



Australian Government
Department of Industry and Science

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 296

**ACCELERATED REVIEW
OF A DUMPING DUTY NOTICE APPLYING TO**

**CONSUMER PINEAPPLE EXPORTED FROM
THE KINGDOM OF THAILAND BY**

PRIME PRODUCTS INDUSTRY CO., LTD

AUGUST 2015

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ABBREVIATIONS

| | |
|-----------------------------|---|
| the Act | <i>Customs Act 1901</i> |
| ADN | Anti-Dumping Notice |
| the applicant | Prime Products Industry Co., Ltd (also referred to in this report as Prime Products) |
| Commission | Anti-Dumping Commission |
| the Commissioner | the Commissioner of the Anti-Dumping Commission |
| CON 296 | Consideration Report No. 296 |
| Dumping Duty Act | <i>Customs Tariff (Anti-Dumping) Act 1975</i> |
| FSI | Food service and industrial |
| the goods | Consumer pineapple |
| Golden Circle | Golden Circle Limited |
| the Parliamentary Secretary | the Parliamentary Secretary to the Minister for Industry and Science |
| Review period | 1 April 2014 to 31 March 2015 |
| SEF | Statement of essential facts |
| Thailand | The Kingdom of Thailand |
| TPC | Thai Pineapple Canning Co., Ltd |

1 SUMMARY AND RECOMMENDATION

This *Accelerated Review No. 296* is in response to an application from Prime Products Industry Co., Ltd (Prime Products) seeking an accelerated review of the dumping duty notice applying to consumer pineapple exported to Australia from the Kingdom of Thailand (Thailand).¹

1.1 Recommendation

The Commissioner of the Anti-Dumping Commission (the Commissioner) recommends, in accordance with paragraph 269ZG(1)(a) of the *Customs Act 1901* (the Act), that the dumping duty notice remain unaltered so far as it affects Prime Products.²

If the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary) accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare (by signing the notice at **Non-Confidential Attachment 1**) that, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act), the original dumping duty notice is to remain unchanged. Such declaration must be published in the *Commonwealth Gazette*.³

1.2 Legislative framework

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of anti-dumping measures. This Division, among other matters:

- sets out the procedures to be followed and the matters to be considered by the Commissioner in conducting accelerated reviews in respect of the exporter and the goods covered by the application for the purpose of making a report to the Parliamentary Secretary; and
- empowers the Parliamentary Secretary, after consideration of such reports, to leave the dumping duty notice or countervailing duty notice unaltered or to modify them as appropriate.

1.3 Findings and conclusions

After considering the application and making further inquiries, the Commissioner is not satisfied that there is sufficient and relevant information to calculate exporter specific variable factors (and therefore an individual dumping duty rate) for consumer pineapple exported to Australia by Prime Products.

Accordingly, the Commissioner recommends that the original dumping duty notice remain unaltered.

¹ This application was lodged in accordance with section 269ZF.

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

³ The Minister for Industry 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 for this review.

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The effect of this accelerated review is that exports of goods to Australia by Prime Products will be subject to the “all other exporters” rate of 9.57%, which is the fixed component of duty. An additional amount of variable duty may be incurred if the export price per unit is below the (confidential) ascertained export price per unit.

2 BACKGROUND

2.1 The goods

2.1.1 Description

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

Pineapple fruit prepared or preserved in containers not exceeding one litre (consumer pineapple).

2.1.2 Tariff classification

The goods are classified to tariff subheading 2008.20.00 (statistical codes 26 and 28) in Schedule 3 to the *Customs Tariff Act 1995*.

There is currently no general duty imposed on the goods exported from Thailand in accordance with the Thailand-Australia Free Trade Agreement.

2.2 Accelerated review process

If a dumping duty notice or a countervailing duty notice has been published in respect of certain goods, a new exporter, as defined in subsection 269T(1) of the Act, may request an accelerated review of that notice as it affects that particular exporter.⁴

If an application for an accelerated review of a dumping duty notice or countervailing duty notice is received and not rejected, the Commissioner has up to 100 days to conduct the review and report to the Parliamentary Secretary.⁵

In making recommendations in a final report to the Parliamentary Secretary, the Commissioner must consider the application for an accelerated review and make such inquiries as considered appropriate.

The Commissioner must then recommend to the Parliamentary Secretary that the dumping duty notice or countervailing duty notice:

- remain unaltered; or
- be altered:
 - so as not to apply to the particular exporter; or
 - so as to apply to the particular exporter as if different variable factors had been fixed.⁶

Following the Parliamentary Secretary's decision, a notice is published in the *Commonwealth Gazette* advising interested parties of the decision.⁷

⁴ Subsection 269ZE(1)

⁵ Subsection 269ZG(2)

⁶ Subsection 269ZG(1)

⁷ Subsection 269ZG(3)

2.3 Existing measures

Anti-dumping measures, in the form of a dumping duty notice, were first imposed on exports of consumer pineapple from Thailand on 18 October 2001 for an initial period of five years. The measures were continued for a further five years in 2006 and again in 2011.

