



**CUSTOMS ACT 1901 - PART XVB**

**CONSIDERATION REPORT NO. 295**

**APPLICATION FOR AN ACCELERATED REVIEW  
OF THE DUMPING DUTY NOTICE APPLYING TO**

**FOOD SERVICE AND INDUSTRIAL  
PREPARED OR PRESERVED PINEAPPLE  
EXPORTED FROM THE KINGDOM OF THAILAND BY**

**PRIME PRODUCTS INDUSTRY CO., LTD.**

**JUNE 2015**

**PUBLIC RECORD**

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**ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full title</b>
ACBPS	Australian Customs and Border Protection Service
the Act	<i>Customs Act 1901</i>
the applicant	Prime Products Industry Co., Ltd.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
FSI	Food service and industrial
the goods	the goods to which the anti-dumping measures apply
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
Prime Products	Prime Products Industry Co., Ltd.
Review period	1 April 2014 to 31 March 2015
TPC	Thai Pineapple Canning Industry Corp., Ltd.

## 1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application by Prime Products Industry Co., Ltd. (referred to as the applicant or Prime Products in this report) for an accelerated review of the dumping duty notice applying to food service and industrial (FSI) prepared or preserved pineapple<sup>1</sup> exported to Australia from the Kingdom of Thailand (Thailand) in so far as the notice affects the applicant.

### 1.1 Recommendations

The Commission recommends that the Commissioner of the Anti-Dumping Commission (the Commissioner) not reject the application.

### 1.2 Legislative background

Division 6 of Part XVB of the *Customs Act 1901* (the Act)<sup>2</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for an accelerated review of a dumping duty or countervailing duty notice by certain exporters of goods covered by the notice.

Subsection 269ZE(2) provides that the Commissioner may reject the application for an accelerated review of a dumping duty or countervailing duty notice if satisfied that either of the conditions set out in this subsection have been met.

### 1.3 Findings and conclusions

Prime Product's application for an accelerated review of the dumping duty notice applying to FSI pineapple exported to Australia from Thailand has been examined and the Commission finds that:

- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the conditions for rejection under subsection 269ZE(2) have not been met; and
- the application satisfies the requirements of section 269ZF.

Accordingly, the Commission concludes that the applicant is eligible to apply for and has lodged a valid application for an accelerated review under the Act, and recommends that the Commissioner not reject the application.

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<sup>1</sup> Refer to the full description of the goods in Section 2.1 of this report.

<sup>2</sup> A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

## 2 BACKGROUND

### 2.1 Goods under review

The goods subject to anti-dumping measures, in the form of a dumping duty notice, are:

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

The goods are currently classified to tariff subheading 2008.20.00 (statistical codes 27 and 28) of Schedule 3 to the *Customs Tariff Act 1995*.

### 2.2 Existing measures

On 8 January 2001 Golden Circle lodged an application requesting that the then Minister for Justice and Customs publish a dumping duty notice in respect of certain pineapple products from Thailand. The investigation period for the purpose of the original investigation was 1 January 2000 to 31 December 2000. The statement of essential facts was published on 20 August 2001.

The then Minister accepted the recommendations in *Trade Measures Report No. 41* and published dumping duty notices for consumer pineapple exported to Australia from Thailand and FSI pineapple exported from Thailand with the exception of pineapple exported by Malee Sampran Public Co.

On 22 February 2006, following consideration of applications from Golden Circle, a continuation inquiry and a review were initiated into the measures applying to consumer and FSI pineapple.

On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained within *Trade Measures Report No. 110* and *Trade Measures Report No. 111* to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

Following a decision of the Federal Court in April 2008, measures applying to exports of consumer pineapple from Thailand by Thai Pineapple Canning Industry Corp., Ltd. (TPC) lapsed.

On 4 February 2011, following consideration of an application by Golden Circle, a continuation inquiry and a review were initiated into the measures applying to consumer and FSI pineapple.

On 11 October 2011, the then Minister for Home Affairs accepted the recommendations contained within *Trade Measures Report No. 172c* and *Trade Measures Report No. 172d* to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

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On 15 April 2011, the then Minister initiated an investigation following consideration of an application by Golden Circle requesting that the Minister publish a dumping duty notice in respect of consumer pineapple exported from Thailand by TPC.

On 11 October 2011, the then Minister accepted the recommendations contained in *Trade Measures Report No. 173b* to publish a dumping duty notice for consumer pineapple exported from Thailand by TPC.

On 10 December 2012, the Australian Customs and Border Protection Service (ACBPS) received an application from Tipco Foods Public Company Limited seeking a review of the variable factors of the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand. On 29 January 2013, the ACBPS extended the review to all exporters of FSI pineapple in response to a requested from the then Minister for Home Affairs.

After accepting recommendations from ACBPS, the then Minister declared that, with effect from 26 July 2013, the dumping duty notice is to be taken to have effect as if different variable factors had been fixed in respect of exporters of FSI pineapple from Thailand.

