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7 June 2017

**Ms Joan Fitzhenry**  
**Senior Member**  
**Anti-Dumping Review Panel**  
c/- Legal Audit and Assurance Branch  
**Department of Industry, Innovation and Science**  
**10 Binara Street**  
**Canberra**  
**Australian Capital Territory 2601**

**By email**

Dear Senior Member

## **Review of Ministerial decision – resealable can end closures Interested party submission of M.C. Packaging Pte Ltd.**

On behalf of our client M.C. Packaging Pte Ltd (“MC”), we welcome the decision of the Anti-Dumping Review Panel decision to accept MC’s application and to initiate this review.

This is MC’s interested party submission to the Review Panel, made in accordance with Section 269ZZJ of the *Customs Act 1901* (“the Act”).

In this submission, MC does not intend to repeat the detailed explanation of the factual background and procedural issues involved. We believe these were adequately explained in MC’s application for this review. Instead, MC would like to emphasise three key issues.

**Firstly**, we ask the Review Panel to be satisfied that MC was not accorded due process in the investigation, and that it was not afforded the opportunity to present its information and to defend its interests as required by the Act, by the WTO *Anti-Dumping Agreement*, and by notions of natural justice and decency.

In this regard, we refer to the detailed chronological summary of the overall investigation process and of the communications that took place between MC and the Anti-Dumping Commission (“the Commission”) during the investigation, as set out in MC’s review application. We believe this chronology demonstrates how MC’s attempts to participate in the process were rebuffed. Additionally, the treatment of other exporters can be seen to have been quite different, and although MC does not claim that the mere difference in treatment makes its case, it does at least demonstrate what the Commission perceived to be fair and reasonable practice in the case of other parties – being fair and reasonable practice that was not accorded to MC.

In particular, we submit that our client’s application establishes that it was not correct or reasonable for the Commission to claim that MC significantly impeded the investigation, or that it did not give the Commission relevant information within a reasonable period of time, and was therefore “uncooperative”.<sup>1</sup> We also pointed to the refusal on the part of the Commission to give MC any opportunity to provide relevant information to the Commission within a reasonable time, or to be advised of any deficiencies that the Commission may have asserted and to address them. In relation

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<sup>1</sup> See MC ADRP Application – Attachment B, at pages 13 to 16.

to the latter, our client's application notes the clear language in the Anti-Dumping Agreement, and the relevant WTO authority, which explains the relevant procedural requirements that should be observed by an investigating authority. The Anti-Dumping Agreement and the relevant Panel authority all point to the importance of the additional opportunity that must be afforded to an exporter to explain any perceived deficiencies, in circumstances where the investigating authority would otherwise intend not to accept evidence or information provided by the exporter. We highlight again the way in which the Commission's decision to *reject* information provided by MC was made – as recited in our application – and the fact that no opportunity was given whatsoever for MC to *address* the Commission's specific concerns at any point.<sup>2</sup>

**Secondly**, we repeat MC's offer to provide the necessary clarification and support as might be required in the reinvestigation process if requested by the Review Panel, to enable both the Commission and the Review Panel to "right the wrong" by carrying out the correct factual and legal determination in this review.

In this regard, it is important to recognise that MC was regarded as "uncooperative", and had its information rejected in the margin calculations undertaken by the Commission, because of the Commission's failure to provide the necessary and mandatory opportunity for MC to address its concerns by providing the cooperation that MC offered to provide in the investigation. The fact is that MC was not given the necessary opportunity to explain its information, to provide any additional supporting information, to give clarification, or to make corrections or revisions of the information as it should have been given, at any time or in any form during the seven month period between the Commission's decision to reject MC's information and the date on which the Commission provided its final report to the Minister.

Accordingly, should the Review Panel, or the Commission in conducting any reinvestigation as requested by the Review Panel, consider that clarifications are required for the purpose of working out a dumping margin using MC's own information, MC again offers to be fully involved. It wants to have those opportunities, it wants to participate in that process, and it wants to address any concerns regarding the information provided – as was the case in the original investigation.

**Lastly**, we draw the Review Panel's attention to the Commission's decision to "*rely on all other information available*" and the apparent rejection of the information provided by MC in the calculation of MC's dumping margin. This rejection appears to have been based solely on the Commission's decision to treat MC as uncooperative, and had nothing to do with an assessment of the relevance or reliability of the information that was provided by MC. The Commission "*calculated the same dumping margin for exporters from Malaysia and Singapore*" by using the "*same weighted average export price for uncooperative and all other exporters from the Philippines*" and "*the highest weighted average quarterly normal value calculated for each TRF size manufactured by Genpacco*",<sup>3</sup> being an exporter from the Philippines. Accordingly, we submit that the dumping margin as worked out for MC cannot be said to have been based on the information relevant to and pertaining to MC as an exporter of resealable can end closures from Singapore. Instead, the information used by the Commission could only be described as relevant information for exporters from Philippines.

Yours sincerely



**Daniel Moulis**  
Principal Partner

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<sup>2</sup> *Ibid.*, pages 5 to 12.

<sup>3</sup> See Report 350, at pages 46 and 47.