



**Australian Government**  
**Anti-Dumping Review Panel**

# Application for review of a Ministerial decision

*Customs Act 1901 s 269ZZE*

This is the approved<sup>1</sup> form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party<sup>2</sup> may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

## **Time**

Applications must be made within 30 days after public notice of the reviewable decision is first published.

## **Conferences**

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

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<sup>1</sup> By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

<sup>2</sup> As defined in section 269ZX *Customs Act 1901*.

## **PUBLIC VERSION**

### **Further application information**

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

### **Withdrawal**

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email [adrp@industry.gov.au](mailto:adrp@industry.gov.au).

**PUBLIC VERSION**

**PART A: APPLICANT INFORMATION**

**Applicant's details**

Applicant's name: [Prime Products Industrial Co., Ltd \("PPI"\)](#)

Address: [1/19 Nanakarin, Soi. Supaphong 3, Yak 8, Srinakarin Rd., Nhongbon, Pravet, Bangkok 10250 Thailand](#)

Type of entity (trade union, corporation, government etc.): [PPI is a limited liability company.](#)

**Contact person for applicant**

Full name: [Ms Chuanchom Ketkaew](#)

Position: [Regional Sales Manager](#)

Email address: [chuanchom@primeproducts.co.th](mailto:chuanchom@primeproducts.co.th)

Telephone number: [\(66\)2 743 4699 ext. 115](#)

**Set out the basis on which the applicant considers it is an interested party**

[Prime Products Industrial Co., Ltd](#) (herein referred to as "PPI") is a producer and cooperating exporter of consumer pineapple from Thailand

**Is the applicant represented?**

[Yes](#)

**PUBLIC VERSION**

**PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES**

**Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:**

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

**PUBLIC VERSION**

**Provide a full description of the goods which were the subject of the reviewable decision**

The goods subject of the reviewable decision are:

Pineapple prepared or preserved in containers not exceeding one litre (“consumer Pineapple”).

**Provide the tariff classifications/statistical codes of the imported goods**

The relevant tariff classifications for the subject goods are:

- 2008.20.00
- 2008.20.00/26
- 2008.20.00/28

**Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**

*If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.*

Anti-Dumping Notice 2016/82 is attached.

**Provide the date the notice of the reviewable decision was published**

The attached ADN 2016/82 (**Exhibit A**) was published on 12 September 2016.

## PUBLIC VERSION

### PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.**

Please refer at [Attachment B](#).

**Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.**

Please refer at [Attachment B](#).

**Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.**

Please refer at [Attachment B](#).

**PUBLIC VERSION**

**PART D: DECLARATION**

The applicant's authorised representative declares that:

The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;

The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:



Name: **JOHN BRACIC**

Position: **DIRECTOR**

Organisation: **J.BRACIC & ASSOCIATES PTY LTD**

Date: **13<sup>TH</sup> OCTOBER 2016**

**PUBLIC VERSION**

**PART E: AUTHORISED REPRESENTATIVE**

*This section must only be completed if you answered yes to question 4.*

**Provide details of the applicant's authorised representative**

Full name of representative: [Mr John Bracic](#)

Organisation: [J.Bracic & Associates Pty Ltd](#)

Address: [PO Box 6203, Manuka, ACT 2603](#)

Email address: [john@jbracic.com.au](mailto:john@jbracic.com.au)

Telephone number: [+61-0499056729](tel:+61-0499056729)

**Representative's authority to act**

***\*A separate letter of authority may be attached in lieu of the applicant signing this section\****

Refer to **Attachment C** for signed letter of authority.

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name:

Position:

Organisation

Date:    /    /





**J.BRACIC & ASSOCIATES**  
TRADE REMEDY ADVISORS

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12 October 2016

Anti-Dumping Review Panel  
c/o Legal, Audit and Assurance Branch  
Department of Industry and Science  
10 Binara Street  
Canberra City ACT 2601

**Review of a Ministerial decision – Consumer pineapple  
exported from Thailand  
by Prime Products Industrial Co., Ltd**

## INTRODUCTION

On 2 December 2015, in accordance with subsection 269ZHB(1), a notice (Anti-Dumping Notice (ADN) No. 2015/136) was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on consumer pineapple exported to Australia from the Philippines and Thailand.

On 29 January 2016, Golden Circle, a member of the Australian industry producing consumer pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes. The Anti-Dumping Commission ("the Commission") notified on 9 March 2016 of its decision to not reject the application.

On 27 June 2016, the Commission published its preliminary findings of the continuation inquiry in Statement of Essential Facts Report No. 3333 ("SEF 333").

