



**Australian Government**  
**Anti-Dumping Commission**

**PUBLIC RECORD**

**CUSTOMS ACT 1901 - PART XVB**

# **CONSIDERATION REPORT NO. 279**

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

**FOOD SERVICE AND INDUSTRIAL PINEAPPLE EXPORTED  
FROM THE KINGDOM OF THAILAND BY  
PRIME PRODUCTS INDUSTRY CO., LTD**

**December 2014**

**Consideration Report 279 – FSI Pineapple - Thailand**

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**ABBREVIATIONS**

\$	Australian dollars
ACBPS	Australian Customs and Border Protection Service
The Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
The applicant	Prime Products Industry Co., Ltd
CFR	Cost and freight
COGS	Cost of goods sold
Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTM	Cost to make
CTMS	Cost to make & sell
CTS	Cost to sell
EBIT	Earnings before interest and tax
EDITA	Earnings before interest, tax, depreciation and amortisation
FOB	Free On Board
GAAP	Generally accepted accounting principles
NIP	Non-injurious Price
PAD	Preliminary Affirmative Determination
SEF	Statement of Essential Facts
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry
USP	Unsuppressed Selling Price

## **1 SUMMARY AND RECOMMENDATION**

This report provides the results of the Commissioner of the Anti-Dumping Commission's (the Commissioner's) consideration of an application by Prime Products Industry Co. Ltd (Prime Products) for an accelerated review of the dumping duty notice in respect of FSI Pineapples from the Kingdom of Thailand (Thailand).

The Commissioner has examined the application and is satisfied that:

- the application was lodged in accordance with the requirements of section 269ZF of the *Customs Act 1901* (the Act)<sup>1</sup> (as set out in Chapter 3);
- the application contains a description of the kind of goods to which the dumping duty notice relates (as set out in Chapter 2 of this report);
- the application contains a statement on the basis on which the exporter considers that the particular notice is inappropriate so far as the exporter is concerned (as set out in Chapter 3 of this report);
- the applicant is a new exporter and was not an exporter that refused to co-operate in relation to the application for publication of the notice (as set out in Chapter 4 of this report); and
- the applicant is not related to an exporter whose exports were examined in relation to the application for publication of the notice (as set out in Chapter 4 of this report).

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<sup>1</sup> A reference to a division, section, subsection or paragraph in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

## 2 BACKGROUND

### 2.1 Existing measures

On 8 January 2001 Golden Circle lodged an application requesting that the then Minister 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 (SEF) was published on 20 August 2001.

The Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 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 Minister 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 the Thai Pineapple Canning Co., 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 Minister 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.

On 15 April 2011 the 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 products exported from Thailand by TPC.

On 11 October 2011 the 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 (TIPCO) seeking a review of the variable factors of the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand by TIPCO. On 29 January 2013, ACBPS extended the review to all exporters after receiving a request from the Minister to do so.

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After accepting recommendations from ACBPS, the 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 TPC and Malee Sampran) is in the form of fixed and variable duty.

### **2.2 The goods the subject of the application**

#### **2.2.1 Description**

The goods the subject of the application (the goods) are:

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

#### **2.2.2 Tariff classification**

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

- 2008.20.00 statistical codes 27 and 28.

### **2.3 Consideration of the application for accelerated review**

On 4 December 2014, Prime Products lodged an application for an accelerated review of anti-dumping measures applying to FSI Pineapple exported to Australia from Thailand by Prime Products.

Pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary to the Minister for Industry (the Parliamentary Secretary)<sup>2</sup> 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 recommendation must be made no later than 16 March 2014.

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<sup>2</sup> Responsibility for anti-dumping matters was transferred to the Minister for Industry on 25 September 2013. The Minister for Industry subsequently delegated responsibility for anti-dumping matters to the Parliamentary Secretary to the Minister for Industry.

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There is no legislative requirement for the Commissioner to maintain a public file for accelerated reviews. 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 Public Record, which can be accessed at the Commission's premises. It will also be published on the Electronic Public Record, available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Given the expedited nature of accelerated reviews and the shortened timeframe for the Commissioner to produce a final report, any submissions by interested parties should be lodged by **6 February 2015**.

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.

### 3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF

#### 3.1 Legislative Background

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

- be in writing (subsection 269ZF(1));
- be lodged in accordance with subsection 269ZF(2);
- contain a description of the goods to which the dumping duty notice and the countervailing duty notice relates; and
- 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.

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

Section 269ZF sets out the manner in which an application for an accelerated review can be made. The application received from Prime Products, was in writing, lodged in accordance with subsection 269ZF(2), and contains a description of the goods to which the dumping duty notice relate. The application also contains a statement from Prime Products that outlines the reasons why the company believes the current anti-dumping notice is inappropriate to the company.

