

PUBLIC VERSION



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Ms Kerry Taylor
Director, Operations 1
Anti-Dumping Commission
1010 La Trobe Street
DOCKLANDS VIC 3008

Dear Ms Taylor

Accelerated review – FSI Pineapple exported by Prime Products Industry Co. Ltd. from Thailand

This submission is made on behalf of Prime Products Industry Co. Ltd. (PPI) in response to the Anti-Dumping Commission (the Commission's) email of 19 February 2015. In summary, the Commission explains that it considers at this stage 'there to be insufficient information to calculate exporter specific variable factors (and therefore a dumping margin / individual rate) for FSI pineapple exported by Prime Products.'

Ascertaining the export price

The Commission points out that as PPI have no export sales during the review period, it is not possible to establish an export price under s.269TAB of the *Customs Act 1901* (the Act).

This view is inconsistent with the Commission's current and long-standing policy and practice of ascertaining export prices in the absence of export sales. The Commission's current Dumping and Subsidy Manual (December 2013)¹ outlines its policy in circumstances where an exporter has not made export sales to Australia during the nominated review period:

The Commission does not require an applicant for an accelerated review to have already exported some minimum quantity of the goods to Australia. Article 9.5 of the ADA contains two conditions: that the exporter did not export the goods during the investigation period; and that it is not related to an exporter already subject to the duty. In the circumstances where there have been no exportations,

¹ Dumping & Subsidy Manual – December 2013, page 158.

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any accelerated review will assess the normal value for the goods. If there have been exportations by the applicant exporter, or contracts entered into, those details will also be examined.

As noted in PPI's application for the review of measures, this policy is supported by the findings of the WTO Panel² and upheld by the Appellate Body which examined whether Article 9.5 of the Anti-Dumping Agreement subjected the right to an expedited new shipper review to a showing of a "representative" volume of export sales. The Panel found that:

Article 9.5 of the AD Agreement provides that the authorities shall promptly carry out a review, provided that the exporters or producers who have not exported the product subject to a duty during the period of investigation can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. In sum, in case a producer or exporter which (i) has not exported the product to the country concerned during the period of investigation and (ii) is not related to an exporter or producer already subject to the duty requests a new shipper review, the authority is required to promptly carry out such a review.

The ability to ascertain an export price in the absence of export sales is further supported by the Commission's past and current practice. In each case³ where the Commission found that no export sales existed or no representative export sales existed, export prices were ascertained equal to the normal value of like goods, in effect providing a floor price measure which ensured that future exportations were exported at or above the undumped normal value.

PPI therefore submits that the Act permits the Commission to continue to apply its current policy and practice of ascertaining an export price equal to PPI's normal value for like goods.

² Mexico – Definitive Anti-Dumping Measures on Beef and Rice: WT/DS295/R; para 7.266.

³ REP 139 – Review of certain hot dip galvanised welded circular hollow sections – September 2008, section 6.1, pages 13-14; REP 180: Accelerated Review LLDPE Thailand - November 2011, section 3.2, page 7; REP191: Accelerated Review Consumer Pineapple by Kuiburi Fruit Canning Co Ltd – September 2012, section 3.4, page 9; REP 196, Review of consumer pineapple exported from Thailand; section 4.4.2; page 14; REP 196, Review of consumer pineapple exported from Thailand; section 4.6.3; page 20; REP 196, Review of FSI pineapple exported from Thailand; section 4.7.3; page 26; section 3.4, page 15; REP 214 – Accelerated Review Aluminium Extrusions – Guangdong Jinxiacheng – September 2013; REP 250, Accelerated review of prepared or preserved tomatoes from Italy; section 3.1; page 8; REP 259 – Accelerated Review for Aluminium Extrusions – Zhaoqing – October 2014, section 3.3, page 12; REP 274 - Accelerated review for zinc coated (galvanised) steel – Zongcheng – January 2015.

Ascertaining the normal value

The Commission explains in its email that it considers that it is not possible or appropriate to calculate a floor price based on the normal value in accordance with the provisions of s.269TAC of the Act.

