



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 373

**CONSIDERATION OF AN APPLICATION FOR
A REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
FOOD SERVICE AND INDUSTRIAL PINEAPPLE EXPORTED TO
AUSTRALIA FROM
THE KINGDOM OF THAILAND BY NATURAL FRUIT CO., LTD**

SEPTEMBER 2016

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ABBREVIATIONS

Abbreviation	Full title
the Act	the <i>Customs Act 1901</i>
Natural Fruit or the applicant	Natural Fruit Co., Ltd.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
FSI	food service and industrial
Golden Circle	Golden Circle Limited
the goods	food service and industrial pineapple
NIP	non-injurious price
the Parliamentary Secretary ¹	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
MSP	Malee Sampran Public Co
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission) consideration of an application lodged by Natural Fruit Co., Ltd (Natural Fruit) for a review in respect of the anti-dumping measures, in the form of a dumping duty notice, relevant to its exports of food service and industrial (FSI) pineapple exported to Australia from the Kingdom of Thailand (Thailand).

The applicant considers it appropriate to review the anti-dumping measures because one or more of the variable factors relevant to the taking of the anti-dumping measures have changed, being the normal value and export price relevant to the dumping duty notice.

1.2 Recommendation

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application for the reasons outlined in section 1.4 and chapter 3 of this report and initiate a review into the anti-dumping measures in so far as they relate to the applicant.

1.3 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject the application, he is required to publish a notice indicating that he proposes to review the anti-dumping measures covered by the application.

1.4 Findings and conclusions

Based on the findings outlined in this report, the Commission is satisfied that:

- the application complies with subsections 269ZB(1) and (2); and
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

Accordingly, the Commission recommends that the Commissioner not reject the application.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

2.1.1 FSI pineapple from Thailand

On 8 January 2001, Golden Circle Limited (Golden Circle) lodged an application requesting, among other things, that the then Minister for Justice and Customs publish a dumping duty notice in respect of FSI pineapple exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 41) and published a dumping duty notice for FSI pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co (MSP).

On 26 February 2006, following consideration of applications by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia from Thailand.

On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 111* (REP 110 and REP 111) to continue the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand for a further five years and fix different variable factors relevant to the determination of duty.

On 15 April 2011, following consideration of an application for the continuation of measures by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple from Thailand. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 172c* (REP 171c) and (REP 172c), to continue the anti-dumping measures for a further five years from 18 October 2011 and fix different variable factors relevant to the determination of duty.

On 10 December 2012, a review of measures was initiated for FSI pineapple from Thailand following an application by Tipco Foods Public Company Limited. The review of measures was extended to all exporters from Thailand. The then Minister for Home Affairs, accepted the recommendations contained in *International Trade Remedies Branch Report No. 196* and fixed different variable factors relevant to the determination of duty.

On 11 August 2016, following an application by Golden Circle for a continuation of the measures and subsequent continuation inquiry conducted by the Commission, the Commissioner recommended that the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (Parliamentary Secretary) take steps, in accordance with subsection 269ZH(1)(b), to secure the continuation of the anti-dumping measures relating to FSI pineapple exported to Australia from Thailand from the expiry date of the measures and that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained.

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On 12 September 2016, the Parliamentary Secretary accepted the recommendations contained in *Anti-Dumping Commission Report No. 334* to continue the anti-dumping measures and fixed different variable factors relevant to the determination of interim dumping duty.

As a result, the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand (except from MSP) have been continued for a further 5 years from 17 October 2016.

2.2 The current application

On 30 August 2016, the Commission received an application lodged by Natural Fruit requesting a review of the anti-dumping measures in relation to its exports of the goods to Australia from Thailand.

The applicant claims that there has been a change in the variable factors relevant to its circumstances. The applicant did not request a review of all exporters generally.

The application is not precluded by subsection 269ZA(2), which provides that an application for review must not be lodged earlier than 12 months after the publication of a dumping duty notice, or a notice declaring the outcome of the last review of the dumping duty notice.

Pursuant to subsection 269ZC(1), the Commissioner must, within 20 days after receiving the application, examine the application and decide whether to reject the application. As such, the decision whether to reject the application must be made by 19 September 2016.

If the Commissioner is not satisfied, having regard to an application and to any other information that the Commissioner considers relevant, of one or more matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.3 The goods subject to the anti-dumping measures

The goods subject to measures (the goods) are:

Pineapple prepared or preserved in containers exceeding one litre (food service and industrial pineapple).

2.3.1 Tariff classification of the goods

The goods are generally classified to the following tariff classifications in Schedule 3 to the *Customs Tariff Act 1995*:

2008.20.00	Pineapples
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

FSI pineapple imported from Thailand is not subject to Customs Duty.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application for review be in writing, be in a form approved by the Commissioner for the purposes of section 269ZB, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form to be included, subsection 269ZB(2) provides that the application must include:

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

Subsection 269ZC(2) specifies the matters which the Commissioner must consider in making a decision whether to reject the application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application – compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted by Natural Fruit:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires (including evidence in support of the amount by which normal value and export prices have changed since anti-dumping measures were last imposed and information on the causes of the change to normal values and export prices and whether these causes are likely to persist);
- is signed in the manner required by the form;

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- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the measures the subject of the application relate;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the anti-dumping measures taken that have changed; the amount by which each factor has changed; and the information that establishes that amount (as discussed in section 3.3, below).

