PUBLIC RECORD

Australian Government
Department of Industry, Innovation and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 453

REVIEW OF ANTI-DUMPING MEASURES APPLYING TO

CONSUMER PINEAPPLE

EXPORTED TO AUSTRALIA FROM THAILAND BY

PRIME PRODUCTS INDUSTRIES COMPANY LIMITED

March 2018

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ABBREVIATIONS

the Act	*Customs Act 1901*
ADN	Anti-Dumping Notice
the 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
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
GCL	Golden Circle Limited
FSI pineapple	Pineapple fruit – food service and industrial
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
KFC	Kuiburi Fruit Canning Company Limited
KFCup	Kuiburi Fruit Cup Company Limited
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Philippines	the Republic of the Philippines
PPI	Prime Products Industries Company Limited
REQ	exporter questionnaire response
review period	1 October 2016 to 30 September 2017
SEF	statement of essential facts
Thailand	the Kingdom of Thailand
TPC	Thai Pineapple Canning Industry Corp Ltd

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister)[1] in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain pineapple fruit - consumer (also referred to in this report as consumer pineapple or the goods) exported to Australia from the Kingdom of Thailand (Thailand)[2] by Prime Products Industries Company Limited (PPI) .

This review was initiated on 24 November 2017 after an application was lodged by PPI.

PPI considered 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 had changed. The variable factors that have allegedly changed are the export price and normal value.

PPI is currently subject to the 'All other exporters' rate of dumping duties. The 'All other exporters' rate applies to all Thai exporters of consumer pineapple except Thai Pineapple Canning Industry Corp Ltd (TPC). TPC's exports of consumer pineapple to Australia are not subject to anti-dumping measures.

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 when undertaking 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 it is proposed to review the anti-dumping measures covered by the application.[4]

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Assistant Minister allows, place on the public record a statement of essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Assistant Minister in relation to the review of anti-dumping measures.[5]

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[1] For the purposes of this decision the Minister is the Assistant Minister to the Minister for Science, Jobs and Innovation.

[2] It is noted that the anti-dumping measures apply to all exporters from Thailand, with the exception of Thai Pineapple Canning Industry Corp Ltd.

[3] All references to legislation in this report are to the *Customs Act 1901*, unless otherwise specified.

[4] Subsection 269ZC(4).

[5] Subsection 269ZD(1).

1.3 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice applying to the goods exported to Australia from Thailand by PPI remain unaltered.

The Commissioner's final report and recommendations must be provided to the Assistant Minister by **30 April 2018** or within such longer period as may be allowed.[6]

[6] Subsection 269ZDA(1). It is noted that, on 14 January 2017, the then Assistant Minister delegated the powers and functions of the Minister under section 269ZHI to the Commissioner. Refer to Anti-Dumping Notice (ADN) No. 2017/10 for further information.

2 BACKGROUND

2.1 Initiation

Following consideration of PPI's application, the Commissioner decided not to reject the application and on 24 November 2017, initiated a review of the anti-dumping measures applying to the goods exported to Australia from Thailand by PPI.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2017/171, which was published on the Commission's website on 24 November 2017.

Consideration Report Nos. 453 and 455 was also published on the Commission's website detailing the Commissioner's reasons for not rejecting the application.[7]

2.2 The current anti-dumping measures

The anti-dumping measures applying to consumer pineapple were last altered in October 2016 following Continuation Inquiry No. 333.

As PPI did not export consumer pineapple to Australia during the inquiry period PPI did not participate in Continuation Inquiry No. 333 and is therefore subject to the 'All other exporters' rate of dumping duties.

2.3 History of the anti-dumping measures

Since 2001, the Commission has conducted numerous investigations, reviews and inquiries relating to consumer pineapple. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. The matters most relevant to this review are outlined 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 pineapple and FSI pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co.

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.

[7] This consideration report addressed two applications, one lodged by PPI and the second lodged jointly by Kuiburi FruitCanning Co., Ltd. (KFC) and Kuiburi Fruit Cup Co., Ltd. (KFCup) (as joint applicants),

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 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 Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science[8] (the then Parliamentary Secretary), accepted the recommendations contained in Report No. 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.

