Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

[2] As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. **Applicant's details**

Applicant's name: **M.C. Packaging Pte Ltd ("MC")**

Address: **159 Gul Circle, Jurong, Singapore 629617**

Type of entity (trade union, corporation, government etc.): **Limited liability company**

2. **Contact person for applicant**

Full name: **Mr C W Loy**

Position: **Chief Operating Officer**

Email address: **cwloy@mcpsing.com.sg**

Telephone number: **+65 6861 4238**

Please note that all communications in relation to this application are requested to take place with and through MC's legal representatives. For contact details please refer to Part E of this application.

3. **Set out the basis on which the applicant considers it is an interested party**

Pursuant to Section 269ZZC of the *Customs Act* 1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. The reviewable decision in this case relates to an application made to the Commissioner under Section 269TB requesting that the Minister publish a dumping duty notice. Under Section 269T of the Act an *"interested party"* for the purpose of that kind of a reviewable decision is defined as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia.

MC is a manufacturer and exporter, to Australia, of the goods to which the decision relates, namely resealable can end closures. MC is thus an *"interested party"* for the purposes of the Act and this application.

4. **Is the applicant represented?**

Yes ☑ No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the Customs Act 1901 the reviewable decision was made under:

☑ Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐ Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐ Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐ Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐ Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐ Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐ Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐ Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

The goods the subject of the reviewable decision were resealable can end closures (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.**

The Anti-Dumping Commission also advised interested parties that:

- **the goods concerned are commonly manufactured by the TRF industry in the following nominal sizes (diameters):**
  - **73mm;**
  - **99mm;**
  - **127mm; and**
  - **153/4mm;**
- **the goods concerned may be coated or uncoated and/or embossed or not embossed;**
- **the goods concerned can also be known as RLTs (ring, lid tagger), RLFs (ring, lid, foil) or Penny Lever ends; and**
- **specifically excluded were TRFs of nominal size:**
  - **52mm;**
  - **65mm;**
  - **189mm; and**
  - **198mm.**

7. **Provide the tariff classifications/statistical codes of the imported goods**

The goods are classified to tariff subheading 8309.90.00 (statistical code 10) of Schedule 3 to the Customs Tariff Act 1995.

8. **Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

2017/20

9. **Provide the date the notice of the reviewable decision was published**

The reviewable decision was dated 20 March 2017 but was not published until 24 March 2017, as evidenced by the following which has been extracted from the Anti-Dumping Commission website (see "Date Loaded"):

EPR 350 Resealable can end closures from India, Malaysia, the Philippines and Singapore

No.	Type	Title	Date Loaded
083	Notice	Section 8 Notice (PDF 109KB)	24/03/2017
082	Notice	ADN 2017/20 - Findings in Relation to a Dumping Investigation (PDF 2.2MB)	24/03/2017
081	Report	Final Report - REP 350 (PDF 4.2MB) (PDF 4.2MB)	24/03/2017

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

See Attachment A

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

See Attachment B, in respect of which confidential and non-confidential versions have been provided.

10. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

11. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

12. **Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

    Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

PART D: DECLARATION

The ~~applicant~~/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

Name: **Daniel Moulis**

Position: **Principal Partner**

Organisation: **Moulis Legal**

Date: **24 May 2017**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: **Daniel Moulis**

Organisation: **Moulis Legal**

Address: **6/2 Brindabella Circuit**
Brindabella Business Park
Canberra International Airport
Australian Capital Territory
Australia 2609

Email address: **daniel.moulis@moulislegal.com**

Telephone number: **+61 2 6163 1000**

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

See Attachment C.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:…………………………………………………………………………….

(Applicant's authorised officer)

Name:

Position:

Organisation

Date: / /

ATTACHMENT B

24 April 2017

In the Anti-Dumping Review Panel

Application for review
Resealable can end closures exported from India, Malaysia, the Philippines and Singapore

M.C. Packaging Pte Ltd

Introduction **1**

A First ground – the Commissioner erred in treating MC as an uncooperative exporter for the purposes of the investigation **2**

10 Grounds **3**

11 Correct or preferable decision **19**

12 Material difference between decisions **19**

B Second ground – on the basis that MC was not an uncooperative exporter, the Commissioner erred in determining that MC was dumping **20**

10 Grounds **20**

11 Correct or preferable decision **23**

12 Material difference between decisions **24**

Conclusion and request **24**

Introduction

By way of an application to the Anti-Dumping Commission ("the Commission") dated 22 April 2016, Marpac Pty Ltd applied for a dumping investigation into imports of certain resealable can end closures ("TRFs") from the Republic of India, Malaysia, the Republic of the Philippines and the Republic of Singapore.

In response to that application, the Commission initiated the subject anti-dumping investigation in

respect of TRFs exported from the subject countries on 18 May 2016.

At the conclusion of the investigation, in a decision published on 24 March 2017, the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Parliamentary Secretary") decided to impose dumping duties on TRFs exported to Australia from, *inter alia*, Singapore.[1]

Specifically, the Parliamentary Secretary decided to publish notices in relation to TRFs exported from Singapore under Sections 269TG(1) and (2) of the *Customs Act 1901* ("the Act").[2] These notices had the effect of imposing dumping duties on exports from all Singaporean exporters.

M.C. Packaging Pte Ltd ("MC") is a Singaporean manufacturer and exporter of TRFs.

MC seeks review by the Anti-Dumping Review Panel ("the Review Panel"), under Sections 269ZZA(1)(a) and 269ZZC, of the decision (or decisions) made by the Parliamentary Secretary to impose dumping measures against its exports of TRFs to Australia, as outlined in this application.

We now address the requirements of both the form of application that has been approved by the Senior Member of the Review Panel under Section 269ZY, and of Section 269ZZE(2), in relation to MC's grounds of review, being those requirements not already addressed within the text of the approved form itself, which MC has also completed and lodged with the Review Panel.

