



CUSTOMS ACT 1901 - PART XVB

FINAL REPORT

REPORT NO. 279

**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

MARCH 2015

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ABBREVIATIONS

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 (also referred to in this report as Prime Products)
Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON 279	Consideration Report No. 279
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the goods	Food service and industrial (FSI) pineapple
Golden Circle	Golden Circle Limited
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry and Science
Review period	1 October 2013 to 30 September 2014
SEF	Statement of essential facts
Thailand	The Kingdom of Thailand
TIPCO	Tipco Foods Public Company Limited
TPC	Thai Pineapple Canning Co., Ltd

1 SUMMARY AND RECOMMENDATION

1.1 Background

This *Accelerated Review No. 279* is in response to an application¹ 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).

1.2 Recommendation

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

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, 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 notice must be published in the *Commonwealth Gazette*.

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 FSI pineapple exported to Australia by Prime Products.

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

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 25.0 per cent, 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.

1.4 Application of law to facts

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

¹ This application was lodged in accordance with s. 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 investigation.

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- 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.

2 BACKGROUND

2.1 The goods

2.1.1 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)

2.1.2 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*.

The goods are subject to five per cent duty.

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 s. 269T(1) of the Act, who has not exported the goods to Australia during the period specified in the definition of new exporter, may request an accelerated review of that notice as it affects that particular exporter, if they consider the notice is not appropriate to that exporter.

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 inquire and report to the Parliamentary Secretary on the accelerated review (s. 269ZG(2)).

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.

Under s. 269ZG(1), 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.

Following the Parliamentary Secretary's decision, a notice is published advising interested parties of the decision.

2.3 Existing measures

On 8 January 2001, Golden Circle Limited (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

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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 pineapple 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* (REP 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* (REP 172c) and *Trade Measures Report No. 172d* (REP 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* (REP 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, the ACBPS extended the review to all exporters after receiving a request from the Minister to do so.

After accepting recommendations from the 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.

2.4 Notification and participation

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

The Commissioner considered the application⁴ to determine if it was valid as required by s. 269ZE, s. 269ZF and the definitions provided in s. 269T(1) of the Act. The Commissioner was satisfied that:

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

As the circumstances in which an accelerated review can be sought were satisfied, the Commissioner did not reject the application and commenced the accelerated review. *Consideration Report No. 279* (CON 279) provides further details in relation to the Commissioner's consideration of the application. CON 279 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 in Anti-Dumping Notice (ADN) No. 2015/04, which was published on 12 January 2015. This ADN is available on the Commission's website at www.adcommission.gov.au.

This ADN highlighted that interested parties had until 6 February 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 16 March 2015.

For the purposes of the accelerated review, the period examined is 1 October 2013 to 30 September 2014 (herein referred to as the accelerated review period).

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 26 January 2015, the Commission received a completed response to the exporter questionnaire. A non-confidential version of this response is available on the public record.⁵

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

- company structure and organisation chart;

⁴ In accordance with s. 269ZG of the Act.

⁵ Document No. 5 on the electronic public record refers.

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- product brochure;
- turnover, unaudited financial statements and income tax records;
- domestic sales with supporting documentation for two sales of FSI pineapple ‘tidbits’;
- domestic production and selling costs for FSI pineapple ‘tidbits’; 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 is 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.

3 EXPORT PRICE

3.1 Findings

The Commissioner has found that Prime Products did not export FSI pineapple to Australia during the accelerated review period. Accordingly, the Commission is unable to establish an export price under s. 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;⁶
- the price in Australia less prescribed deductions (deductive export price);⁷ or
- the price having regard to all the circumstances of the exportation.⁸

The Commission considered whether an export price could be determined, for the purposes of this accelerated review, having regard to all relevant information.⁹ 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, doesn't 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.

6 s. 269TAB(1)(a)

7 s. 269TAB(1)(b)

8 s. 269TAB(1)(c)

9 s. 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 FSI 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

In a telephone call on 18 February 2015 and a follow up email dated 19 February 2015, the Commission communicated its preliminary concerns to Prime Products regarding the sufficiency and relevance of information available to calculate an export price and normal value for the purposes of this accelerated review.¹⁰ In particular, the Commission considered that:

- 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 s. 269TAC(1) of the Act;
- it was not reasonable for the Commission to construct a normal value pursuant to s. 269TAC(2)(c) of the Act, because there was no information relating to the cost of producing the goods exported to Australia;
- it was not possible to calculate a normal value based on comparable third country sales under s. 269TAC(2)(d) of the Act, for reasons consistent with Chapter 10.3 of the Dumping and Subsidies Manual;¹¹ and
- 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 s. 269TAC(6) of the Act, having regard to all relevant information. Specifically, the Commission notes 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 website¹², 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. For this reason the 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.

Submission by Prime Products

On 2 March 2015, Prime Products responded to the Commission through a submission, which (among other things) stated that:

¹⁰ A copy of the email is available at document 4 on the public record

¹¹ http://www.adcommission.gov.au/reference-material/manual/documents/DumpingandSubsidyManual-December2013_001.pdf

¹² <http://www.primeproducts.co.th/>

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- Prime Products made sales of 'like goods' on the domestic market in Thailand. Despite the sales being considered unprofitable and not recoverable, due to the limited demand for FSI pineapple in Thailand, it would be unreasonable for the Commission to expect and require Prime Products to sell each and every type of pineapple cut on the domestic market during the accelerated review period; and
- whilst Prime Products did not export goods to Australia, the cost of production for like goods, being tidbits, for future sale on the export market to Australia would effectively be the same as the production costs for all other like goods. Prime Products concluded 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 in the exporter questionnaire.

As a confidential attachment to its submission, Prime Products provided a sales contract for the exportation of FSI pineapple to Australia dated subsequent to the accelerated review period, to demonstrate its intention to export pineapple 'tidbits' to Australia at an export price above its domestic cost of production.

The Commission's assessment

In considering Prime Products' submission, the Commission analysed the cost of production for exporters visited in relation to previous investigations and reviews into FSI pineapple from Thailand (as mentioned in Section 2.3). The Commission's analysis indicated 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.

In the absence of up to date verified selling prices and production costs of other exporters during the accelerated review, the Commissioner considers that it is inappropriate to determine a normal value¹³ for Prime Products based on its domestic cost of production of tidbits for the purposes of this accelerated review.

As a result, the Commissioner is not satisfied that there is sufficient and relevant information to calculate a normal value for FSI pineapple exported to Australia by Prime Products.

4.3 Dumping margin

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

¹³ Including relevant adjustments to normal value in order for under s. 269TAC(8) and/or (9) of the Act.

5 EFFECT OF THE ACCELERATED REVIEW

If the Parliamentary Secretary accepts the recommendations in this report, in respect of FSI 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 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 s. 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 s. 269TAB of the Act, sufficient information is not available to enable export prices for FSI pineapple to Australia from Thailand by Prime Products to be determined; and
- in accordance with s. 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