



Australian Government
**Australian Customs and
Border Protection Service**

R E P O R T

CUSTOMS ACT 1901 - PART XVB

**ANTI-DUMPING COMMISSION
REPORT TO THE ADRP No. 232**

REINVESTIGATION OF CERTAIN FINDINGS IN REP 195B

CONSUMER PINEAPPLES

**EXPORTED TO AUSTRALIA FROM
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1 SUMMARY AND RECOMMENDATIONS

This report provides the results of the reinvestigation by the Commissioner of the Anti-Dumping Commission (Commission) of certain findings in International Trade Remedies REP 195B (REP 195B), which resulted in the finding that the revocation of measures was likely to lead to a recurrence of dumping and material injury.

1.1 Findings

The delegate of the Commissioner (delegate), in accordance with s.269ZZL(3) of the Customs Act 1901 (Act), affirms the findings subject to the reinvestigation. The reasons for this decision are set out in this report.

1.2 The reinvestigation

Division 9 of Part XVB of the Act sets out procedures for review by the Anti-Dumping Review Panel (Review Panel) of certain decisions made by the Minister or the Commissioner.

1.2.1 The role of the Review Panel and the Anti-Dumping Commission

Interested parties can apply to the Review Panel to review certain decisions in relation to anti-dumping and countervailing matters. If an application for review is not rejected, the Review Panel must make a report to the Minister on the application either¹:

- recommending that the Minister affirm the reviewable decision; or
- recommending that the Minister revoke the reviewable decision and substitute a specified new decision.

If the Review Panel has not rejected a review application, before making a recommendation under s. 269ZZK(1) of the Act, the Review Panel may, by written notice, require the Commissioner to²:

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

1.2.2 What must be reinvestigated

On 29 October 2013, the Review Panel required the Commissioner to reinvestigate certain findings made in REP 195B. The notice provided by the Review Panel to the Commissioner is as follows:

In the Dole report (REP 195B), it is claimed that Customs calculation for the constructed profit for the post investigation period miscarried in that

¹ Under s.269ZZK(1) of the Act

² Under s.269ZZL(1) of the Act

contract figures for the 2013/14 year were applied to the 2012/13 [sic] – see second full paragraph at p14 of the application. It would assist this aspect [sic] could be reinvestigated and if the necessary re calculation undertaken using the 2012-13 year figures. If a recalculation is undertaken it would further assist if any resulting differences to the conclusions reached in REP 195B could be noted in the accompanying report.

The ADRP provided clarification of its request to the Commission on 25 November 2013 where it confirmed that it was requesting that the dumping margin be calculated by comparing the constructed normal values for October 2012, January 2013 and May 2013 to the contract prices for the 2012/13 financial year in the TPC report (not Dole). This was in response to TPC's assertion in the second full paragraph at page 14 of the Application for review:

Custom's 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.

On the basis of this clarification, pursuant to section 269ZZL of the Act, the Commission has reinvestigated the calculation of the dumping margin by comparing:

- (1) the export price, determined pursuant to section 269TAB(1) of the Act, using the contract prices between TPC and its Australian customers for the 2012/13 financial year; and
- (2) the normal value, determined pursuant to section 269TAC(2) of the Act, being TPC's cost to make and sell for October 2012, January 2013 and May 2013 plus relevant amounts for profit and selling, general and administrative expenses.

2 BACKGROUND

2.1 Original Investigation – Investigation 195B

The initiation of Investigation 195B was in response to an application by Siam Agro-Food Industry Public Co., Ltd seeking the revocation of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by Thai Pineapple Canning Industry Corp Ltd (TPC).

The Australian Customs and Border Protection Service (ACBPS) (now the Anti-Dumping Commission) examined information during the period 1 October 2011 to 30 September 2012 to determine whether the measures as related to TPC were no longer warranted.

REP 195B set out the facts on which the delegate of the Chief Executive Officer of ACBPS based his recommendations to the Minister in relation to the revocation review of the measures relating to consumer pineapple exported to Australia from Thailand.

Based on all available information, ACBPS finding was that the measures relating to consumer pineapple exported to Australia by TPC continue to be warranted. ACBPS considered that revoking the measures 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.

