



Australian Government
Anti-Dumping Review Panel

Application for review of a Commissioner's decision

Customs Act 1901 s 269ZZQ

This is the approved¹ 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 Commissioner of the Anti - Dumping Commission.

Section 269ZZO *Customs Act 1901* sets out who may make an application for review to the ADRP of a review of a decision of the Commissioner.

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 the applicant was notified of the reviewable decision.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel begins to conduct a review (by public notice in the case of termination decisions and by notice to the applicant and the Commissioner in the case of negative prima facie decisions, negative preliminary decisions and rejection decision). Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after the Panel begins to conduct a review. 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.

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

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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 (s269ZZQA(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.

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Marpac Pty Ltd

Address: 2 Samantha Court, Knoxfield, 3180

Type of entity (trade union, corporation, government etc.): Australian Manufacturer

2. Contact person for applicant

Full name: Charlie Maher

Position: Managing Director/Owner

Email address: charlie.maher@marpac.com.au

Telephone number: 0408 367 809

3. Set out the basis on which the applicant considers it is entitled to apply for review to the ADRP under section 269ZZO

Marpac Pty Ltd (hereafter referred to as "Marpac") was the applicant company seeking the imposition of dumping and countervailing measures on resealable can end closures from India, Malaysia, the Philippines and Singapore.

Marpac is seeking a review of the Commissioner's decision in regards to India only.

4. Is the applicant represented?

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.****

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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 269TC(1) or (2) – *a negative prima facie decision*
- Subsection 269TDA(1), (2), (3), (7), (13), or (14) – *a termination decision*
- Subsection 269X(6)(b) or (c) – *a negative preliminary decision*
- Subsection 269YA(2), (3), or (4) – *a rejection decision*
- Subsection 269ZDBEA(1) or (2) – *an anti-circumvention inquiry termination decision*

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

Goods Description:

The imported goods, the subject of this application, are resealable can end closures 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.

Additional Information:

The Australian standard for TRF like goods is AS2854-4-3-1 (See Marpac Attachment 6.1 – AS2854-4-3-1, Ring and Lid). The standard for Ring and Lid for Friction closure cans covers TRF's. Note that the standard allows for different thicknesses of material as long as they have similar performance.

TRFs are made from Tinfoil which should conform to Japanese International Standard (JIS) 3303-2008, and Aluminium Foil which should conform to Japanese International Standard (JIS) H4160-1994 amendment 2006. The standard for tinfoil, Aluminium and lacquers and coatings are expected to conform with the United States Food and Drug Administration (FDA) 21 Code of Federal Regulations (CFR) 174.300 and European Standard (EN) 1186-1,2002 Food Contact requirements

The goods the subject of the application may be either coated or uncoated, and/or embossed or not embossed.

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The goods are referred to locally as TRF ends (Tagger, Ring and Foil ends) and can also be known as RLT's (Ring, Lid, Tagger), RLF's (Ring, Lid, Foil) or Penny Lever Ends.

The goods are referred to in this application as TRFs. TRFs are a resealable can end closure and are used on products such as [REDACTED] coffee, milk powder and other dry powder products. TRFs are manufactured in nominal sizes to match the nominal can size diameters produced in Australia.

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The TRF nominal sizes the subject of this application are:

- 73 mm;
- 99 mm;
- 127 mm; and
- 153/4 mm.

Goods specifically excluded from this application are TRFs of nominal size:

- 52 mm;
- 65 mm;
- 189mm; and
- 198 mm.

A list of common nomenclature used in the Can Industry can be found at Marpac Attachment 6.2 - Nomenclature in the Can Industry

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Typical specifications of the goods are shown in the table below:

