



Australian Government
Anti-Dumping Review Panel

APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER FOLLOWING A REVIEW INQUIRY

Anti-Dumping Review Panel

c/o Legal Services Branch
Australian Customs and Border Protection Service
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Canberra City
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INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Australian Customs and Border Protection Service (ACBPS), or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The ADRP may review decisions made by the Minister, as follows:

Investigations

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice;
- not to publish a countervailing duty notice;

Review inquiries

- to alter or revoke a dumping duty notice following a review inquiry;
- to alter or revoke a countervailing duty notice following a review inquiry;
- not to alter a dumping duty notice following a review inquiry;
- not to alter a countervailing duty notice following a review inquiry;
- that the terms of an undertaking are to remain unaltered;
- that the terms of an undertaking are to be varied;
- that an investigation is to be resumed;
- that a person is to be released from the terms of an undertaking;

Continuation inquiries

- to secure the continuation of dumping measures following a continuation inquiry;
- to secure the continuation of countervailing measures following a

- continuation inquiry;
- not to secure the continuation of dumping measures following a continuation inquiry;
- not to secure the continuation of countervailing measures following a continuation inquiry;

Anti-circumvention inquiries

- to alter a dumping duty notice following an anti-circumvention inquiry;
- to alter a countervailing duty notice following an anti-circumvention inquiry;
- not to alter a dumping duty notice following an anti-circumvention inquiry; and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations to** the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The ADRP does not have any discretion to accept an invalidly made application or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for an ADRP review of a decision of the Minister under s 269ZDB, following a review inquiry. It is approved by the Commissioner pursuant to s.269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION FOLLOWING A REVIEW INQUIRY?

Any interested party may lodge an application for review to the ADRP of a review of a ministerial decision. An "interested party" may be:

- if an application was made which led to the reviewable decision, the applicant;
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a person directly concerned with the importation or exportation to Australia of the goods;
- a person directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country of origin or of export of the subject goods.

Intending applicants should refer to the definition of "interested party" in s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision is first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for

believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP after an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The ADRP does not have any investigative function, and must take account only of information which was before the Minister when the Minister made the reviewable decision (s 269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review;
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)); or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision; or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP_support@customs.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6275 5868**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the ADRP** can be obtained at the ADRP website (www.adreviewpanel.gov.au) or from:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6275 5868
Facsimile: +61 2 6275 6784

Inquiries and requests for **general information about dumping matters** should be directed to:

Anti-Dumping Commission
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision of the Minister under s 269ZDB of the *Customs Act 1901* following a review inquiry.

**APPLICATION FOR REVIEW OF A DECISION OF THE MINISTER
FOLLOWING A REVIEW INQUIRY**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

To alter: ☒ a dumping duty notice(s) following a review inquiry;
 ☐ a countervailing duty notice(s) following a review inquiry.

OR

To revoke: ☐ a dumping duty notice(s) following a review inquiry; and/or
 ☐ a countervailing duty notice(s) following a review inquiry.

OR

Not to alter: ☒ a dumping duty notice(s) following a review inquiry; and/or
 ☐ a countervailing duty notice(s) following a review inquiry.

OR

- ☐ that the terms of an undertaking are to remain unaltered;
- ☐ that the terms of an undertaking are to be varied;
- ☐ that an investigation is to be resumed;
- ☐ that a person is to be released from the terms of an undertaking;

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

- ☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

NON-CONFIDENTIAL

- ☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.
- ☒ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☒ Full description of the imported goods to which the application relates.
- ☒ The tariff classification/statistical code of the imported goods.
- ☒ A copy of the reviewable decision.
- ☒ Date of notification of the reviewable decision and the method of the notification.
- ☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- ☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature: 

Name: Roger Simpson

Position: Consultant

Applicant Company/Entity:

SIAM AGRO-FOOD INDUSTRY PUBLIC COMPANY LIMITED

Date: 21 / 9 / 13

**ATTACHMENT TO THE APPLICATION FOR REVIEW OF THE MINISTER'S
DECISION FOLLOWING A REVIEW INQUIRY CONCERNING CONSUMER
PINEAPPLE EXPORTED FROM THAILAND**

