



CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 295

**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

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.
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FSI	Food service and industrial
the goods	the goods to which the anti-dumping measures apply
NIP	Non-injurious price
Parliamentary Secretary	Parliamentary Secretary to the Minister for Industry and Science
Prime Products	Prime Products Industry Co., Ltd.
REP 196	Final Report No. 196, 24 June 2013
Review 196	Review of anti-dumping measures on FSI pineapple exported from Thailand, 2013
Review period	1 April 2014 to 31 March 2015
SEF	Statement of essential facts
Thailand	The Kingdom of Thailand

1 SUMMARY AND RECOMMENDATION

This *Accelerated Review No. 295* 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 food service and industrial (FSI) 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 subparagraph 269ZG(1)(b)(ii) of the *Customs Act 1901* (the Act), that the dumping duty notice be altered so as to apply to Prime Products as if different variable factors had been fixed.²

If the Parliamentary Secretary to the Minister for Industry and Science (Parliamentary Secretary)³ accepts this recommendation, to give effect to the decision, the Parliamentary Secretary must declare (by signing the notice at **Non-Confidential Attachment 1**) that the Act and the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have effect as if different variable factors had been specified relevant to the determination of duty payable for Prime Products.⁴ This declaration must be published in the *Commonwealth Gazette*.

In terms of the method for working out interim dumping duty payable in relation to any exports of FSI pineapple by Prime Products, the interim dumping duty amount will be worked out in accordance with the floor price duty method pursuant to subsection 5(4) of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

1.2 Legislative framework

Division 6 of Part XVB of the Act enables eligible parties to apply for an accelerated review of a dumping and/or countervailing duty notice. 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 and/or countervailing duty notice unaltered or to modify them as appropriate.

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 for anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision-maker for this accelerated review.

⁴ Subparagraph 269ZG(3)(b)(ii).

1.3 Findings and conclusions

Based on all relevant and available information, the Anti-Dumping Commission (the Commission) has, in relation to the variable factors for Prime Products' exports of FSI pineapple to Australia, found that:

- export price should be determined having regard to all the circumstances of the exportation pursuant to paragraph 269TAB(1)(c) of the Act based on the price paid to the exporter;
- normal value should be determined using a constructed normal value methodology pursuant to paragraph 269TAC(2)(c) based on the cost to make the goods exported to Australia, plus amounts for the selling, general and administrative costs and profit on the assumption that the goods had been sold on the domestic market in Thailand;
- the existing non-injurious price (NIP) represents the best information available to the Commission for the purposes of this accelerated review; and
- the NIP is higher than the normal value, therefore the lesser duty rule does not come into effect.

Based on these findings and conclusions, the Commissioner recommends that the dumping duty notice be altered so as to apply to Prime Products as if different variable factors had been fixed.⁵

The effect is that FSI pineapple exported to Australia from Thailand by Prime Products will be subject to a floor price. Interim dumping duty will be payable on FSI pineapple exported by Prime Products only when the actual export price is below the floor price (equal to the weighted average normal value).

⁵ Paragraph 269ZG(1)(b)(ii).

2 BACKGROUND

2.1 The goods

Description

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

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

Tariff classification

The goods are classified to tariff subheading 2008.20.00 (statistical codes 27 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.⁶

If an application for an accelerated review of a dumping duty notice or a 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.⁷

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.⁸

Following the Parliamentary Secretary's decision, a notice is published in the *Commonwealth Gazette* advising interested parties of the decision.⁹

⁶ Subsection 269ZE(1).

⁷ Subsection 269ZG(2)

⁸ Subsection 269ZG(1)

⁹ Subsection 269ZG(3)

2.3 Existing measures

Anti-dumping measures, in the form of a dumping duty notice, were first imposed on exports of FSI 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 196) 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 FSI pineapple from Thailand is in the form of a fixed and variable duty.

2.4 Previous accelerated review

On 4 December 2014, Prime Products lodged an application for an accelerated review in respect of the same goods (FSI pineapple exported from Thailand). The Commission conducted an accelerated review and found that there was insufficient information to determine an export price or normal value for Prime Products, on the basis that Prime Products had no export sales to Australia and no domestic sales in the ordinary course of trade during the review period.

