



**REVIEW NO. 478
CONSUMER PINEAPPLE
EXPORTED FROM THE KINGDOM OF THAILAND**

**MEETING WITH REPRESENTATIVES OF SIAM AGRO
FOODS INDUSTRY PUBLIC COMPANY LIMITED**

PRESENT:

Representatives of Siam Agro Foods Industry Public Company Limited	John McDermott, John McDermott and Associates Pty Ltd Roger Simpson, Roger D Simpson & Associates Pty Ltd
Anti-Dumping Commission	Paul Sexton - General Manager, Investigations Matthew Williams - Director, Investigations 3 Reuben McGovern - Assistant Director, Investigations 3 Raoul Renard - Lawyer, Economic and Strategic Services
Date	11 September 2018

Background

Following initiation of [Review No. 478](#) (the review), Siam Agro Foods Industry Public Company Limited (SAICO) emailed the Commission to clarify whether, among other things, it was exempt from the measures applying to consumer pineapple from Thailand (the measures), and whether it was required to complete an exporter questionnaire.

The Commission responded to SAICO explaining that SAICO is not exempt from the measures. The Commission's response also outlined the circumstances in which SAICO would be required to provide information to the review.

SAICO subsequently made a submission to the review.¹ In this submission, SAICO consider that it is exempt from the measures. On 31 August 2018, the Commission responded to SAICO's submission by letter. A copy of the Commission's letter is attached to this file note.

Subsequent to the Commission's letter, SAICO requested a meeting with the Commission.

File Note of Meeting

The following matters were discussed at the meeting:

¹ [Public record item no. 007 to case page 478](#).

- SAICO's status in relation to the measures; and
- SAICO's participation in the review.

The Commission briefly outlined the history of the measures. In summary, it was highlighted that the measures were imposed in 2001. These measures apply to all exporters, except Thai Pineapple Canning Industry Co Ltd (TPC). SAICO have never been exempted from the measures.

The representatives for SAICO disagree that SAICO is subject to the measures. The representatives for SAICO pointed to findings made in Report No. 195A (REP 195A) to support a view that TPC and SAICO are the same entity and that both entities should be exempt from the measures.

The Commission outlined that:

- SAICO and TPC are separate legal entities (i.e. they are not the same legal entity);
- There was a second notice published in relation to consumer pineapple exported by TPC in 2011 (the second measures);
- REP 195A made findings in relation to variable factors applicable to the measures and the second measures (however it did not relate to a revocation review). There was a second report, Report No. 195B (REP 195B) which considered whether the second measures ought to be revoked against TPC. REP 195B recommended that the second measures should not be revoked against TPC. Following a review by the Anti-Dumping Review Panel (ADRP), the second measures were revoked against TPC.² As the ADRP review was limited to a matter relating to the second measures, a conclusion cannot be drawn that SAICO is exempt from the measures.

On the basis of the above, the Commission considers that the measures remain applicable to SAICO.

The representatives for SAICO outlined the history and affiliation between SAICO and TPC. A brief outline of the business structure and operations prior to, and following, imposition of the second measures was discussed. The representatives for SAICO referred to evidence which could substantiate its claims. This evidence was not provided at the meeting.

The Commission outlined that, without participation in the review by SAICO, it cannot verify SAICO's claims. The Commission outlined examples of conflicting information before it regarding the relationship between SAICO and TPC and the nature of the exports.

The representatives for SAICO indicated that it may pursue the matter further.

The Commission stated that, consistent with its letter to SAICO, it remained open to SAICO participating in the review (by completing an exporter questionnaire as requested by 21 September 2018 and agreeing to a verification visit) to verify the facts and circumstances.

² ADRP [Decision 34](#) refers.



Australian Government
**Department of Industry,
Innovation and Science**

Anti-Dumping Commission

Anti-Dumping Commission
Level 35, 55 Collins Street
Melbourne VIC 3000

31 August 2018

John McDermott
John McDermott and Associates Pty Ltd
PO Box 3414
Belconnen ACT 2617

By email: jmcd49@optusnet.com.au

Dear John

Consumer Pineapple exported to Australia from Thailand by Siam Agro-Food Industry Public Company Ltd

We write to you in your capacity as representative for Siam Agro-Food Industry Public Company Ltd (**SAICO**).

On 18 June 2018, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated Review No. 478 regarding consumer pineapple from Thailand. In initiating Review No. 478, Anti-Dumping Notice (**ADN**) No. 2018/101 advised that the anti-dumping measures regarding consumer pineapple from Thailand apply to all exporters except Thai Pineapple Canning Industry Co Ltd (**TPC**).

On 5 July 2018, following initiation of Review No. 478, you emailed the Commission on behalf of SAICO to establish whether, among other things, SAICO is exempt from the anti-dumping measures and whether it is required to participate in Review No. 478.¹

The Commission responded to your email on 5 July 2018 clarifying that SAICO is not exempt from the anti-dumping measures. The Commission's response also outlined the circumstances in which SAICO would be required to provide information in relation to Review No. 478.

Subsequent to the Commission's response, there has been further correspondence relating to SAICO's status in relation to the anti-dumping measures between yourself and the Commission.² You also made a submission to Review No. 478 on behalf of SAICO on 25 July 2018.³

The purpose of this letter is to:

- advise you, and SAICO, of the Commission's view that SAICO is subject to the anti-dumping measures, and
- provide a further opportunity for SAICO to participate in Review No. 478, should it wish to.

