



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 478**

**Consideration of an application for
a review of variable factors; and
a revocation review
in relation to the anti-dumping measures applying to**

**Consumer pineapple
exported to Australia from
the Kingdom of Thailand by**

Prime Products Industry Co., Ltd

May 2018

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PUBLIC RECORD

ABBREVIATIONS

| Abbreviation | Full title |
|-----------------------------------|---|
| ADN | Anti-Dumping Notice |
| the Act | the <i>Customs Act 1901</i> |
| Assistant Minister | Assistant Minister for Science, Jobs and Innovation |
| the Commission | the Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| consumer pineapple | Pineapple fruit - consumer |
| FOB | Free on board |
| FSI | Food service and industrial pineapple |
| GCL | Golden Circle Limited |
| the goods | Pineapple fruit - consumer |
| IDD | interim dumping duty |
| MSP | Malee Sampran Public Co |
| NIP | non-injurious price |
| PPI | Prime Products Industry Co., Ltd |
| REP 333 | Anti-Dumping Commission Report No. 333 |
| review period (existing measures) | 1 January 2015 to 31 December 2015 |
| review period (this review) | 1 April 2017 to 31 March 2018 |
| Thailand | the Kingdom of Thailand |
| TPC | Thai Pineapple Canning Industry Corp Ltd |

1 SUMMARY AND RECOMMENDATIONS

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Prime Products Industry Co., Ltd (PPI or 'the applicant'). PPI's application requests a review of the anti-dumping measures (in the form of a dumping duty notice) applying to consumer pineapple (the goods) exported to Australia from the Kingdom of Thailand (Thailand) in relation to PPI, on the basis that:

- one or more of the variable factors (being the export price and the normal value) relevant to the anti-dumping measures have changed¹; and
- the anti-dumping measures are no longer warranted².

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)³ sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in assessing applications for a review of anti-dumping measures.

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

1.3 Findings and conclusions

The Commission is satisfied that, in relation to PPI's application for a review of variable factors:

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

However, in relation to PPI's application for a revocation review, the Commission is not satisfied that:

- the application complies with subsections 269ZB(1) and (2); and
- reasonable grounds have been provided for asserting that the anti-dumping measures are no longer warranted.

¹ Subsection 269ZA(1)(b)(i).

² Subsection 269ZA(1)(b)(ii).

³ All references are to the *Customs Act 1901*, unless otherwise stated.

1.4 Recommendations

1.4.1 Review of variable factors

The Commission recommends that the Commissioner:

- not reject the application by PPI seeking a review of the variable factors, for the reasons outlined at chapter 3 of this report; and
- recommend to the Assistant Minister for Science, Jobs and Innovation (Assistant Minister)⁴ that the review of the variable factors be extended to all exporters of the goods from Thailand generally, for the reasons outlined at section 3.3.4.

1.4.2 Revocation review

The Commission recommends that the Commissioner reject the application requesting, in relation to PPI, a revocation review, for the reasons outlined at section 3.4 of this report.

⁴ On 20 December 2017, the Prime Minister appointed the Parliamentary Secretary to the Minister for Jobs and Innovation as the Assistant Minister for Science, Jobs and Innovation. For the purposes of this review, the decision maker is the Assistant Minister.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

Since 2009, the Commission has conducted numerous investigations, reviews and inquiries relating to consumer pineapple exported to Australia from Thailand. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. The matters relevant to the applications are summarised below.

On 8 January 2001, Golden Circle Limited (GCL) lodged an application requesting that the then Minister for Justice and Customs publish dumping duty notices in respect of certain pineapple products exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* and published dumping duty notices for consumer and food service and industrial (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 GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 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.

On 4 April 2008, the Federal Court set aside the then Minister for Justice and Customs' decision to continue measures in relation to exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC).

On 15 April 2011, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 171d*, to continue the anti-dumping measures for a further five years from 18 October 2011.

On 9 March 2016, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science, accepted the recommendations contained in Report No. 333 (REP 333), to continue the anti-dumping measures for a further five years from 17 October 2016 with the exception of consumer pineapple exported by TPC.

2.2 Accelerated review relating to the applicant

On 3 May 2015, PPI lodged an application for an accelerated review of the measures applicable to consumer pineapple exported from Thailand. The outcome of the accelerated review was published in Anti-Dumping Notice (ADN) No. 2015/111 and the Commonwealth Gazette on 8 September 2015. As a result of this accelerated review the Commissioner was not satisfied that there was sufficient and relevant information to calculate exporter specific variable factors and accordingly recommended that the original dumping duty notice remain unaltered. The reasons for the findings of the accelerated review are contained in *Final Report No. 296*.

The effect of this finding was that PPI remained subject to the “all other exporters” rate.