As a result of the above, the Commission is satisfied that Natural Fruit has satisfied the requirements of subsections 269ZB(1) and (2).

3.3 Variable factors

The Commission considers that to comply with section 269ZB, the applicant must provide information to establish that, in the applicant's opinion, one or more of the variable factors have changed. The applicant does not have to provide information to establish that all the variable factors have changed.

The following sections will address the applicant's claims that there has been a change in the variable factors.

If the application is based on a change in variable factors, subsection 269ZB(2)(c) requires that the applicant provide a statement of its opinion regarding:

- the variable factors relevant to the taking of the measures taken that have changed;
- the amount by which each such factor has changed; and
- information that establishes that amount.

3.3.1 Natural Fruit application

All exports of the goods from Thailand, with the exception of those exported by MSP, are subject to the dumping duty notice. Natural Fruit's duty payable is an amount that is worked out in accordance with the combination of fixed and variable duty method. Natural Fruit claims that the normal value and export price of the goods in relation to its exports have changed.

The application included the identification of changes to the normal value and export price, with evidence to support those changes. In particular, Natural Fruit downloaded the exporter questionnaire template used for the recent continuation inquiry (continuation inquiry 334) and completed the exporter questionnaire in relation to the period 1 January 2015 to 31 December 2015.³ The completed exporter

³ Natural Fruit stated that it did not participate in the most recent continuation inquiry because it was not aware that the inquiry had been initiated or that the company had been requested to participate.

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questionnaire was submitted with the review application and contains evidence in relation to domestic and export transactional data.

Based on the information in the application, the Commission is satisfied that there is sufficient data on which to analyse changes in the variable factors for the purposes of this report. However, as noted in section 3.5, should the Commissioner initiate a review and accept the Commission's recommendation about what the review period should be set as, the review period will be a more contemporaneous period, from 1 July 2015 to 30 June 2016. As a result, the Commission will require that Natural Fruit provide data for the most recent two quarters, covering the period 1 January 2016 to 30 June 2016.

Ascertained export price

Natural Fruit claims that the ascertained export price has changed since the most recently completed review at the time of lodgement (REP Nos 171c and 172c) and provided supporting documentation in the form of line by line export sales data for the period 1 January 2015 to 31 December 2015. Based on the evidence provided, the Commission is satisfied that there appear to be reasonable grounds for asserting that the export price has changed in comparison to the export price last ascertained for Natural Fruit at the time that Natural Fruit lodged its application

Ascertained normal value

Natural Fruit claims that the ascertained normal value has changed since the most recently completed review at the time of lodgement (REP Nos 171c and 172c) and provided supporting documentation in the form of line by line domestic sales data. Based on the evidence provided, the Commission is satisfied that there appear to be reasonable grounds that the normal value has changed in comparison to the normal value last ascertained for Natural Fruit at the time that Natural Fruit lodged its application

Commission's assessment

The Commission considers that Natural Fruit has provided sufficient information to establish its statement of opinion concerning the amount by which the variable factors have changed as required by subsection 269ZB(2)(c).

Therefore, the Commission is satisfied that, in respect of the variable factors, the application complies with section 269ZB.

3.3.2 Non-injurious price

Natural Fruit has not claimed a change in the variable factor of non-injurious price (NIP).

In the most recent continuation inquiry, the Commissioner considered the most appropriate basis for estimating the NIP was to first calculate an unsuppressed selling price (USP) based on the Australian Industry's cost to make and sell and a profit. Amounts were deducted from the USP in relation to costs incurred in getting

the goods from the export FOB point to the relevant level of trade in Australia. These deductions included overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

As the NIP is a variable factor relevant to a review of measures,⁴ the Commission considers that it is appropriate to review the NIP in respect of any review that follows this application.

3.4 Assessment of application – compliance with section 269ZC

In determining whether to reject an application under section 269ZC, a further matter that is required to be considered by the Commissioner is whether there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

The Commission considers that on the basis of information available to him the Commissioner has sufficient grounds to determine whether or not he would be induced to recommend to the Parliamentary Secretary a change in the relevant variable factors.

Accordingly, there appear to be reasonable grounds for asserting under subsection 269ZC(2)(b)(i) that the variable factors relevant to the taking of anti-dumping measures have changed.

Based on this assessment, the Commission considers that the Commissioner not reject the application pursuant to subsection 269ZC(1) as it is satisfied of the matters referred to in subsection 269ZC(2).

3.5 Conclusions and recommendations

The Commission has considered the application made by the applicant in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application and other relevant information, that:

- the application complies with section 269ZB; and
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission recommends that the Commissioner:

- not reject the application and initiate the review into the current anti-dumping measures applying to Natural Fruit; and
- set the review period as 1 July 2015 to 30 June 2016.

⁴ Subsection 269T(4E).