The interim dumping duty applicable to all exporters (except Malee Sampran Public Co., Ltd.) of FSI pineapple is in the form of fixed and variable duty.

### **2.3 Background to the application for an accelerated review**

On 4 December 2014, Prime Products lodged an application for an accelerated review of the dumping duty notice applying to FSI pineapple exported from Thailand to Australia in so far as the notice affects Prime Products.

Following consideration of this application, the Commissioner decided not to reject the application and public notification of the accelerated review was made on 12 January 2015<sup>3</sup>.

After making further inquiries, the Commissioner was not satisfied that there was sufficient and relevant information to calculate exporter-specific variable factors for FSI pineapple exported to Australia from Thailand by Prime Products<sup>4</sup>, and on 19 March 2015, the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary) declared that the original dumping duty notice was to remain unchanged. Notice of the Parliamentary Secretary's decision was published in the *Commonwealth of Australia Gazette* on 31 March 2015.

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<sup>3</sup> Refer Anti-Dumping Notice No. 2015/04.

<sup>4</sup> Final Report No. 279 refers.

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## **2.4 Consideration of the application for an accelerated review (Division 6 of Part XVB of the Act)**

On 3 May 2015, Prime Products Industry Co. Ltd. lodged an application for an accelerated review of the dumping duty notice applying to FSI pineapple exported to Australia from Thailand in so far as the notice affects the applicant (refer **Attachment 1**).

If the Commissioner does not reject the application, the date of lodgement (3 May 2015) is the date on which the 100 day accelerated review timeframe commences.<sup>5</sup>

The assessment of this application is discussed in sections 3 and 4 of this report.

### **2.4.1 Review process**

Pursuant to subsections 269ZG(1) and (2), the Commissioner must, no later than 100 days after an accelerated review application is lodged, provide the Parliamentary Secretary with a report recommending:

- a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or
- b) that the dumping duty notice or countervailing duty notice the subject of the application be altered:
  - (i) so as not to apply to the applicant; or
  - (ii) so as to apply to the applicant as if different variable factors had been fixed;

and set out the Commissioner's reasons for so recommending.

In relation to this application, this report must be made no later than 11 August 2015.

### **2.4.2 Public record**

There is no legislative requirement for the Commissioner to maintain a public file for this accelerated review. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be maintained.

This consideration report, along with a non-confidential version of the application and response to the exporter questionnaire, will be published on the Electronic Public Record at <http://www.adcommission.gov.au>.

Interested parties can make submissions to the Commissioner in relation to this accelerated review application. However, given the expedited nature of accelerated reviews and the short timeframe for the Commissioner to produce a final report, any submissions by interested parties should be lodged by 2 July 2015.

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<sup>5</sup> Subsection 269ZG(2).

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The Commissioner may not be able to have regard to submissions received after this date if to do so would, in the Commissioner's opinion, delay the timely preparation of the final report to the Parliamentary Secretary.

### **2.4.3 Key dates**

3 May 2015	Application lodged
2 July 2015	Submissions by interested parties due
11 August 2015	Final report to Parliamentary Secretary due

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### 3 APPLICATION FOR AN ACCELERATED REVIEW – COMPLIANCE WITH SECTION 269ZF

#### 3.1 Legislative background

Section 269ZF requires that an application for an accelerated review must:

- be in writing (subsection 269ZF(1));
- contain a description of the goods to which the dumping duty or countervailing duty notice relates (subsection 269ZF(1)(a));
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned (subsection 269ZF(1)(b)); and
- be lodged in accordance with subsection 269ZF(2).

#### 3.2 Assessment of the application – compliance with section 269ZF

The application received from the applicant was in writing (subsection 269ZF(1)), lodged in accordance with subsection 269ZF(2) and contains a description of the goods to which the dumping duty notice relates (subsection 269ZF(1)(a)).

In accordance with the requirements of subsection 269ZF(1)(b), an application for an accelerated review must also contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned.

Prime Products stated in its application that the current dumping duty notice is inappropriate in so far as it is concerned because the notice is outdated and that its export prices differ significantly to the currently applicable ascertained export price or ascertained normal value. To demonstrate this, Prime Products submitted a proforma invoice / sales contract related to exports of FSI pineapple to Australia in early 2015 (refer **Confidential Attachment 2**).

The Commission therefore recommends that the Commissioner be satisfied that the application complies with subsection 269ZF(1) and was lodged in accordance with subsection 269ZF(2).

**4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE**

**4.1 Background**

Section 269ZE sets out the circumstances in which an accelerated review may be sought.

The conclusions in this section are made on the basis of currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) are met, the Commissioner may terminate the review.

**4.2 Status as a new exporter**

Subsection 269ZE(1) provides that a new exporter can apply for an accelerated review if a dumping duty or countervailing duty notice has been published in respect of goods exported from a particular country of export or in respect of goods exported by new exporters from a particular country of export, provided a declaration has not already been made in respect of that exporter under subsection 269ZG(3)(b)(ii).

