



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 477**

**Consideration of an application for
a review of variable factors; and
a revocation review**

in relation to the anti-dumping measures applying to

**Food service and industrial pineapple
exported to Australia from
the Kingdom of Thailand by**

Prime Products Industry Co., Ltd

10 May 2018

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ABBREVIATIONS

Abbreviation	Full title
ADN	Anti-Dumping Notice
the Act	the <i>Customs Act 1901</i>
Assistant Minister	Assistant Minister for Science, Jobs and Innovation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FSI pineapple or the goods	food service and industrial pineapple
GCL	Golden Circle Limited
MSP	Malee Sampran Public Co
NIP	non-injurious price
the then Parliamentary Secretary	the then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PPI	Prime Products Industry Co., Ltd
REP 295	<i>Anti-Dumping Commission Report No. 295</i>
REP 334	<i>Anti-Dumping Commission Report No. 334</i>
review period (existing measures)	1 January 2015 to 31 December 2015
review period (this review)	1 April 2017 to 31 March 2018
SG&A	selling, general and administrative costs
Thailand	the Kingdom of Thailand
TPC	Thai Pineapple Canning Industry Corp Ltd

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of an application lodged by Prime Products Industry Co., Ltd (PPI or 'the applicant'). PPI's application requests a review of the anti-dumping measures (in the form of a dumping duty notice) applying to food service and industrial pineapple (FSI pineapple or the goods) to Australia from the Kingdom of Thailand (Thailand) in relation to PPI, because:

- one or more of the variable factors relevant to the anti-dumping measures have changed¹; and
- the anti-dumping measures are no longer warranted².

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)³ sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in assessing applications for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject such applications. If the Commissioner does not reject an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

1.3 Findings and conclusions

The Commission is satisfied that, in relation to PPI's application for a review:

- the application complies with subsections 269ZB(1) and (2);
- there appears to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed; and
- there appears to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

1.4 Recommendation

The Commission recommends that the Commissioner not reject the application requesting, in relation to PPI, a review of the variable factors and a revocation of the anti-dumping measures, for the reasons outlined at chapter 3 of this report.

¹ Subsection 269ZA(1)(b)(i). The variable factors that have allegedly changed are the export price and the normal value.

² Subsection 269ZA(1)(b)(ii).

³ All references are to the *Customs Act 1901*, unless otherwise stated.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

Since 2001, the Commission has conducted numerous investigations, reviews and inquiries relating to FSI pineapple exported to Australia from Thailand. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. The matters relevant to the applications are summarised below.

On 8 January 2001, Golden Circle Limited (GCL) lodged an application requesting that the then Minister for Justice and Customs publish dumping duty notices in respect of certain pineapple products exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* and published dumping duty notices for pineapple fruit - consumer (consumer pineapple) and FSI pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co (MSP).

On 26 February 2006, following consideration of applications by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 111* to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

On 15 April 2011, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 171d* to continue the anti-dumping measures for a further five years from 18 October 2011.

On 9 March 2016, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the then Parliamentary Secretary), accepted the recommendations contained in Report No. 334 (REP 334), to continue the anti-dumping measures for a further five years from 17 October 2016 with the exception of FSI pineapple exported by MSP.

On 28 April 2017, following a decision by Anti-Dumping Review Panel, the measures were removed for FSI pineapple exported by Kuiburi Fruit Canning Co., Ltd.

2.2 Accelerated reviews relating to the applicant

2.2.1 Accelerated review 279

On 4 December 2014, PPI lodged an application for an accelerated review in respect of FSI pineapple exported from Thailand. The Commission conducted an accelerated review and found that there was insufficient information to determine an export price or normal value for PPI, on the basis that PPI had no export sales to Australia and no domestic sales in the ordinary course of trade during the review period.

On 31 March 2015, the then Parliamentary Secretary declared that the original dumping duty notice was to remain unchanged. The effect of this decision was that any exports of FSI pineapple from Thailand by PPI remained subject to the rate of dumping duty applicable to 'all other exporters'. The Commission's full findings and the Commissioner's recommendations to the Parliamentary Secretary are set out in *Anti-Dumping Commission Report No. 279*.