On 12 September 2016, following the completion of the Commission's continuation inquiry, the Assistant Minister to the Minister for Industry, Innovation and Science ("the Assistant Minister") made the decision under subsection 269ZHG(1)(b) of the *Customs Act 1901* (the Act) to continue the measures for a further five years from 17 October 2016.

The Assistant Minister also made the decision pursuant to subsection 269ZHG(4)(a)(iii) of the Act, that in relation to the dumping duty applying to consumer pineapple from Thailand that continue to remain in force after 17 October 2016, that the notice has effect as if different specified variable factors had been fixed in relation to all exporters generally, with the exception of Thai Pineapple Canning Industry Corp Ltd ("TPC").

Final Report No. 333 ("Report 333") contains the material findings of fact and reasoning that forms the basis for the Assistant Minister's decision to continue the measures.

## BACKGROUND

On 15 April 2016, PPI lodged a completed exporter questionnaire response seeking an individual interim dumping duty rate applicable to its exports. The questionnaire response showed that PPI:

- had not exported consumer pineapple to Australia during the nominated review period;
- had not made domestic sales of like goods on the domestic market in Thailand during the nominated review period; and
- had significant exports to almost third countries during the review period.

PPI was found to be a cooperative exporter by the Commission for the purposes of the expiry review and the decision was taken by the Commission to not verify PPI's submitted information.

## REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION.

Ground 1: The Commission erred in ascertaining PPI's export price.

### Grounds for appeal

REP 333 states that '*sufficient data was not available to enable the Commission to determine export price and normal value for Prime Products and, therefore a dumping margin.*' As such, the Commission has determined export prices under subsection 269TAB(3), on the basis of a weighted average export price for Thailand from the Australian Border Force import database at FOB terms. PPI considers the Commission's determination to be critically flawed and undoubtedly unreasonable, and as such neither correct or preferable.

PPI rejects the view by the Commission that as PPI had no export sales during the review period, it is not possible to establish an export price under subsection 269TAB the Act. This view is inconsistent with the Commission's current and long-standing policy and practice of ascertaining export prices in the absence of export sales.

For example, in the case of an accelerated review, the Commission's current Dumping and Subsidy Manual (December 2013)<sup>3</sup> outlines its policy in circumstances where an exporter has not made export sales to Australia during the nominated review period:

*The Commission does not require an applicant for an accelerated review to have already exported some minimum quantity of the goods to Australia. Article 9.5 of the ADA contains two conditions: that the exporter did not export the goods during the investigation period; and that it is not related to an exporter already subject to the duty. In the circumstances where there have been no exportations, any accelerated review will assess the normal value for the goods. If there have*

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<sup>3</sup> Dumping & Subsidy Manual – December 2013, page 158.

*been exportations by the applicant exporter, or contracts entered into, those details will also be examined.*

This policy is supported by the findings of the WTO Panel<sup>4</sup> and upheld by the Appellate Body which examined whether Article 9.5 of the Anti-Dumping Agreement subjected the right to an expedited new shipper review to a showing of a "representative" volume of export sales. The Panel found that:

*Article 9.5 of the AD Agreement provides that the authorities shall promptly carry out a review, provided that the exporters or producers who have not exported the product subject to a duty during the period of investigation can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. In sum, in case a producer or exporter which (i) has not exported the product to the country concerned during the period of investigation and (ii) is not related to an exporter or producer already subject to the duty requests a new shipper review, the authority is required to promptly carry out such a review.*

The accelerated review provisions are equally relevant in the context of a Division 5 review as they both involve the ascertaining of variable factors, with the only difference being that the accelerated review is only open to new exporters.

The ability to ascertain an export price in the absence of export sales is further supported by the Commission's past and current practice. In each case<sup>5</sup> where the Commission found that no export sales existed or no representative export sales existed, export prices were ascertained equal to the normal value of like goods, in effect providing a floor price measure which ensured that future exportations were exported at or above the non-dumped normal value.

PPI therefore submits that the Act permits the Commission to continue to apply its current policy and practice of ascertaining an export price equal to PPI's normal value or equal to the normal value of other sellers.

REP 333 correctly describes PPI as a cooperating exporter. All requested and necessary information was provided to the Commission in a timely manner and in the format required. Whilst PPI's submitted information was not the subject of verification, there was no reason for the Commission to doubt its accuracy and reliability. As such, it cannot be the correct and preferable decision for PPI to be penalised and grouped with

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<sup>4</sup> Mexico – Definitive Anti-Dumping Measures on Beef and Rice: WT/DS295/R; para 7.266.