Normal value under s.269TAC(1)

The Commission points out that PPI made no domestic sales of FSI pineapple in the ordinary course of trade, as required by s. 269TAC(1) of the Act. This statement can be misread as indicating that PPI had no domestic sales during the review period. PPI wishes to highlight that during the review period, it had made sales of like goods on the domestic market in Thailand which are considered to be at arms-length. These domestic sales consisted of [redacted] [product description] to [redacted] [redacted] [customer details]. These contracted sales are considered to be [redacted] [redacted] [pricing information], and therefore not in the ordinary course of trade and not appropriate for establishing normal values under s.269TAC(1) of the Act.

Despite the [redacted] [pricing information], it is important for the Commission to understand the nature and characteristics of the domestic market in Thailand for processed pineapple. The Commission has previously found⁴ that:

*The Thai domestic market is characterised by the ready source of fresh pineapple.
The processed pineapple industry in Thailand is overwhelmingly export oriented.*

Given the limited demand for FSI processed pineapple in Thailand, it is unreasonable for the Commission to expect and require PPI to have sold each and every different type of pineapple cut during the review period. For example, it is unlikely that the food service industry in Thailand will be sourcing canned pineapple slices when it is cheaper and easier to source local fresh pineapples.

Normal value under s.269TAC(2)(c)

The Commission expresses the view that it is not possible to construct a normal value pursuant to s.269TAC(2)(c) of the Act as there is no cost to make and sell data relating to the goods exported to Australia.

Subsection 269TAC(2)(c) of the Act establishes the normal value of the goods to be the sum of:

- (i) *such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*

⁴ REP 41, Pineapple fruit exported from Indonesia and Thailand; 2001; page 45

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- (ii) *on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export – such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale.*

In determining the cost of production, subsection 269TAC(5A) requires that the amounts must be worked out by the Minister in such manner and taking into account such factors, as the regulations provide for the respective purposes of paragraphs 269TAD(4)(a) and (b) – ordinary course of trade.

Regulation 180(2) requires that if:

- (a) *an exporter or producer of like goods keeps records relating to the like goods; and*
- (b) *the records:*
- (i) *are in accordance with generally accepted accounting principles in the country of export; and*
- (ii) *reasonably reflect competitive market costs associated with the production or manufacture of like goods;*

the Minister must work out the amount by using the information set out in the records. [emphasis added].

In responding to the Commission's request for information, PPI provided an exporter questionnaire response which included the costs of production for like goods ([redacted]) [product description] over the review period, as accounted for in the company's records. As noted in the questionnaire response, those records are kept in accordance with the generally accepted principles of Thailand and reasonably reflect competitive market costs associated with the production of like goods. Therefore, PPI submits that the Minister must determine the cost of production for the purposes of constructing a normal value under s.269TAC(2)(c) using information submitted by PPI.

Whilst the submitted production costs relate to domestic sales of like goods, it is important for the Commission to understand that these also reflect the production costs for exported goods during the review period. This is because like most producers of FSI pineapples, PPI does not separately attribute a different cost to different types of pineapple cuts.

The unit cost of the fresh pineapple used in the production of slices, tidbits, chunks, diced and crushed are the same on any given day of production. PPI records the actual weighted average unit cost of fresh pineapple by dividing the total value of purchased fresh pineapple consumed in production by the total volume of fresh pineapple consumed in production.

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An earlier verification report to Golden Circle Limited confirms that this approach to a common cost for pineapple fruit is utilised by the Australian industry. In the report⁵:

Golden Circle stated that the raw material for all canned pineapple products came from the single parent fruit code and that there was no yield or material pricing differential in its BOM's for the product whether it was sliced, crushed or pieces.

A similar approach is utilised in the cost of cans given that all FSI pineapple products are sold in A10 sized cans. Likewise, manufacturing overheads are common across the different types of pineapple cuts with relevant product costs being allocated on the basis of total production volume of finished goods.

Therefore, irrespective of which type of pineapple cut had been sold on the domestic market in Thailand or exported to Australia, the cost of production for like goods and the goods would have been the same for the review period. PPI submits then that the costs of production provided to the Commission in its exporter questionnaire response does also reflect the costs of production of the exported goods, and is suitable for establishing a constructed normal value under s.269TAC(2)(c).