Applicant

SIAM AGRO-FOOD INDUSTRY PUBLIC COMPANY LIMITED
50 GMM Grammy Place 17th Floor Sukhumvit 21 (Asoke) Road,
Klongtoey Nua, Wattana, Bangkok, 10110, Thailand

Form of business: Company

Contact person

Ms Ghanyapad (Jinny) Tantipipatpong
President
Tel: +66(0)2 665 9333
Fax: +66(0)2 665 9348
Mobile: +66(0)81 813 6288
Email: jinny@tpc-canning.com

Consultant/Advisor

Mr Roger Simpson
Roger D Simpson & Associates Pty Ltd
PO Box 2112
Port Adelaide SA 5015
Tel: +61 8 8447 3699
Fax: +61 8 8447 2661
Email: roger@panpac.biz

A letter of authorisation is at attachment 1.

Description of the imported goods

Pineapple, prepared or preserved, in containers not exceeding one litre
(consumer pineapple).

Tariff classification/statistical code of the imported goods

2008.20.00/26,27,28

The reviewable decision

A copy of the Minister's decision is at attachment 2.

Notification of the reviewable decision

The reviewable decision was notified on 26 July 2013 by email from the Anti-Dumping Commission – copy at attachment 3.

Statement of reasons for believing that the reviewable decision is not the correct or preferable decision

Preliminary note:

The review by the Australian Customs and Border Protection Service (Customs) to which this application refers found that Siam Agro-Food Industry Public Co Ltd (SAICO) and Thai Pineapple Canning Industry Co Ltd (TPC) are the same corporate entity.¹ Consequently references to SAICO and TPC in this application are synonymous.

The reviewable decision in respect of which this application is made follows two separate Customs' reviews of anti-dumping measures applicable to consumer pineapple exported from Thailand. They are –

- the variable factors review as reported in International Trade Remedies Report No. 195A; and
- the revocation review as reported in International Trade Remedies Report No. 195B.

We believe that the reviewable decision is not the correct or preferable decision as it relates to both reviews. Reasons follow.

Revocation review – Report No. 195B

The decision of the Minister to accept Customs' recommendation per Report No. 195B to not alter the dumping duty notice applying to exports of consumer pineapple from Thailand by TPC is not the correct or preferable decision

The facts established by the review do not provide reasonable grounds for the conclusion that the dumping duty relating to consumer pineapple exported from Thailand by TPC continues to be warranted. They do not provide reasonable grounds for Customs' consideration that revoking the duty 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. Consequently the Customs' recommendation upon which the reviewable decision was based should have been a recommendation that the dumping duty applicable to TPC's exports be revoked.

Section 269ZDA(1A) of the Customs Act ("the Act") explicitly provides that Customs must make a revocation recommendation unless it is satisfied that revoking the measures (dumping duty) **would lead, or be likely to lead,** to continuation or recurrence of dumping. As the review determined no dumping during the review period, the question under consideration here is, not whether revoking the measures would lead, or be likely to lead, to a continuation of dumping, but whether it would lead, or be likely to lead, to recurrence of the dumping found by Customs to have occurred during the investigation period of the 2011 investigation which led to imposition of the subject measures (no. 173b), viz January to December 2010.

¹ Visit Report, Thai Pineapple Company February 2013, section 3.1.2.

In examining the issue of whether dumping is likely to recur, Customs takes guidance from WTO jurisprudence where *likely* has been taken to mean *probable*.² The facts established by review no. 195B ("the review") demonstrate that it is possible that the dumping determined for the period January-December 2010 will recur, but fails to demonstrate that it is likely to recur. That is, it is demonstrated that a recurrence of dumping is a possibility, but it is not demonstrated that it is a probability.