On 31 March 2015, the Parliamentary Secretary declared that the original dumping duty notice was to remain unchanged. The effect of this decision was that any exports of FSI pineapple from Thailand by Prime Products remained subject to the rate of dumping duty applicable to 'all other exporters'.

The Commission's full findings and the Commissioner's recommendations to the Parliamentary Secretary are set out in *Anti-Dumping Commission Report No. 279*.¹⁰

2.5 The current review

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

The Commissioner considered the application¹¹ to determine if it was valid¹² and the Commissioner was satisfied that:

- Prime Products was a new exporter as defined by subsection 269T(1) of the Act;
- the application satisfied the requirements of subsection 269ZF(1);
- 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.

¹⁰ <http://www.adcommission.gov.au/cases/Documents/008-FinalReport279.pdf>

¹¹ In accordance with section 269ZG of the Act

¹² As required by sections 269ZE and 269ZF and the definitions provided in subsection 269T(1) of the Act.

Consideration Report No. 295 (CON 295) provides further details in relation to the Commission's consideration of the application and the decision of the Commissioner. CON 295 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. 2015/72. The ADN is also available on the Commission's website. The ADN advised 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).

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. The non-confidential version of this response was placed on the public record.¹³

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

- company structure and organisation;
- products manufactured;
- turnover, audited financial statements and income tax records;
- export sales to Australia with supporting documentation for all sales;
- domestic sales with supporting documentation for two sales;
- third country sales quantity and value by country;
- purchases of raw materials including details of suppliers;
- production costs and selling, general and administrative expenses; and
- production process and production volumes.

The Commission reviewed the response to the exporter questionnaire and considered that it was complete and relevant for the purpose of this accelerated review.

2.6 Public record

There is no legislative requirement for the Commission 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 file for this accelerated review has been maintained and is accessible on the Commission's website at www.adcommission.gov.au.

¹³ <http://www.adcommission.gov.au/cases/Pages/CurrentCases/EPR-295.aspx>

3 EXPORT PRICE

3.1 Findings

The Commission considers that the information provided by Prime Products in its response to the exporter questionnaire is suitable for determining the export price of FSI pineapple exported by Prime Products from Thailand to Australia.

The Commission considers that the export price should be determined under subsection 269TAB(1)(c) of the Act having regard to all the circumstances of the exportation, based on the price paid to the exporter.

3.2 Export sales

In its exporter questionnaire response, Prime Products provided details and supporting evidence¹⁴ for all of its exports to Australia during the accelerated review period. All sales were made to a single customer, being a party based in a third country, which in turn sold the goods to its customer in Australia. Prime Products' customer provided copies of its sales invoices to the Australian purchaser for all of the exports during the review period.

Based on consideration of the documents provided and data from the Australian Border Force (ABF) import database, the Commission considers the purchaser in Australia to be the importer of the goods. The Commission considers Prime Products' customer to be merely an intermediary in the export sales process, or trader.

3.3 Arms length transactions

To determine whether Prime Products' export sales to Australia were arms length transactions, the Commission has assessed the profitability of the trader's sales of the goods purchased from Prime Products. The Commission compared Prime Products' selling price to the trader's selling price to the Australian importer plus the trader's selling, general and administrative costs (SG&A). The Commission estimated the trader's SG&A using the same rate (as a percentage of revenue) applied in Review 196, when the trader's purchases of FSI pineapple were last examined.

The Commission has found that all of the trader's sales during the accelerated review period were profitable. The Commission notes that the trader's sales of FSI pineapple purchased from a different Thai exporter, which were examined as part of Review 196, were also found to be profitable and its purchases of those goods were found to be arms length transactions.

Considering the above findings, the Commission considers that Prime Products' export sales to Australia were arms length transactions.

¹⁴ Purchase orders, sales invoices, packing lists, bills of lading and proof of payment.

3.4 Determination of export price

The Commission considers that sufficient information is available to enable the export price to be ascertained under subsection 269TAB(1) of the Act. In order to determine export price under paragraph 269TAB(1)(a) or 269TAB(1)(b), the goods must have been purchased by the importer from the exporter.¹⁵ As stated above in section 3.2, Prime Products did not sell the goods to the Australian importer, as its exports to Australia involved an intermediary in the export sales process. Therefore, the goods exported to Australia have not been purchased by the importer from the exporter.

