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24 May 2013

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,

REVIEW OF VARIABLE FACTORS – CONSUMER PINEAPPLE FROM THAILAND

This submission, made on behalf of Siam Agro-Food Industry Public Company Limited ("SAICO") is in response to Statement of Essential Facts No. 195A ("the SEF").

Our submission of 22 May 2013 in response to SEF 195B demonstrates conclusively that anti-dumping measures applicable to consumer pineapple exported from Thailand by Thai Pineapple Canning Industry Corp Ltd ("TPC") must be revoked. Notwithstanding, this submission addresses the amount of profit included by Customs and Border Protection Service ("Customs') in its s269TAC(2)(c) constructed normal value of TPC's exports to Australia during the review period.

The profit amount included in Customs 'constructed normal value is calculated in accordance with Regulation 181A(3)(c), which has its origin in Article 2.2.2(iii) of the WTO Anti-Dumping Agreement ('the Agreement"). Regulation 181A(3)(c), and Article 2.2.2(iii) of the Agreement explicitly require the method used to determine the amount of profit for the purpose of normal value construction vide s269TAC(2)(c) to be a **reasonable method.**

In the final paragraph of section 4.5.3 of the SEF, Custom states that the profit of approximately 17% included in its normal value construction *represents the weighted average of DLT and KFC's actual profit realized for sales of* ***like goods*** *in the domestic market, calculated in accordance with reg. 181A(3)(c).* (Emphasis added).

The above statement that 17% profit amount included in the normal value construction of TPC's exports of consumer pineapple represents the profit realised for sales of **like goods** in the domestic market by DTL and KFC is false. This 17% profit amount represents the weighted average of profit achieved by DTL and KFC in domestic sales of **FSI pineapple**

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during the review period – refer to SEF No 196 sections 4.6.2, 4.7.2 and 4.8.2. And **FSI pineapple and consumer pineapple are not like goods,** as determined by Customs in Final Finding Report No. 41 (REP 41) concerning the original investigation into canned pineapple from Thailand.

Putting aside Customs' false claim that FSI and consumer pineapple are like goods, the method used by Customs in determining the amount of profit to be included in the constructed normal value of TPC's exports of consumer pineapple on the basis of profit taken in domestic sales of FSI pineapple is **not reasonable** and is therefore inconsistent with Reg. 181A(3)(c) and Article 2.2.2(iii) of the Agreement.

Customs reached its conclusion in section 4.1.2.5 of REP 41 that FSI and consumer pineapple are two separate goods on the grounds that *FSI and consumer pineapple are sold into two distinct segments of the market and therefore are not directly competitive.* In addition, this review and Customs' previous canned pineapple reviews/investigations have established the FSI and consumer pineapple have distinctly different production costs and selling prices into all markets. It is obviously **unreasonable** to use the amount of profit achieved in domestic sales of FSI pineapple in determining a normal value for TPC's exports of consumer pineapple, and to use this method is therefore inconsistent with Reg. 181A(3)(c).

It is demonstrated by the above that Customs' claim that FSI and consumer pineapple are like goods is false and that to use a profit amount achieved in domestic sales of FSI pineapple in a constructed normal value for consumer pineapple is not reasonable and therefore not in accordance with Reg. 181A(3)(c) as claimed by Customs.

In view of the foregoing, this review has not established any facts to cause Customs to revise its considerations leading to a zero profit amount inclusion in construction of a normal value for TPC's exports of consumer pineapple in the 2011 investigation which led to imposition of the current anti-dumping measures (REP 173b refers). Consequently the normal value for TPC's exports of consumer pineapple should be THB [redacted]/kg and the dumping margin negative [redacted]%. We request that they be revised accordingly.

Yours sincerely,

Roger Simpson