Customs accepts that the finding of dumping during the January-December 2010 investigation period of the 2011 investigation was impacted by the increased price of raw pineapple resulting from the unusual climate conditions in Thailand during 2010 and 2011, being the prolonged period of drought.³ It also accepts that the cost of raw pineapple for the period of the review, viz October 2011 to September 2012, has recovered from the impacts of the 2010 drought and that TPC has not exported at dumped prices during this period.⁴

In response to TPC's rebuttal of its preliminary finding in this regard, Customs is now satisfied that the increase in contractual export prices for the period of the review, which were found to be undumped, was not because of the imposition of anti-dumping measures in October 2011 but was because of cost increases experienced because of the 2010 drought.⁵

It follows from the above that Customs' sole ground for finding that revocation of the measures would be likely to lead to a recurrence of dumping is its conjecture that the volatility of raw pineapple cost is likely to result in TPC selling to Australia at dumped prices within the next 12 months. This conjecture is in despite of the following facts:

- TPC's export prices during the review period, which had been increased because of higher costs during 2010/2011 on account of the 2010 drought conditions and higher raw pineapple costs, provided for [REDACTED] margins; and
- TPC's export prices during the post-investigation period examined by Customs, ie October 2012, January 2013 and May 2013, also provided for [REDACTED] margins.

The above facts demonstrate that TPC has reacted to the losses experienced in 2010/11 because of, among other things, the unexpected increase in raw pineapple costs, by building into its export prices to Australia sufficient margins to account for unforeseen cost increases.

Customs has evidence that the [REDACTED] margin included in TPC's exports during the review period was [REDACTED].⁶ It also has evidence in its dumping

² Dumping and subsidy manual, chapter 31.3.

³ Report No. 195B, section 4.4.

⁴ Ibid.

⁵ Ibid.

⁶ Statement of Essential Facts No. 195B, section 4.4.

calculations for exports during the post-review period examined (October '12, January '13, May '13) that [REDACTED] margins in these exports are also [REDACTED]

Important to Customs' conclusion that dumping of TPC's exports is likely to occur in the next 12 months is its conclusion that the subject goods were exported at dumped prices during October '12, January '13 and May '13. Customs reached this conclusion on the basis of the calculation of a positive dumping margin for certain individual products in certain months. When the dumping status of the subject goods is calculated according to Customs' normal method, ie a weighted average product margin, there is no dumping during this period – our calculation of a product margin for this period based on Customs' normal values and export prices is at attachment 4. Furthermore, the normal values used by Customs in these dumping margin calculations include a highly inflated profit margin (approx. 11.8%) – see the section hereunder concerning the variable factors review.

Customs' calculation of dumping margins for the said post-review period based on 2013/14 contract prices are meaningless because actual export prices for October '12, January '13 and May '13 were in accordance with 2012/13 contract prices.

It is important that the key circumstance which led to dumping in 2010 and imposition of measures in 2011 was a huge increase in raw material prices from an average of THB [REDACTED]/kg in the second half of 2009 to as high as THB [REDACTED]/kg in the second half of 2010, because of severe drought. There are no facts established by the review from which it can be concluded that a recurrence of such unforeseen circumstance is **likely**. And even if it was to recur, there are no facts established by the review which can lead to a conclusion that in such circumstance TPC's exports to Australia would be **likely** to be at dumped prices. The facts established by this investigation demonstrate that TPC has reacted to the loss situation experienced in 2010 because of increased production costs due to drought conditions, ie increased raw pineapple costs and reduced production volume of finished goods, by ensuring that term contract prices provide sufficient margin to protect against recurrence of the 2010 circumstances. It is not possible for Customs to predict that it is **likely** that there will be an increase in raw pineapple costs which will cause TPC's exports to Australia to be at dumping prices.

It is of note that in the unlikely event of a large unexpected increase in raw pineapple costs causing TPC's exports to Australia to go into a dumping mode, such mode would be temporary as TPC would, as it did in 2010/11, increase its contract export prices as soon as possible to achieve its [REDACTED] margin and also the largely increased raw pineapple costs causing this situation would be likely to be temporary. It is also of note in this regard that at the time of imposition of the subject anti-dumping measures in October 2011, TPC's export prices found to have been dumped in 2010 were no longer dumped, as TPC's contract export prices had been increased and raw pineapple costs had decreased. Customs has knowledge of this from the 2011 investigation and the review. Summarising the foregoing, the dumping situation in 2010 was a

temporary situation brought about by unforeseen, climate related, circumstances, which was remedied within months by TPC increasing its export prices as soon as possible and change in the climate related circumstances which brought the temporary dumping. And any (unlikely) recurrence of a dumping situation by reason of recurrence of the 2010 circumstances will be similarly remedied.