<sup>5</sup> REP 139 – Review of certain hot dip galvanised welded circular hollow sections – September 2008, section 6.1, pages 13-14; REP 180: Accelerated Review LLDPE Thailand - November 2011, section 3.2, page 7; REP191: Accelerated Review Consumer Pineapple by Kuiburi Fruit Canning Co Ltd – September 2012, section 3.4, page 9; REP 196, Review of consumer pineapple exported from Thailand; section 4.4.2; page 14; REP 196, Review of consumer pineapple exported from Thailand; section 4.6.3; page 20; REP 196, Review of FSI pineapple exported from Thailand; section 4.7.3; page 26; section 3.4, page 15; REP 214 – Accelerated Review Aluminium Extrusions – Guangdong Jinxiacheng – September 2013; REP 250, Accelerated review of prepared or preserved tomatoes from Italy; section 3.1; page 8; REP 259 – Accelerated Review for Aluminium Extrusions – Zhaoqing – October 2014, section 3.3, page 12; REP 274 - Accelerated review for zinc coated (galvanised) steel – Zongcheng – January 2015.

other non-cooperative exporters that provided no response to the Commission's request for information to the inquiry.

In PPI's view the Commission has not undertaken an objective investigation in basing its determination of export prices on the best available information. Further, in arriving at its preliminary decision to determine export prices in accordance with s.269TAB(3) of the Act, PPI submits that the Commission has not complied with its own policy and its obligations under the WTO Anti-Dumping Agreement to evaluate and assess all relevant information in deciding which information is best for the particular circumstances.

Pursuant to Article 6.8 and Annex II of the WTO Anti-Dumping Agreement, an investigating authority may rely on the facts available where a respondent has failed to provide some or all of the necessary information requested by the investigating authority. Australia's anti-dumping legislation incorporates and reflects those provisions in subsections 269TAB(3) and 269TAC(6) of the Act.

In addressing the function of Article 6.8 and Annex II, in *US – Hot-Rolled Steel*<sup>6</sup>, the Panel stated that *“one of the principle elements governing anti-dumping investigations that emerges from the whole of the AD Agreement is the goal of ensuring objective decision-making based on facts. Article 6.8 and Annex II advance that goal by ensuring that even where the investigating authority is unable to obtain the ‘first-best’ information as the basis of its decision, it will nonetheless base its decision on facts, albeit perhaps ‘second-best’ facts.”*

In *Beef and Rice*<sup>7</sup>, the Panel noted that *‘Annex II, entitled “Best Information Available in Terms of Paragraph 8 of Article 6” contains a number of obligations the investigating authority has to comply with in order for the use of facts available in a given case to be in accordance with Article 6.8 of the AD Agreement.’*

The Panel interpreted the conditions of Annex II on the investigating authority as follows:

*The use of the term “best information” means that information has to be not simply correct or useful per se, but the most fitting or “most appropriate” information available in the case at hand. Determining that something is “best” inevitably requires, in our view, an evaluative, comparative assessment as the term “best” can only be properly applied where an unambiguously superlative status obtains. It means that, for the conditions of Article 6.8 of the AD Agreement and Annex II to be complied with, there can be no better information available to be used in the particular circumstances. Clearly, an investigating authority can only be in a position to make that judgement correctly if it has made an inherently comparative evaluation of the “evidence available”. This is reinforced, in our view, by the requirement in paragraph 3 of Annex II that all information which is verifiable, which is appropriately submitted and supplied in a timely fashion is to be taken*

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<sup>6</sup> Panel Report, *US – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R, para 7.55; Page 23.

<sup>7</sup> Panel Report, *Mexico – Definitive Anti-Dumping Measures on Beef and Rice*, WT/DS295/R, para 7.166, page 144.

*into account when determinations are made. In similar vein, paragraph 5 of Annex II does not allow an authority to disregard information, even though that information is not ideal in all respects, provided the interested party has acted to the best of its ability. Finally, and perhaps most importantly, such a conclusion is evident from the requirement set forth in paragraph 7 of Annex II that, in case the authorities have to base their findings on information from a secondary source they should do so with special circumspection, and check, where practicable, the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns and from the information obtained from other interested parties during the investigation.*

This requirement to undertake a comparative evaluation is supported by the Commission's stated policy in Report 159D<sup>8</sup> and more recently REP 203<sup>9</sup>. In assessing the use of relevant information for the purposes of determining export price and normal values for uncooperative parties, the Commission notes at page 16 of Report 159D, that:

