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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  
5 Constitution Avenue  
Canberra City  
ACT 2601  
P: +61 2 6275 5868  
F: +61 2 6275 6784  
E: [ADRP\\_support@customs.gov.au](mailto:ADRP_support@customs.gov.au)

## 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](http://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](http://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](mailto: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:

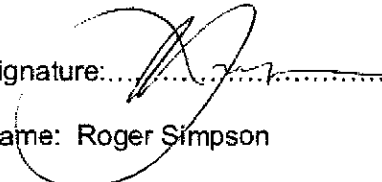
- provides reasonable grounds for a review to be undertaken;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

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).

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- 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:

Tipco Foods Public Company Ltd

Date: 21 / 9 / 13

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

**Applicant**

Tipco Foods Public Company Ltd  
Tipco Tower 118/1 Rama 6 Road  
Samsen Nai, Phayathai, Bangkok  
Thailand 10400

Form of business: Company

**Contact person**

Ms Chidchanok Vipavasupakorn  
International Business Manager  
Tel: (662) 273 6200 ext. 6803  
Fax: (662) 271 1600, 271 4304  
Email: [chidchanok@tipco.net](mailto:chidchanok@tipco.net)

**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](mailto:roger@panpac.biz)

A letter of authorisation is at attachment 1.

**Description of the imported goods**

Pineapple, prepared or preserved, in containers exceeding one litre (food service and industrial pineapple).

**Tariff classification/statistical code of the imported goods**

2008.20.00/27,28

**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**

The decision of the Minister for Home Affairs ("the Minister") to accept the recommendation of the Australian Customs and Border Protection Service ("Customs") per International Trade Remedies Report No. 196 ("REP 196") as it relates to the variable factors applicable to food service and industrial pineapple ("FSI pineapple") exported from Thailand by Tipco Foods Public Company Limited ("Tipco") is not the correct or preferable decision. Reasons follow.

The dumping duty notice applicable to exports of FSI pineapple from Thailand, including those by Tipco, refers to all types of FSI pineapple, as do the variable factors applicable to such exports, eg standard or choice grade, 440 or 825g packs, pieces or slices, in natural juice or light/heavy syrup.

The variable factors applicable to Tipco's exports of all types of FSI pineapple exports to Australia have been ascertained by Customs on the basis of just one type of FSI pineapple. The outcome of this approach is a highly inflated ascertained export price ("AEP") and thus variable duty becoming applicable to Tipco's future exports of various types of FSI pineapple. This highly inflated AEP and consequent variable duty is likely to prohibit future FSI pineapple exports to Australia by Tipco, which is contrary to the intention of anti-dumping measures. The situation leading to this likely prohibition of Tipco's future FSI pineapple exports to Australia by the measures imposed following review no. 196 ("the review") is outlined hereunder.

During the period of the review, the only FSI pineapple exported to Australia by Tipco was [REDACTED] of the kind exported to [REDACTED] is a specialty product and [REDACTED] is no longer a customer of Tipco and in fact no longer imports FSI pineapple. It is therefore highly unlikely that Tipco will receive future orders from Australia for this type of FSI pineapple.

The review established a negative dumping margin for the said Tipco exports of [REDACTED]. It also established normal values for the [REDACTED] types of FSI pineapple that Tipco is likely to export to Australia in the future, viz [REDACTED]. Customs is aware that these [REDACTED] types constitute a large proportion of FSI pineapple exports from Thailand to Australia.

The AEP determined by Customs for Tipco's exports of [REDACTED], the only type of FSI pineapple exported to Australia during the review period ([REDACTED] x containers), is AUD [REDACTED]/kg. The product normal value determined by Customs for Tipco's FSI pineapple exports, ie the weighted average normal value for this product type and the product types that constitute Tipco's likely future exports to Australia mentioned above, is AUD [REDACTED]/kg. The weighted average normal value for just the types likely to be exported to Australia is also AUD [REDACTED]/kg.