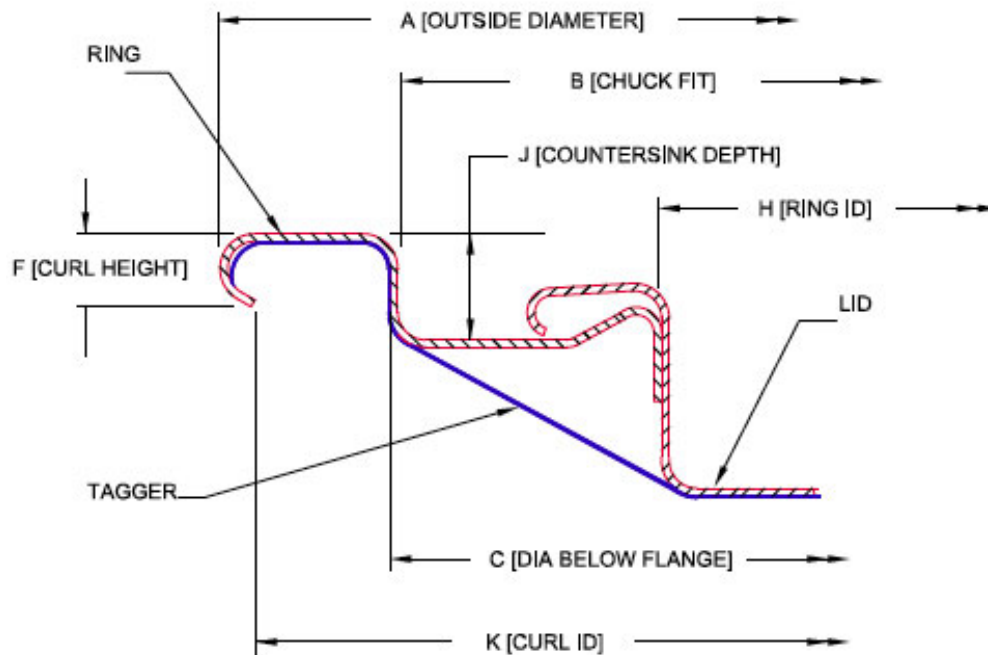
TRF Specifications	Tolerance	73mm		99mm		127mm		153mm		
		Ring	Lid	Ring	Lid	Ring	Lid	Ring	Lid	
Outer diameter	A	±0.30	82.20	63.20	109.30	88.20	137.40	116.60	164.10	139.0
Curl height	F	±0.15	2.15	1.80	2.20	1.90	2.20	2.10	2.20	1.80
Component depth	J	±0.20	3.20	4.70	3.20	4.80	3.20	5.00	3.30	6.10
Chuck fitment size	B	±0.05	72.90	---	99.07	---	126.48	---	153.37	---
Material thickness		±0.015	0.20	0.18	0.20	0.20	0.22	0.20	0.24	0.22
Tagger thickness		±0.003*	0.064		0.064		0.085		0.085	

*NOTE: Tagger Thickness Tolerance ± 0.003 for 0.064 mm thick foil and ± 0.005 for foil thickness greater than 0.064mm

All dimensions are in mm

Tolerances are indicative only and may vary.

The technical drawing below illustrates the specifications of a TRF



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Marpac also offer the choice of plain tinplate, clear lacquered or coloured TRFs. Customers can have their lids embossed with a customer name, such as Massel require on their lids.

The below picture shows a TRF on a Coles Gravy Can and the components that make up the TRF



Ring

Foil

Foil and Ring Plug

The ring and foil are assembled first and then the plug is inserted. The TRF is then seamed on to the can.

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

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

8. If applicable, 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.

Anti-Dumping Notice No 2017/16 dated 17th February 2017 notified the Commissioner's decision to terminate the investigation in relation to India and Hindustan ONLY.

A copy of the notice is attached to this application for review.

- Marpac Attachment 8.1 – EPR 350 - Antidumping Notice No 2017/16
And
- Marpac Attachment 8.2 – EPR 350 - the Termination Report No 350 dated February 2017

9. Provide the date the applicant received notice of the reviewable decision

The applicant received notification of the Commissioner's decision on the 17th of February 2017.

****Attach a copy of the notice of the reviewable decision to the application****

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PART C: GROUNDS FOR YOUR 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:

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

The applicant considers that Hindustan should have been treated as a non-cooperative exporter. The applicant refers to Marpac Attachment 10.1: EPR-350 Submission 021, 19/8/17. Here, the applicant argued extensively regarding the relevant acts that Hindustan was in fact a non-cooperative exporter.

The continued leniency of submissions to the Commission by Hindustan with respect to compliance with the act shows a lack of transparency and is of grave concern to the applicant. This has been apparent throughout the investigation, with respect to Hindustan.

