



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

**STATEMENT OF ESSENTIAL FACTS
NO. 373**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO
FOOD SERVICE AND INDUSTRIAL PINEAPPLE
EXPORTED FROM THE KINGDOM OF THAILAND
BY NATURAL FRUIT CO., LTD.**

January 2016

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ABBREVIATIONS

ABF	Australian Border Force
the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
REP 334	<i>Anti-Dumping Commission Report No. 334</i>
Natural, or the applicant	Natural Fruit Co., Ltd.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
FOB	free on board
FSI	food service and industrial
GAAP	generally accepted accounting practices
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Golden Circle	Golden Circle Limited
MSP	Malee Sampran Public Co
NIP	non-injurious price
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
SG&A	selling, general and administrative
SEF	Statement of Essential Facts
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price

1 SUMMARY

1.1 Introduction

This statement of essential facts (SEF) sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) proposes to base his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary) in relation to a review of the anti-dumping measures applying to food service and industrial (FSI) pineapple (also referred to as the goods) exported to Australia from the Kingdom of Thailand (Thailand).^{1, 2}

This review of measures is in response to an application from Natural Fruit Co., Ltd (referred to as the applicant, or Natural) for a review of the anti-dumping measures (in the form of a dumping duty notice) applying to FSI pineapple exported to Australia from Thailand in so far as the anti-dumping measures affect the applicant.

The application for review is based on a change in the variable factors relevant to the taking of the anti-dumping measures in relation to the applicant.³ The applicant claims that its normal value and export price of the goods have changed from the time when the original investigation was conducted.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)⁴ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures.

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

The Commissioner must, within 110 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, place on the public record a statement of the essential facts (this SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary in relation to the review of measures.⁶

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

² Refer to section 3.3 of this report for a full description of the goods.

³ Subsection 269T(4E).

⁴ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

⁵ Subsection 269ZC(4).

⁶ Subsection 269ZD(1).

1.3 Preliminary findings

The Commissioner finds that, in relation to FSI pineapple exported to Australia from Thailand by Natural during the review period (1 July 2015 to 30 June 2016):

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the non-injurious price (NIP) has changed.

1.4 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Natural as if different variable factors had been ascertained.

2 BACKGROUND

2.1 Application and initiation

On 30 August 2016, the Anti-Dumping Commission (Commission) received an application lodged by Natural (the applicant) requesting a review of the anti-dumping measures in relation to its exports of the goods to Australia from Thailand.

Following consideration of the application, the Commissioner decided not to reject the application and initiated a review of the anti-dumping measures applying to the goods exported to Australia from Thailand in so far as the anti-dumping measures affect the applicant. Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2016/99, which was published on the Commission's website on 19 September 2016.

Consideration Report No. 373 was published on the Commission's website detailing the reasons for not rejecting the application.

2.2 History of the existing anti-dumping measures

On 8 January 2001, Golden Circle Limited (Golden Circle) lodged an application requesting, among other things, that the then Minister for Justice and Customs publish a dumping duty notice in respect of FSI pineapple exported to Australia from Thailand. The then Minister for Justice and Customs accepted the recommendations in *Trade Measures Report No. 41* and published a dumping duty notice for 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 Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia from Thailand. 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 FSI pineapple exported to Australia from Thailand for a further five years and fix different variable factors relevant to the determination of duty.

On 15 April 2011, following consideration of an application for the continuation of measures by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple from Thailand. The then Minister for Home Affairs accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 172c*, to continue the anti-dumping measures for a further five years from 18 October 2011 and fix different variable factors relevant to the determination of duty.

On 10 December 2012, a review of measures was initiated for FSI pineapple from Thailand following an application by Tipco Foods Public Company Limited. The review of measures was extended to all exporters from Thailand. The then Minister for Home Affairs accepted the recommendations contained in *International Trade Remedies Branch Report No. 196* and fixed different variable factors relevant to the determination of duty.

PUBLIC RECORD

On 11 August 2016, following an application by Golden Circle for a continuation of the measures and subsequent continuation inquiry conducted by the Commission, the Commissioner recommended in *Anti-Dumping Commission Report No. 334* (REP 334) that the Parliamentary Secretary take steps, in accordance with subsection 269ZHG(1)(b) of the Act, to secure the continuation of the anti-dumping measures relating to FSI pineapple exported to Australia from Thailand from the expiry date of the measures and that the Parliamentary Secretary determine, in accordance with subsection 269ZHG(4)(a)(iii), that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been ascertained.

