



Anti-Dumping Review Panel Conference Summary

2017/51 – Resealable can end closures exported from India

Panel Member	Leora Blumberg
Date	11 May 2017
Participants	Kathryn Marnell (ADC), Justin Wickes (ADC)

1. Procedural Issues

- a. Leora Blumberg (Reviewing Member) opened the conference call and participants introduced themselves;
- b. The Reviewing Member advised the conference is being held pursuant to section 269ZZRA of the Act;
- c. The reviewing Member advised that a summary will be published on the ADRP website and confirmed that the summary would be provided to the Anti-Dumping Commission (ADC) prior to publication;
- d. The Reviewing Member advised that the conference related to parties' confidential information;
- e. The Reviewing Member stated that the purpose of the conference is to obtain further information and clarification from the ADC in relation to the grounds raised by the applicant, Marpac Pty Ltd (Marpac).

2. Ground of review relating to the change in treatment of Hindustan Tin Works Ltd (Hindustan) from uncooperative exporter in SEF 350

The Reviewing Member requested clarification relating to the ADC's change from SEF 350, where it regarded Hindustan as an uncooperative exporter with a 48.2% margin, to TER 350 when it came to the view that Hindustan provided complete and accurate data resulting in a different finding of a negative 12.86% margin. The ADC clarified that it did not 'change' the status of Hindustan after SEF 350. It had made the declaration that Hindustan was an uncooperative exporter under s. 8(b)(ii) of the Customs (Extension of Time and Non-cooperation) Direction 2015 (the Direction) because Hindustan had not provided sufficient relevant information for verification. Accordingly, the ADC determined export price under s.269TAB(3) and normal value under s.269TAC(6). After SEF 350, Hindustan provided the relevant information and documents (including about 100 attachments) in the time allowed, which the ADC was required to take into consideration. The normal value was still calculated under s.269TAC(6) for TER 350 (reference Section 3.3.2), but more relevant information was available to the ADC.

The Reviewing Member also requested the ADC's comments on Marpac's claim, supported by its submission to the ADC dated 19 August 2016 (Document #21), that Hindustan should have been regarded as an uncooperative exporter based on the fact that it did not provide a proper non-



confidential summary of its exporter questionnaire response. The ADC pointed out that most of the information requested in the exporter questionnaire is highly confidential (particularly to a private company), and it is difficult to determine how to treat it when the information is largely redacted. The exporter can take the view that anything to do with internal operations is confidential, which is difficult to challenge. The ADC stated further that Hindustan was the only exporter from India that submitted information, which was the 'best information available' for India, and the ADC would be in a far worse position down the track, if it took a hard-line approach to a redacted exporter questionnaire.

The Reviewing Member requested the ADC to comment on Marpac's contention that none of the approximately 100 documents submitted by Hindustan after SEF 350 were made publicly available before the termination decision. The ADC stated that these were all confidential attachments to Hindustan's submissions that were made after SEF 350, being the sort of confidential documents that would normally be gathered at verification, such as, invoices and internal costing documents. It was clarified that the submissions themselves (excluding attachments) which provided quite extensive non-redacted information, were placed on the public file (Documents #36 and #38) in late October and before publication of TER 350.

3. Ground of review relating to the various adjustments granted to Hindustan in the calculation of its normal value:

a. Adjustment referred to as Item 1 in the Application for Review

The ADC confirmed that after SEF 350 Hindustan demonstrated that it was using the rebates for the exports to Australia and the quantum it was receiving back, by giving the ADC access to the CENVAT credit registers, which shows all taxation debits and credits. The ADC also had access to Hindustan's monthly tax returns to Indian Central Board for Excise and Customs for verification purposes. Prior to SEF 350, Hindustan had been unable to provide the necessary evidence.

The ADC confirmed that it was satisfied with the verification of the documents that related to this claim and identified the files and work sheets on the confidential appendices which reflected this claim, and the percentage amounts of the rebates

b. Adjustment referred to as Item 2 in the Application for Review

The Reviewing Member requested the ADC to comment on Marpac's contention that there appeared to be double counting since there was a reference to "excise duties" in Item 1 as well as in Item 2. The ADC explained that this adjustment related to an excise duty paid on the sale of the **finished product**, whereas in Item 1 it related to excise duties on



inputs, so it was not double counting. The ADC advised that during verification Hindustan could not provide evidence that there was no excise duty for exports, and so the ADC had made an upward adjustment. The ADC subsequently obtained Indian tax advice and was able to verify that no excise duty is payable on exports.