2.2.2 Accelerated review 295

On 3 May 2015, PPI lodged an application for an accelerated review of the measures applicable to FSI pineapple exported from Thailand. The outcome of the accelerated review was published in Anti-Dumping Notice (ADN) No. 2015/110 on 8 September 2015.⁴ As a result of this accelerated review no interim duty was to be payable on exports of the goods by PPI unless the export price was below the ascertained normal value. The Commission's full findings and the Commissioner's recommendations to the Parliamentary Secretary are set out in *Anti-Dumping Commission Report No. 295 (REP 295)*.

2.3 Current anti-dumping measures

The current anti-dumping measures relating to FSI pineapple from Thailand, in relation to PPI, were implemented following the outcome of REP 334. REP 334 examined the period of 1 January 2015 to 31 December 2015 (review period for existing measures). PPI cooperated with this inquiry. As a result of this inquiry no interim duty was to be payable on exports of the goods by PPI unless the export price was below the ascertained normal value.

2.4 The current application

On 20 April 2018, the Commission received an application from PPI for a review of the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand insofar as they relate to PPI.

The application claims that there has been a change in the variable factors relevant to the applicant's circumstances.

⁴ All ADNs and reports referenced in this report are available on the Commission's public record at www.adcommission.gov.au

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The application is not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a dumping duty notice or a notice declaring the outcome of the last review of the dumping duty notice.⁵

Pursuant to subsection 269ZC(1), the Commissioner must examine the application and, within 20 days after receiving them, decide whether to reject the application.

As such, the decision to reject the application must be made no later than 10 May 2018.

If the Commissioner is not satisfied, having regard to an application and to any other information that he considers relevant, of one or more of the matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.5 The goods subject to the anti-dumping measures

The goods the subject of the current anti-dumping measures are:

Pineapple prepared or preserved in containers exceeding one litre.

Glace and/or dehydrated pineapple are excluded from the measures

2.6 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff	Statistical code	Description
2008.20.00	27	Pineapples – Canned, in containers exceeding one litre
2008.20.00	28	Other

⁵ The last time this occurred was 23 March 2017, ADN No. 2017/21 refers.

3 CONSIDERATION OF THE APPLICATION

3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount;
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the application - compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that the application submitted:

- is in writing;
- is in the approved form (*Form B602 – Application for a review of measures*) and contains such information as the form requires. This includes evidence in support of the amount by which the variable factors have changed since last ascertained, information on the causes of the change to the variable factors and an opinion of whether these causes are likely to persist. The application also includes evidence in support of the view that there are reasonable

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grounds for asserting that the measures are no longer warranted because dumping is not occurring and is unlikely to recur;

- is signed in the manner required by the form;
- was lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provides a description of the kind of goods to which the anti-dumping measures the subject of the application relates;
- provides a description of the anti-dumping measures the subject of the application; and
- includes a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the anti-dumping measures have changed; the amount by which the variable factors have changed; and information that establishes that amount. It also includes evidence, in accordance with the form, of the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.

As a result of the above, the Commission is satisfied that the applicant has satisfied the requirements of subsections 269ZB(1) and (2).

3.3 Grounds for change in variable factors

The applicant's variable factors are those ascertained in REP 334. As part of REP 334, the applicant became subject to a variable component of IDD where the actual export price is below the ascertained normal value (a floor price).

The following sections will address the applicant's claim that there has been a change in at least one of the variable factors.

3.3.1 Ascertained export price

PPI notes that the current ascertained export price relevant to PPI's exports was determined in REP 334 under subsection 269TAB(1)(a) using PPI's export invoices, excluding any part of the price that relates to post-exportation charges.

PPI seeks a review on the grounds that, since the completion of REP 334, it has continued to export the goods to Australia and that the export price of the goods has decreased.

As part of its application, PPI provided a sample of commercial sales invoices relating to its recent export sales to Australia during the period 1 April 2017 to 31 March 2018. PPI relied upon these commercial documents to calculate a weighted average export price over the period 1 April 2017 to 31 March 2018 in accordance with subsection 269TAB(1)(a). PPI also specified the amount by which the export price has changed since anti-dumping measures were last ascertained. PPI claim that the changes in export prices are likely to persist given the trends it has observed in relation to fresh local pineapple prices in Thailand (which make up a substantial proportion of the cost to make FSI pineapple).

3.3.2 Ascertained normal value

PPI notes that the current ascertained normal value relevant to PPI's exports was determined in REP 334 under subsection 269TAC(2)(c) using PPI's cost of production, selling, general and administration costs (SG&A), plus a weighted average profit from other exporters of like goods.