A First ground – the Commissioner erred in treating MC as an uncooperative exporter for the purposes of the investigation

Introduction

This ground of review relates to the question of when and in what circumstances the Commission may decide that an exporter is uncooperative, in the legal sense of that word under the Act, and whether it

[1] Based on the recommendations contained in *Report No. 350 – Alleged Dumping of Resealable Can End Closures Exported from the Republic of India, Malaysia, the Republic of the Philippines and the Republic of Singapore*, February 2017 ("Report 350").

[2] A reference in this Application to "the Act", or to a "Section", "Subsection" or "Subparagraph" is a reference to a Section, Subsection or Subparagraph of the Act, unless otherwise specified.

was correct or preferable for the Commission to make that decision with respect to our client.[3]

Our client was unrepresented in the investigation which led to the imposition of the dumping duties against it. Our client had never been involved in such a process before. Our client had strong concerns about the protection of the confidentiality of the information it needed to submit to the Commission.

It is both fair and correct to say that its submission of information to the Commission, as at the time it was advised by the Commission that it was to be excluded from the investigation, was not ideal in all respects. Indeed, the information that it had submitted as at that time was deficient.

However, from MC's perspective it was cooperative at all times, and its conduct at all times fully bears that out. The Commission acted far too precipitously in labelling MC an uncooperative exporter. The Commission failed to undertake procedures with respect to MC's participation in the investigation that were required by law. Other exporters were afforded opportunities to rectify deficiencies in their provision of information, but MC was not.

Ultimately, the legal standard for determining whether an exporter is uncooperative or not was not met, and the Commissioner should not have been satisfied of the things of which he was required to be satisfied at the time MC was labelled as an uncooperative exporter.

Our client requests the Review Panel to decide that the correct or preferable decision in the circumstances of this case was not to treat MC as an uncooperative exporter as was done by the Commission.

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

(a) Legal background

Section 269TACAB provides rules for working out export prices and normal values for different categories of exporters. Subsection (1) applies to the category of exporters referred to as "uncooperative exporters". It provides, in relevant part, as follows:

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[3] Our client's other ground of review (the second ground) deals with the implications of the Commission's decision (as to whether our client should have been treated as an "uncooperative exporter") not being the "correct or preferable" decision.

If one of the following applies:

(a) there is an investigation under this Part in relation to whether a dumping duty notice should be published;

…

then:

(d) if the export price of goods for an uncooperative exporter is to be worked out in relation to the investigation […] - that export price is to be worked out under subsection 269TAB(3); and

(e) if the normal value of goods for an uncooperative exporter is to be worked out in relation to the investigation […] - that normal value is to be worked out under subsection 269TAC(6).

The subsections referred to in each of subparagraphs (d) and (e), namely Subsections 269TAB(3) and 269TAC(6), allow the Commission to determine the export price and the normal value *"having regard to all relevant information"*. They provide as follows:

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

and:

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

In MC's case, the dumping margin the Commission worked out using what it determined to be "relevant information" for the purposes of export price and normal value was 266.3%. However, there would be no dumping margin determined against MC had the Commission used the information that was submitted by MC with respect to its exports from Singapore.

Determining whether an interested party is to be treated as an uncooperative exporter turns upon the definition of "uncooperative exporter" in Section 269T. That definition is as follows:

uncooperative exporter, in relation to:

(a) an investigation under this Part in relation to whether a dumping duty notice should be published; or

…

means an exporter of goods that are the subject of the investigation […], or an exporter of like goods, where:

(d) the Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or

(e) the Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry.

In considering the exercise of the Commissioner's discretion under subparagraphs (d) and (e), it is necessary to ask:

- a legal question, in the context of whether the Commissioner's decision was the correct decision - whether the Commissioner *could* be satisfied:
  - ➢ that MC Packaging did not give the Commissioner information the Commissioner considered to be relevant within a period the Commissioner considered to be reasonable; or
  - ➢ that MC Packaging significantly impeded the investigation; and
- in the alternative, and in the context of whether the Commissioner's decision was the preferable decision - if the legal conditions had been met (which is not considered by us to have been the case) whether the Review Panel considers that the Commissioner *should* have exercised his discretion in the way he did.

(b) Relevant facts

In order to consider these matters it is necessary to set out the relevant facts. These facts are the sequence and timing of:

- the milestones in the investigation;
- the interactions between MC and the Commission in the investigation; and
- the interactions the Commission was having with other interested parties during the investigation.

The relevant timeline of events is as follows:

1. 18 May 2016 - investigation initiated.
2. 31 May 2016 - MC was contacted by the Commission, and was requested to provide a completed Exporter Questionnaire ("EQ") by 7 July 2016.

3. 3 June 2016 - MC replied to the Commission by email, advising that it was under consideration and that MC would reply by 10 June 2016.

4. 15 June 2016 – the Commission emailed MC, to advise that verification visits were being scheduled, and that the Commission had not heard back from MC. The Commission asked MC whether it would be participating in the investigation.

5. 15 June 2016 - MC emailed the Commission to advise that it was not able to provide detailed cost breakdowns as requested by the Commission, but gave a percentage breakdown of the costs to manufacture and sell **[CONFIDENTIAL TEXT DELETED – PRODUCT TYPE]** TRFs. MC said it could show the Commission the tinplate and foil prices when the Commission visited Singapore.

6. 15 June 2016 – the Commission replied by listing out all the information required and suggesting visit dates.

7. 15 June 2016 - MC emailed the Commission and stated that it does not agree to fill out the spreadsheets as requested by Commission, but would share major component cost on visit to Singapore.

8. 17 June 2016 – the Commission emailed MC to remind that the EQ has detailed instructions for its completion and that the Commission would review MC's response to decide whether MC's information was suitable for the investigation.