On 12 September 2016, the Parliamentary Secretary accepted the recommendations contained in (REP 334) to continue the anti-dumping measures and fixed different variable factors relevant to the determination of duty. As a result, the anti-dumping measures applying to FSI pineapple exported to Australia from Thailand (except by MSP) have been continued for a further 5 years from 17 October 2016.

2.2.1 Existing measures

As a result of the continuation inquiry, Natural is currently subject to the uncooperative and all other rate of interim dumping duty of 28.6 per cent.

2.3 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,⁷ or the Parliamentary Secretary may request that the Commissioner conduct,⁸ a review of those measures if one or more of the variable factors has changed.

The Parliamentary Secretary may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the notice imposing the original anti-dumping measures or the notice(s) declaring the outcome of the last review.⁹

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as the Parliamentary Secretary may allow, to conduct a review and report to the Parliamentary Secretary on the review of the anti-dumping measures.¹⁰

⁷ Subsection 269ZA(1).

⁸ Subsection 269ZA(3).

⁹ Subsection 269ZA(2)(a).

¹⁰ Subsection 269ZDA(1).

PUBLIC RECORD

During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are a reference to:

- the ascertained export price;
- the ascertained normal value; and
- the NIP.

Within 110 days of the initiation of a review, or such longer time as the Parliamentary Secretary may allow, the Commissioner must place on the public record a SEF on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.¹¹

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹²

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- this SEF; and
- any submission made in response to this SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.¹³

At the conclusion of the review, in respect of the dumping duty notice, the Commissioner must provide a final report. In his final report he must make a recommendation to the Parliamentary Secretary that the dumping duty notice:¹⁴

- remains unaltered; or
- have effect as if different variable factors had been ascertained.

Following the Parliamentary Secretary's decision, the Parliamentary Secretary must give notice of the decision.¹⁵

2.4 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Parliamentary Secretary.

The SEF represents an important stage in the review as it informs interested parties of the facts established and allows them to make submissions in response to the SEF.

¹¹ Subsection 269ZD(1).

¹² Subsection 269ZDA(3)(a).

¹³ Subsection 269ZDA(3)(b).

¹⁴ Subsection 269ZDA(1)(a).

¹⁵ Subsection 269ZDB(1).

PUBLIC RECORD

It is important to note that the SEF may not represent the final views of the Commissioner. The final report will recommend whether or not the dumping duty notice should be varied, and the extent of any interim duties that are, or should be, payable.

The final report will recommend whether the dumping duty notice should remain unaltered or whether different variable factors relevant to the determination of duty should be fixed in relation to Natural.

Responses to this SEF should be received by the Commissioner no later than **27 January 2017**. The Commissioner must consider these responses in making his final report to the Parliamentary Secretary.¹⁶ The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Parliamentary Secretary.¹⁷

The Commissioner must report to the Parliamentary Secretary by 21 February 2017.

Submissions should preferably be emailed to operations3@adcommission.gov.au.

Alternatively, submissions may be sent to fax number +61 3 8539 2499, or posted to:

Director Operations 3
Anti-Dumping Commission
Level 35
55 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the Public Record.

A guide for making submissions is available at the Commission's website www.adcommission.gov.au.

The Public Record contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents. It is available by request in hard copy in Melbourne (phone (03) 8539 2415 to make an appointment), or online at www.adcommission.gov.au

Documents on the Public Record for this review (EPR 373) should be read in conjunction with this SEF.

¹⁶ Subsection 269ZDA(3)(a)(iv).

¹⁷ Subsection 269ZDA(4).

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner finds that FSI pineapple produced by the Australian industry are 'like goods' as defined in subsection 269T(1) of the Act.

3.2 Legislative framework

The Commissioner must be satisfied that like goods are produced in Australia. In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are 'like' to the imported goods.

Subsection 269T(1) defines like goods as:

"...goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration".

Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In accordance with subsection 269T(3), for goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of those goods must be carried out in Australia.

3.3 The goods subject to the anti-dumping measures

The goods subject to measures (the goods) are:

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

3.4 Tariff classification

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

2008 .20.00	Pineapples
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

FSI pineapple imported from Thailand is not subject to the general rate of customs duty.