The level of the measures was last reviewed in 2013 (Review 195) and as a result of that review the amount of interim dumping duty payable was revised on 26 July 2013. The interim dumping duty applicable to exports of consumer pineapple from Thailand is in the form of a fixed and variable duty.

2.4 Notification and participation

On 3 May 2015, Prime Products lodged an application for an accelerated review of the dumping duty notice applicable to consumer pineapple exported to Australia from Thailand.

The Commissioner considered the application⁸ to determine if it was valid⁹ and was satisfied that:

- Prime Products was a new exporter as defined by subsection 269T(1) of the Act;
- the application satisfied the requirements of section 269ZF of the Act;
- the conditions for rejection under subsection 269ZE(2) of the Act were not met; and therefore,
- the circumstances in which an accelerated review can be sought were satisfied.

Consideration Report No. 296 (CON 296) provides further details in relation to the Commissioner's consideration of the application. CON 296 should be read in conjunction with this report and is available on the Commission's website at www.adcommission.gov.au.

The commencement of the accelerated review was publicly notified on 10 June 2015 in Anti-Dumping Notice (ADN) No. 2015/73. The ADN is also available on the Commission's website. The ADN highlighted that interested parties had until 2 July 2015 to lodge submissions in relation to the accelerated review. It also advised that the Commissioner's recommendation to the Parliamentary Secretary will be made in a report on or before 11 August 2015.

For the purposes of the accelerated review, the period examined was 1 April 2014 to 31 March 2015 (herein referred to as the accelerated review period).

⁸ In accordance with section 269ZG of the Act.

⁹ As required by sections 269ZE and 269ZF and the definitions provided in subsection 269T(1) of the Act.

2.5 Exporter questionnaire response

2.5.1 Prime Products' exporter questionnaire response

Upon the commencement of the accelerated review, the Commission sent an exporter questionnaire to Prime Products to complete.

On 19 June 2015, the Commission received a completed response to the exporter questionnaire. A non-confidential version of this response is available on the public record.¹⁰

Prime Products' response contained information and data in relation to:

- company structure and organisation;
- products manufactured;
- turnover, audited financial statements and income tax records;
- third country sales quantity and value by country;
- production and selling costs for consumer pineapple for three consumer pineapple products exported to third countries; and
- production process and production volumes.

The Commission reviewed the response to the exporter questionnaire and considered that it was complete.

2.6 Public record

There is no legislative requirement for the Commissioner to maintain a public record for accelerated reviews. However, in the interests of ensuring this process was conducted in an open and transparent manner, a public record for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

¹⁰ Document No. 4 on the Commission's electronic public record (EPR 296) refers.

3 EXPORT PRICE

3.1 Findings

The Commissioner has found that Prime Products did not export consumer pineapple to Australia during the accelerated review period. Accordingly, the Commission is unable to establish an export price under subsection 269TAB(1) of the Act for the purposes of this accelerated review.

Specifically, there is insufficient information to determine the export price of the goods using:

- the price paid or payable by the importer;¹¹
- the price in Australia less prescribed deductions (deductive export price);¹² or
- the price having regard to all the circumstances of the exportation.¹³

The Commission considered whether an export price could be determined, for the purposes of this accelerated review, having regard to all relevant information.¹⁴ In particular, for the purpose of determining duty payable the Commission considered whether sufficient and relevant information existed to establish a floor price by determining the export price as equal to an amount determined to be the normal value.

Under the floor price duty method, dumping duty is payable if the export price of future exports of the goods is below the floor price. However, for the reasons outlined below in Chapter 4, after having regard to all relevant information, the Commissioner was not satisfied that this approach was appropriate given the circumstances of this accelerated review.

Notwithstanding that a new exporter, for the purposes of an accelerated review, does not need to have exported the goods to Australia, for this specific case the Commission is satisfied that an export price of the goods was not able to be calculated.

¹¹ Paragraph 269TAB(1)(a)

¹² Paragraph 269TAB(1)(b)

¹³ Paragraph 269TAB(1)(c)

¹⁴ Subsection 269TAB(3)

4 NORMAL VALUE AND DUMPING MARGIN

4.1 Findings

The Commissioner has concluded that it is not appropriate, having regard to the circumstances of this accelerated review, to determine a normal value for consumer pineapple exported by Prime Products.

In the absence of an appropriate normal value, the Commission was unable to establish a floor price for the purpose of this accelerated review.