9. 17 June 2016 - MC emailed the Commission to say that it would provide the suggested breakdown (ie that it would complete the spreadsheet) as long as the information was kept confidential, and requested an extension to 30 July.

10. 20 June 2016 – the Commission emailed MC to advise that it would get back to MC regarding the extension request, and that it had limited flexibility with visit dates.

11. 22 June 2016 – the Commission emailed MC again and advised that it would get back to MC regarding the extension request. The Commission inquired as to the location of MC's facilities.

12. 24 June 2016 – the Commission emailed MC to advise that it had granted MC an extension of time to 11 July 2016, and again asked where MC's facilities were located.

13. 29 June 2016 – the Commission unsuccessfully attempts to get in touch with MC by telephone, and then emails MC to ask MC to get in touch with the Commission to discuss MC's participation in the investigation.

14. 29 June 2016 – there was a telephone discussion between the Commission and MC, subsequent to which the Commission emailed MC confirming the Commission's proposal to visit MC on 27 July 2016; asking about what is produced in Malaysia and Singapore; and advising of information required in MC's EQ response.

15. 29 June 2016 - MC emailed the Commission to say that MC would not share all the necessary information on the spreadsheet, but that it would fill out the information that it was able to release and asking for confidentiality.

16. 6 July 2016 – the Commission advises Hindustan Tin Works (an Indian exporter of TRFs) of deficiencies in its EQ response, and requested that these deficiencies be addressed by 11 July 2016 (later extended to 14 July).

17. 7 July 2016 – the Commission advises Genpacco (a Filipino exporter of TRFs) of deficiencies in its EQ response, and requested that these be addressed by 11 July 2016.

18. 11 July 2016 - MC submitted its EQ spreadsheets to the Commission.

19. 12 July 2016 – the Commission emailed MC, stating as follows:

> *I acknowledge receipt of MC Packaging's Questionnaire spreadsheet. However there is also a Word document Questionnaire. I also ask which country – Malaysia or Singapore – the data relates to?*
>
> *Is it intentional that this was Word document Questionnaire was not attached to your email of last night?*
>
> *For your reference, I have attached the original email sent with the Commission's Questionnaire documents attached.*

20 12 July 2016 - the Commissioner decided, as recorded in a letter of that date, that:

(a) M.C. Packaging would not have further time to provide an additional supplementary response;

(b) MC had not provided the Commissioner with information that the Commissioner considered to be relevant to the investigation because a sufficient degree of information relevant to the investigation was not provided by the due date of 11 July 2016;

(c) MC had significantly impeded the investigation;

(d) MC would be considered to be an uncooperative exporter; and

(e) he would rely on all other information available.

21 13 July 2016 – the Commission emailed the Commissioner's letter dated 12 July 2016 to MC and it was uploaded on to the public record.

22. 13 July 2016 – the EQ response of Genpacco dated 29 June 2016 was uploaded on to the public record.

23. 14 July 2016 - MC responded by email to the Commission's email of 12 July, saying the cost data was **[CONFIDENTIAL TEXT DELETED – COST INFORMATION]** and that the EQ response would be shared and discussed on the planned visit.

24. 14 July 2016 – the Commission emailed MC to ask whether MC had received the letter from the Commissioner dated 12 July, and said there would be no visit as MC was an uncooperative exporter.

25. 14 July 2016 - MC emailed the Commission to say that it would submit information it feels comfortable to submit, and would show other information and hold other in-depth discussions on the visit.

26. 14 July 12:06pm – the Commission emailed MC to say that the decision had been made by the Commissioner and that MC was considered uncooperative.

27. 14 July 2016 - MC emailed the Commission to say that it did not agree that it was uncooperative, and that it would share the sensitive information on visit but not by email, and asked the Commission to reconsider.

28. 15 July 2017 – **[CONFIDENTIAL TEXT DELETED –CUSTOMER INFORMATION]**

29. 18 July 2016 - Day 60 status report placed on public record, in which the Commissioner advised, (in relevant part):

> *However, I require further time to obtain the necessary information to calculate normal values under another method.*

30. 18 July 2016 - MC emailed the Commission to inquire how the secure mechanism to submit information would work, and to advise that it wanted to submit a Word version EQ response, and to ask how long it could have to do that.

31. 19 July 2016 – the Commission emailed MC to advise that a "Sigbox" facility would be arranged, and advised MC that it would be helpful if it could submit the documents by 4 August.

32. 19 July 2016 - MC emailed the Commission to ask whether the Commission would be visiting after reviewing the documents submitted by MC.

33. 21 July 2016 – the Commission emailed MC to advise that MC was considered to be uncooperative; that the Commission would not be visiting; and that the later-submitted information may be considered but not necessarily relied upon because the Commission would be unable to verify it.

34. 21 July 2016 - MC emailed the Commission to note the Commission's comments and to offer a teleconference.

35. 21 July 2016 – the Commission emailed MC to thank MC for the offer, and advised that if there were to be any questions the Commission would be sure to arrange a teleconference.

36. 26 July 2016 - MC emailed the Commission to advise that the file and all supporting docs would be sent by 4 August 2016.

37. 26 July 2016 (estimated) – the Commission conducted an on-site verification of Hindustan Tin Works at its location in India, in respect of which the Commission advised in its termination report (see below) that:

    > *The verification team was unable to obtain complete and relevant information within a reasonable time period to complete a timely and efficient verification, which was necessary for the purposes of the investigation.*

38. 4 August 2016 - MC emailed the Commission, asking for the Login ID and Password for the submission of files to the "Sigbox" facility.

39. 4 August 2016 – the Commission emailed MC to advise that the details for the upload had been sent separately.

40. 4 August 2016 – MC emailed its Word file EQ response and supporting documents to the Commission.

