



ANTI – DUMPING SPECIALISTS

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NON - CONFIDENTIAL

Mr John Bracic
Director
Trade Measures Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
Canberra ACT 2600

Dear Mr Bracic,

REVOCATION REVIEW – CONSUMER PINEAPPLE

This submission, made on behalf of Siam Agro-Food Industry Public Company Limited (“SAICO”), is in response to Statement of Essential Facts No. 195B (“the SEF”) concerning the captioned review (“the review”).

There are no **facts** established by the review which demonstrate that revoking the anti-dumping measures in relation to consumer pineapple exported by TPC **would lead, or be likely to lead**, to a recurrence of the dumping that the measures are intended to prevent. Consequently the measures applicable to consumer pineapple exported from Thailand by TPC are no longer warranted and must be revoked vide s269ZDA(1A)(b) of the Customs Act.

In section 4.4 of the SEF Customs has concluded that unpredictable volatility in raw pineapple costs (“perpetuating factors”) **may** result in a recurrence of TPC selling to Australia at dumped prices. That “these perpetuating factors” **may** result in a recurrence of TPC selling to Australia at dumped prices does not satisfy the legislative requirement that they are **likely** to lead to a recurrence of sales to Australia at dumped prices. The facts established by the review do not demonstrate that it is **probable (likely)** that “these perpetuating factors” will lead to a recurrence of dumping.

Similarly, Customs has concluded in section 4.4 that the recurrence of dumping **may** eventuate in the next 12 months, but the facts established by the review do not demonstrate that this is **likely (probable)**.

Concerning the “caveat” in section 4.4 that –

- *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 -*
- this is mere conjecture.

Relevant facts do not support Customs conclusion that –

- *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.*

These facts are as follows:

TPC's export prices during the review period, (October 2011 to September 2012) which Customs found to be [REDACTED], were fixed as follows:

- By agreement of [REDACTED] – applicable to exports between [REDACTED]; and
- By agreement of [REDACTED] – applicable to exports between [REDACTED].
- By agreement of [REDACTED] – applicable to exports between [REDACTED].
- By agreement of [REDACTED] – applicable to exports between [REDACTED].

Hereunder are tables summarising the above price arrangements:

[REDACTED]	Date of agreement: [REDACTED] Effective period: [REDACTED]	Date of agreement: [REDACTED] Effective period: [REDACTED]
Slices nat. juice 440g	[REDACTED]	[REDACTED]
Pieces nat. juice 440g	[REDACTED]	[REDACTED]
Slices nat. juice 825g	[REDACTED]	[REDACTED]
Pieces nat. juice 825g	[REDACTED]	[REDACTED]

[REDACTED]	Date of agreement: [REDACTED] Effective period: [REDACTED]	Date of agreement: [REDACTED] Effective period: [REDACTED]
Pieces nat. juice 440g	[REDACTED]	[REDACTED]
Slices nat. juice 440g	[REDACTED]	[REDACTED]

It is of note that prices revised during the review period are lower than those prevailing at the commencement of the review period.

As prices of exports to [REDACTED] and [REDACTED] during the first [REDACTED] and [REDACTED] months of the review period respectively were in place well before the interim dumping duty ("IDD") applicable to TPC's exports was determined, and prices for the remainder of the period [REDACTED], it is not possible that prices of TPC's exports during the review period were fixed having regard to the IDD applicable to them from October 2011, as asserted by Customs.

Besides the factors normally taken into account in fixing prices in 12 month contracts, ie production costs, forecasts of raw material costs and exchange rate movements, prices prevailing during the review period were fixed also taking into account the [REDACTED] [REDACTED] prices because of the unexpected large increase in raw material costs and consequent large increase in production costs of consumer pineapple. This provided for [REDACTED]
[REDACTED]

Consequent upon the foregoing, Customs' conclusion that the revocation of the measures is likely to lead to a recurrence of dumping is fundamentally flawed.

In summary –

- while it is possible that the circumstances which led to the dumping of TPC's exports in 2010, viz severe drought conditions and increasing tinplate costs, may recur at some time, it is not possible for Customs to be satisfied that it is likely (probable) that they will recur within a particular timeframe;
- because of the substantial sales margin in TPC's export prices during the review period and its awareness of the [REDACTED]
[REDACTED], Customs cannot be satisfied that, even if the circumstances of 2010 recur, it is likely that TPC/SAICO will export to Australia at dumped prices; and
- on the facts available, the [REDACTED] during the review period was not because of the imposition of anti-dumping measures in October 2011 and therefore it cannot be found that, but for the measures the [REDACTED] would not have occurred.

In view of the above, Customs cannot be satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping that the measures are intended to prevent. Consequently Customs must make a revocation recommendation vide s269ZDA(1A)(b) of the Customs Act.

Yours sincerely,



Roger Simpson