



**Australian Government**  
**Australian Customs and  
Border Protection Service**

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***CUSTOMS ACT 1901 - PART XVB***

**INTERNATIONAL TRADE REMEDIES BRANCH**

**STATEMENT OF ESSENTIAL FACTS NO.195B**

**REVOCAION REVIEW OF**

**CONSUMER PINEAPPLE**

**EXPORTED FROM THAILAND BY THAI PINEAPPLE  
CANNING INDUSTRY CO., LTD**

8 May 2013

## TABLE OF CONTENTS

1.	SUMMARY AND RECOMMENDATIONS.....	3
1.1	Proposed recommendation.....	3
1.2	Preliminary findings and conclusions.....	3
1.3	Final report.....	3
2.	INTRODUCTION.....	4
2.1	Review process.....	4
2.2	Notification and participation.....	5
2.3	Responding to the statement of essential facts.....	5
2.4	History of anti-dumping measures.....	6
3.	GOODS SUBJECT TO THE REVIEW.....	8
3.1.	Preliminary findings.....	8
3.2.	The goods and like goods.....	8
3.2.1.	Tariff classification.....	8
3.2.2.	Like goods.....	8
3.3.	Australian Industry.....	10
3.3.1.	Like goods.....	10
3.3.2.	Manufacturing process.....	10
4.	Revocation review.....	11
4.1	Preliminary finding.....	11
4.2	Applicant's claims.....	11
4.3	Customs and Border Protection's preliminary findings in SEF 195A....	11
4.4	Likelihood of recurrence of dumping and material injury to the Australian Industry.....	11
<b>7.</b>	<b>EFFECT OF THE REVIEW.....</b>	<b>16</b>

## **1. SUMMARY AND RECOMMENDATIONS**

This review is in response to an application by Siam Agro-Food Industry Public Co., Ltd (SAICO) seeking a review of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by Thai Pineapple Canning Industry Corp Ltd (TPC).

This Statement of Essential Facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (CEO) (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation to the Minister for Home Affairs (Minister) in relation to the review of whether the measures applicable to consumer pineapple exported to Australia from Thailand by TPC are no longer warranted.

The SEF relating to the review of the variable factors of the measures applicable to consumer pineapple exported to Australia from Thailand forms SEF 195A.

A separate SEF, SEF196, has been issued for the review of the variable factors of the measures applicable to food service and industrial (FSI) pineapple exported to Australia from Thailand.

### **1.1 Proposed recommendation**

The delegate proposes to recommend to the Minister that the dumping duty notice remain in effect in relation to TPC.

This recommendation does not preclude any amendment to the dumping duty notice in relation to TPC that may be proposed as a result of review 195A insofar as different variable factors that may be ascertained with respect to exports of the goods to Australia from Thailand by TPC.

### **1.2 Preliminary findings and conclusions**

Based on all available information Customs and Border Protection's preliminary finding is that the measures relating to consumer pineapple exported to Australia by TPC continue to be warranted because revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent.

Based on this preliminary finding and subject to any submissions received in response to this SEF, the delegate proposes to recommend to the Minister that the measures should not be revoked.

### **1.3 Final report**

The delegate's final report and recommendation in relation to whether the measures applicable to consumer pineapple exported to Australia by TPC are no longer warranted must be provided to the Minister by **22 June 2013**.

## **2. INTRODUCTION**

### **2.1 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to apply for a review of those measures as they affect a particular exporter or exporters generally.

Accordingly the affected party may apply for revocation of the measures if there are reasonable grounds to assert that the anti-dumping measures are no longer warranted.

If an application for a review of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures.

Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the public record a SEF on which it proposes to base its recommendation to the Minister concerning the review of the measures.

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the review.

In respect of a dumping duty notice, the delegate:

- must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
- otherwise must make a revocation recommendation in relation to the measures, unless the CEO is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

Following the Minister's decision, a notice will be published advising interested parties of the decision.

## 2.2 Notification and participation

On 3 December 2012, Customs and Border Protection received an application from (SAICO) for the review of anti-dumping measures that apply to consumer pineapple exported to Australia from Thailand by TPC, an exporter of the goods and wholly owned subsidiary of SAICO.

