



Australian Government
**Australian Customs and
Border Protection Service**

INTERNATIONAL TRADE REMEDIES BRANCH

CONSIDERATION REPORT NO. 195

**APPLICATION FOR THE REVIEW AND
REVOCATION OF ANTI-DUMPING MEASURES**

CONSUMER PINEAPPLE

EXPORTED FROM THAILAND

19 December 2012

1 Summary and recommendations

This consideration report is in response to an application by Siam Agro-Food Industry Public Company Limited (“SAICO”) for the review of anti-dumping measures that apply to consumer pineapple exported to Australia from Thailand by the Thai Pineapple Canning Industry Corp Ltd (“TPC”). SAICO is a wholly owned subsidiary of TPC and is an exporter of the goods.

SAICO has applied for a review of the variable factors (normal value and export price) relating to consumer pineapple exported by TPC (“a variable factor review”). SAICO has also applied for the measures as they relate to TPC to be revoked because they are no longer warranted (“a revocation review”).

This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer of Customs and Border Protection (CEO) as to whether or not to reject the application.

1.1 Recommendations

We recommend that the delegate of the CEO decide:

- a) **not to reject** the application for review of variable factors; and
- b) **not to reject** the application for revocation.

If the delegate accepts these recommendations, to give effect to that decision, the delegate must publish a notice indicating that it is proposed to review the measures covered by the application.

1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (“the Act”)¹ sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures.

The Division empowers the CEO to reject or not reject an application for review of anti-dumping measures. Depending on the CEO’s decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to review the measures covered by the application.

The CEO’s powers have been delegated to certain officers of Customs and Border Protection.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

1.3 Findings and conclusions

Customs and Border Protection have examined SAICO's application for a review of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by TPC.

We are satisfied that the application lodged by SAICO provides the required information to initiate both a variable factors review and a revocation review because:

- we are satisfied, having regard to the applicant's claims and other relevant information, that there appear to be reasonable grounds for asserting that there have been changes in the variable factors; and
- we are satisfied, having regard to the applicant's claims and other relevant information, that there are sufficient grounds for asserting that the measures are no longer warranted.

2 Background

On 3 December 2012, SAICO, an exporter of consumer pineapple from Thailand, lodged an application requesting a variable factors review and a revocation review of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by TPC.

2.1 Existing measures

Anti-dumping measures were first imposed on certain pineapple products exported from Thailand on 18 October 2001 following an application from Golden Circle Limited (Golden Circle). Measures were imposed against consumer pineapple exported from Thailand. Measures were also imposed in relation to food service and industrial (FSI) pineapple exported from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co. Trade Measures Report No 41 (REP 41) refers.

Following a decision of the Federal Court in April 2008 measures applying to exports of consumer pineapple from Thailand by TPC lapsed.

Golden Circle subsequently submitted an application for the publication of dumping duty notices in respect of consumer and FSI pineapple exported from the Philippines and consumer pineapple exported from Thailand by TPC. Trade Measures Report No. 173b (REP 173b) refers. The investigation period was 1 January 2010 to 31 December 2010. On 14 October 2011 anti-dumping measures on consumer pineapple were imposed on exporters from the Philippines, and on TPC.

2.2 The goods subject to the measures

The goods the subject of the application (the goods) are pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple).

The application for a variable factors review and a revocation review is limited to consumer pineapple only. FSI pineapple, which is described as pineapple prepared or preserved in containers exceeding one litre, is not within the scope of the application for review.

2.3 Imports

Customs and Border Protection's import database indicates that TPC has continued to export the goods since the imposition of measures on 14 October 2011.

Details of the imports for this period are at **confidential attachment 1**.

2.4 Tariff classification of the goods

The goods are classified to tariff subheading 2008.20.00, statistical code 26 and 28 in Schedule 3 of the *Customs Tariff Act 1995 (Cth)* ("Tariff Act").

There is currently no general duty imposed on goods exported from Thailand in accordance with the Thailand-Australia Free Trade Agreement.