41. 5 August 2016 – the Commission emailed MC to confirm receipt of the documents. The Commission reminded MC in that email that MC was still considered to be uncooperative and that the Commission could look at the information but would be unable to rely on it since it had not been verified.

42. 5 August 2016 - MC emailed the Commission to say its "doors" were "open" for the audit or that it could be done by way of teleconference.

43. 17 August 2016 - the EQ response of Hindustan Tin Works (undated) was uploaded on to the public record.

44. 17 August 2016 – a deficiency list (undated) with respect to the submission of information by Hindustan Tin Works was uploaded onto the public record.

45. 5 September 2016 – an extension of time to 5 October for the Commissioner to publish the Statement of Essential Facts ("SEF") was published on the public record, for the stated reason:

> *[t]o enable me to complete my enquiries in relation to the claims of dumping and injury made by the applicant, Marpac Pty Ltd and to complete the remaining verification of exporters' and importers' data.*

46. 5 October – the SEF was published, including this with respect to Hindustan Tin Works:

> *The Commissioner is satisfied that Hindustan has not provided information considered to be relevant to the investigation because a sufficient degree of information relevant to the investigation was not provided and remains outstanding.*

and this, with respect to MC:

> *The Commission did not receive complete REQs from manufacturers of TRFs in Malaysia or Singapore.*

47. 6 October - MC emailed the Commission to say that the dumping margin for exports from Singapore and Malaysia was extremely high, and to ask what further information was required for reconsideration.

48. 6 October 2016 – the Commission emailed MC to advise about the ability of MC to make submissions on the SEF.

49. 6 October 2016 - MC emailed the Commission to ask for help in identifying the documents or information needed from MC.

50. 7 October 2016 – the Commission emailed MC to advise that MC was an uncooperative exporter, and that it could not advise MC what information or response MC may wish to provide.

51. 10 October 2016 - MC emailed the Commission and asked who MC could contact in order to understand what information was lacking.

52. 11 October 2016 – the Commission emailed MC to say that the Commission could not advise MC what information to provide; that MC was offered multiple opportunities to provide information by way of completion of the EQ with all attachments; that MC did not complete that vital step and therefore the Commissioner determined MC to be uncooperative; and that the verification phase of the investigation was over.

53. 21 October 2016 - MC writes to the Commission with submissions regarding the inability of 99mm, 127mm and 153mm TRFs to cause injury.

54. 24 October 2016 - Hindustan Tin Works made a submission to the Commission, which the Commission stated, in its later Termination Report with respect to that exporter, had 26 confidential attachments and over 100 additional documents.

55. 21 November 2016 - an extension of time to 20 January 2017 for the Commissioner to provide his report to the Minister was published on the public record, for the stated reasons;

   - *This is a complex investigation involving allegations of dumping in relation to four countries and material hindrance to the establishment of an Australian industry;*
   - *Submissions received in response to the SEF/PAD have raised complexities that require further investigation and analysis…*

56. 15 December 2016 - Genpacco provided a submission to the Commissioner regarding the NV calculations with respect to its exports, including submission of new and supporting information.

57. 19 December 2016 – the Commission advised that Genpacco had been granted an extension of time until 22 December 2016 to provide allocation of costs information.

58. 20/21 December – representatives from Hindustan Tin Works met with the Commission in Melbourne.

59. 20 January 2017 - an extension of time to 17 February 2017 for the Commissioner to provide his report to the Minister was published on the public record, for the stated reason:

   > *[t]o enable me to complete my consideration of the submissions received in response to my Preliminary Affirmative Determination and Statement of Essential Facts (PAD/SEF 350)*

60. 17 February 2017 – ADN 2017/16 was published on the public record, announcing that the investigation had been terminated as against Hindustan Tin Works, and advising in relevant part:

   > *As a result of considering its submissions, the Commissioner has come to a view that Hindustan's submission provided complete and accurate data, resulting in the calculation of a normal value different to the finding made in SEF 350.*

61. February 2017 – the Commissioner provided his report to the Minister.

62. 24 March 2017 – ADN 2017/20 was published on the public record, announcing the Minister's final decision.

(c) Observations on the facts

From the foregoing it can readily be seen that MC's initial understanding of the requirements of the investigation was incomplete, and that it was initially resistant to the provision of detailed information to the Commission because it had concerns about the confidentiality of its information. Not having been

involved in such a procedure before, and not being fully cognisant of the usual way these investigations are conducted, it offered to explain its data in a face-to-face setting at its premises in Singapore.

With regard to its early interactions with MC, the Commission can be seen to have provided MC with the EQ that MC needed to complete, including its detailed instructions. Direct contact with MC in this regard did not commence until 31 May 2016, which was some two weeks after the investigation had been initiated (on 18 May 2016). Nonetheless the Commission did still give MC 37 days from 31 May 2016 to provide its EQ response, until 7 July 2016, and then extended that to 11 July 2016.

On 11 July 2016 MC provided its response to the EQ.

It is important to note that this response included:

- the requested *A5 - Income statement*, completed for the investigation period;
- the requested *A6 - Turnover* spreadsheet, completed for the investigation period;
- the requested *B4 - Australian sales* spreadsheet, completed for the investigation period;
- the requested *G5 - Australian CTMS* spreadsheet, completed for the investigation period.

MC had no domestic sales, therefore the *D4 - Domestic sales* spreadsheet and the *G4 – Domestic CTMS* spreadsheets were not relevant to its response.

MC did not complete the requested *F1 – Third country* spreadsheet, however so far as we can recall third country export prices have not been used for normal value purposes in any Australian investigation at any time over the last two decades.

The only spreadsheet in the set of spreadsheets that MC did not fill out and submit by the date requested by the Commission was the *G2 – Production* spreadsheet.

MC's email was sent to the Commission at 8:08pm Singapore time on 11 July 2016, meaning that it would have been received by the Commission on the same day, at or soon after 10:08pm Melbourne time.