3.5 Like goods produced by the Australian industry

In the recent continuation inquiry (REP 334 refers), the Commission found that:

- there was an Australian industry consisting of eight companies that produce like goods in Australia; and
- a substantial process of manufacture was carried out in Australia in producing the like goods.

The Commission did not find any evidence in the current review to suggest that these circumstances have changed.

4 EXPORTER INFORMATION

4.1 Finding

The Commission is satisfied that the information provided by Natural for the purposes of this review is accurate, relevant and complete.

4.2 Exporter questionnaire

The Commission provided Natural with an exporter questionnaire to complete.

Natural provided detailed information and data in its response to the exporter questionnaire, including data relating to its export sales and cost to make and sell (CTMS). Natural has also provided additional information when requested.

4.3 Accuracy, relevance and completeness of information supplied by Natural

The Commission conducted an on-site verification of the information and data provided in Natural's response to the exporter questionnaire.

The Commission is satisfied as to the accuracy, relevance and completeness of the data provided by Natural during the verification visit, upon which the findings of this review are based.

The visit report contains further information on the verification of the information. A copy of the visit report is available on the Commission's website at www.adcommission.gov.au.

4.3.1 Post verification visit data

Prior to the publication of Natural's verification report and following the on-site verification visit, Natural advised the Commission that it had identified errors in the preparation of its production volume data and provided a revised version of its CTMS information as a result. The Commission noted with Natural that the provision of revised data in the absence of an explanation of why the data had changed would not be acceptable. The variance between the data examined during verification and that provided by Natural post verification was also observed to be material. The Commission has therefore not considered the revised data for this review.

5 VARIABLE FACTORS – DUMPING DUTY NOTICE

5.1 Preliminary finding

The Commissioner finds that the variable factors relevant to the taking of anti-dumping measures in relation to FSI pineapple exported to Australia by Natural have changed.

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Natural as if different variable factors, the export price, normal value and NIP, had been ascertained.

5.2 Determination of the exporter

The Act does not provide a definition of ‘exporter’. The Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.¹⁸

After reviewing all data submitted, the Commission determined that Natural was the exporter of the goods subject to this review. It negotiates the sale of goods with the importers through an intermediary, who arranges for the physical transportation of the goods to the port of exportation, and arranges the export clearance of the goods.

5.3 Determination of importer

Subsection 269T(1) defines the importer as the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed.

In its response to the exporter questionnaire, Natural identified the Australian customer that imported the goods during the review period. Comparison to the ABF importer database found this to be accurate.

The Commission is satisfied that the Australian customer referred to in Natural’s exporter questionnaire was the beneficial owner of the goods at the time of their arrival within Australia and can be considered the importer for these consignments.

¹⁸ *Dumping and Subsidy Manual*, Chapter 6.2, p.27.

5.4 Export price

As the goods have not been purchased by the importer from the exporter but through an intermediary, the export price cannot be determined under either subsections 269TAB(1)(a) or 269TAB(1)(b). Therefore, the Commission recommends that the export price be determined under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. Specifically, having regard to the price paid by Natural's intermediary in the country of export.

The Commission's export price calculations are at **Confidential Appendix 2**.

5.5 Normal value

Subsection 269TAC(1) states that the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Subsection 269TAC(2)(a)(i) provides that the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1) where the Parliamentary Secretary is satisfied that:

...because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1)...the normal value of the goods exported to Australia cannot be ascertained under subsection (1).

This provision may operate where there has not been a sufficient volume of sales of like goods sold on the domestic market in the ordinary course of trade;¹⁹ or in cases when, even though there are sufficient sales of like goods on the domestic market, there is otherwise an absence or low volume of relevant sales (i.e. there is something else about the sales that makes them irrelevant for determining normal values).

As a result of the exporter verification, the Commission confirmed that there were no sales of like goods on the exporter's domestic market. The Commission has therefore concluded that there were insufficient sales by the exporter of like goods in the Thai domestic market that would be relevant for determining normal values under subsection 269TAC(1), in accordance with subsection 269TAC(2)(a)(i).

Where subsection 269TAC(2)(a)(i) applies, the Act provides that normal values may be determined on the basis of a cost construction (subsection 269TAC(2)(c)) or third country sales (subsection 269TAC(2)(d)). Subsection 269TAC(3A) provides that the Minister is not required to consider working out the normal value under subsection 269TAC(2)(d) before working out the normal value under subsection 269TAC(2)(c).