2.5 Australian industry producing like goods

Investigation 173b found that there was an Australian industry producing like goods with Golden Circle the sole manufacturer of consumer pineapple in Australia.

Information will be sought from Golden Circle during the review.

3 Compliance with s.269ZB

3.1 Finding

We are satisfied that the application lodged by SAICO complies with the requirements of s.269ZB.

3.2 Legislative framework

Pursuant to Section 269ZA of the *Customs Act 1901*, where anti-dumping measures have been imposed with respect of goods, applications that the CEO initiate a review of measures can be made by an 'affected party'² who considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, on the grounds that:

- (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or
- (ii) the anti-dumping measures are no longer warranted.

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Subsection 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the measures that have changed; and

² "affected party" , in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, is defined under Section 269T of the Act to be:

- (a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- (b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- (c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- (d) the Government of a country from which like goods have been exported to Australia.

- the amount by which each such factor has changed; and
- the information that establishes that amount.
- if the application is based on circumstances that, in the applicant's view, indicate that the anti-dumping measures are no longer warranted the applicant must provide evidence in accordance with the approved form, of the alleged circumstances.

3.3 Particulars of the application

SAICO has submitted an application for the initiation of both a review based on the change in variable factors and revocation review of measures in respect of the subject goods pursuant to Section 269ZA.

In summary, the application requests the CEO to:

- a) Review the level of the measures on the basis that the specific variable factors of the normal value and export price which provides the basis for the imposition of measures currently in force have changed in relation to a particular exporter of the subject goods (**a variable factors review**); and
- b) revoke the current measures on the basis that they are no longer warranted in relation to TPC on the grounds that there is no dumping by TPC and that dumping is unlikely to recur if measures are revoked (**a revocation review**).

3.4 Our assessment

The application lodged by SAICO:

- was in writing;
- provided a description of the goods subject to the measures;
- provided a description of the measures the subject of the application;
- provided statements of the factors that had changed and information to support those statements (in relation to the application for a variable factors review); and
- provided evidence, in the approved form, of the particular circumstances which the applicant believes indicate that the measures are no longer warranted (in relation to the application for a revocation review).

On the basis of the above, we are satisfied that the application for both satisfies the form and substance requirements under section 269ZB.

4 Consideration of reasonable grounds

4.1 Finding

We are satisfied, having regard to the applicant's claims and other relevant information, that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.

We are also satisfied, on the basis of the supporting evidence provided by the applicant and other relevant information, that there are reasonable grounds for asserting that dumping measures are no longer warranted and for a revocation review to be initiated.

4.2 Variable factors review

The variable factors alleged to have changed are the export price and normal value.

4.2.1 Applicant's claims

Export price

SAICO claims that the relevant export price of the goods exported by TPC has changed since the imposition of measures on 14 October 2011.

SAICO relies on a comparison between the export price determined by Customs and Border Protection in investigation 173b ("the original export price") and a contemporary export price.

In its application for review, SAICO provided an outline of its exports to Australia of all consumer pineapple products for the period October 2011 to September 2012.

On the basis of this information, SAICO provided a contemporary ex-factory weighted average export price for the period 1 October 2011 to 30 September 2012.

Normal value

SAICO claims that the normal value of the goods has changed since the imposition of measures on 14 October 2011.

Like its claims with respect to export price, SAICO relies on a comparison between the normal value determined by Customs and Border Protection in investigation 173b ("the original normal value") and a contemporary normal value.

Investigation 173b determined that TPC did not make any sales of consumer pineapple into the Thai domestic market during the investigation period. The

normal value was therefore established pursuant to subsection 269TAC(2)(c) using TPC's cost to make and sell information for the exported goods. Customs and Border Protection did not apply an amount for profit to the original normal value.

The application for review asserts that TPC has not made any domestic sales of consumer pineapple in the period October 2011 to September 2012. In order to construct a contemporary normal value pursuant to subsection 269TAC(2)(c), SAICO provided Customs and Border Protection with updated cost to make and sell information for each of its consumer pineapple products.

