the public record.²⁶

The public record includes non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. The public record can be viewed online on the Commission's website.

²⁴ On 14 January 2017, the powers and functions of the Minister under section 269ZHI were delegated to the Commissioner. Refer to [ADN No. 2017/10](#) for further information.

²⁵ ADN Nos. [2020/002](#), [2020/031](#), [2020/053](#) and [2020/106](#)

²⁶ EPR 527, document [13](#) and [14](#)

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 tinfoil 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*
- *153/154 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 2: General tariff classification of the goods

3.3 Model control codes

On 9 August 2018, the Commission advised in ADN No. 2018/128 that a model control code (MCC) structure would be implemented in new investigations, reviews of measures generally and continuation inquiries for cases initiated after this date. As noted in that ADN, in developing the MCC structure the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price.

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The Commission applied the following MCC structure to the goods in this review.

Category	Sales Data	Cost data
Diameter	Mandatory	Mandatory

Table 3: MCC structure for TRFs

3.4 Like goods

Having regard to the Commission's examination of the Australian industry and the goods in previous cases²⁷ and verification of Federal Metal in the current review, the Commission is satisfied that the locally produced goods closely resemble the goods the subject of the application and are like goods given that the:

- primary physical characteristics of the locally produced goods closely resemble the imported goods;
- imported and locally produced goods are commercially alike as they are sold to the same customers and/or compete in the same markets;
- imported and locally produced goods are functionally alike as they have the same end uses and/or are substitutable; and
- imported and locally produced goods are manufactured in a similar manner.

²⁷ [REP 350](#), [REP 474](#) and [REP 496](#)

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 the review

4.2.1 Importer questionnaire and verification

Upon receipt of Visy's application and prior to initiation of this review, the Commission performed a search of the Australian Border Force (ABF) import database and identified Visy as the sole importer of TRFs from Federal Metal during the review period.

Visy provided the Commission a complete response to an importer questionnaire (RIQ) by the due date of 21 October 2019.

The Commission conducted a desktop verification of the information provided in Visy's RIQ and is satisfied as to the accuracy, relevance and completeness of the data provided by Visy. The verification report for Visy is available on the EPR.²⁸

4.2.2 Determination of the importer

Section 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 Visy:

- is named as the customer on supplier invoices from Federal Metal;
- is named as the consignee on the bills of lading;
- declares itself as the owner of the goods for entry to the ABF;
- negotiates with Federal Metal 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 section 269T(1), the Commission considers that Visy was the beneficial owner of the goods at the time of their arrival in Australia and, as such, was the importer of the goods.

4.2.3 Exporter questionnaire and verification

Upon initiation of this review, the Commission provided Federal Metal with an exporter questionnaire to complete.

Federal Metal requested an extension of time to provide the Commission with a complete response to the exporter questionnaire (REQ). The Commissioner granted a 14 day extension to Federal Metal to provide the completed REQ. Federal Metal provided a complete REQ by the revised due date.

²⁸ EPR 527, document [9](#)

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The Commission conducted a desktop verification of the information provided in Federal Metal's REQ and is satisfied as to the accuracy, relevance and completeness of the data provided by Federal Metal. The verification report for Federal Metal is available on the EPR.²⁹

4.2.4 Determination of the exporter

The goods exported to Australia during the review period were produced by Federal Metal and sold through its related trading company KJ Can (Singapore) Pte Ltd (KJ Singapore). The Commission's desktop verification found that:

- Federal Metal manufactured the goods;
- Federal Metal was listed as the seller of the exported goods on its invoices;
- Federal Metal was named as the shipper of the goods on the bill of lading for each consignment; and
- Federal Metal was named as the seller on the packing lists.

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

4.3 Export price

The Commission is satisfied that export sales of the goods by Federal Metal and the related trading company were arms length transactions, as the Commission has no evidence before it that:

- there was any consideration payable for, or in respect of, the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

In respect of Australian sales of the goods by Federal Metal, based on the Commission's desktop verification, the Commission finds that the importer has not purchased the goods from the exporter, therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The Commission has calculated the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation set out in Chapter 4 of this report.