4.2 The Commission's assessment of normal value

Previous Accelerated Review 279

The circumstances of this review are very similar to those found by the Commission when considering the previous accelerated review application made by Prime Products, which was in relation to food service and industrial (FSI) pineapple. The Commission's findings in that case are set out in *Anti-Dumping Commission Report No. 279*.¹⁵ In relation to normal value, the Commission was not satisfied that was sufficient and relevant information to calculate a normal value under any of the relevant legislative provisions as follows:

- Domestic sales – whilst Prime Products made some sales of FSI pineapple 'tidbits' domestically in Thailand during the accelerated review period, there were insufficient domestic sales in the ordinary course of trade in order to establish normal value under subsection 269TAC(1) of the Act;
- Constructed normal value – it was not reasonable for the Commission to construct a normal value pursuant to paragraph 269TAC(2)(c) of the Act, because there was no information relating to the cost of producing the goods exported to Australia;
- Third country sales – it was not possible to calculate a normal value based on comparable third country sales under paragraph 269TAC(2)(d) of the Act, for reasons consistent with Chapter 10.3 of the Dumping and Subsidy Manual;¹⁶ and
- All relevant information – due to the circumstances of sales made on the domestic market in Thailand by Prime Products, it was not appropriate to calculate a normal value under subsection 269TAC(6) of the Act, having regard to all relevant information. Specifically, the Commission noted that Prime Products' sales of tidbits on the domestic market were for a relatively small proportion of total company sales. The Commission also highlighted that, according to its product brochure and website¹⁷, Prime Products manufactures a much broader range of pineapple cuts (including slices, chunks, pieces, diced and crushed pineapple) in different container sizes and packing media, and that there are, in some instances, substantial differences in the costs of production for various pineapple cuts, container sizes and packing media in relation to Thailand. For this reason the

¹⁵ <http://www.adcommission.gov.au/cases/Documents/008-FinalReport279.pdf>

¹⁶ http://www.adcommission.gov.au/reference-material/manual/documents/DumpingandSubsidyManual-December2013_001.pdf

¹⁷ <http://www.primeproducts.co.th/>

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Commission was unable to determine a weighted average production cost or alternatively determine whether the production costs of Prime Products' tidbits were representative of its entire product range.

The Commission's assessment

The Commission has considered the circumstances of this review in light of the findings in Accelerated Review 279 as follows:

- Domestic sales – there were no domestic sales of consumer pineapple during the review period, therefore it is not possible to establish normal value under subsection 269TAC(1) of the Act;
- Constructed normal value – it is not reasonable for the Commission to construct a normal value pursuant to paragraph 269TAC(2)(c) of the Act, because there is no information relating to the cost of producing the goods exported to Australia – as there were no exports during the review period; and
- Third country sales – it is not possible to calculate normal value based on comparable third country sales pursuant to paragraph 269TAC(2)(d) for reasons consistent with chapter 10.3 of the Dumping Subsidy Manual.

As there are no domestic sales or Australian sales for consumer pineapples within the accelerated review period, the Commission is not satisfied that there is sufficient information available from Prime Products to calculate a normal value for consumer pineapple for Prime Products. Nevertheless, the Commissioner has considered whether a normal value could be calculated for Prime Products having regard to all relevant information pursuant to subsection 269TAC(6). In the absence of up-to-date verified selling prices and production costs of other exporters during the accelerated review period, the Commissioner is not satisfied that there is sufficient and relevant information available to calculate a normal value for consumer pineapple for Prime Products.

In the absence of an appropriate normal value, the Commission was unable to establish a floor price for the purpose of this accelerated review.

4.3 Dumping margin

As the Commission has been unable to establish an export price or normal value for the goods, there is no requirement to calculate a dumping margin for the purpose of reviewing the variable factors for this accelerated review.

5 EFFECT OF THE ACCELERATED REVIEW

If the Parliamentary Secretary accepts the recommendations in this report, in respect of consumer pineapple exported by Prime Products to Australia from Thailand, Prime Products will remain subject to the dumping duties that were imposed in the original dumping duty notice at the rate applicable to 'all other exporters'.

The Commission notes that if the Parliamentary Secretary accepts the recommendations in this report, Prime Products will be eligible to seek another accelerated review in respect of consumer pineapple at a later date.

6 RECOMMENDATION

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed sign the attached notice (**Non-Confidential Attachment 1**) to **declare**:

- under paragraph 269ZG(3)(a) of the Act and the Dumping Duty Act, the original dumping duty notice is to remain unchanged.

The Commissioner recommends that the Parliamentary Secretary **be satisfied** that:

- in accordance with section 269TAB of the Act, sufficient information is not available to enable export prices for consumer pineapple to Australia from Thailand by Prime Products to be determined; and
- in accordance with section 269TAC of the Act, sufficient information is not available to enable the normal value of goods exported to Australia to be determined.

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APPENDICES AND ATTACHMENTS

Non-Confidential Attachment 1

Section 269ZG(3)(a) Public Notice