On this basis of this information, SAICO provided a contemporary ex-factory weighted average normal value for the period 1 October 2011 to 30 September 2012.

SAICO also claim that the increased costs incurred during the investigation period for investigation 173b resulted from a shortage of supply due to extreme drought conditions experienced in Thailand at the time. SAICO claim that the contemporary cost information better reflects TPC's actual costs in a market unaffected by unforeseeable factors.

4.2.2 Customs and Border Protection's assessment

We note that the updated export sales and cost to make and sell information has been provided summarily as a confidential attachment to the application and as such cannot be regarded as primary commercial documentation.

In relation to export price, Customs and Border Protection is satisfied that the updated export sales information appears comparatively consistent with Customs and Border Protection's import data. Given this, and a comparison of the contemporary export price provided in the application with the original export price, Customs and Border Protection is satisfied that the applicant has sufficiently demonstrated that the export price has changed for the purpose of section 269ZC(2)(b)(i).

In relation to normal value, investigation 173b accepted that cost increases were being experienced in Thailand due to the prolonged effect of drought. The cost to make and sell information provided by the applicant suggests that the cost of production has since returned to what would be expected in a market unaffected by unusual environmental conditions.

Given that Customs and Border Protection accepts that the market was impacted by unforeseen circumstances during the investigation period the subject of investigation 173b, it is reasonable, on the basis of the information provided in the application, that the cost to make and sell has changed.

Customs and Border Protection is therefore satisfied that the applicant has sufficiently demonstrated that the normal value has changed for the purpose of subsection 269ZC(2)(b)(i).

4.2.3 Conclusion on “reasonable grounds”

We are satisfied that there appear to be reasonable grounds for asserting the export price and normal value have changed.

Accordingly we recommend that the delegate of the CEO decide not to reject the application for a variable factors review.

4.3 Review Period

For the purposes of this review, the period to examine the variable factors is 1 October 2011 to 30 September 2012.

Whilst the applicant has only applied for review of the export price and normal value, Customs and Border Protection will also review the non-injurious price (NIP) as part of the variable factors review.

4.4 Application for a revocation review

SAICO claims that there are reasonable grounds for asserting that the measures in respect of the subject goods are no longer warranted on the basis that:

- a) there is no dumping by TPC; and
- b) dumping is unlikely to recur if measures are revoked.

4.4.1 Applicant's claims

In its application, SAICO makes the claim that the goods are no longer dumped as a result of the change in the variable factors, being the export price and normal value. SAICO has used the contemporary export price and normal value provided in its application to calculate a current dumping margin.

As outlined in 4.2.1 above, SAICO claims that the constructed normal value determined in investigation 173b was abnormally high as a result of a shortage of supply due to extreme drought conditions in Thailand at the time. SAICO claim that its current cost to make and sell represents an appropriate cost of production in a market unaffected by any unusual or unforeseen occurrences.

SAICO claim that it is unlikely that dumping would recur if measures were revoked as it is unlikely that the circumstances that led to the inflated costs during the investigation period subject to investigation 173b will recur.

4.4.2 Customs and Border Protection's assessment

As outlined at 4.2.2 above, Customs and Border Protection is satisfied that the export price and normal value have changed since the imposition of measures on 14 October 2011. On the basis of the contemporary export sales and cost to make and sell information, it appears that TPC may not be currently exporting the goods to Australia at dumped prices.

REP 173b outlined that supply of consumer pineapple to Australia by TPC is subject to contracts established through a tender process. TPC sales to Australia were negotiated in yearly (now six monthly) contracts. The prices were negotiated six months prior to commencement of the contract, on the basis of the cost of production at the time of the contract negotiation.

Evidence obtained during investigation 173b by Customs and Border Protection confirmed that production costs were inflated during the investigation period as a result of the shortage of supply in pineapple fruit due to prolonged drought in Thailand. Whilst the cost of tinplate also rose during this period, the abnormally high cost of raw pineapple fruit, being the primary cost factor, was considered to be the major contributor to TPC's unusually high production costs.