In the SEF, the Commission calculated export price as the price paid by the importer less transport and other costs arising after exportation. The Commission accounted for the export sales commission paid from Federal Metal to KJ Singapore, by making an upwards adjustment to the normal value.³⁰ This is consistent with the approach in the previous review of Federal Metal's exports to Australia (Accelerated Review 474) upon which the current measures applicable to Federal Metal are based.

In its submission in response to the SEF, Federal Metal disagreed that there should be an adjustment for the export sales commission. It stated that the full payment made by the customer to KJ Singapore represents the commercial price. It further said that it would be

²⁹ EPR 527, document [12](#)

³⁰ SEF 527 (EPR 527, document [11](#)) at 4.4.1 and EPR 527, document [12](#) at chapter 9

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different if Federal Metal was making a payment to a third party export agent and paying a commission however, in this case, the full benefit of the purchase price remains within the Kian Joo Group (which includes Federal Metal and KJ Singapore).

The Commission further examined the export sales process and export documentation provided by Federal Metal and the importer. The Commission finds that the export price information submitted by Federal Metal in its REQ reflects KJ Singapore's export price and not Federal Metal's.

The Commission recalculated export price to be the price received by Federal Metal, using the price paid by the importer, less the export sales commission received by KJ Singapore, transport and other costs arising after exportation.

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

4.4 Normal value

All of Federal Metal's domestic sales made during the review period were to a related customer. The Commission examined these sales and found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than their price;³¹ or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.³²

However, the Commission found evidence that the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller as domestic sales were not profitable.

The Commission therefore considers that all domestic sales made by Federal Metal to its related customer during the period were not treated as arms length transactions, pursuant to section 269TAA(1)(b).³³

The Commission is satisfied that because of the absence of sales of like goods in arms length transactions in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1), the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1).

The Commission has therefore constructed a normal value under section 269TAC(2)(c) using the sum of:

- the cost to make the exported goods based on the company's records in accordance with section 43(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation);
- selling, general and administrative (SG&A) costs of domestic sales of the goods based on the company's records in accordance with section 44(2) of the Regulation; and

³¹ Section 269TAA(1)(a)

³² Section 269TAA(1)(c)

³³ The Commission notes that the finding in this report that the sales to domestic customers did not take place on an arms length basis relates to the assessment of domestic prices for anti-dumping purposes under section 269TAC. It is not an assessment of the exporter's transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.

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- an amount for profit based on data relating to the production and sale of the same general category of goods, being the components of cans, in the domestic market in accordance with section 45(3)(a) of the Regulation.

Section 45(2) of the Regulation requires, if reasonably practicable, the profit to be calculated using data related to the production and sale of like goods by the exporter in the ordinary course of trade (OCOT). The Commission was not able to calculate profit under section 45(2) of the Regulation as the only domestic sales of like goods that Federal Metal made were transfers to its related party and therefore were not sales made in the OCOT.

4.4.1 Submission on profit

Following publication of the SEF, Federal Metal made a submission³⁴ in respect of the amount for profit in the constructed normal value. Federal Metal stated that the profit margin used was incorrect as it did not include the manufacturing variance, which reflects “the actual manufacturing costs being different from the standard costing model”. Federal Metal provided audited accounts from 2018 and stated that the lower company-wide profit margin should be applied, which would reduce the dumping margin.

In the exporter verification report and SEF 527 the Commission did not include the manufacturing variance in its calculations as Federal Metal stated that the variance did not affect the cost to manufacture TRFs. Subsequent to the publication of SEF 527, Federal Metal stated that the manufacturing variance is applicable to all manufacturing, including TRFs. Federal Metal allocated the manufacturing variance to the different categories of goods based on the cost of goods sold. Further reasoning and emails from Federal Metal regarding the variance is at **Confidential Attachment 2**.

The Commission reviewed the profit calculations and agrees that the manufacturing variance should be included in the calculations. This has the effect of increasing the cost to make the exported goods and decreasing the amount for profit.

In reviewing the profit calculations the Commission realised that the profit margin applied in SEF 527 and the profit margin suggested by Federal Metal in its response to the SEF are both gross margins, i.e. the difference between sales revenue and the cost of goods sold. By applying a gross margin the Commission effectively double-counted the SG&A costs in the constructed normal value. The recalculated profit margin is net of all costs including SG&A costs.