*Thus, in conducting an investigation, Customs and Border Protection should undertake an "evaluative, comparative assessment"<sup>10</sup> of information provided by interested parties to ensure that "this information [is] the most fitting or appropriate for making determinations..."<sup>11</sup>.*

*As non-cooperating exporters do not provide Customs and Border Protection with information so that an individual dumping margin can be determined, all relevant information is actively sought from interested parties. Customs and Border Protection will ordinarily have regard to a breadth of information as a result of this inquiry. It is then necessary to critically assess this information to ascertain whether it can be relied upon in order to determine export prices and normal values pursuant to subsections 269TAB(3) and 269TAC(6) respectively. If the information is considered to be unreliable, it is disregarded pursuant to subsections 269TAB(4) and 269TAC(7).*

On page 17 of that same report, the Commission outlined its approach to the use of relevant information from other cooperating exporters in determining export price or normal values for non-cooperating parties. It stated:

*Customs and Border Protection must then scrutinise the verified information of cooperating exporters to ensure that it is reasonable in the circumstances to attribute this information to non-cooperating exporters.*

The Commission's only conclusion set out in REP 333 was that *'it is not possible for the Commission to conclude whether TPC's exports to Australia are relevant to Prime Products, as Prime Products has not exported consumer pineapple to Australia. Therefore the*

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<sup>8</sup> Reinvestigation of certain findings in REP 159C – Certain Clear Float Glass,

<sup>9</sup> Reinvestigation of certain findings in REP 177 – Certain Hollow Structural Sections

<sup>10</sup> Appellate Body Report, Mexico – Beef and Rice, WT/DS295/R at para 7.167

<sup>11</sup> Appellate Body Report, Mexico – Beef and Rice, WT/DS295/R at para 7.167

*Commission has not established normal values for Prime Products based on exports from TPC of Thailand'*. PPI considers this statement to be a prime example of the Commission's flawed logic and reasoning.

On the one hand the Commission rejects relying on actual export prices by the non-dumped Thai exporter, TPC, because it held the view that it could not be satisfied that those exports were relevant in PPI's circumstance, but considered that actual export prices from other non-cooperating exporters from Thailand were relevant to PPI's circumstances. There is no reasonable explanation why import statistics from non-cooperating exporters are any more relevant to PPI than the equivalent import statistics from the non-dumped Thai exporter.

In fact, PPI contends that TPC's exports were the more relevant and reliable information in ascertaining PPI's export prices as they reflected non-dumped prices which paralleled PPI's circumstances of not having exported consumer pineapple to Australia at dumped prices.

Therefore, PPI submits that REP 333 contains no evaluative, comparative assessment or any such critical assessment of all relevant information available to the Commission. PPI submits then that the Commission did not undertake such an assessment and did not comply with its own policy guidelines in this area or its obligations pursuant to Annex II of the WTO Anti-Dumping Agreement. Therefore in failing to properly investigate and evaluate other relevant and verified information, the Commission was unable to establish that the information relied upon in determining export prices under s.269TAB(3) of the Act, was the best information to be attributed to PPI.

PPI understands and accepts that the dumping framework and the findings that flow from the investigations undertaken within that framework, are heavily influenced by the decisions of interested parties to cooperate or not with those investigations. It is a generally accepted principle that non-cooperative parties cannot expect favourable outcomes or treatment, relative to those of cooperative parties. This principle of favourable treatment to cooperating parties is critical to ensuring that interested parties are encouraged to participate in these inquiries so that the findings can be based on the best possible information available.

So it is entirely understandable that the Commission would consider that export price information from the Australian Border Force import database to be relevant and appropriate for determining export prices for non-cooperative exporters. However, in PPI's case as a cooperative exporter, where it has made every effort and fully cooperated with the Commission's investigation, it cannot be a correct and preferable decision to effectively treat it as a non-cooperative exporter and apply the non-cooperative ascertained variable factors.

PPI has not been provided sufficient information by the Commission to properly understand that basis of the normal value ascertained for Dole Philippines, in

particular the like good domestic models and the Australian exported models. PPI considers this information was critical to its ability to properly respond to the Commission's findings and defend its interests in this matter.

Notwithstanding the lack of sufficient understanding of the normal value ascertained, PPI makes the following observations which support its view that the ascertained export price was not correct or preferable.

Firstly, the Commission found that Dole Philippines export prices were on average dumped and below the corresponding weighted normal value by a margin of 5.9%. Therefore, it was open to the Minister to ascertain Dole Philippine's variable factors so that a fixed amount of interim dumping duty is imposed on its future exports, equivalent to the difference between the ascertained normal and ascertained export price.