2.3.1 Accelerated review 296 Consumer pineapple

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 ADN No. 2015/111 and the Commonwealth Gazette on 8 September 2015. As the Commissioner was not satisfied that there was sufficient and relevant information to calculate exporter specific variable factors he 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.

2.4 Submissions received in relation to the initiation of the review

No submissions were received in response to this review being initiated.

2.5 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Assistant Minister.

The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice and countervailing duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

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[8] 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.

Interested parties are invited to make submissions to the Commissioner in response to the SEF within 20 days of the SEF being placed on the public record. The due date to lodge written submissions in response to this SEF therefore is **3 April 2018**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Assistant MInister.[9]

The Commissioner must report to the Assistant Minister by **30 April 2018**.

Submissions should preferably be emailed to investigations3@adcommission.gov.au. Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director Investigations 3
Anti-Dumping Commission
GPO 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the Commission's website at www.adcommission.gov.au.

The public record contains non-confidential submissions by interested parties and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2478 to make an appointment), or online at www.adcommission.gov.au

Documents on the public record should be read in conjunction with this SEF.

[9] Subsection 269ZDA(4).

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods the subject to the 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

3.2 Tariff classification

The goods are generally, but not exclusively, 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

3.3 Like goods

Subsection 269T(1) defines like goods as:

> "*…goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration"*.

The definition of like goods is relevant in determining the normal value of goods exported to Australia. The Commission's framework for assessing like goods is outlined in Chapter 2 of the Commission's *Dumping and Subsidies Manual*.[10]

[10] Available on the Commission's website at www.adcommission.gov.au

4 VARIABLE FACTORS – DUMPING DUTY NOTICE

4.1 Finding

The Commissioner finds that the variable factors relevant to the determination of dumping duty payable under the Customs Tariff (Anti-Dumping) Act 1975 (Dumping Duty Act) have not changed.

The Commissioner therefore proposes to recommend to the Assistant Minister that the dumping duty notice remain unaltered.

4.2 Cooperation with this review

Upon initiation the Commission published an exporter questionnaire on its website for PPI to complete by 2 January 2018. On 3 January 2018 PPI advised the Commission of its intentions to withdraw its application for this review.

The Commission will nonetheless proceed with this review as the relevant legislation[11] does not provide for applicants to withdraw from a review of measures.

As PPI did not participate in the review the Commissioner has determined PPI to be an uncooperative exporter in accordance with subsection 269T(1) of the Act and subsection 8(b)(i) of the *Customs (Extensions of Time and Non-Cooperation) Direction 2015.*

4.3 Approach to calculating variable factors

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

As PPI did not complete the exporter questionnaire there was insufficient information available for the Commission to ascertain exporter specific variable factors.

4.4 Export price

The Commission considered all relevant information available to determine the export price under subsection 269TAB(3).

The Commission acknowledges that data from the Department of Home Affairs' import database is available to establish PPI's export price. However, given PPI's non-cooperation with the review, the Commission was unable to verify the accuracy and reliability of this data.

In this instance, the Commission is not satisfied that sufficient information is available to calculate an exporter specific export price under subsection 269TAB(3). Therefore the Commission recommends that the export price be the same amount as previously

[11] *Customs Act 1901, Part XVB, Division 5* refers.

ascertained in Continuation 333 insofar it relates to exports of consumer pineapple from Thailand by PPI.

4.5 Normal value

The Commission considered all relevant information available to determine the normal value under subsection 269TAC(6).

The Commission found that insufficient contemporaneous information was available to calculate an exporter specific normal value under subsection 269TAC(6). Therefore the Commission recommends that the normal value be the same amount as previously ascertained in Continuation 333 insofar it relates to exports of consumer pineapple from Thailand by PPI.

5 FINDINGS AND PROPOSED RECOMMENDATIONS

5.1 Findings

The Commissioner finds that:

- PPI did not cooperate with this review;
- insufficient data was available to enable the variable factors to be recalculated for the purposes of determining the dumping duty payable under the Dumping Duty Act; and
- the variable factors ascertained previously as part of Continuation 333 are still relevant for the purposes of the dumping notice for the goods exported to Australia from Thailand by PPI, meaning that the variable factors have not changed.

5.2 Proposed recommendation

The Commissioner proposes to recommend to the Assistant Minister that the dumping duty notice applicable to exports of consumer pineapple from Thailand remain unchanged.