In such a case where paragraph 269TAB(1)(a) or 269TAB(1)(b) do not apply, export price is to be determined having regard to all circumstances of the exportation, in accordance with paragraph 269TAB(1)(c).

Based on the finding above in section 3.3 that Prime Products' export sales to Australia were arms length transactions, the Commission has determined export price as the price paid to Prime Products by the trader, other than any part of that price that represents a charge in respect of transport or any other matter arising after exportation.

Export price calculations are at **Confidential Attachment 1**.

¹⁵ Subparagraph 269TAB(1)(i) and subparagraph 269TAB(1)(b)(i)

4 NORMAL VALUE AND DUMPING MARGIN

4.1 Findings

The Commission considers that the information provided by Prime Products in its response to the exporter questionnaire is suitable for determining the normal value of FSI pineapple exported by Prime Products from Thailand to Australia.

The Commission considers that normal value should be established under subsection 269TAC(2)(c) using the constructed normal value method.

The Commission has found the dumping margin in respect of FSI pineapple exported from Thailand by Prime Products is -17.4% and therefore considers that Prime Products was not dumping during the accelerated review period.

4.2 Domestic sales

In its exporter questionnaire response, Prime Products provided details and supporting evidence for its domestic sales of FSI pineapple during the accelerated review period. Prime Products also provided its cost to make and sell (CTMS) of the like goods sold domestically.¹⁶

In order for domestic sales of like goods to be used as the basis for normal value in accordance with subsection 269TAC(1), those sales must be, *inter alia*, sold in the ordinary course of trade. The Commission tested the profitability of Prime Products' domestic sales¹⁷ and found that none of the domestic sales were made in the ordinary course of trade. The domestic sales are therefore not suitable for using as the basis of establishing normal value.

4.3 Cost to make and sell

In its exporter questionnaire response, Prime Products provided its CTMS the goods exported to Australia. In Review 279, Prime Products provided a CTMS for tidbits, being the goods it proposed to export to Australia, based on a weighted average cost for all preserved pineapple products. The Commission did not accept the CTMS presented in this way, for the reason 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".¹⁸

For this accelerated review, Prime Products recognised these differences and developed a costing model that allocates the cost of pineapple fruit based on the realisable value of individual preserved pineapple products. Prime Products believes that presenting its costs in this way overstates the CTMS of the goods exported to Australia, however it did so in light of the Commission's concerns expressed in Review 279.

¹⁶ Verification of Prime Products' cost to make and sell data is discussed in section 4.3

¹⁷ In accordance with section 269TAAD

¹⁸ REP 279, page 12

The Commission sought to verify the CTMS information and met with Prime Products on 31 July 2015 as part of the verification process, in order to discuss its costing model and supporting evidence provided for major raw materials, direct labour and allocation of other costs to the goods.¹⁹ The Commission verified these costs to source documents and is satisfied that the CTMS information provided by Prime Products is accurate and reliable.

4.4 Determination of normal value

As stated above in section 4.2, there are no suitable domestic sales available to enable normal value to be determined under subsection 269TAC(1). The Commission has therefore considered whether sufficient information is available to enable the normal value to be determined pursuant to paragraph 269TAC(2)(c) or paragraph 269TAC(2)(d). As stated above in section 4.3, the Commission is satisfied that the CTMS information provided by Prime Products is accurate and reliable. The Commission is therefore satisfied that the CTMS information is suitable for the purposes of determining normal value in accordance with paragraph 269TAC(2)(c).

Adjustments

In determining the CTMS of the goods for the purposes of constructing a normal value, the Commission has considered making any adjustments necessary to ensure the normal value is properly comparable with the export price of those goods.²⁰ Prime Products' sales on the domestic market represent a very small proportion of total company sales, and Prime Products has allocated all fixed costs to the goods exported to Australia. The Commission is satisfied that no further adjustments to the CTMS are necessary for ascertaining normal value.