As set out in the timeline of events, the Commission emailed MC on the morning of the next day, 12 July 2016, with two brief questions about MC's EQ response.

On that very same day, without providing MC with a deficiency notice, for it to address or clarify deficiencies in its response, and without waiting for a response to the Commission's email of that day, the Commissioner decided that MC was an "uncooperative exporter" and issued a letter to that effect.

To make that decision, the Commissioner needs to have been satisfied, in accordance with Section 269T

of the Act, of one or other of the following things:

- that MC did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or
- that MC significantly impeded the investigation, review or inquiry.

With respect to the former condition, unless the Commissioner formed the opinion that the information that MC gave to the Commission was irrelevant to the investigation, MC cannot have failed to give the Commissioner information that the Commissioner considered to be relevant to the investigation.

The wording of the condition may well be considered to be problematic from the perspective of the Commissioner, in that the definition of what constitutes an uncooperative exporter does not accord, or in some cases does not accord, with the Commissioner's desired manner of administration of the legislation. This is because the Commissioner's letter of 12 July 2016 says the following:

> *I am satisfied that M.C. Packaging has not provided me with information that I consider to be relevant to the investigation because a sufficient degree of information relevant to the investigation was not provided by the due date I set of 11 July 2016.* [our underlining]

Whether or not a *sufficient degree of information* has been provided is a different test to that stated in the definition of uncooperative exporter in Section 269T. Plainly, MC did provide information that the Commissioner must have considered to be relevant to the investigation. The Commissioner may well have a different view about this, and the contents of the 12 July letter certainly indicate that he did have a different view when deciding that MC was to be treated as an uncooperative exporter. However we are not aware of any case – or at least there must have been only very, very few – where an exporter has given every single piece of information that the Commissioner considers relevant to an investigation in its EQ response, such that the Commission does not have to engage in any follow up at all.

Our client does not mean to suggest that its EQ response was ideal in all respects. It was not. However it did provide relevant information – highly relevant information – that covered the critical areas of the Commission's investigation as they applied to MC. It was not represented. It recognised the need to allow for verification of its information, and it had discussed with the Commission how this could be achieved. It was not given any opportunity to address specific written concerns of the Commission. It was not treated with the formality with which the Commission treated others, nor was it allowed the licence that others were allowed.

Importantly, MC was not provided with a deficiency notice. The Commission appears to have prepared

such a notice – it is attached to the Commissioner's 12 July letter – however rather than giving that to MC so that it could address those matters, it was used as a justification *not* to give MC that opportunity.

The other condition of the first limb of the "uncooperative exporter" definition is that the failure on the part of the exporter to provide information the Commissioner considers to be relevant to the investigation must be "within a period the Commissioner considered to be reasonable". It is here that the treatment meted out to MC was also unjustified and extremely harsh, both absolutely and relatively to the treatment of all other participating exporters. There was less than 24 hours between the 11 July deadline for submitting its EQ information – which MC met, whether that submission was considered to be complete or not – and the Commissioner's decision that MC was an uncooperative exporter. On the morning of 12 July the Commission sent MC an email with questions about its EQ response of the day before. However, on the same day, and presumably only a few hours after that email, and before MC had responded to it – MC was summarily "cut" from the investigation.

Other interested parties who participated in the investigation appear to have been given full opportunity to address perceived shortcomings, over much longer periods and apparently on multiple occasions. In this context we note:

- that Hindustan Tin Works was provided the opportunity to address a five page deficiency list with 29 separate cells containing multiple questions which touched upon every section of the Exporter Questionnaire that it had submitted, and was given up until 17 August or thereabouts to do so;[4]

- that Hindustan Tin Works was allowed to make a submission to the Commission on 24 October 2016 with 26 confidential attachments and over 100 additional documents,[5] despite the fact that the Commissioner had reported in the SEF published on 5 October 2016 that Hindustan was an

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4 See EPR 350 Doc 019 "Questionnaire" - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/019%20-%20Exporter%20Questionnaire%20Deficiency%20note_%20responses_%20Hindustan%20Tin%20Works.pdf

5 See EPR 350 Doc 079, "Report" at page 7 - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/079%20-%20Termination%20Report%20350.pdf

"uncooperative exporter";[6]

- that the cooperative or uncooperative status of Hindustan Tin Works was a topic of conversation between Hindustan and the Commission as late as 21 December, over 5 months after MC had been deemed to be uncooperative (and had repeatedly been told that it had that status with the clear implication, at all times, that this was irreversible);[7]

- that the uncooperative exporter finding with respect to Hindustan Tin Works was reversed and the investigation terminated as against that exporter on the basis that TRFs exported by Hindustan to Australia had not been dumped;[8]

- that Genpacco was still being given opportunities to clarify or complete its submittal of information to the Commission as late as 22 December 2016;[9]

In comparison, MC was summarily excluded from the investigation on the very next day after it had provided its EQ response, was not given any opportunity to address any deficiencies, and had its repeated entreaties to be readmitted or reconsidered either ignored or rejected.

With respect to the latter condition, which is that MC significantly impeded the investigation, we return again to the very long periods of grace provided to other interested parties and to the extended period of the investigation itself. We accept that the Commissioner has to make decisions on the basis of the facts known at the time of his decision. Those facts were, presumably:

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6 See EPR 350 Doc 032, "Report" at page 24 - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/032%20-%20SEF%20350.pdf

7 See EPR 350 - Document No. 074, "Note for File" - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/074%20-%20Note%20for%20File%20-%20Exporter%20-%20Hindustan%20Tin%20Works.pdf

8 See EPR 350 Doc 080, "Notice" - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/080%20-%20ADN%202017-16%20TER%20350.pdf

9 See EPR 350 Doc 070 "Note for File" - http://www.adcommission.gov.au/cases/EPR%20301%20%20350/EPR%20350/070%20-%20Note%20for%20File%20-%20Exporter%20-%20Genpacco%20Inc.pdf

- that MC had been given until 11 July 2016 to provide its EQ response;[10]
- that other exporters had been given extensions of time to provide their EQ responses;
- that deficiency notices had been given to other exporters, with a return date in the case of one of them of 14 July 2016;
- that the delay to the investigation allegedly caused by MC, before it was decided by the Commission that it was uncooperative, was less than one day.