Subsection 269T(1) defines a ‘new exporter’, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice, as an exporter who did not export such goods to Australia at any time during the period:

- (a) starting at the start of the investigation period in relation to the application; and
- (b) ending immediately the day before the Commissioner places on the public record the statement of essential facts in relation to the investigation of the application.

Subsection 269T(1) also defines ‘application’ in relation to a dumping duty notice or a countervailing duty notice as meaning an application for the publication of such a notice in relation to the original investigation.

**4.2.1 Evidence of exports during the new exporter period**

To meet the definition of a new exporter, the period during which the applicant must not have exported FSI pineapple to Australia (the new exporter period) is from 1 January 2000, the start of the original investigation period, to 19 August 2001, the day before the statement of essential facts for the original investigation was placed on the public record.

A search of an archived extract from the ACBPS import database by the Commission did not reveal any exports of FSI pineapple (classified to tariff subheading 2008.20.00 of Schedule 3 to the *Customs Tariff Act 1995*) by the applicant during the period 1 January 2000 to 19 August 2001.

#### **4.2.2 Declaration under subsection 269ZG(3)(b)(ii)**

Pursuant to subsection 269ZE(1) of the Act, a new exporter cannot apply for an accelerated review if they had previously applied for an accelerated review that resulted in a declaration being made in respect of that exporter under subsection 269ZG(3)(b)(ii).

As noted in section 2.3 of this report, the applicant has previously applied for an accelerated review, however, the Parliamentary Secretary has not made a declaration in respect of the exporter under subsection 269ZG(3)(b)(ii).

#### **4.3 Cooperation in regards to the application for a dumping duty notice and countervailing duty notice**

Subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because an exporter refused to cooperate in relation to the application for a dumping duty notice or a countervailing duty notice, and the exportations of that exporter were not investigated, the Commissioner may reject the application.

Noting the above finding that there is no evidence of exports by the applicant during the new exporter period, the Commission notes that the applicant's cooperation would not have been sought during the original investigation as it would not have been identified as an exporter.

The Commission therefore recommends that the Commissioner consider that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

##### **4.3.1 Relationship with exporters**

Subsection 269ZE(2)(b) provides that, if the Commissioner is satisfied that an exporter is related to an exporter whose exports were examined in relation to an application for the publication of a dumping duty or a countervailing duty notice, the Commissioner may reject the application.

To determine if the applicant is related to an exporter whose exports were examined in relation to the original investigation in accordance with subsection 269ZE(2)(b), the Commission reviewed the list of exporters from the original investigation. The ACBPS import database was also examined for any relevant company information.

The Commission did not find any information to indicate that the applicant is related to any of the exporters considered in the original investigation.

Given the information available, the Commission recommends that the Commissioner consider there are no grounds for rejection in terms of subsection 269ZE(2)(b).

#### **4.4 Findings under section 269ZE**

In accordance with section 269ZE, on review of the application and all information currently available, the following findings have been made about whether circumstances exist in which the applicant may seek an accelerated review:

- the applicant did not export FSI pineapple during the new exporter period. Therefore, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for a dumping duty notice, and therefore the application should not be rejected under subsection 269ZE(2)(a); and
- the applicant does not appear to be related to any exporters whose exports were examined in the original investigation, and therefore the application should not be rejected under subsection 269ZE(2)(b).

## **5 CONCLUSION AND RECOMMENDATIONS**

The Commission has considered the application made by the applicant in accordance with sections 269ZE, 269ZF and the definition of a new exporter provided in subsection 269T(1) of the Act.

The Commission concludes, on the basis of currently available information, that:

- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied;
- the conditions for rejection under subsection 269ZE(2) have not been met; and
- the application satisfies the requirements of section 269ZF.

Accordingly, the Commission recommends that the Commissioner not reject the application for an accelerated review of the dumping duty notice applying to FSI pineapple exported to Australia from Thailand, in so far as the notice affects the applicant.

Should the Commissioner decide not to reject this application for an accelerated review, the Commission recommends that the review period for the accelerated review be from 1 April 2014 to 31 March 2015.

**6 SECURITIES AND INTERIM DUTY**

When an application for an accelerated review of a dumping duty or countervailing duty notice is lodged, subsection 269ZH(a) provides that no interim duty can be collected from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review.

Pursuant to subsection 269ZH(b), the ACBPS may, however, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim duty that may be payable.

Should the Commissioner not reject the application, and an accelerated review is conducted, the ACBPS may require and take securities under section 42 in respect of interim duty that may be payable.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 3**.

**7 ATTACHMENTS**

<b>Attachment 1</b>	Prime Products Industry Co., Ltd. – application (FSI pineapple)
<b>Confidential Attachment 2</b>	Copy of Prime Products’ pro forma invoice / sales contract
<b>Confidential Attachment 3</b>	Table outlining variable factors for calculation of securities