Following consideration of the application, a review of the measures commenced on 19 December 2012. The period of 1 October 2011 to 30 September 2012 was set as the review period.

Both a review of the variable factors, being the export price, normal value and NIP (the variable factors review) and a review to determine whether the measures as they apply to TPC are no longer warranted (the revocation review) were initiated by Customs and Border Protection on 19 December 2012.

Public notification of initiation of the review was made on 19 December 2012 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2012/64 was also published.

On 29 January 2013, following a request by the Minister, Customs and Border Protection published a notice in *the Australian* newspaper notifying parties that the variable factors review had been extended to all exporters of consumer pineapple from Thailand. The revocation review remained in relation to the exports of TPC only. ACDN No. 2013/10 was also published.

Following an extension from the Minister, Customs and Border Protection is required to place the SEF relating to consumer pineapple exported from Thailand by TPC on the public record on or before **8 May 2013**.

The final report to the Minister, which outlines Customs and Border Protection's findings and recommendations, is due on or before **22 June 2013**.

## 2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this SEF. However Customs and Border Protection is not obliged to have regard to any submissions received after **28 May 2013** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

The Director  
International Trade Remedies Operations 1  
Australian Customs and Border Protection Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
AUSTRALIA

Submissions can also be faxed to (02) 6275 6990 or emailed to [itrops1@customs.gov.au](mailto:itrops1@customs.gov.au).

Submissions provided in confidence must be clearly marked “**FOR OFFICIAL USE ONLY**”. Interested parties intending to respond to the SEF must include a non-confidential version of their submission for placement on the public record.<sup>1</sup>

The public record contains non-confidential submissions already received from interested parties, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s consideration report and notices. This SEF should be read in conjunction these documents.

All documents on the public record are available on Customs and Border Protection’s electronic public record for the review, which may be accessed online at <http://www.customs.gov.au/anti-dumping/cases/EHP195.asp>.

The public record may also be viewed at Customs House Canberra by contacting International Trade Remedies Branch administration on (02) 6275 6547.

## 2.4 History of anti-dumping measures

On 8 January 2001 Golden Circle lodged an application requesting that the Minister publish a dumping duty notice in respect of certain pineapple products (the goods) from Thailand.

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, continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

On 28 September 2006 the Minister accepted the recommendations contained within REP 110 and 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 TPC lapsed.

On 4 February 2011 following consideration of an application by Golden Circle continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

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<sup>1</sup> In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

On 11 October 2011 the Minister accepted the recommendations contained within REP 172c and 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 also accepted the recommendations contained in REP 173b to publish a dumping duty notice for consumer pineapple exported from Thailand by TPC.

### 3. GOODS SUBJECT TO THE REVIEW

#### 3.1. Preliminary findings

The Australian industry produces consumer pineapple that has characteristics closely resembling those of consumer pineapple manufactured in Thailand and exported to Australia.

As such consumer pineapple produced by the Australian industry are like goods.<sup>2</sup>

#### 3.2. The goods and like goods

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

- pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple); and
- pineapple prepared or preserved in containers exceeding one litre (food service & industrial pineapple).

Consumer pineapple and FSI pineapple are subject to individual reviews. Consumer pineapple forms the subject of this SEF.

##### 3.2.1. Tariff classification

The goods are classified to the following tariff classifications in Schedule 3 to the *Customs Tariff Act 1995*:

2008.20.00	Pineapples
2008.20.00/26	Canned, in containers not exceeding one litre
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

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

##### 3.2.2. Like goods

The issue of like goods was considered during the original investigation into pineapple exported from Thailand in REP 41.

In REP 41, Customs and Border Protection was satisfied that there was an Australian industry producing like goods to the goods under consideration. This finding has been maintained through all reviews and continuation inquiries.

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<sup>2</sup> For the purposes of s.269T.



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'.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

Customs and Border Protection understands, from the basis of costs and sales information provided by Golden Circle, that its production and sales of consumer pineapple is unchanged from that found in the 2011 review (REP 172c refers).

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes not exceeding one litre (typically 225g, 425-450g, and 825-850g, although other sizes are available) sold into retail stores for the consumer market.