The Commission considers the same general category of goods, being components of cans, more appropriate than Federal Metal’s company-wide profit margin, which reflects the production and sale of all of Federal Metal’s manufactured products. Can components is the narrowest category that includes TRFs, whereas Federal Metal’s company-wide profit margin reflects the production and sale of all manufactured products.

The Commission has worked out the amount for profit by identifying the actual amount realised by Federal Metal from the sale of the same general category of goods in the domestic market in accordance with section 45(3)(a) of the Regulation. The Commission considers that this more closely approximates the profit that Federal Metal would achieve from the sale of TRFs on the domestic market than the overall profit of the company, as suggested by Federal Metal in its submission.

³⁴ EPR 527, document [14](#)

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4.4.2 Adjustments

The Commission is satisfied there is sufficient information to justify the following adjustments in accordance with section 269TAC(9), and considers these adjustments necessary to ensure a fair comparison of normal values and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct the cost of domestic credit terms
Export credit terms	Add the cost of export credit terms
Export inland transport and handling	Add the cost of export inland transport and handling
Export packaging	Add the cost of export packaging

Table 4: Normal value adjustments

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

4.4.2.1 Submission on adjustments

In its submission to the SEF, Federal Metal disagreed that there should be an adjustment for export sales commission. In response to Federal Metal's submission, the Commission reviewed the treatment of KJ Singapore's commission and has revised the export price calculations to deduct the commission received by KJ Singapore. The adjustment for export sales commission has therefore been removed from the revised normal value calculation.

4.5 Dumping margin

The Commission calculated a dumping margin based on the revised variable factors for the review period. The dumping margin has been calculated by comparing Federal Metal's weighted average export prices of the goods during the review period, with the corresponding weighted average normal values in accordance with section 269TACB(2)(a).

The dumping margin in respect of the goods exported to Australia by Federal Metal during the review period is **7.9 per cent**³⁵.

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

³⁵ The dumping margin calculated in the SEF was 11.6%.

5 NON-INJURIOUS PRICE

5.1 Non-Injurious Price

While Visy's application did not include the NIP as a variable factor to be reviewed, section 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 NIP. Therefore, it is the Commission's practice to review all variable factors in a review.

The NIP is defined in section 269TACA as "the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance" caused by the dumped or subsidised goods the subject of a dumping duty notice or a countervailing duty notice.

5.2 Lesser Duty Rule

The calculation of the NIP is relevant for the purposes of the lesser duty rule under the Dumping Duty Act.³⁶ The level of dumping duty imposed by the Minister cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Minister must also have regard to the desirability of fixing a lesser amount of duty.

Pursuant to section 8(5BAA) of the Dumping Duty Act, the Minister is not required to have regard to the desirability of fixing a lesser amount of duty in certain circumstances. Neither of those circumstances (being the composition of the Australian industry, or the method of ascertaining normal value in circumstances of a particular market situation in the country of export), are relevant to the present review.

5.3 Calculating the NIP

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). The Commission's preferred approach to establishing the USP is set out in Chapter 24 of the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.³⁷

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export Free On Board point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

5.3.1 The USP for the review period

The Commission sought data and information from the Australian industry member, Marpac Pty Ltd (Marpac) for the review period. Marpac did not respond.

³⁶ Section 8(5B) of the Dumping Duty Act

³⁷ [The Manual](#), pp. 134-135

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In the absence of information from Marpac, the Commission considers that the USP from Accelerated Review 474³⁸ to be the most appropriate information available for this review. That accelerated review also concerned exports of the goods to Australia from Malaysia by Federal Metal. In that review the Commission calculated a USP based on Marpac's weighted average selling price for 127 mm TRFs, as that was the model produced and exported to Australia by Federal Metal in that period.³⁹

In the current review period Federal Metal exported 127 mm and 153 mm TRFs to Australia. As there was no USP calculated in Accelerated Review 474 for 153 mm TRFs, for this size, the Commission examined what other information was available to it. The only available information available is from the original investigation, in which the USP was based on written quotes from Marpac to a potential customer.