PPI seeks a review on the grounds that the cost of manufacturing of the goods has declined significantly since REP 334 due to reduced production costs, which are expected to result in lower contemporary normal values.

PPI alleges that the primary cause of the change in contemporary normal values is the sharp decrease in local fresh pineapple farm-gate prices. To support its claim, PPI provided data of Thai fresh pineapple farm-gate prices for the period 1 April 2017 to 31 March 2018. PPI also supplied Bank of Thailand Farm price statistics for the periods of 1 April 2017 to 31 March 2018, and of the review period of REP 334 (being 1 January 2015 to 31 December 2015).

PPI also note that the favourable climate and growing conditions are forecast to continue, meaning that fresh pineapple farm-gate prices are expected to be maintained.⁶

3.3.3 The Commission's assessment

The Commission has assessed the information provided by PPI in conjunction with an extract from the Australian Border Force's import data base and other relevant information, which supports PPI's assertions that the cost to produce the goods have declined. On the basis of this information, the Commission considers that there appears to be reasonable grounds for PPI to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being the ascertained export price and ascertained normal value, have changed.⁷

Therefore, the Commission is satisfied that, in respect of the variable factors, PPI's application complies with section 269ZB.

3.4 Grounds for revocation

PPI submits that the current anti-dumping measures applying to PPI's exports are no longer warranted as evidence supports the view that dumping and material injury are unlikely to recur if the measures were to be revoked.

PPI states that the Commission's findings from REP 295 and REP 334 confirm that PPI has never engaged in exporting FSI pineapple to Australia at dumped prices. PPI

⁶ Source: <https://www.linbro.com/single-post/2017/07/17/State-of-Thailands-pineapple-industry>

⁷ As defined in subsection 269T(4E), in relation to a review of a dumping duty notice, the variable factors are export price, normal value and non-injurious prices (NIP). Although PPI has not claimed a change in the NIP in the application, the Commission considers it necessary to review all relevant variable factors, including the NIP.

state that it will cooperate and submit information which will demonstrate that it did not export the goods at dumped prices during the review period.

The Commission's assessment

The Commission has assessed the claims brought forward by PPI. The Commission notes that PPI have never been assessed as having dumped the goods into Australia. In particular, PPI did not export the goods during the investigation period for the original investigation. As part of REP 295, where PPI was a new exporter, the Commission found that PPI's exports to Australia were not dumped. Also REP 334 found that PPI's exports were not dumped.

The Commission considers that there appears to be reasonable grounds for PPI to assert that dumping is unlikely to recur and that the anti-dumping measures applying to PPI's exports are no longer warranted.⁸

Therefore, the Commission is satisfied that, in respect of the evidence to support the applicant's view that the anti-dumping measures are no longer warranted, PPI's application complies with section 269ZB.

3.5 Assessment of the application – section 269ZC

Based on the Commission's analysis in section 3.3, there appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(i), that the variable factors relevant to the taking of anti-dumping measures have changed.

Based on the Commission's analysis in section 3.4, there appear to be reasonable grounds in respect of the application for asserting, under subsection 269ZC(2)(b)(ii), that the anti-dumping measures are no longer warranted.

Therefore, the Commission recommends that the Commissioner not reject the application pursuant to subsection 269ZC(1) as it is satisfied of the matters referred to in subsection 269ZC(2).

3.6 Conclusions and recommendations

The Commission has considered PPI's application in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the application and other relevant information, that, in relation to PPI:

- the application complies with section 269ZB;
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the anti-dumping measures have changed; and

⁸ The Commission is of the view that PPI's past export conduct may be relevant to its future conduct. The Commission notes the Anti-Dumping Review Panel has taken a similar view in relation to continuation inquiries, which have similarities to a revocation review. Reference is made to ADRP Decision No. 44 – *Clear Float Glass* and ADRP Decision No. 50 – *FSI Pineapple from Thailand*.

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- there appears to be reasonable grounds for asserting that the anti-dumping measures are no longer warranted.

The Commission recommends that the Commissioner:

- not reject the application;
- initiate a review examining, in relation to PPI, whether:
 - there has been a change in the variable factors, by reference to a review period of 1 April 2017 to 30 March 2018; and
 - the anti-dumping measures are no longer warranted.

4 ATTACHMENTS

Confidential Attachment 1	Commercial Documents – PPI’s Export Sales
Confidential Attachment 2	PPI’s Analysis of Fresh Pineapple Prices in Thailand
Confidential Attachment 3	PPI’s Export Price Analysis