Regarding the new evidence provided by Hindustan, that has resulted in termination of the investigation with respect to India, the applicant believes:

The Commissioner's decision to terminate the investigation into dumped resealable can end closures from **India** was based upon a finding that the dumping margin was negative 12.86%.

The applicant considers that the Commission's decision is based on a meeting in late December, where documents were provided to the Commission, again, no record of the meeting or the documents were put on the public record as required under the act. So the applicant is of the belief that Hindustan and the Commission have not met the requirements under the act to provide a reasonable redacted version of any submissions.

The applicant considers that the presentation, to the Commission by [REDACTED] of 26 confidential attachments and over 100 individual documents have served to confuse the Commission in its determination. None of these documents have been available on the "public record" for interested parties to understand their relevance. As required by S269 ZJ of the Customs Act. The first the applicant was aware of these documents was in the termination publication.

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Consequently, the applicant was not given the opportunity to make a submission on the validity of these documents.

It is also the applicant's belief that the analysis of the data provided by [REDACTED] is at odds with the decision made regarding the Philippines. The exporter [REDACTED] admitted to selling below the manufacturing costs

(see Marpac Attachment 10.2 - EPR 350 – submission 078 – [REDACTED], 9/2/17. Page 8, paragraph 2, "re-computation shows that our cost is still slightly higher than the selling price")

It should be noted that the applicant provided evidence to the Commission that [REDACTED] price into Australia was higher than [REDACTED] during the investigation period. It is therefore difficult to understand how [REDACTED] can have a negative 12.86% dumping margin.

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Based on the information contained in Termination Report No 350 at 3.3.2 – Normal Value

The applicant notes in item 1;

the duties refundable by the Indian Government would only serve to bring the tinplate and aluminium foil prices back into line with the "Asian Pricing" being paid in the countries where such taxes and duties do not apply, vis a vis the Philippines, Malaysia and Singapore.

The applicant notes that item 2:

It would appear to be double counting excise duties shown in item 1 above.

The applicant notes in item 3:

[REDACTED] is not charged interest for purchases of "discounted tinplate"

Within the industry discounted tinplate refers to secondary grade tinplate which does not meet the JIS 3303-2008 or other relevant standards for prime tinplate for use with a Food or Beverage application. The applicant cannot understand how discounted tinplate could be considered in the COG's. Given the requirements of the end user and the multiple submissions made by the importers and the "CMIA" regarding the strictness of the quality requirements.

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The applicant notes in item 4:

Reference is made to copper wire which has no use in the manufacture of TRF ends. It is a product used in can making, on welding lines, and the cost of the material in manufacturing is [REDACTED] of the purchase cost of the copper wire. Any affect is negligible on can lines and irrelevant on TRF lines.

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The applicant notes in item 5:

No information is available on the public record so the veracity of this information cannot be checked.

Basic COG's Analysis:

To obtain a negative 12.86% dumping margin the applicant estimates that the price [REDACTED] was paying for its tinplate can be shown in the following table: (calculation methodology can be found at the Confidential Marpac Attachment 10.3 – Tinplate and Profit Matrix (A similar matrix was provided to the Commission)

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Table 1: Indicative Raw Material Pricing for TRF's based on the -12.86% Dumping margin.

	73mm	99mm	127mm	153mm
Sell Price USD Australia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Estimated FOB Prices USD	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Estimated Local Indian Sell Price *	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
40% COG's Raw Material **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate COG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate Value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Estimated Tinplate Price per tonne USD	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
50% COG's Raw Material **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate COG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate Value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Estimated Price per tonne USD	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
60% COG's Raw Material ****	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate COG	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Tinplate Value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Estimated Price per tonne USD	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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NB Tinplate represents [REDACTED] of the raw material COG's depending on the size of the penny lever due to the much higher price of foil. The remaining raw materials make up less than [REDACTED] so are ignored for simplicity. We have used a price of [REDACTED].

* Estimated local sell price is based on the available data from the Commission and evidence submitted to the Commission by the applicant within the application

** 40% COGS [REDACTED]

***50% COGS [REDACTED]

**** 60% COGS [REDACTED]

Please note that the verified "Asian price" in the period [REDACTED]. Prices subsequently came down by [REDACTED]. These prices were not available for product received during the investigation. There are still associated costs with clearance and delivery.