5.3.1.1 Submission on the calculation of the USP

In response to the SEF, Visy made a submission concerning the USP.⁴⁰ Visy stated that Marpac does not manufacture 127 mm or 153 mm TRFs in Australia and there is no Australian Industry in respect of these goods, and that this fact was accepted by the Commission in Exemption EX0073 in which an exemption was granted for imports of TRFs with a diameter of not less than 103 mm. Visy claimed that Marpac is not suffering any injury as it does not manufacture these goods. Visy submitted that the NIP should be operative and set equal to the export price so that no dumping duty is imposed. Visy further submitted that the Commission should not utilise information related to goods that are not manufactured by the Australian Industry, which did not cooperate in this review.

Visy's submission also stated that, should the Commission not accept Visy's reasoning that the NIP be operative, the NIP should be based on contemporary market pricing. Visy suggested that the most reliable market information is from imports of TRFs into Australia from countries "unaffected by dumping", such as India which was found not to be dumping in the original investigation, or China.

Visy claimed that the prices proposed by the Commission should not be used to establish the NIP for this review as the pricing for 127 mm and 153 mm is out of date. Visy noted that the main raw material for TRFs, tinplate, fluctuated as much as 30 per cent between 2016 and 2020.

The Commission's assessment

The Commission acknowledges that in EX0073, it found that Marpac was not yet manufacturing 127 mm TRFs,⁴¹ however in a submission to that inquiry, Marpac stated that the production of 127 mm and 153 mm TRFs are on its agenda and remains under constant review.⁴² Marpac did not provide information for this review, therefore the Commission has examined all available information to determine a USP and NIP for the review period.

In relation to Visy's submission that the NIP should be equal to the export price, the Commission notes that the original measures were imposed following a finding that

³⁸ [REP 474](#)

³⁹ Accelerated Review 474 examined the review period 1 April 2017 to 31 March 2018.

⁴⁰ EPR 527, document [13](#)

⁴¹ The Commission was silent regarding the manufacture of 153mm TRFs in Australia.

⁴² EPR EX0073, document [7](#)

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dumping had caused material hindrance to the Australian industry. Visy's submission that the NIP should be set equal to the export price is not appropriate as it will not achieve the purpose of the NIP which is "...the minimum price necessary... to remove the hindrance..."⁴³ which arises from dumping.

The Manual states that when establishing the USP/NIP in reviews, the Commission will generally not depart from the approach taken in the original investigation or a previous review, unless there has been a change in circumstances that either makes the earlier USP approach unreasonable, or less preferred amongst the other available options.⁴⁴ As there has been no change in circumstances in this review that makes the earlier USP approach unreasonable, the Commission does not find there to be any compelling reasons to divert from the approach determined in the original investigation and Accelerated Review 474, which also concerned exports of the goods from Malaysia by Federal Metal.

In considering Visy's assertion that the USP is out of date, the Commission notes that the Manual states that where the USP is older than five years, the Commission will consider updating of old pricing by indexing or other means where reasonable. The USP in the original investigation was determined for the period 1 April 2015 to 31 March 2016, which is approximately three years before the review period examined in this review. As such, the Commission does not consider that updating the USP is necessary.

Notwithstanding this, the Commission has examined the tinsplate pricing in Malaysia and found that the price of tinsplate has increased since the original investigation. Indexing the USP with reference to the increase in tinsplate prices would result in a higher NIP. As the NIP is currently not operative, it would continue to not be operative if such an adjustment were made. The Commission's examination of tinsplate pricing is at **Confidential Attachment 3**.

In considering Visy's assertion that the NIP can be calculated by reference to import prices from India or China, the Commission acknowledges that while exports of TRFs from India were found not to be dumped during the original investigation, no such finding has been made with respect to the review period. The Commission further notes that Visy did not provide any supporting evidence to substantiate the claimed import prices from India or China.

The approach to calculating the USP and NIP for TRFs in this review is consistent with that taken in the previous review of TRFs, *Anti-Dumping Commission Report No. 496*,⁴⁵ which was endorsed by the Anti-Dumping Review Panel (ADRP) in its *Report No. 113*.⁴⁶

5.3.2 The NIP for the review period

Having established the USP, the Commission calculated the NIP using Visy's import costs in the review period, using the same calculation methodology from Accelerated Review 474.

The Commission found that the NIP was higher than Federal Metal's normal value and therefore the lesser duty rule does not apply.