2.3 Current anti-dumping measures

The current anti-dumping measures applying to consumer pineapple from Thailand were ascertained in October 2016 following Continuation Inquiry No. 333.

Whilst the Commissioner was satisfied that PPI cooperated with that inquiry, PPI did not export consumer pineapple to Australia during the inquiry period. As a result, sufficient data was not available to enable the Commission to ascertain exporter specific variable factors for PPI.

Subsequently PPI remained subject to the ‘all other exporters’ rate of dumping duties.

2.4 Review of measures relating to the applicant

On 24 November 2017, the Commissioner initiated a review of the measures applying to consumer pineapple exported by PPI following an application by PPI. On 3 January 2018, PPI notified the Commission that it wished to withdraw its application. As there is no express power in the Act to withdraw an application the Commission nonetheless completed the review.

PPI did not provide any information that the Commissioner requested as part of the review. Accordingly, the Commissioner determined PPI to be an ‘uncooperative exporter’ under subsection 269T(1) and determined PPI’s export price and normal value under subsection 269TAB(3) and subsection 269TAC(6) respectively, having regard to all relevant information.

As a result, the Commission recommended in *Anti-Dumping Commission Report No. 453* that the export price and the normal value for PPI remain the same amount as previously ascertained in Continuation Inquiry No. 333, meaning that the dumping duty notice remained unaltered.

2.5 The current application

On 7 May 2018, the Commission received an application from PPI for a review of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand insofar as they relate to PPI.

The application claims there has been a change in one or more of the variable factors relevant to the applicant's circumstances and that the anti-dumping measures are no longer warranted.

The application is not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made 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 examine the application and, within 20 days, decide whether to reject the application.

As such, the decision to reject the application must be made no later than 28 May 2018.⁵

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

2.6 The goods subject to the anti-dumping measures

The goods the subject of the current anti-dumping measures (the goods) are:

Pineapple prepared or preserved in containers not exceeding one litre.

Glace and/or dehydrated pineapple are excluded from the measures.

2.7 Tariff classification

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

| Tariff | Statistical code | Description |
|---------------|-------------------------|--|
| 2008.20.00 | 26 | Pineapples – Canned, in containers not exceeding one litre |
| 2008.20.00 | 28 | Pineapples – Other |

⁵ The legislated due date is 27 May 2018, however as this falls on a Sunday, the effective date is the following business day, being 28 May 2018.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, 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, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping 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 anti-dumping measures 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 must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appears 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:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*), noting that:
 - in relation to the request for a review of the variable factors, the application contains evidence in support of the amount by which the variable factors have changed since last ascertained, information on the causes of the

- change to the variable factors and an opinion of whether these causes are likely to persist;⁶ and
- in relation to the request for a revocation review, the application does not include any evidence, in accordance with the form, of the circumstances that support that there are reasonable grounds for asserting that the measures are no longer warranted;⁷
 - is signed in the manner required by the form;
 - 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 anti-dumping measures the subject of the application relates; and
 - provides a description of the anti-dumping measures the subject of the application.

3.3 Grounds for change in variable factors

The applicant's variable factors are those currently applicable to 'all other exporters' from Thailand. As such, the applicant is subject to a combined fixed interim dumping duty (IDD)⁸ and a variable component of IDD where the actual export price is below the ascertained export price.

3.3.1 Ascertained export price

In its application, PPI notes that it did not export to Australia during the period of the continuation inquiry (REP 333) and as such its export prices were determined in accordance with subsection 269TAB(3), having regard to all relevant information. Specifically the export price was ascertained based on the weighted average free on board (FOB) export price for Thailand from the Australian Border Force (ABF) import database.

Since the completion of REP 333, PPI has commenced exporting consumer pineapple to Australia.

As part of its application, PPI provided a sample of commercial sales invoices relating to its recent export sales to Australia during the period 1 April 2017 to 31 March 2018. PPI relied upon these commercial documents to calculate a weighted average export price over the period 1 April 2017 to 31 March 2018 in accordance with subsection 269TAB(1)(a). PPI calculated that the weighted average export price over this period is lower (by a specified amount) than the ascertained export price.

⁶ Section 3.3.3 of this report refers.

⁷ Section 3.3.4 of this report refers.

⁸ The fixed IDD is a confidential amount per kilogram.

3.3.2 Ascertained normal value

In its application, PPI notes that it did not sell consumer pineapple on its domestic market during the period assessed for REP 333. PPI notes that the current ascertained normal value relevant to PPI's exports was determined in REP 333 under subsection 269TAC(6), using all relevant information. Specifically the ascertained normal value was ascertained based on the weighted average normal value determined for Dole Philippines, excluding any part of that price that relates to post-exportation charges.

Since the completion of REP 333, PPI has sold consumer pineapple on its domestic market.