Furthermore, the temporary dumping situation in 2010 did not cause any reduction of TPC's export prices to Australia, but rather brought an early increase of those prices, and such will be the case if there is any (unlikely) recurrence of this situation. This must raise questions about the materially injurious nature of this temporary dumping in the unlikely event that that it was to recur.

Fundamental to Customs' conclusion that volatility of raw pineapple costs are likely to result in recurrence of TPC selling to Australia at dumped prices within the next twelve months is its false claim that TPC *has demonstrated an unwillingness to respond to unforeseen cost increases*.⁷ The truth is that TPC responded to the 2010 unforeseen cost increases by [REDACTED] increasing its contract prices as early as possible to include [REDACTED] margins to protect against recurrence of the 2010 circumstances. Customs has evidence of this.

To support the said false claim leading to its incorrect conclusion, Customs falsely claims that TPC's unwillingness to respond to unforeseen cost increases is *confirmed through analysis of TPC's contemporary cost information, whereby some products exported to Australia outside of the review period are exported at dumped prices*.⁸ As outlined above, the contemporary export price and cost information examined by Customs demonstrates no dumping and inclusion of [REDACTED] margins in TPC's export prices to Australia. It is of important note that "some products" exported outside the review period refers to one low volume product, whereas the overall post-review period product dumping margin (not calculated by Customs) is negative 11% - attachment 4 refers.

We reiterate that the facts established by the review do not support Customs' conclusion that revocation of the subject measures is **likely** to lead to a recurrence of dumping and consequent material injury. They also do not give any indication that the recurrence of dumping in the absence of measures is **likely** to eventuate in the next twelve months, as concluded by Customs. Consequently, in accordance with section 269ZDA (1A) of the Act, Customs should have made a revocation recommendation.

Variable factors review – Report No. 195A

The Minister's decision to accept Customs' recommendation concerning the variable factor of normal value applicable to TPC's exports to Australia as set

⁷ Report No. 195B, section 4.4.

⁸ Ibid.

out in International Trade Remedies Report No. 195A (REP 195A) is not the correct or preferable decision for the following reasons.

The normal value applicable to TPC's exports to Australia according to REP 195A is a constructed normal value pursuant to section 269TAC(2)(c) of the Customs Act ("the Act"). In determining this normal value vide s269TAC(2)(c), Customs found it appropriate to apply a profit of approximately 11.8% of cost, which it claims to be calculated in accordance with Customs Regulation 181A(3)(c) ("Reg 181A(3)(c)").⁹ We believe that the method used by Customs to calculate this profit amount of approximately 11.8% is contrary to the explicit requirement of Reg 181A(3)(c) that it be a *reasonable method*. We consider the method used by Customs to calculate the said profit amount to be an unreasonable method.

The profit amount of approximately 11.8% applied by Customs represents the weighted average profit realised by the Dole Group and KFC on domestic sales of food services and industrial pineapple ("FSI pineapple"), which Customs considers to be in the same general category of goods as consumer pineapple.¹⁰

Customs' method of calculating this profit amount is unreasonable and therefore contrary to Reg 181A(3)(c) because, while FSI and consumer pineapple may fall within the same general category of goods, they are sold into two distinct markets and have significantly different production costs and selling prices into all markets into which both are sold.

In its original investigation concerning canned pineapple from Thailand (no. 41), Customs found that *FSI and consumer pineapple are sold into two distinct segments of the market and therefore are not directly competitive*.¹¹ This finding is fundamental to FSI and consumer pineapple being subjects of separate investigations/reviews.

In section 4.4.2 of REP 195 it is stated that –

- *the two categories of goods differ in commercial likeness; and*
- *consumer pineapple is sold predominately to the retail market while FSI pineapple is sold predominately into the distribution market.*

In addition, it has been established by the review and previous Customs' investigations concerning pineapple from Thailand that FSI and consumer pineapple have significantly different production costs and selling prices into markets into which both are sold.

Consequent upon the foregoing, it is absolutely unreasonable to consider that the profit achieved in domestic sales of FSI pineapple by other Thai producers is representative of the profit that could be achieved in domestic sales of consumer pineapple by TPC.