2.2 The reinvestigation framework

In conducting a review, the Review Panel may only have regard to relevant information and any conclusions based on relevant information.³ Relevant information is from the original investigation and comprises of application, submissions to the original investigation, SEF 195B, submissions to SEF 195B, REP 195B and any other matters considered relevant by the Commission in the course of the investigation. Conclusions based on relevant information are conclusions based on the relevant information contained in the applications to the Review Panel and submissions received by the Review Panel within 30 days of notification of the review.

The Commission examined the documents from the original investigation (relevant information) and applications and submissions to the Review Panel received within the specified timeframes (conclusions based on relevant information) for the purposes of conducting the reinvestigation.

³ s. 269ZZK(4) of the Act

3 CONSUMER PINEAPPLES – USE OF 2012/13 AND 2013/14 CONTRACT PRICES

3.1 Summary of the reinvestigation findings

The Commission affirms the findings of REP 195B, being satisfied that the issue for reinvestigation was properly considered in the initial review. The Commission is of the view that 2012/13 contract prices were properly applied in calculating the dumping margin at first instance, pursuant to section 269ZDA(1A) of the Act. The dumping calculations, as requested by the ADRP, already form columns I to M of Confidential Attachment 4 to REP 195B. As a result, there is no variation from the conclusion reached in REP 195B.

3.2 Finding to be reinvestigated

The ADRP required the Commission to ascertain whether calculations were properly carried out in the application of 2013/14 contract prices to 2012/13 figures. The ADRP also asked to identify any resulting differences to the conclusions based on the recalculation.

3.3 The reinvestigation

The Commission has reinvestigated the calculation of dumping margins, as performed by ACBPS and has found that ACBPS conducted the calculations using both 2012/13 and 2013/14 contract prices.

Section 269ZDA(1A) of the Act requires that ACBPS must make a revocation recommendation in relation to measures, unless ACBPS is satisfied that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of dumping. Consequently, ACBPS was required to conduct a “prospective examination” of various factors.⁴ That is, ACBPS must determine whether, if the anti-dumping measures were to be revoked, dumping causing injury to the Australian industry would be likely to continue or recur.

ACBPS conducted two assessments of the likelihood of future dumping in its prospective examination, as explained below in section 3.3.1 and 3.3.2.

3.3.1 Comparison of contract prices during the review period to updated normal values

ACBPS sought to assess the likelihood of a recurrence of dumping by accounting for the impact of rising costs on TPC’s future dumping margin.

In order to undertake this prospective examination, ACBPS asked TPC to provide updated cost to make and sell (CTMS) data for three selected months subsequent to the review period, being October 2012, January 2013 and May 2013.

ACBPS then calculated the margin of dumping by comparing:

⁴ Australian Customs and Border Protection Service, Dumping and Subsidy Manual, p257.

- the export prices, using the 2012/13 contract prices, being the contract prices relevant to the end of the review period; and
- the constructed normal values for the selected months pursuant to section 269TAC(2) using the updated CTMS data and adding the amount for profit found in the variable factors review conducted at the same time as the revocation review in REP 195B.

These calculations form columns I to N of Confidential Attachment 4 to REP 195B.

3.3.2 Comparison of future contract prices to updated normal values

As a further step in undertaking a prospective examination, ACBPS sought to assess the likelihood of a recurrence of dumping by TPC by reference to future contract prices.

ACBPS requested TPC to provide contract prices applicable to exports to Australia for the years 2013 and 2014. ACBPS then calculated the margin of dumping by comparing:

- the export prices, using the 2013/14 contract prices provided by TPC; and
- the constructed normal values for the selected months pursuant to section 269TAC(2)(c), as outlined at 3.3.1 above.

These calculations form columns P to T of Confidential Attachment 4 to REP 195B.

3.4 Conclusion

After taking into consideration the calculations set out in REP 195B, and specifically the calculations in Confidential Attachment 4, the Commission considers that the calculation of dumping margins originally undertaken by the ACBPS used 2012/13 contract prices. The Commission, therefore, affirms the use of this method and the resulting findings made under section 269ZDA. The Commission has come to no different conclusion to that reached in REP 195B.