## Physical Likeness

Golden Circle stated that it produces a range of pineapple products in the above container sizes.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices and crushed pineapple. The products can be sold in containers in either syrup or natural juice.

Sales of consumer pineapple by industry and importers that met the description of the goods and like goods were verified by Customs and Border Protection during the investigation.

## Commercial Likeness

Golden Circle says that prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the consumer market segment.

Customs and Border Protection collected information during the investigation that confirmed this direct competition.

## Functional Likeness

Golden Circle stated that its locally produced products are directly substitutable for the imported goods.

Customs and Border Protection collected information during the investigation that confirmed the locally produced product and imported product were substitutable for each other.

## Production Likeness

Verified information from industry and exporter visits shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

Customs and Border Protection remains satisfied that there is an Australian industry producing like goods to the goods.

### **3.3. Australian Industry**

#### **3.3.1. Like goods**

There is an Australian industry that is producing like goods, consisting of Golden Circle.

#### **3.3.2. Manufacturing process**

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia<sup>3</sup>.

Golden Circle is the sole manufacturer of consumer pineapple in Australia.

A verification visit was undertaken to Golden Circle for the review of measures and continuation inquires in 2011 where the manufacturing process was observed and data was verified. Customs and Border Protection has not received any submissions from interested parties claiming that this has changed.

Customs and Border Protection considers that at least one substantial process in the manufacture of consumer pineapple is carried out in Australia, and therefore consumer pineapple is manufactured in Australia.

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<sup>3</sup> Ss 269T(2) and 269T(3).

## 4. REVOCATION REVIEW

### 4.1 Preliminary finding

Customs and Border Protection has made the preliminary finding that the measures related to consumer pineapple exported by TPC should not be revoked.

### 4.2 Applicant's claims

In its application for revocation review, SAICO, on behalf of TPC, asserted that the variable factors had changed since the 2011 investigation so that TPC was no longer exporting consumer pineapple to Australia at dumped prices. SAICO provided preliminary data to show that TPC's cost to make and sell had dropped from that incurred in 2011.

SAICO also submitted that TPC is unlikely to export consumer pineapple to Australia at dumped prices in the future as TPC's cost to make and sell was abnormally inflated during the 2011 investigation as a result of prolonged drought in Thailand in 2009-2010. This inflated the purchase price of raw pineapple fruit, which represents a significant raw material input, as there was a shortage of supply due to the unforeseen and extreme drought conditions.

Customs and Border Protection subsequently undertook a visit to SAICO/TPC in order to verify information provided in the application for review and TPC's exporter questionnaire response.

### 4.3 Customs and Border Protection's preliminary findings in SEF 195A

As set out in SEF 195A, Customs and Border Protection has made the preliminary finding that the variable factors, being the export price, normal value and NIP have changed in relation to exports of consumer pineapple from Thailand by TPC.

The change in variable factors has resulted in a dumping margin of -3.1%.

### 4.4 Likelihood of recurrence of dumping and material injury to the Australian Industry

Pursuant to s. 269ZDA(1A)(b), the CEO must make a revocation recommendation, unless the CEO is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation or recurrence of the dumping and material injury that the measures are intended to prevent.

During verification, TPC advised that the nature of its exports sales to Australia had not changed significantly since the 2011 investigation. TPC confirmed that most sales to Australia were made on a long-term contract basis, in which the

price and terms were negotiated and agreed six months prior to the commencement of the contract.

Customs and Border Protection notes, however, that all contracts executed between TPC and its Australian customers included specific options that could be exercised by either contractual parties to re-negotiate sales prices during the lifecycle of the contract by way of variation to the principle head of agreement. TPC outlined that, when setting prices for export sales contracts to Australia, it took into account the following factors:

- current production costs plus forecast adjustments for raw material inputs, being fresh pineapple fruit and tin plate;
- current and forecasted movement in exchange rates; and
- current and forecasted movement in demand conditions in various export markets.

TPC outlined that weather patterns have a significant impact on the availability and cost of pineapple fruit both positively, when weather conditions are favourable, and negatively, during periods of extreme weather conditions. TPC confirmed that cyclical extreme weather patterns, referred to as El Nino and La Nina, have historically had a significantly detrimental impact on availability of pineapple fruit which, in turn, is the catalyst for increased costs.

