



Australian Government
Australian Customs and
Border Protection Service

INTERNATIONAL TRADE REMEDIES BRANCH

CONSIDERATION REPORT NO. 196

APPLICATION FOR REVIEW OF ANTI-DUMPING MEASURES

FOOD SERVICE AND INDUSTRIAL PINEAPPLE

EXPORTED FROM THAILAND

19 December 2012

1 Summary and recommendations

This consideration report is in response to an application by Tipco Foods Public Company Ltd (“Tipco”) for the review of anti-dumping measures that apply to food service and industrial (“FSI”) pineapple exported to Australia from Thailand by Tipco.

Tipco has applied for a review of the variable factors (normal value and export price) relating to FSI pineapple exported by it (“a variable factors review”). Tipco has also applied for the measures as they relate to it 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) **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.

1.3 Findings and conclusions

Customs and Border Protection have examined Tipco’s application for a review of the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand by Tipco.

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

We are satisfied that the application lodged by Tipco provides the required information to initiate a variable factors review.

We are also 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.

We are not 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 10 December 2012, Tipco, an exporter of FSI pineapple from Thailand, lodged an application requesting a variable factors review and a revocation review of the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand by Tipco.

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 in relation to 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.

On 28 September 2006 the Minister accepted the recommendation of Customs and Border Protection to continue anti-dumping measures for a further five following consideration of an application for continuation inquiries and reviews into consumer and FSI pineapple. Trade Measures Report No 111 ("REP 111") refers. Different variable factors were fixed at this review.

On 14 October 2011 the Minister accepted the recommendation of Customs and Border Protection to continue anti-dumping measures for a further five years with the variable factors fixed at a different rate to those determined in the 2006 review. Trade Measures Report No. 172c ("REP 172c") refers. The period of review was 1 January 2010 to 31 December 2010.

Only one exporter from Thailand, Kuiburi Fruit Canning Co Ltd ("KFC") cooperated with the 2011 review of anti-dumping measures relating to FSI pineapple.

2.2 The goods subject to the measures

The goods the subject of the application (the goods) are pineapple prepared or preserved in containers exceeding one litre (FSI pineapple).

The application for a variable factors review and a revocation review is limited to FSI pineapple only. Consumer pineapple, which is described as pineapple prepared or preserved in containers not 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 Tipco has exported 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 27 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

The 2011 review found that there was an Australian industry producing like goods with Golden Circle the sole manufacturer of FSI 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 Tipco 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

Tipco 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 Tipco on the grounds that there is no dumping by Tipco and that dumping is unlikely to recur if measures are revoked (**a revocation review**).

3.4 Our assessment

The application lodged by Tipco:

- 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 not 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

Tipco did not cooperate in the 2011 review of FSI pineapple and is currently subject to the "all other exporters" rate for Thailand.

In review 172c, Customs and Border Protection determined the "all other exporters" rate for Thailand by comparing the weighted average export price with the corresponding weighted average normal value for the review period in accordance with subsection 269TACB(2)(a).

The weighted average export price was determined having regard to all relevant information pursuant to subsection 269TAB(3), using information from importers and the Customs and Border Protection import database. The weighted average normal value was determined having regard to all relevant information pursuant to subsection 269TAC(6), being the adjusted normal value determined for the sole cooperating exporter, KFC.

Tipco generally claims that, should a dumping margin be determined on the basis of actual export sales and costs information provided by Tipco, that Customs and Border Protection would determine that Tipco has not sold FSI pineapple to Australia at dumped prices.

Export Price

In the application for review, Tipco provided details, along with commercial invoices, of its sales to Australia for the period 1 October 2011 to 30 September 2012.

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

Normal value

Tipco claim that it does not make sales of FSI pineapple into the domestic market. Tipco considers it is therefore appropriate to construct a normal value on the basis of subsection 269TAC(2)(c), being the cost to make and sell the goods plus an appropriate amount of profit.

Tipco provided its average cost to make and sell over the period 1 October 2011 to 30 September 2011 along with a submission regarding the appropriate amount of profit to be applied.

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

4.2.2 Customs and Border Protection's assessment

In relation to export price, Customs and Border Protection is satisfied that the summary export sales information and commercial invoices provided by Tipco as confidential attachments to the application appears consistent with Customs and Border Protection's import data. Given this, Customs and Border Protection is satisfied that the applicant has sufficiently demonstrated that the export price, when compared to that previously determined by Customs and Border Protection for "all other exporters" from Thailand has changed for the purpose of section 269ZC(2)(b)(i).

In relation to normal value we note that the 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. However Customs and Border Protection is satisfied that the applicant has sufficiently demonstrated that the normal value has changed from that determined for "all other exporters" from Thailand 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

Tipco 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, Tipco 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. Tipco has used the contemporary export price and normal value provided in its application to calculate a current dumping margin.

Tipco noted in its application for review that it is currently subject to the "all other exporters" rate for Thailand as it did not cooperate with the previous review. On this basis, Tipco claims that it has not been determined that its exports during the period of the previous review were actually dumped. Tipco claims that it has demonstrated, on the basis of the information provided in the application for review, that it has not exported the goods to Australia at dumped prices.

Tipco therefore claims that, given there is no current dumping and an absence of a specifically determined history of dumping, that the likelihood of recurrence is low.

4.4.2 Customs and Border Protection's assessment

As outlined at 4.2.2 above, Customs and Border Protection is satisfied that, on the basis of information provided by Tipco in its application for review, the export price and normal value will be different to that determined for "all other exporters" in the previous review. On the basis of this information, it appears that Tipco may not be currently exporting the goods to Australia at dumped prices.

The application for review of anti-dumping measures form³ outlines that, in relation to an application for a revocation review, evidence in support of the applicant's view that there are reasonable grounds for asserting that the measures are no longer warranted should be included. In relation to an application that alleges no dumping, evidence should be provided in support of the contention that dumping is unlikely to recur if measures are revoked. The October 2011 *Instructions and Guidelines – Application for review/revocation of measures*⁴ states that, "while there may be no current dumping or subsidisation this does not, of itself, mean that the measure must be revoked".

³ Available online at http://www.customs.gov.au/webdata/resources/files/B602_2011.pdf

⁴ Available online at <http://www.customs.gov.au/webdata/resources/files/b602g3.pdf>

Tipco's claim for revocation is based on a view that its exports of FSI pineapple during the most recent review had not been found to be dumped. Customs and Border Protection does not accept this view. Report 172c sets out the findings of fact following the review of measures into FSI pineapple exports from Thailand. That report determined that all exports from Thailand, including those by Tipco, were dumped.

The dumping finding in relation to Tipco's exports was made after export prices were determined having regard to information gathered from importers and Customs and Border Protection import database. Corresponding normal values were constructed having regard to all relevant information.

Tipco has not provided evidence to support the assertion that, had it cooperated with the previous review, Customs and Border Protection would have determined that it was not exporting FSI pineapple to Australia at dumped prices. Given that Tipco was afforded the opportunity to cooperate in the previous review and at the time did not provide necessary information to the investigation, Customs and Border Protection cannot now be satisfied that Tipco was not dumping during the previous review period.

4.4.3 Conclusion on "reasonable grounds"

We are not satisfied, on the basis of the application and supporting evidence provided by Tipco 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 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****Food Service and Industrial 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 FSI pineapple exported to Australia from Thailand by the exporter Tipco Foods Public Company Ltd (Tipco). The review will commence on 19 December 2012.

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are FSI pineapple. FSI pineapple is classified under tariff subheading 2008.20.00, statistical code 27 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. 196 (CON 196) 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 196 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