The ADC identified the files and work sheets on the confidential appendices which reflected this claim, and the quantum of the rebates. The ADC confirmed that it was satisfied with the verification of the documents and information that related to this claim.

c. Adjustment referred to as Item 3 in the Application for Review

The Reviewing Member requested the ADC to comment on Marpac's challenge of this adjustment granted to Hindustan on the basis that there should not be any reference to discounted tinplate in the cost to manufacture, given the strictness of the quality requirements of TRF's exported to Australia.

The ADC stated that Marpac misunderstood what was being referred to in the adjustment claim, being a "bill discounting facility" relating to finance charges in respect of tinplate purchases, which has nothing to do with 'discounted' tinplate. Regarding the actual adjustment claim, the ADC advised that after SEF 350 when Hindustan submitted the required information, the ADC was able to verify that the relevant finance charges were already included in the SGA costs, so including these charges in the cost of manufacture amounted to double counting. The ADC provided the approximate quantum of this adjustment (as a percentage of the tinplate cost) and confirmed that it was satisfied with the verification of the documents that related to this claim. The ADC agreed to provide the Reviewing Member with details of the work sheets which reflected this claim, after the Conference.

d. Adjustment referred to as Item 4 in the Application for Review (corrected in the Conference with Marpac to actually be a reference to Item 5 in the table of adjustments in TER 350, page 8)

The Reviewing Member requested the ADC to comment on Marpac's challenge of this adjustment granted to Hindustan, noting the reference to copper wire scrap in Hindustan's post SEF submission dated 24 October 2016 (Document #36), page 15, in which Hindustan also argued that copper wire is not required for the manufacture of TRF's.

The ADC explained that since there were no domestic sales of TRF's, it constructed the normal value for Hindustan. For this purpose, the cost to manufacture related to TRF's and excluded copper wire as a raw material.



Since there were no domestic sales of TRF's, the amount of SGA and profit was calculated using the amounts realised by Hindustan from the sale of 'the same general category of goods' in the domestic market in accordance with Regulation 44(3)(a) and 45(3)(a). Due to the way Hindustan managed its accounting systems, the ADC utilised all Hindustan's manufacturing activities as the 'general category of goods', which included products that used copper wire in their manufacture (such as complete can units). In the pre -SEF calculations copper wire was not included in the Total Raw Materials sum (for SGA and profit calculations), while copper scrap was included in the Total Revenue line. This was an error which was corrected in the final calculation. The ADC agreed to provide the Reviewing Member with further information relating to this particular adjustment, both pre and post SEF, with reference to the relevant spreadsheets and worksheets.

4. Ground of Review challenging the calculation of negative 12.86% for Hindustan's dumping margin, based on tinplate pricing

The Reviewing Member requested the ADC's comments on this ground of review, with reference to the estimated tinplate prices that Marpac calculated would have to have been paid by Hindustan, using the dumping margin of negative 12.86% as the basis for the calculation (Table 1). Marpac claims that the resulting calculated tinplate pricing was substantially lower than the price available (in US\$ per tonne) during the investigation period, referred to by Marpac as the 'verified Asian price', which it alleged was consistent only with secondary discounted tinplate. The ADC responded that its calculations were based on the actual price paid by Hindustan for tinplate, which the ADC had verified was food grade tinplate (verified to source documents, including invoices and order statements that specifically referred to the quality of the tinplate). The ADC stated that the type of estimate made by Marpac is generally seen in applications, based on assumptions, when the industry doesn't have access to the actual data from the country of export, while the ADC's calculations are based on actual verified information from the exporter.

The Reviewing Member requested information on the approximate average price of non-discounted tinplate that the exporter purchased during the relevant period, to determine if it was comparable to the 'verified Asian price' of tinplate. The ADC referred the Reviewing Member to the relevant worksheet reflecting the actual tinplate prices as purchased by Hindustan. These were substantially higher than the calculated prices by Marpac in Table 1 and comparable to the 'verified Asian price', taking into consideration various costs that both tinplate prices included.

Note: The ADC subsequently furnished the additional confidential exporter information requested during the Conference.