On this basis, when forecasting movements in the cost of raw material inputs, TPC examines available long-term predictions of weather patterns in an attempt to anticipate potential cost fluctuations.

TPC also outlined that once it has undertaken this analysis, it aims to set its price to Australian customers to achieve a gross margin within a certain range, which depended on the type of pineapple products sold. This relative price margin aims to mitigate the risk associated with potential cost fluctuations over the life of a contract.

TPC conceded that environmental forecasting is an inherently in-exact process and there is an inherent risk that costs may increase due to a number of reasons over the life of a contract which could result in the sales price falling below costs.

The risk outlined above conforms to that found by Customs and Border Protection in the 2011 investigation into the alleged dumping of consumer pineapple exported by TPC:

Customs and Border Protection notes that the supply of consumer pineapple by TPC is subject to contracts established through a tender process. It is reasonable to expect that in agreeing to fix prices for a period of time, both the buyer and seller are accepting some amount of risk. For the exporting producer, one would expect them to have factored into their tendered price an amount to take account of future potential cost increases. It is noted that the terms of the contracts also referred to costs and price changes.

The degree to which TPC's exports were priced below the cost of the goods suggests that TPC did not factor in a sufficient premium for such risks. The

consequence being that the goods were exported at a significant dumping margin below their normal value.<sup>4</sup>

Customs and Border Protection accepts that TPC was subject to abnormally high raw pineapple costs as a result of prolonged drought during the period of investigation in 2011. However it is relevant that TPC did not choose to exercise the option to re-negotiate sales prices to mitigate the impact of cost increases as they occurred during this period.

Customs and Border Protection has also made the preliminary finding, as outlined in SEF 195A, that costs have normalised for the current review period and that TPC has not exported the goods to Australia during that period at dumped prices.

As a caveat to the above, Customs and Border Protection is satisfied, based on the verified sales data gathered during verification, that the absence of dumping during the relevant period is the product of negotiations between TPC and its primary Australian customers which have crystallized a contractual sales price which provides a margin which predominantly reflects the margin of dumping found during the original 2010 investigation period.

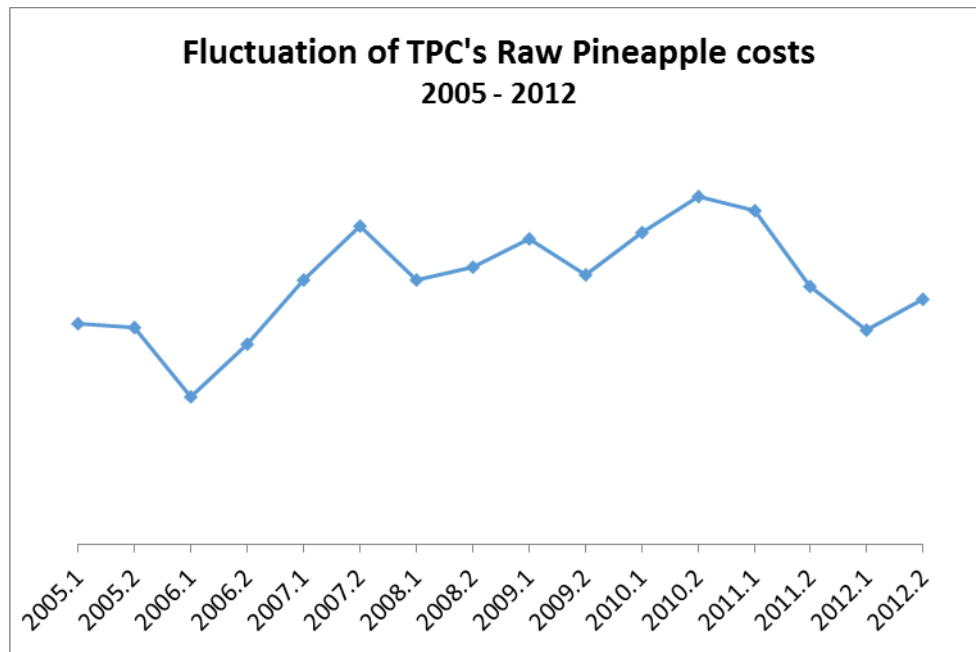
Customs and Border Protection is satisfied that this increase in contractual export price is a reaction to the measures in force in relation to the GUC. Customs and Border Protection is satisfied, on the facts available, that there are no other reasonable explanations or commercial influences for this marked price increase other than the imposition of the measures and that, but for the measures, this increased contractual price margin would not have occurred.