The lead-time on tinplate contracts are: [REDACTED]
[REDACTED]
[REDACTED]

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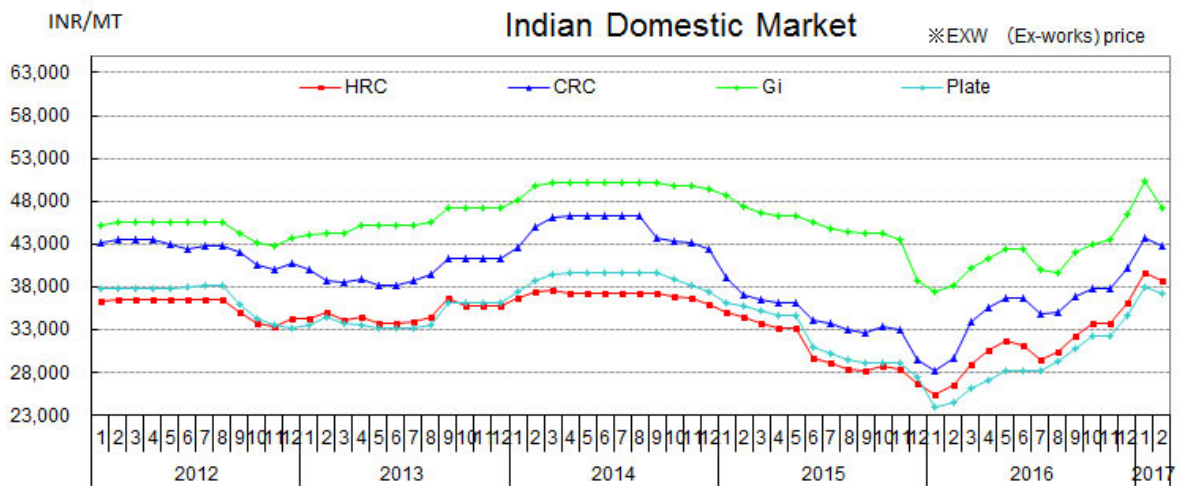
As can be seen the calculated prices are far from the verified tinplate pricing within the Investigative timeframe and are not even close to the [REDACTED] that would have only been available for a short period after the investigation period.

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The table indicates that within the range of pricing there are subsidies, or rebates that may not have been considered, and removed from the calculations in the re-assessment of the dumping margin for India. It should also be noted that these calculations do not allow for compound, a rubber gasket that is added to the ring, a requirement for a steel can and would deduct a further [REDACTED] from this analysis depending on size.

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Basis for Calculation of Indian Domestic Tinplate Pricing



March 9th 2017
Source: Metal Bulletin,
The Japan Iron and Steel Federation(Korea)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This material would not have been available for TRF sales until June 2016 if express serviced, which is outside the investigation period.

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The analysis appears to show the pricing is consistent with secondary/discounted tinplate. The applicant understands from the graph and analysis above, that this pricing was available after the investigation period, but not during the period.

Marpac is still confused how the larger size could possibly be made profitably, given the raw material requirements and costs to produce these products. The applicant, was not privy to any documents that have been supplied to the Commission, as required under the Act. Along with other interested parties, the applicant has, and has had, no way of understanding how the decision to terminate the investigation, with regards to India, has been arrived at.

The applicant would appreciate the opportunity to conference with the Review Panel to explain any questions and further discuss the decision on this matter.

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

The applicant strongly believes that [REDACTED] should be considered as non-cooperative and the dumping duty of 48.2% as recommended in SEF 350 be applied immediately.

(See Marpac attachment 11.1 – EPR 350 – 032 – Report – Statement of Essential Facts and Preliminary Affirmative Determination 350, 5/10/16)

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


Only answer question 12 if this application is in relation to a reviewable decision made under subsection 269X(6)(b) or (c) of the Customs Act.

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PART D: DECLARATION

The applicant 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* beginning 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: Charlie Maher

Position: Managing Director

Organisation: Marpac Pty Ltd

Date: 10 / 3 / 2017