As a result, TPC was found to have been exporting consumer pineapple to Australia at prices significantly lower than the cost of production. In REP 173b, Customs and Border Protection considered that the level at which the goods were dumped during the investigation period suggested that TPC did not factor in a significant premium for such unforeseen risks.

The applicant claims that the circumstances resulting in abnormally high costs during the previous investigation period are "unlikely to recur in the foreseeable future". As outlined above, Customs and Border Protection was aware of these market issues during investigation 173b and obtained evidence in support of the contention that the rise in costs resulted from a rare weather event, being in this instant prolonged drought.

Given that, in REP 173b, Customs and Border Protection accepted that the market was uniquely affected during the investigation period, we are satisfied that there exists a reasonable basis upon which the applicant seeks a revocation review.

This view is prefaced by the unique circumstances of the pineapple industry at the time of the previous investigation, the availability of evidence to Customs and Border Protection confirming the existence of these circumstances and the updated costs information provided by the applicant as a confidential attachment to the application for review.

In initiating a revocation review on this basis, Customs and Border Protection will seek market information from interested parties in order to determine the likeliness of recurrence of the market issues that led to an increase in production costs in 2010.

4.4.3 Conclusion on "reasonable grounds"

We are satisfied, on the basis of the application and supporting evidence provided by SAICO and all available relevant material, that there appear to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

Accordingly we recommend that the delegate of the CEO decide not to reject the application for a revocation review.

5 List of Attachments

Appendix A	Public notice of initiation of review
Confidential Attachment 1	Details of imports from Customs and Border Protection database (1 Oct 2011 to 30 Sep 2012)

Appendix A**Customs Act 1901 – Part XVB****Consumer pineapple exported from Thailand****Initiation of a review of anti-dumping measures****Notice under s.269ZC(4)**

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) will undertake a review in relation to the measures applying to consumer pineapple exported to Australia from Thailand by the exporter Thai Pineapple Canning Industry Corp Limited (TPC). The review will commence on 19 December 2012.

Customs and Border Protection will undertake both a review of the variable factors, being export price and normal value (the variable factors review), and a review to determine whether current measures as they apply to TPC are no longer warranted (the revocation review).

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are consumer pineapple. Consumer pineapple is classified under tariff subheading 2008.20.00, statistical code 26 and 28, in Schedule 3 to the *Customs Tariff Act 1995*.

Interested parties are invited to lodge written submissions concerning the review no later than 28 January 2013 with:

The Director
Operations 1, International Trade Remedies Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra ACT 2601

or by email itrops1@customs.gov.au or fax number 02 6275 6990.

Confidential submissions must be clearly marked "For Official Use Only" and be accompanied by a non-confidential version suitable for placement on the public record. All non-confidential submissions will be placed on the public record for this review.

A statement of the essential facts on which the CEO proposes to base a recommendation to the Minister for Home Affairs (the Minister) will be placed on the public record by 8 April 2013, or such longer period as the Minister allows. Interested parties are invited to lodge submissions in response to the statement of essential facts within 20 days of that statement being placed on the public record. These submissions should also be lodged with Customs and Border Protection at the above mail, fax or email addresses. A report and recommendation to the Minister will be made on or before 23 May 2012 (or such longer period as the Minister allows).

Particulars of the reasons for the decision to initiate this review are shown in Consideration Report No. 195 (CON 195) held on the public record. Interested parties wishing to examine the public record may do so on the internet at <http://www.customs.gov.au/anti-dumping/cases/default.asp> or at Customs House, 5 Constitution Avenue, Canberra ACT during business hours by contacting International Trade Remedies office management on telephone number 02 6275 6547. CON 195 and all Australian Customs Dumping Notices are also available on the Customs and Border Protection website at www.customs.gov.au.

Enquiries about this notice may be directed to the case team on telephone number 02 6275 5675 or by email to itrops1@customs.gov.au.

Kim Farrant
Delegate of the Chief Executive Officer
19 December 2012