⁹ REP 195A, section 4.5.4.

¹⁰ Ibid, section 4.4.2.

¹¹ Customs Report No. 41, section 4.1.2.5.

Despite this matter of the unreasonableness of a profit achieved in domestic sales of FSI pineapple being used in the construction of a normal value for consumer being the subject of our submission in response to Statement of Essential Facts No. 195A, Customs has not, in REP 195A, provided any explanation as to why it considers the use of the weighted average profit achieved in domestic sales of FSI pineapple by other producers to be a reasonable method for determining the amount of profit to be used in the construction of a normal value vide section 269TAC(2)(c) of the Act for exports of consumer pineapple.

It is stated in section 4.5.4 of SEF 195A that Customs considers that the best representation of profit that can be achieved on the domestic market in the same general category of goods to consumer pineapple would be the weighted average profit realised by Dole and KFC on sales of FSI pineapple. However, Customs does not explain why it is reasonable to consider profit realised on sales into the domestic market for FSI pineapple in the construction of a proxy selling price of consumer pineapple into an entirely different domestic market. There is a regular domestic market for FSI pineapple whose end-users are producers of pizza's and other food products and hotels and restaurants, but there is no such market for consumer pineapple whose end-users are consumers who have plentiful supply of fresh pineapple at significantly lower prices than canned (consumer) pineapple on a per kg basis, making profitable sales of consumer pineapple not possible and hence no domestic sales by TPC.

Customs concluded in investigation no. 173b that *an amount of profit should not be added to the constructed normal value* because it considered that TPC would be unable to make profitable sales on the domestic market.¹² Because, for reasons outlined above, it is unreasonable to use profit achieved in the domestic sale of FSI pineapple by other producers into a distinctly different market in the construction of a normal value for consumer pineapple and because the review has provided no other information in relation to this matter, we believe that it is appropriate to follow the course of investigation no. 173b and include a zero amount of profit in the constructed normal value of TPC's exports of consumer pineapple to Australia.

In summary, for reasons provided above, we believe that –

- the calculation of the amount of profit included in the constructed normal value of TPC 's consumer pineapple exports to Australia from prices in domestic sales of FSI pineapple by other producers into a distinctly different market is not a reasonable method and is therefore contrary to Reg 181A(3)(c); and
- it is appropriate that a zero amount of profit be included in the constructed normal value of TPC's consumer pineapple exports to Australia.

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¹² Report No. 173b, section 5.5.

List of Attachments

Attachment 1	Letter of Authorisation
Attachment 2	The Reviewable Decision
Attachment 3	Notification of the Reviewable Decision
Attachment 4	Calculation of a product dumping margin for the post-review period (confidential)

Attachment 1

LETTER OF AUTHORISATION

Attachment 2

THE REVIEWABLE DECISION

Attachment 3

**NOTIFICATION OF THE REVIEWABLE
DECISION**

Attachment 4
CONFIDENTIAL

**CALCULATION OF A PRODUCT DUMPING
MARGIN FOR THE POST-REVIEW PERIOD**



บริษัท สยามอุตสาหกรรมเกษตรอาหาร จำกัด (มหาชน)
SIAM AGRO-FOOD INDUSTRY PUBLIC COMPANY LIMITED
Golden richness...uniquely Thai

August 14th, 2013

*The Anti-Dumping Review Panel
Canberra ACT
Australia*

Dear Sir/Madam,

We hereby authorise Roger D Simpson & Associates Pty Ltd to represent us in seeking a review of the decision of the Minister of Home Affairs in relation to a review of the anti-dumping measures applicable to consumer pineapple exported from Thailand.

Yours faithfully,

*Ghanyapad Tantipipatpong
Director*



Customs Act 1901 – Part XVB

CONSUMER PINEAPPLE

Exported from Thailand

Findings in Relation to a Review of Anti-Dumping Measures

Public Notice under subsection 269ZDB(1) of the Customs Act 1901

The Anti-Dumping Commission (previously the Australian Customs and Border Protection Service) has completed its review, which commenced on 19 December 2012, of the anti-dumping measures applying to consumer pineapple ("the goods") exported to Australia from Thailand.