Profit

Section 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation) sets out the manner in which the Minister must determine an amount for profit to be included in a constructed normal value. Pursuant to subsection 45(2), "the Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade". As Prime Products had no domestic sales of like goods in the ordinary course of trade, the Commission was not able to determine a profit pursuant to this subsection.

If profit cannot be established pursuant to subsection 45(2), subsection 45(3) sets out the options available to the Minister to work out the amount, as follows:

- (a) by identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or

¹⁹ Pineapple fruit and empty tins are the major raw materials for FSI pineapple

²⁰ As required by subsection 269TAC(9)

- (b) by identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
- (c) by using any other reasonable method and having regard to all relevant information.²¹

Prime Products did not have any domestic sales of other goods in the same general category of goods (preserved pineapple fruit), therefore paragraph 45(3)(a) cannot be applied.

As Prime Products was the only exporter subject to this accelerated review, the Commission does not have any information relating to the sales of other exporters in the Thai domestic market during the accelerated review period. Therefore, paragraph 45(3)(b) cannot be applied.

The Commission has considered the most recent review of FSI pineapple exported from Thailand (Review 196). In that review the then Australian Customs and Border Protection Service found that it was reasonable to apply an amount for profit to the normal value for all exporters from Thailand, including those that had no domestic sales in the ordinary course of trade. The Commission considers that this previous finding is the most relevant information available and has applied the same rate of profit in this accelerated review.²²

Normal value calculations are at **Confidential Attachment 2**.

4.5 Dumping margin

The Commission calculated a dumping margin for the goods exported to Australia from Thailand by Prime Products in accordance with paragraph 269TACB(2)(a) by comparing the weighted average of export prices over the accelerated review period with the weighted average of corresponding normal values over the whole of that period.

The dumping margin in respect of FSI pineapple exported from Thailand by Prime Products is -17.4%.

The dumping margin calculations are at **Confidential Attachment 3**.

²¹ Subject to subsection 45(4)

²² A profit margin of 11.8% was applied as per REP196, page 25

5 NON-INJURIOUS PRICE

The calculation of the non-injurious price (NIP) provides the mechanism whereby the lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping.²³

In Review 196 the then Australian Customs and Border Protection Service established the NIP for FSI pineapple by using industry's cost to make and sell during the review period plus an amount for profit. This is the most recent NIP calculated for FSI pineapple exported from Thailand and represents the best information available to the Commission for the purposes of this accelerated review.

The NIP is higher than the weighted average normal value and, as was the case in Review 196, the lesser duty rule does not come into effect.

NIP calculations are at **Confidential Attachment 4**.

²³ Section 269TACA.

6 EFFECT OF THE REVIEW

The existing dumping duties take the form of a fixed amount of duty per kilogram, plus a variable amount of duty if the actual export price is below the ascertained export price.

Based on the finding that Prime Products exported FSI pineapple during the accelerated review period at undumped prices, the Commissioner recommends that dumping duty be determined in accordance with the floor price duty method.

The effect is that FSI pineapple exported to Australia from Thailand by Prime Products will be subject to a floor price (equal to the weighted average normal value). Interim dumping duty will be payable on FSI pineapple exported by Prime Products when the actual export price is below the ascertained normal value.

If the Parliamentary Secretary accepts the recommendations in this report, these changes will take effect from 3 May 2015, being the date that Prime Products lodged its application for this accelerated review.

7 RECOMMENDATION

The Commissioner recommends that the dumping duty notice the subject of the application be altered so as to apply to the applicant (Prime Products) as if different variable factors had been fixed.

The Commissioner recommends that the Parliamentary Secretary considers this report, and if agreed, sign the attached notice (**Attachment 1**) to declare, under subparagraph 269ZG(3)(b)(ii) of the Act, that the Act and the Dumping Duty Act have effect as if the original dumping duty notice had applied to the applicant (Prime Products) but the then Minister had fixed specified different variable factors relevant to the determination of duty payable by Prime Products.

8 ATTACHMENTS

Attachments	
Attachment 1	Public notice under subparagraph 269ZG(3)(b)(ii)
Confidential Attachments	
Confidential Attachment 1	Export price calculations
Confidential Attachment 2	Normal value calculations
Confidential Attachment 3	Dumping margin calculations
Confidential Attachment 4	Non-injurious price calculations