Support for this view can be found in the Commission's previous determinations of normal value for exporters of FSI and consumer pineapple. In the case of FSI pineapple exports by Siam Agro-Food Industry Public Company Limited (SAICO) and consumer pineapple by Tipco Foods Public Company Limited (Tipco) and Kuiburi Fruit Canning Co., Limited (KFC), the Commission found that the exporters had made no export sales to Australia or domestic sales in Thailand during the nominated review period. In these circumstances, the Commission concluded that constructed normal values should be determined pursuant to s. 269TAC(2)(c) and used verified production costs from SAICO, Tipco and KFC for the pineapple products that they intended to export to Australia.⁶

In each of those cases, the Commission was able to establish normal values for the exporters concerned in the absence of either export sales to Australia or domestic sales in Thailand. It is unreasonable and illogical for the Commission to now hold the view that normal values cannot be established for PPI on the basis that it has no sold domestically, the full range of like goods. Particularly so when as explained, the production costs do not vary across the different types of pineapple cuts.

In terms of administrative, selling and general expenses (SG&A), PPI has similarly provided in its exporter questionnaire response the relevant SG&A incurred on its domestic sales of like goods during the review period. Given that s.269TAC(2)(c)(ii) requires the Minister to determine an amount for SG&A on the assumption that the goods had been sold for home consumption, PPI submits that the Commission has suitable information reflecting actual SG&A costs.

⁵ EPR 172, Pineapple, consumer and FSI exported from the Philippines and Thailand; No. 013, page 20.

⁶ REP 196, Review of FSI pineapple exported from Thailand; section 4.7.3; page 26; REP 196, Review of consumer pineapple exported from Thailand; section 4.4.2; page 14; REP 196, Review of consumer pineapple exported from Thailand; section 4.6.3; page 20.

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In conclusion, PPI contends that the Commission has relevant and reliable information to be able to properly establish and determine a constructed normal value for FSI pineapple pursuant to s.269TAC(2)(c) of the Act.

[Redacted] [Exportation details]

PPI wishes to highlight that [Redacted] [sensitive market information].
[Redacted] [sensitive market information] is at **confidential attachment 1** [Redacted]
[Redacted] [pricing information].

Using costing information submitted in the PPI questionnaire response, [Redacted]

[Redacted] [pricing information].

It is noted that in the Commission's recently completed accelerated review of canned tomatoes from Italy by Calispa S.p.A.⁷, the Commission stated that:

It is not possible for the Commission, in the absence of exports or perhaps an irrevocable contract for supply, to reasonably anticipate the product mix that might be exported to Australia.

The Commission went on to add:

In considering the range of alternative approaches, the Commission considers that the outcome should ensure that the effectiveness of the remedy for injurious dumping is upheld, but any outcome should, where possible, also avoid unintended or unnecessary consequences.

PPI provides this additional information to the Commission for the purposes of demonstrating its [Redacted]

[Redacted] [sensitive market and pricing information].

Production of like goods by the Australian industry

PPI is unaware whether the Australian industry producing like goods has provided the Commission with relevant contemporary information to allow for the non-injurious price to be ascertained for the review period. There is no information on the public record which indicates that the Australian industry has provided relevant information or that the Commission has even requested updated cost and sales information.

⁷ REP 250, Accelerated review of prepared or preserved tomatoes from Italy; section 4.2.4; page 12.

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As referred to the Commission in an email on 17 February 2015, the Australian production of fresh pineapple has been severely affected by unfavourable climatic conditions as notified on Golden Circle's homepage (www.goldencircle.com). Whilst there is considerable market speculation about [REDACTED] [REDACTED] [market intelligence], PPI is unaware whether Golden Circle undertook production and sales of FSI pineapple during the review period.

PPI requests the Commission to properly examine the issue of local production of FSI pineapple in considering its recommendations as part of this review.

Conclusion

In conclusion, PPI contends that the Commission has sufficient relevant and reliable information to recommend that the Minister ascertain revised variable factors on the basis of a constructed normal value. Additional supporting information shows that PPI's future exportations are at margins significantly above any reasonable measure of an undumped normal value for the review period and should be taken into account by the Commission in deciding on a reasonable and appropriate approach.

Yours sincerely

John Bracic