On the basis of the foregoing, we submit that MC did provide information the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, and that MC did not significantly impede the investigation. The Commissioner's decision was made precipitously. It was simply too early to arrive at that conclusion, and it was made without according to MC the opportunities that were accorded to others, some of which of course were very extensive.

MC's full and voluntary submission of further information some three weeks after it had been excluded from the investigation[11] was done with a strange mix of encouragement and disavowal on the part of the Commission. However MC tried, the Commission was disinterested and impassive as to its re-admittance to the investigation as a cooperative exporter – a situation which was starkly different to that of the other participating exporters.

(d) WTO authority

We also wish to refer the Review Panel to the World Trade Organisation *Anti-Dumping Agreement*, and to the principal authority that has considered the way in which investigating authorities should best conduct themselves in the situation of incomplete replies and obtaining further information more generally.

Article 6.8 of the *Anti-Dumping Agreement* provides as follows:

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[10] In this regard we note that the other exporters may have been in direct contact with the Commission earlier than 31 June, given that the investigation was initiated on 18 June, meaning that the period from the date on which they first became engaged in the investigation and the end dates of the extended periods for them to respond (to deficiency notices) were overall longer than MC's period to respond to the EQ (for which it was allowed no deficiency notice period).

[11] See para 40 of the timeline of events, and the behaviour of the Commission leading up to that event.

> *In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.*

Paragraph 6 of Annex II is relevant to MC's circumstances. That provides as follows:

> *If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.*

The key authority on the application and interpretation of these companion provisions is the report of the panel in *Egypt – Rebar*.[12] The panel report emphasises that the process of obtaining information in an anti-dumping investigation is an iterative one, which has boundaries set by what is required in terms of both information and process, and what is reasonable in both the circumstances presented and the time allowed.

The panel report in *Egypt – Rebar* considers the situation that confronts us here – namely, the obligation on an investigating authority to comply with the first sentence of paragraph 6 of Annex II of the Anti-Dumping Agreement, and the importance of that obligation:

> *7.262 We must emphasize in this connection that it was the IA itself that requested the information at issue (i.e., the information submitted in response to the 19 August letters). As we have found above, it is within the discretion of an investigating authority to determine, subject to the requirements of Annex II, paragraph 1, what information it needs from interested parties. Furthermore, there is nothing in the AD Agreement that precludes an investigating authority from requesting information during the course of an investigation, including after the questionnaire responses have been received. The fact that an investigating authority may request information in several tranches during an investigation cannot, however, relieve of it of its Annex II, paragraph 6 obligations in respect of the second and later tranches, as that requirement applies to "information and evidence" without temporal qualification.*
>
> *7.263 We note that, at least in respect of Habas, Diler and Colakoglu, the IA itself apparently considered that it had the obligation to explicitly indicate that the information submitted in response to the 19 August request was being rejected. In particular, the 23 September letters identify, as discussed above, a number of very serious inadequacies in the responses of these companies and contain long lists of missing items that would need to be submitted within two to five days. Given these companies' reactions to the 23 September letter, in their own letter of 28 September to the IA, it is evident that they were in no doubt that the IA intended to reject the cost*

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[12] *Egypt – Definitive Anti-Dumping Measures on Steel Rebar from Turkey* - WT/DS211/R (8 August 2002)

> *information they had submitted. Nevertheless, the IA sent these three companies one final letter, dated 28 September 1999, informing them that they had not fully responded in respect of six items, and that therefore the IA "will use other data provided by your clients which were satisfactory, but will use facts available for the above-mentioned items". No similar communication was ever sent to IDC or Icdas.* [our underlining][13]

This underlined part of the passages from the report emphasises that the practice of indicating to an interested party what information the authority requires, and how it has to be augmented and clarified so as to satisfy the authority that its requirements are being properly met and that it understands the information, is not only a once-only obligation of the authority, with respect to the original questionnaire response of the interested party concerned. It is an obligation which applies at each such juncture of an investigation, within the reasonable limits of time.

In a similar vein are comments made in the report of the panel in *China - Broiler Products*[14] in which it was found that China had acted inconsistently with Article 6.2:

> *7.20 … the first sentence of Article 6.2 [stipulates] that all interested parties have a full opportunity for the defence of their interests throughout an anti-dumping investigation. In this respect, in US – Oil Country Tubular Goods Sunset Reviews, the Appellate Body clarified that Article 6.2 "set[s] out the fundamental due process rights to which interested parties are entitled in anti-dumping investigations and reviews". However, …Article 6.2 does not provide for "indefinite" rights and indicated that the "opportunities" provided for under this provision must be balanced against other considerations such as the investigating authority's ability to complete the investigation in an expeditious manner.*

The rights of interested parties to defend their interests are “fundamental due process rights”. The rights are not “indefinite” – but MC was not accorded even the basic right of a formal deficiency notice and an opportunity to deal with it within whatever reasonable time period the Commission might have imposed. It did not get a first opportunity to address the deficiencies identified by the Commission, at the time of its original response.

Clearly, the Commission was of a mind not to accept MC’s information, and did not accept it, but it did not provide MC with an opportunity to provide further explanations, whether within a reasonable period or at all.