### **Analysis of historical cost fluctuation**

In support of TPC's claim that 2010-2011 was not representative of the usual course of trade as a result of the abnormally high raw pineapple fruit costs, TPC provided Customs and Border Protection with its historical purchase costs for raw pineapple fruit. This data presented a yearly and half yearly weighted average of raw pineapple fruit costs from 2005 to 2012. The pattern of fluctuating costs over period (reflected on a half yearly basis) is set out in the graph below.

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<sup>4</sup> REP 173b at page 27



As demonstrated in the above graph, the historical cost data reflects significant upward spikes in raw pineapple costs in 2006-2007 and 2010-2011 period – both of which are understood to be periods of extreme weather patterns in Thailand and, specifically, reflect periods in which TPC’s costs outstripped revenue from the goods resulting in the company trading at a loss during these periods.

Customs and Border Protection also considers that the falling costs in 2011 and the first half of 2012, followed by a return to an upward trend in the second half of 2012 as presented above is significant. This pattern of decline and increase, in a period asserted by TPC to be characterised as a return to normal weather patterns, is indicative that variables other than catastrophic climatic phenomena also contribute to the volatility of pineapple costs in a significant way.

Viewed in totality, Customs and Border Protection considers that the above graph reflects the inherent volatility in raw pineapple cost in Thailand. This data emphasises the inherent risks accepted by TPC in setting long-term supply contracts in relation to a product, the cost base of which is significantly impacted by the volatility in availability, and price, of its primary raw material.

Customs and Border Protection considers, as was the case in the circumstances of the 2011 investigation, that the gross margin TPC seeks to achieve on its exports to Australia does not adequately account for cost fluctuations so as to ensure that its selling price to Australia does not go below its cost to make and sell during the life of the contract.

This is supported by a calculation of the margin of dumping of TPC’s exports during the review by comparing the established weighted average normal value to a weighted average export price adjusted to remove the impact of the interim dumping duties imposed on TPC’s exports. This analysis shows that in the absence of dumping duties and all other things being equal, TPC’s exports

during the review period would have been dumped by a margin greater than 2%.

Whilst Customs and Border Protection concedes that severe climatic patterns have, historically, been the primary causes of the most dramatic spikes in costs (and associated significant margins of dumping), contemporary analysis confirms that TPC is at risk of these patterns re-occurring as a result of ongoing cost fluctuations – albeit to a lesser degree than has been experienced as a result of abnormal weather phenomena.

### **Conclusion**

Customs and Border Protection is satisfied on the basis of historical data, that the cost of raw material in Thailand is inherently volatile and subject to significant fluctuation due a number of factors including, but not limited to climatic changes and restrictions in export markets and currency.

Customs and Border Protection is satisfied that historical trends of unpredictable volatility in raw pineapple costs – both upwards and downwards – are likely to perpetuate in the future.

Customs and Border Protection is satisfied, on the basis of the available data, that TPC has previously, and continues to, inadequately account for fluctuations in its primary raw material cost in establishing export prices and has demonstrated an unwillingness to respond to unforeseen cost increases via appropriate contractual management.

Customs and Border Protection considers that there are reasonable grounds upon which to assert that these perpetuating factors may result in a recurrence of TPC selling to Australia at dumped prices and the material injury that measures were intended to prevent.

Customs and Border Protection is satisfied, on the basis of the information currently available, that revocation of the measures is likely to lead to a recurrence of dumping. The analysis above indicates that the recurrence of dumping in the absence of measures may eventuate in the next twelve months.

## **7. EFFECT OF THE REVIEW**

Customs and Border Protection has made the preliminary finding that revocation of the measures related to consumer pineapple exported by TPC is not warranted.