However by contrast, PPI's circumstances are that it has never exported consumer pineapple products to Australia at dumped prices. So in PPI's view, the primary and only objective of the Minister is to ensure that contemporary ascertained variable factors are imposed against PPI's future exports to ensure that it is prevented from exporting at prices less than the ascertained normal value. In this case, the ascertained normal value outlined in REP 333, is the weighted average normal value ascertained for Dole Philippines.

Therefore, to ensure that future exportations of consumer pineapple by PPI are not at dumped prices, the Minister need only ascertain PPI's export price at the same level as the ascertained normal value. This would guarantee that PPI's future exports are not dumped and consistently reflect the fact that it has not previously exported to Australia at dumped prices.

This approach was recently adopted by the Commission in circumstances similar to PPI. In the review of canned tomatoes from Italy by Calispa S.p.A.<sup>12</sup>, the Commission stated that:

*It is not possible for the Commission, in the absence of exports or perhaps an irrevocable contract for supply, to reasonably anticipate the product mix that might be exported to Australia.*

The Commission went on to add:

*In considering the range of alternative approaches, the Commission considers that the outcome should ensure that the effectiveness of the remedy for injurious dumping is upheld, but any outcome should, where possible, also avoid unintended or unnecessary consequences.*

In that case, the Minister set an equal ascertained export price and ascertained normal value, which ensured a minimum floor price below which export prices were subject

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<sup>12</sup> REP 250, Accelerated review of prepared or preserved tomatoes from Italy; section 4.2.4; page 12.

to an interim dumping duty. In the same manner, PPI considers that the Commission ought to have properly taken into account PPI's circumstances as a cooperating exporter and ascertained its export price at the same level as its ascertained normal value which reflects a non-dumped price by Dole Philippines.

Another key reason to consider that the Commission's ascertained export price was not correct or preferable, was concerns about the export prices and normal values being properly comparable. As explained earlier, the Commission has not provided any information or a reasonable non-confidential summary of the information relied upon for ascertaining PPI's normal value and export price. This information is considered critical to PPI properly understanding the type of consumer pineapple products included in the Commission's ascertained variable factors, and specifically its ability to identify and submit claims for adjustment to ensure proper comparison.

Notwithstanding the lack of a non-confidential summary, PPI considers that the ascertained normal value and export price do not allow for a proper comparison. Firstly, it is expected that the raw pineapple costs in the Philippines and Thailand will be different, as they are heavily impacted by the particular weather conditions in the respective countries. Therefore, it is not reasonable to compare export prices from Thailand against domestic prices and costs in the Philippines. PPI expects that the Commission was in a position to properly compare and assess relative pineapple costs between the two countries given information presented by cooperating exporters.

Also the Commission makes no mention of the types of models sold domestically and constructed for Dole Philippines, and whether those same types were reflected in the export sales information taken from the ABF import database. This again is critically important as the relative prices per kilogram net weight varies considerably depending on the size of the can.

As highlighted to the Commission, contemporary retail prices for a 227g can of 'Love Dole' pineapple chunks in juice exported by Dole Philippines is \$7.14/kg, compared to \$4.61/kg for exactly the same product in a 432g can. This represents a price premium of 55% for the smaller can of an identical product.

The potential for further differences in prices is evident when comparing different products all together. Once again, PPI brought to the Commission's attention examples Dole Philippines exports of pineapple pieces in juice sold in 115g tetra pak packaging. This product retails for \$8.70/kg and is expected to be significantly more expensive to produce than an equivalent product in cans.

In conclusion, PPI contends that the Commission's determination of export price was not correct or preferable as it did not properly reflect PPI's particular circumstances as a cooperating exporter that has never exported consumer pineapple to Australia at dumped prices.



## THE CORRECT AND PREFERABLE DECISIONS

PPI contends that the correct and preferable decision for the challenged findings are:

**Finding 1:** Consistent with its common approach to ascertaining export price in circumstances where no exports to Australia occurred during the review period, the correct and preferable decision was to ascertain PPI's export price at a level equal to the corresponding ascertained normal value during the review period.

## REASONS WHY THE PROPOSED DECISION IS MATERIALLY DIFFERENT FROM THE REVIEWABLE DECISION.

The proposed decision is different from the reviewable decisions for the following reason:

**Finding 1:** The proposed decision would have resulted in PPI's exports being subject to an ascertained normal value floor price and a zero rate of dumping duty, which would have properly reflected the fact that it has never exported consumer pineapple to Australia at dumped prices.