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13 *Ibid*, at paras 7.262-263

14 *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States* WT/DS427/R (2 August 2013)

(d) Request

For all of these reasons, we request the Review Panel to recommend to the Minister that the treatment of MC as an uncooperative exporter, in the circumstances in which that occurred, was not the correct or preferable decision. We ask that the Review Panel reappraise this decision both as a matter of law (ie, that the conditions were not met such as would enable the Commissioner to achieve the level of satisfaction required) and, in the alternative, of discretion (ie that the Commissioner was not "bound" to arrive at the decision that he did, and should not have made that decision).

11 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

The correct or preferable decision is for the Review Panel to overturn the finding made by the Commissioner that MC was an uncooperative exporter, and to recommend that the export price and normal value for MC should not be determined in accordance with Section 269TACAB(1).

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

The proposed decision provided in response to question 11 would have the effect of requiring the Commissioner to have regard to the information submitted by MC for the purposes of working out whether dumping has occurred, and levels of dumping, pursuant to Section 269TACB.

In making its recommendations to the Minister, the Commissioner arrived at a dumping margin in respect of all Singaporean exporters of 266.3%. This was achieved by using information considered to be "relevant information" for the purposes of Sections 269TAB(3) and 269TAC(6). In so doing it would appear to be the case that the Commission disregarded information submitted by MC.

The Commissioner's letter dated 12 July 2016 advises that the Commissioner:

> *[would] rely on all other information available in making recommendations and findings in relation to M.C. Packaging*

This suggests that the Commission relied upon all information that it had in its possession apart from MC's own information.

By not disregarding MC's information, it will become apparent that MC was not dumping in the investigation period.

It is to that proposition that we now turn.

B Second ground – on the basis that MC was not an uncooperative exporter, the Commissioner erred in determining that MC was dumping

Introduction

From the timeline of events set out under A above, the Review Panel will note the following entry:

> *40. 4 August 2016 – MC emailed its Word file EQ response and supporting documents to the Commission.*

MC's confidentiality concerns having been properly catered for, by way of a secure electronic entry point for the submittal of its records to the Commission, MC despatched its follow-up EQ response to the Commission on that day.

The files therein are therefore also available for the purposes of determining a dumping margin for MC.

10 Grounds

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision

In this respect, the decision that was not the correct or preferable one was the finding of a dumping margin of 266.3% for exporters of TRFs from Singapore. As a result of that decision, MC's exports to Australia became subject to the imposition of dumping duties not as high as 266.3%, but nonetheless of a very significant magnitude (under the "lesser duty" rule). The basis for that decision has been addressed in A above, namely that MC was an "uncooperative exporter". If the Review Panel does overturn the finding that MC was an uncooperative exporter, we would fully expect the Review Panel to request the Commission to reinvestigate the question of MC's export price and normal value, and of the resultant dumping margin generated by a comparison of the two.

Using that information, the Commission should conclude that MC did not engage in any dumping of TRFs in the investigation period.

The fact that MC did not make any domestic sales of the goods under consideration makes the exercise less complicated than would be the case where domestic sales are made. It obviates the need for any "ordinary course of trade" ("OCOT") analysis. The normal value methodology typically used by the Commission in such circumstances is that prescribed by Section 269TAC(2)(c) of the Act. This can then

be compared with MC's FOB export sales prices, all of which were provided to the Commission, on a weighted average basis.

This also means that the Commission would need to consider a profit component in the constructed normal value, if that were to be required pursuant to Regulation 45(3) of the *Customs (International Obligations) Regulation 2015*. In that regard it would be a matter for the Commission to consider the application of that Regulation, noting that the gap between the constructed normal value and the export price on the data that was presented is significant.

That said, we do realise that it would be incumbent on the Commission to undertake this exercise in a considered and robust way. Our client has no concerns or reservations about this, and is supportive of such an approach. It can provide clarifications to the Commission to the extent that the Commission may consider is properly within its remit.

In this regard, we note the comments of the Review Panel in ADRP Report No 33 concerning aluminium road wheels from China. In its reinvestigation of the dumping margins it had originally determined for one of the exporters, the Commission found it necessary, in conducting its ADRP-directed reinvestigation, to use the information that had been provided by the exporter to the extent that it could be used, but to augment that with other information where it considered that to be necessary.

The relevant passage of the Review Panel's report endorsed this approach, saying:

> *Upon reinvestigation, the Commissioner has found that although Yueling provided Australian sales data to the Commission that contained inaccuracies, it appears that based on the Commission's and Yueling's correspondence, Yueling complied with the Commission regarding additional requests for information.*
>
> *The additional information provided to the Commission during Review 263 included corrected Australian sales data that, upon reinvestigation, reconciles with commercial invoices provided by Yueling.*
>
> *It appears that Yueling clarified the Commission's queries in relation to Yueling's distribution channels, to the best of its ability and within the Commission's timeframes allowed to Yueling.*
>
> *As part of this reinvestigation, the Commission assessed the analysis undertaken in Review 263 of Yueling's cost to make and sell data, which, based on that assessment, indicates that the data appears reasonable.*
>
> *The Commissioner considers, however, that the information provided to the Commission is not ideal in all respects.*
>
> *Based on the evidence and reasons above, the Commissioner has made the following new finding that Yueling's information provided to the Commission in Review 263 should not be disregarded as unreliable in its entirety.*

In this way the Commission was able to arrive at its findings mostly with respect to export price and

normal value using the information that was submitted.

More recently, we note the position reached in ADRP Review 35,[15] involving the Minister's decision to impose dumping duties on certain prepared and preserved tomatoes imported from Italy, in which the Review Panel requested a reinvestigation by the Commission.