⁴³ Section 269TACA

⁴⁴ [The Manual](#), p. 137

⁴⁵ [REP 496](#)

⁴⁶ [ADRP Report No. 113](#)

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The assessment of the USP and NIP is provided at **Confidential Attachment 4**.

6 FORM OF MEASURES

6.1 Finding

The Commission recommends that the Minister change the form of the anti-dumping measures from the current floor price duty method to the *ad valorem* duty method.

6.2 Consideration of form of measures

The various forms of anti-dumping measures all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of measures will better suit particular circumstances more so than others. In considering which form of measures to recommend to the Minister, the Commissioner will have regard to the *Guidelines on the Application of Forms of Dumping Duty*⁴⁷ and relevant factors in the market for the goods.

6.2.1 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods. An *ad valorem* dumping duty is determined for the product as a whole, meaning that a single ascertained export price is required when determining the dumping margin. The *ad valorem* duty method is the simplest and easiest form of duty to administer when delivering the intended protective effect. The *ad valorem* duty method also 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.

In recommending a change to the form of measures, the Commission notes that the original investigation considered the *ad valorem* duty method most appropriate as multiple TRFs are exported to Australia and a fixed form of measures will not adequately address all the different prices for each TRF size (as there is a distinct difference between sizes). The Commission notes that this finding is still relevant in relation to TRFs exported to Australia.

The Commission also notes that the floor price duty method was imposed on exports by Federal Metal in Accelerated Review 474 which determined that the ascertained export price be the same amount as the normal value. In this review, the Commission has determined export price with regard to all the circumstances of the exportation.

As such, the Commission recommends to amend the form of measures as it applies to Federal Metal and that duties be calculated under the *ad valorem* method.

⁴⁷ [Guidelines on the Application of Forms of Dumping Duty](#)

7 FINDINGS AND RECOMMENDATIONS

7.1 Findings

The Commissioner has found that, in relation to TRFs exported to Australia from Malaysia by Federal Metal, the:

- AEP has changed;
- ANV has changed; and
- NIP has changed.

7.2 Recommendations

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

- in accordance with subsection 269ZDB(1)(a)(iii), with effect from the day after publication of the notice declaring the outcome of the review, and for the purposes of the Act and the Dumping Duty Act, the dumping duty notice is taken to have effect in relation to TRFs exported to Australia from Malaysia by Federal Metal, as if different variable factors, as set out in **Confidential Attachment 5**, have been fixed relevant to the determination of duty.

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

- in accordance with subsection 269TAC(2)(a)(i), the normal value of TRFs exported to Australia from Malaysia by Federal Metal cannot be ascertained under subsection 269TAC(1) because of an absence of sales of like goods in the market of Malaysia that would be relevant for the purpose of determining a price under subsection 269TAC(1);

The Commissioner recommends the Minister **determine**:

- in accordance with subsection 269TAB(1)(c), having regard to all the circumstances of the exportation of TRFs from Malaysia by Federal Metal to Australia, that the export price is as set out in **Confidential Attachment 1**;
- in accordance with subsection 269TAC(2)(c), that the normal value of TRFs exported from Malaysia by Federal Metal is the sum of:
 - the cost of production or manufacture of TRFs in Malaysia as set out in **Confidential Attachment 1**, and
 - on the assumption that the TRFs, instead of being exported, had been sold for home consumption in the ordinary course of trade in Malaysia, the administrative, selling and general costs associated with the sale and the profit on that sale as set out in **Confidential Attachment 1**,

as adjusted in accordance with subsection 269TAC(9), as set out in **Confidential Attachment 1**, to ensure that the normal value of the goods so ascertained is properly comparable to with the export price of the goods;

- in accordance with subsection 8(5) of the Dumping Duty Act, that the interim dumping duty payable in respect of TRFs exported to Australia from Malaysia by Federal Metal is an amount which will be worked out in accordance with the *ad valorem* duty method pursuant to subsection 5(7) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

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8 ATTACHMENTS

Confidential Attachment 1	Calculations – Federal Metal
Confidential Attachment 2	Further reasoning and emails from Federal Metal regarding manufacturing variance
Confidential Attachment 3	Tinplate prices
Confidential Attachment 4	Assessment of the USP / NIP for the review period
Confidential Attachment 5	Summary of the variable factors and dumping margin