¹ Attachment A refers.

² Attachment B and C refers.

³ [Electronic public record item 007](#) to Review No. 478 refers.

PUBLIC RECORD

SAICO's status in relation to the anti-dumping measures

As previously communicated to you, the Commission is of the view that SAICO is subject to the anti-dumping measures. Accordingly, imports of consumer pineapple produced by SAICO attract interim dumping duty. The rate of interim dumping duty applicable to SAICO's exports is currently specified in ADN No. 2016/82⁴, which outlines the findings of Continuation Inquiry No. 333. This inquiry was the last time the variable factors were ascertained in relation to the anti-dumping measures.

To clarify, TPC is exempt from the anti-dumping measures.

Response to SAICO's claims that it is the same entity as TPC

In correspondence with the Commission, you have claimed that TPC and SAICO are the same corporate entity, and that both companies should be exempt from the anti-dumping measures.

You have referred to past reports of the Australian Customs and Border Protection Service (ACBPS) to support your claims, including ACBPS Report No. 195A.⁵

In relation to these claims, the Commission highlights the following:

- Review No. 478 is a review of the variable factors applicable to a notice which was published in 2001 ("the first notice"). The first notice applied to all exporters of consumer pineapple from Thailand. In 2008, TPC were exempted from this notice, following a Federal Court case which set aside the then Minister for Justice and Customs' decision to continue the anti-dumping measures as they relate to TPC. As a result, and as outlined in ADN No. 2018/101, the first notice applies to all exporters, except TPC.
- In 2011, following a separate investigation, Investigation No. 173, a second notice was published in relation to consumer pineapple from TPC ("the second notice"). In 2013, there was a variable factors review and a revocation review in relation to the second notice (Review No. 195). The revocation review ultimately led to the second notice being revoked in relation to TPC.⁶

Though TPC and SAICO are related companies, they have separate corporate legal personality and are to be treated separately for the purposes of the anti-dumping measures.

In the circumstances, the Commission considers that the first notice remains applicable to SAICO. SAICO have never been exempted from the first notice.

References to findings made in relation to the second notice do not apply to the first notice. In addition, it is noted that, ACBPS Report No. 195A, which you refer to in order to support your claims that TPC and SAICO are the same entity, relates only to the review of variable factors in relation to the second notice. The treatment of determining related parties playing a role in the exportation of goods within the same corporate group as the same entity for the purposes of establishing variable factors, known as "collapsing", was a practice of the Commission until it was found by the ADRP in 2016 to be contrary to Australian corporations law and to have no legal basis in the *Customs Act 1901*.⁷ Following this ADRP decision, the Commission has ceased the practice of collapsing.

Further, the finding does not relate to the revocation review in relation to the second notice. Findings of the revocation review in relation to the second notice were made in a separate

⁴ [ADN No. 2016/82](#) refers.

⁵ ACBPS [Report No. 195A](#), section 4.5.1 refers.

⁶ Anti-Dumping Review Panel (ADRP) [Public Notice](#) refers.

⁷ ADRP [Decision 34](#) refers

PUBLIC RECORD

report, ACBPS Report No. 195B. Collapsing of the two separate legal entities, TPC and SAICO, has never occurred with respect to the first notice.

On the basis of the above, the Commission maintains that, where SAICO itself is the producer of the consumer pineapple exported to Australia, importers are required to pay interim dumping duty in line with ADN No. 2016/82. It is only where SAICO are exporting consumer pineapple produced by TPC, that such consignments may be linked to TPC, attracting TPC's exemption.⁸

Participation in Review No. 478

As previously mentioned, the Commission is currently undertaking a review of the anti-dumping measures applicable to consumer pineapple exported from Thailand (the first notice).⁹ SAICO have been invited to participate in this process. The review may result in alterations to the first notice, both generally and in respect of SAICO. Until such time, importers are required to pay interim dumping duty in line with the rates specified in ADN No. 2016/82.

The Commissioner is willing to provide SAICO with a further opportunity to participate in Review No. 478, by lodging an exporter questionnaire and by making itself available for a verification visit. However, given the current legislated timeframes of Review No. 478 (which are outlined in ADN No. 2018/101), the Commission requests a response to the exporter questionnaire by 21 September 2018. As previously advised, If SAICO do not comply with the request to submit an exporter questionnaire, it is likely that the variable factors applicable to SAICO's exports will be determined having regard to all relevant information. Participation in Review No. 478 will also provide further opportunity for the Commission to examine and verify SAICO's claims.

We advise you to contact the case manager as soon as possible, if SAICO wish to take this opportunity to participate in Review No. 478. The case manager's details and the exporter questionnaire have been available on the Commission's electronic public record since initiation of Review No. 478.¹⁰

Given the complexity of the above, and if it would assist, I am willing to meet with you and your client to discuss.

Yours sincerely

Matthew Williams

Director, Investigations 3
Anti-Dumping Commission

⁸ Consistent with the Commission's [Dumping Commodity Register](#).

⁹ [Review No. 478](#) refers.

¹⁰ A link is available [here](#).

PUBLIC RECORD

ATTACHMENTS

Attachment A



Attachment A.msg

Attachment B



Attachment B.msg

Attachment C



Attachment C.msg