Prime Products stated in its application that it is uncertain as to the basis upon which the ascertained normal value was determined for non-cooperating exporters in the latest review of measures (i.e domestic sales or constructed domestic prices).

Further, Prime Products has provided evidence in the form of a TROPFIN report<sup>3</sup> that shows an increase in farm gate prices for fresh pineapple in Thailand since the review of measures was conducted. Prime Products considers that the updated TROPFIN Report demonstrates that the current ascertained normal value is inappropriate given the Commission's previous reliance on this report to show the impact of fresh pineapple prices on production costs and normal values in Thailand.

The Commissioner is satisfied that the application complies with subsections 269ZF(1) and 269ZF(2) of the Act.

#### 3.3 Lodgement date

On 4 December 2014, Prime Products formally lodged an application for an accelerated review. A copy of their application is at **Attachment A**. The application is available on the Public Record. On receipt of the application, the Commission recorded the date on which the application was received as 4 December 2014 in accordance with subsection

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<sup>3</sup> Tropfin acts as a buying agent for food companies specialising in processed tropical fruits from South East Asia. It also provides free market information including daily updates on cost and supply of raw materials.



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269ZF(3). If the Commissioner does not reject the application, the initiation date of this accelerated review is said to be the date of lodgement of the application.

## **4 CIRCUMSTANCES IN WHICH 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 Chapter are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE are not met, the Commissioner may terminate the application for an accelerated review.

### **4.2 Status as a new exporter**

#### **4.2.1 Background**

Section 269ZDC provides that a “new exporter” may apply for an accelerated review.

A new exporter is defined (section 269T) as an exporter who did not export the goods the subject of an application for a dumping duty notice or a countervailing duty notice 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 before the day the Commissioner places on the Public Record the statement of essential facts in relation to the investigation of the application.

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

Subsection 269T 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.

#### **4.2.2 New exporter period**

The Commissioner considers that, due to the definitions in section 269T, the period within which the applicant must not have exported 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 SEF for Investigation 41 was placed on the Public Record.

#### **4.2.3 Evidence of exports during the new exporter period**

A search of the Australian Customs and Border Protection Service's (ACBPS's) import database for any exports by the exporter Prime Products did not reveal any exports of the goods, by Prime Products during the period 1 January 2000 to 19 August 2001.

Based on the available information, the Commissioner considers that Prime Products should be considered as a new exporter for the purposes of the accelerated review.

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

Paragraph 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because the exporter (i.e. the applicant for an accelerated review) refused to cooperate in relation to the application for a dumping duty notice or a countervailing duty notice, the exportations from that exporter have not been investigated (in the original investigations), the Commissioner may reject the application.

Noting the above finding that there is no evidence of exports by Prime Products during the investigation period, the Commissioner notes that Prime Products' cooperation would not have been sought during the original investigations in any case (as the company would not have been identified as an exporter).

The Commissioner considers that there are no grounds for rejection in terms of paragraph 269ZE(2)(a).

### **4.4 Relationships with selected exporters**

Paragraph 269ZE(2)(b) provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter who was a selected exporter in relation to the application for a notice, the Commissioner may reject the application.

Based on a search of publically available information, it appears that Prime Products is not related to any exporter involved in the original investigation. The ACBPS import database was also examined for any company information.

Given the information available, the Commissioner considers there are no grounds for rejection in terms of paragraph 269ZE(2)(b).

### **4.5 Summary of findings**

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

- the applicant did not export FSI Pineapple during the period for which new exporters cannot have exported. Consequently, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review as stated at subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for a dumping duty notice or a countervailing duty notice, and the application should not be rejected under paragraph 269ZE(2)(a); and
- the applicant does not appear to be related to any selected exporters in the original investigations and the application should not be rejected under paragraph 269ZE(2)(b).

## **5 CONCLUSION**

The Commissioner has considered the application made by Prime Products to determine if it was valid as required by sections 269ZE, 269ZF and the definitions provided in section 269T of the Act.

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

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

The review period for the accelerated review is 1 October 2013 to 30 September 2014.

## 6 SECURITIES AND INTERIM DUMPING DUTIES

When an application for an accelerated review of a dumping duty notice is lodged, section 269ZH states that no interim dumping duty (IDD) 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. However, the ACBPS may require and take securities under section 42 of the Act in respect of IDD that may be payable on the importation of goods to which the application relates.

Should the Commissioner not reject the application, and conduct an accelerated review, ACBPS may require and take securities under section 42 in respect of interim dumping duty that may be payable during the course of the accelerated review. A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 2**.

**7 APPENDICES AND ATTACHMENTS**

Non-confidential attachment 1	Application
Confidential attachment 2	Table outlining variable factors for calculation of securities