As part of its application, PPI provided commercial sales invoices relating to its domestic sales. PPI relied upon these commercial documents to calculate a weighted average normal value over the period 1 April 2017 to 31 March 2018 in accordance with subsection 269TAC(1). PPI calculated that the weighted average normal value over this period is lower (by a specified amount) than the ascertained normal value.

PPI highlights that the cost of manufacturing of the goods has declined significantly since REP 333 due to favourable climate and growing conditions resulting in increased production and pushing down farm-gate prices. PPI alleges that this sharp decrease in local fresh pineapple farm-gate prices is the primary cause of the change in contemporary normal values.

To support its claim, PPI provided data of Thai fresh pineapple farm-gate prices for the period 1 April 2017 to 31 March 2018. PPI also supplied Bank of Thailand Farm price statistics for the periods of 1 April 2017 to 31 March 2018, and of the review period of REP 333 (being 1 January 2015 to 31 December 2015).

PPI also note that the favourable climate and growing conditions are forecast to continue, meaning that fresh pineapple farm-gate prices are expected to be maintained.⁹

3.3.3 Assessment of the application – review of variable factors

The Commission has assessed the information provided by PPI in conjunction with an extract from the Australian Border Force's import data base and other relevant information, which supports PPI's assertions. The Commission considers that there appears to be reasonable grounds for PPI to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being that the ascertained export price and ascertained normal value have changed.¹⁰

Therefore, the Commission is satisfied that, in respect of the variable factors,

⁹ Source: <https://www.linbro.com/single-post/2017/07/17/State-of-Thailands-pineapple-industry>

¹⁰ As defined in subsection 269T(4E), in relation to a review of a dumping duty notice, the variable factors are export price, normal value and non-injurious prices (NIP). Although PPI has not claimed a change in the NIP in the application, the Commission considers it necessary to review all relevant variable factors, including the NIP.

PPI's application complies with section 269ZB.

Based on the Commission's analysis in section 3.3.2, there appears to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(i), that the variable factors relevant to the taking of anti-dumping measures have changed.

Therefore, the Commission recommends that the Commissioner not reject the application for a review of variable factors pursuant to subsection 269ZC(1) as it is satisfied of the matters referred to in subsection 269ZC(2).

3.3.4 Extending the review of variable factors to all exporters

Subsection 269ZC(4) provides that if the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner may, if he or she considers that the review applied for should be extended to include any additional matter, recommend to the Assistant Minister that the review be extended accordingly.

As the change in circumstances upon which the application in relation to a change in the variable factors for review are based are common to all Thai exporters of the goods, the Commission considers that it would be appropriate to extend any review to ensure that any changes to the anti-dumping measures are applied across all exporters.

3.4 Grounds for revocation

The application form requires a detailed statement setting out an applicant's reasons for a revocation review. It requires evidence in support of the view that there are reasonable grounds for asserting that the measures are no longer warranted and refers to instructions and guidelines which are published on the Commission's website.

PPI has not provided a detailed statement setting out the reasons for a revocation review. Further, the evidence submitted with the application is specific to addressing changes in variable factors, without specifically addressing the likelihood of recurrence of dumping or material injury if the measures were to be revoked.

Therefore, the Commission is not satisfied that, in respect of a revocation review, PPI's application complies with section 269ZB.

The Commission recommends that the Commissioner reject the application for a revocation review pursuant to subsection 269ZC(1) as it is not satisfied of the matters referred to in subsection 269ZC(2).

3.5 Conclusions and recommendations

3.5.1 Review of variable factors

The Commission has considered PPI's application 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, in relation to PPI:

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

Therefore the Commission recommends that the Commissioner:

- initiate a review examining, in relation to PPI, whether there has been a change in the variable factors, by reference to a review period of 1 April 2017 to 30 March 2018; and
- recommend to the Assistant Minister that the review be extended to all exporters of consumer pineapple from Thailand generally.

3.5.2 Revocation review

The Commission has considered PPI's application in accordance with sections 269ZB and 269ZC. The Commission is not satisfied, on the basis of the information provided in the application and other relevant information, that, in relation to PPI:

- the application complies with section 269ZB;
- there appears to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

Therefore the Commission recommends that the Commissioner reject the application for a review examining, in relation to PPI, whether the anti-dumping measures are no longer warranted.

4 ATTACHMENTS

| | |
|----------------------------------|--|
| Confidential Attachment 1 | Commercial Documents – PPI’s Export Sales |
| Confidential Attachment 2 | PPI’s Export Price Analysis |
| Confidential Attachment 3 | Commercial Documents – PPI’s Domestic Sales |
| Confidential Attachment 4 | PPI’s Analysis of Normal Values and Fresh Pineapple Prices in Thailand |