It is grossly unfair that future exports of FSI pineapple to Australia by Tipco will be prohibited by the variable dumping duty applicable to such exports being based on an AEP which is 23% higher than the normal value determined by Customs for the product types of FSI pineapple likely to be exported to Australia by Tipco in the future, ie AUD [REDACTED]/kg v AUD [REDACTED]/kg.

Paramount to this grossly unfair situation is the fact that AEP's inherent in variable duties applicable to exports of FSI (and consumer) pineapple by exporters who did not export during the review period are at the level of product normal values which are the average of normal values applicable to the various types of pineapple likely to be exported to Australia in the future, ie the equivalent of the AUD [REDACTED]/kg for Tipco's exports.

In the above circumstances it would have been appropriate for Customs to have separately determined a dumping duty rate for the product exported to Australia at a large negative dumping margin during the review period, viz [REDACTED], based on the AEP established for these exports (AUD [REDACTED]/kg) and a dumping duty rate for all other types of FSI pineapple exported by Tipco, based on the average normal value of the other types (AUD [REDACTED]/kg). It was open to Customs to do this.

The inappropriateness of determining a single variable duty for all types of FSI pineapple on the basis of the AEP applicable to a single specialty product type of which [REDACTED] containers were exported to Australia during the review period (AUD [REDACTED]/kg), when the average normal value for that product and the three types of product likely to be exported to Australia is substantially lower (AUD [REDACTED]/kg), was the subject of our representations to Customs in response to Statement of Essential Facts No. 196. At a meeting with the CEO's delegate, John Bracic, in Canberra on 4 June, it was acknowledged by Mr Bracic that it is open to Customs to determine separate variable factors for the FSI pineapple product type exported to Australia during the review period and other FSI pineapple product types likely to be exported by Tipco, to overcome the unfairness of a single variable duty based on the AEP of the high priced, low volume exports of a specialty product type during the review period. Mr Bracic stated that he would consider doing this for the final report to the Minister. There is nothing reported in REP 196 which indicates that Customs did consider this matter in reaching its final conclusion re the variable duty applicable to Tipco's exports.

It is paramount that, if Tipco were to export any type of FSI pineapple to Australia at normal value (AUD [REDACTED]/kg), ie at an undumped price, under existing measures such exports would be subject to an interim dumping duty of AUD [REDACTED]/kg or 23% of export price. This clearly illustrates the travesty of the measures recommended by Customs and accepted by the Minister in relation to Tipco's exports of FSI pineapple.

We believe that there are strong grounds for the Panel to recommend revision of variable duty applicable to exports of FSI pineapple by Tipco as follows:

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- Choice grade chunks in light syrup – based on an AEP of AUD [REDACTED]/kg;  
and
- Other types – based on an AEP of AUD [REDACTED]/kg.

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**List of Attachments**

Attachment 1	Letter of Authorisation
Attachment 2	The Reviewable Decision
Attachment 3	Notification of the Reviewable Decision

**Attachment 1**

**LETTER OF AUTHORISATION**



## **Attachment 2**

# **THE REVIEWABLE DECISION**

**Attachment 3**

**NOTIFICATION OF THE REVIEWABLE  
DECISION**



TIPCO FOODS PCL.

บมจ. ทิปโก้ฟู้ดส์

Registration No. 0107535000052

ทะเบียนเลขที่ 0107535000052

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 food service and industrial pineapple exported from Thailand.

Yours faithfully,

Mr. Pornchai Phulsuksombati  
Business Director



*Customs Act 1901 – Part XVB*

**FOOD SERVICE AND INDUSTRIAL 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 food service and industrial 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. 196 (REP 196).

I, Jason Clare, the Minister for Home Affairs, have considered REP 196 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 196.

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 food service and industrial pineapple from Thailand as if different variable factors had been fixed in respect of those exporters, with the exception of Malee Sampran Public Co. Limited, which is exempt from the measures.

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) Regulations 2013*.

REP 196 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](mailto: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](mailto:Operations1@adcommission.gov.au).

Dated this 10<sup>th</sup> day of July 2013

Jason Clare  
Minister for Home Affairs

## **Roger Simpson**

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**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](mailto: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](http://www.adcommission.gov.au)