Recommendations resulting from that review, reasons for the recommendations and material findings of fact and law in relation to the review are contained in International Trade Remedies Report No. 195A (the variable factors review) and 195B (the revocation review in relation to exports from Thailand by Thai Pineapple Canning Industry Corp Ltd) (REP 195A and 195B).

I, Jason Clare, the Minister for Home Affairs, have considered REP 195A and 195B and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 195A and 195B.

Under subsection 269ZDB(1) of the *Customs Act 1901* (the Act), I declare, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that anti-dumping measures concerning the goods involved the publication of a dumping duty notice that, with effect from the date of publication of this notice, the notice is to be taken to have effect or to have had effect in relation to exporters of consumer pineapple from Thailand as if different variable factors had been fixed in respect of those exporters.

The export prices, normal values and non-injurious prices will be varied as a result of this review. To preserve confidentiality, the revised variable factors will not be published. *Bona fide* importers of the goods can obtain details of the new rates from the Regional Dumping Officer in their respective capital city.

The interim dumping duty payable is an amount which will be worked out in accordance with the combination of fixed and variable duty method as outlined in the *Customs Tariff (Anti-Dumping) Regulation 2013*.

REP 195A and 195B has been placed on the Anti-Dumping Commission's public record, available at <http://www.adcommission.gov.au>. Alternatively, the public record may be examined at the office address below during business hours by contacting the Case Manager on the details provided below.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements of Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

The Anti-Dumping Review Panel can be contacted by mail, phone, fax or email:

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA CITY ACT 2601 AUSTRALIA
Phone: +61 2 6275 5868
Fax: +61 2 6275 6784
Email: ADRP_support@customs.gov.au

Enquiries about this notice may be directed to the case manager on telephone number 02 6275 5675 fax number 02 6275 6690 or Operations1@adcommission.gov.au.

Dated this 10th day of July 2013

Jason Clare
Minister for Home Affairs

Roger Simpson

From: GARABED Pamela [Pamela.Garabed@adcommission.gov.au]
Sent: Friday, 26 July 2013 10:50 AM
To: Roger Simpson
Subject: Review of the Anti-Dumping measures related to Consumer and FSI Pineapple exported from Thailand [DLM=For-Official-Use-Only]

Good morning Roger,

The Anti-Dumping Commission (the Commission) has completed its review of the anti-dumping duties that apply to consumer pineapple and food service and industrial (FSI) pineapple exported from Thailand.

Findings in relation to the consumer pineapple reviews

In relation to the reviews of consumer pineapple exported from Thailand, the Minister for Home Affairs (the Minister) has accepted the Commission's (previously the Australian Customs and Border Protection Service) recommendation:

- to fix new variable factors with respect to all exporters of consumer pineapple from Thailand (the variable factors review); and
- that the measures remain warranted insofar as they relate to the exports of consumer pineapple from Thailand by Thai Pineapple Canning Industry Corp Ltd (the revocation review).

A copy of *International Trade Remedies Report No. 195A* (related to the variable factors review) and *195B* (related to the revocation review) (REP 195A and 195B) and the related Australian Dumping Notice (ADN) No. 2012/62 are available on the electronic public record for the investigation at <http://www.adcommission.gov.au/cases/EHP195.asp>.

Findings in relation to the FSI pineapple review

In respect of the review of the variable factors of the measures related to FSI pineapple exported to Australia from Thailand, the Minister has accepted the Commission's recommendation to fix new variable factors for all exporters of the goods.

A copy of REP 196 and the related ADN 2012/63 are available on the electronic public record for the investigation at <http://www.adcommission.gov.au/cases/EPR196.asp>.

Enquiries concerning the interim dumping duty should be directed to the liaison officer on 1300 884 159 or by email at clientsupport@adcommission.gov.au.

Please don't hesitate to contact me should you wish to discuss the reviews of measures or request further information in relation to the reviews.

Kind regards,

Pamela Garabed
Supervisor | Operations 1
Anti-Dumping Commission
Customs House, 5 Constitution Avenue, Canberra ACT 2600
T: +61 2 6275 5675 | F: +61 2 6275 6990 | W: www.adcommission.gov.au