In particular, the Review Panel requested the ADC to reinvestigate:

- *The finding relating to the application of s 43(2) of the Customs (International Obligations) Regulation 2015 (Regulation) in respect of the adjustment to the cost for raw tomatoes",*
- *The finding relating to the magnitude of the cost adjustment and its impact on the Dumping Margin of Feger and La Doria"; and*
- *The finding relating to the magnitude of the cost adjustment and its impact on the Dumping Margin of Feger and La Doria.*

Central to this reinvestigation was the applicants' claims that the Commission had relied on incorrect information and calculations. The Review Panel requested the Commission to reassess, to conduct further analysis, and to reinvestigate its various calculations.

In response, the Commissioner invited interested parties to make submissions relating to the findings subject to the reinvestigation requests. The Commission accepted 13 submissions during the reinvestigation, before providing its Reinvestigation Report to the Review Panel.[16]

The involvement of the interested parties in the reinvestigation process, substantially assisted and reshaped the Commission's view on those issues, as the Reinvestigation Report noted:

> *The Commissioner considers that the substantially better evidence obtained in the course of this reinvestigation indicates that the value of SPS payments made to growers under the terms of the CAP varies according to the entitlements held. These entitlements are based on the land holding, and the payments are made regardless of crop or whether any part of the land remains fallow.*
>
> *The Commission has quantified the value of the SPS payments received on a per hectare basis. Once the yield rate for tomato production in Italy in 2014 is factored into the volume of raw*

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[15] See, generally, the ADRP website page for this review - http://www.adreviewpanel.gov.au/CurrentReviews/Pages/Prepared-or-Preserved-Tomatoes-Exported-from-Italy-by-Feger-di-Gerardo-Ferraioli-S-p-A-and-La-Doria-S-p-A.aspx

[16] See *ADC Report to the ADRP - Reinvestigation of Certain Findings Concerning Prepared or Preserved Tomatoes Exported to Australia From Italy by Feger di Gerardo Ferraioli S.P.A. and La Doria S.P.A.* - http://www.adreviewpanel.gov.au/CurrentReviews/Documents/Prepared%20or%20Preserved%20tomatoes/Att%20A.1%20PUBLIC%20VERSION%20-%20Reinvest%20Report%20360%20%20(Tomatoes%20from%20Italy).pdf

tomatoes actually purchased, the Commissioner finds that the growers received approximately €0.014 / kg under the SPS during the investigation period.

The value of the SPS payments received is substantially less than the amount established in REP 276.

The Reinvestigation Report provided detailed narratives regarding additional information collected, verified and analysed by the Commission during the reinvestigation. The Reinvestigation Report also explained in detail how the information collected and analysed in the reinvestigation warranted the changes to the Commission's findings which led to the reviewable decision in question. This included the reversal of findings that the two Italian exporter's cost records did not reasonably reflect competitive market costs associated with production of the goods, and the recalculation of a dumping margin in accordance with the findings of the reinvestigation. These new findings and new margin calculations were subsequently accepted by the Review Panel and were incorporated in its recommendations to the Minister.

ADRP Review No.35 provides a clear example of the utilisation of the Review Panel's reinvestigation power, and the implementation of such a request by the Commission, for the purposes of achieving the correct or preferable decision in a review such as this. This procedure allows both the Commission and the Review Panel to "right the wrong" by carrying out the correct factual and legal determination in a review.

The approach towards a reinvestigation as evinced in the ADRP's previous practice would appear to us to be both reasonable and required, in circumstances where the incorrect exclusion of the exporter concerned from the investigation is responsible for an inability on the part of the Commission to fully complete the analysis without proper explanations (which the exporter can provide in the reinvestigation direct to the Commission) or without specific pieces of evidence.

11 Correct or preferable decision

Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10

The correct or preferable decision should be that MC did not engage in any dumping of the goods under consideration in the investigation period, by reason of the fact that the export price for the goods was more than their normal value.

12 Material difference between decisions

Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision

The proposed decision provided in response to question 11 would lead to the Review Panel recommending to the Minister that the measures should be revoked as against MC.

This is materially different to the decision that was made by the Minister, which was to find that all exporters from Singapore had a dumping margin of 266.3%, and to impose dumping duties on them of a significant magnitude in accordance with the lesser duty rule.

Conclusion and request

The decision to which this application refers is a reviewable decision under Section 269ZZA of the Act. Where references are made to the Commission and its recommendations, it is those recommendations which were accepted by the Parliamentary Secretary and form part of the reviewable decision that MC seeks to have reviewed.

MC is an interested party in relation to the reviewable decision.

MC's application is in the approved form and has otherwise been lodged as required by the Act.

We submit that MC's application is a sufficient statement setting out its reasons for believing that the reviewable decisions are not the correct or preferable decisions, and that there are reasonable grounds for that belief for the purposes of acceptance of its application for review.

This application contains confidential and commercially sensitive information. An additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information is included as an Attachment to the application.

The correct or preferable decisions that should result from the grounds that MC has raised in the application, and their individual effect on the outcome of each, are dealt with in A, B and C above.

Accordingly, being fully compliant with the requirements of the Act, MC requests the Review Panel to undertake the review of the reviewable decision, as requested by this application, under Section 269ZZK of the Act.

The Review Panel is requested to recommend to the Parliamentary Secretary that, in accordance with Section 269ZZM the reviewable decision (being the decision to publish notices under Sections 269TG(1) and (2)) be revoked with effect from 20 March 2017 and be substituted by another decision to publish a

dumping duty notice in the same terms as that made on 20 March 2017 and with effect from that date but amended:

- if MC's exports are determined in this review not to have been dumped, or to have been dumped but at a *de minimis* level – so as to exclude from the notice exports of rebar from Singapore by MC; or
- if MC's exports are determined in this review to have been dumped at more than *de minimis* level – so as to include the different variable factors worked out for MC in this review.

Lodged for and on behalf of M.C. Packaging Pte Ltd

Daniel Moulis
Principal Partner

Moulis Legal