¹⁹ Subsection 269TAC(14) refers.

PUBLIC RECORD

The Commission's policy, set out at Chapter 10 of the *Dumping and Subsidy Manual*, outlines an approach which preferences the use of the cost based method in the first instance when cost data is available from a cooperating exporter. Further, it is not the Commission's practice to undertake a detailed examination of third country prices if there is sufficient information to establish normal value using other methods.

In this review, verified cost information relating to the exporter's exports to Australia and other exporters from Thailand who produce like goods is available. Consistent with the Commission's policy and the circumstances of the case, normal values have been constructed in accordance with subsection 269TAC(2)(c) of the Act.

Subsection 269TAC(2)(c) provides that constructed normal values are to be calculated as the cost of production of the goods in the country of export plus, on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, the selling, general and administrative (SG&A) costs associated with the sale, and an amount for profit.

The Commission's construction of normal values under subsection 269TAC(2)(c) in relation to all sales by Natural are provided at **Confidential Appendix 3**. As required, the Commission has performed this construction in accordance with the conditions of sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation) as outlined below.

5.5.1 Cost of production

In calculating a constructed normal value under subsection 269TAC(2)(c), the cost of production of the goods in the country of export is to be established in accordance with section 43 of the Regulation.²⁰

Subsection 43(2) of the Regulation requires the Commission to determine the cost of production by using the information set out in an exporter's records if the exporter keeps records relating to the goods, and the records:

- are in accordance with generally accepted accounting principles (GAAP) in the country of export; and
- reasonably reflect competitive market costs associated with the production or manufacture of like goods.

The Commission is satisfied that Natural's cost of production records are kept in accordance with the GAAP in Thailand. Further, the Commission has also had regard to the circumstances outlined in Chapter 9 of the *Dumping and Subsidy Manual* for assessing whether Natural's cost of production reasonably reflect competitive market costs.

On the basis that the Commission has not received any submissions regarding Natural's production costs, and a comparison between Natural's verified production costs and other exporter's verified production costs did not reveal any significant variation, the Commission is satisfied that Natural's production costs reasonably reflect competitive market costs.

²⁰ Subsection 269TAC(5A)(a).

PUBLIC RECORD

Natural's verified cost of production has therefore been utilised in the construction of the normal value calculated for Natural's exports to Australia.

5.5.2 Selling, general and administrative costs

In calculating a constructed normal value under subsection 269TAC(2)(c), the SG&A costs are to be established in accordance with section 44 of the Regulation.²¹

Subsection 44(2) of the Regulation requires the Commission to determine SG&A costs by using the information set out in an exporter's records if the exporter keeps records relating to the sale the like goods in the country of export, and the records:

- are in accordance with GAAP in the country of export; and
- reasonably reflect the SG&A costs associated with the sale of the like goods.

As there are not sales of like goods in the country of export by Natural, the Commission is not satisfied that the above conditions are met in this case and is unable to determine SG&A costs under subsection 44(2) of the Regulation.

The Commission notes that there are no relevant sales made by Natural in its domestic market in the same general category of goods as the goods under consideration, and therefore the Commission is unable to determine SG&A costs under subsection 44(3)(a) of the Regulation. Further, as this review of measures is relevant only to Natural the Commission does not have contemporaneous domestic sales data for other exporters of the like goods, and therefore the Commission is unable to determine SG&A costs under subsection 44(3)(b) of the Regulation. Accordingly, the Commission must determine SG&A costs by reference to any other reasonable method, as required by subsection 44(3)(c) of the Regulation.

As a result of the recently completed continuation inquiry (REP 334 refers), the Commission has evidence of SG&A costs incurred by other exporters for the sale of like goods in the domestic market of the country of export. The data from the continuation inquiry overlaps with the first six months of the review period (that is, from July to December 2015).

The Commission has compared the trends and relativities of SG&A costs incurred by the cooperating exporters in the continuation inquiry period to those incurred by Natural with respect to its exports in the review period. In both instances the costs are generally consistent in all quarters, and exhibit a similar trend. The trend in SG&A costs reported by the selected exporters in the continuation inquiry does not appear to be subject to cyclical or seasonal variation. As a result, the Commission considers it reasonable to apply the weighted average of the SG&A costs from the six months that the continuation inquiry and review period have in common for the purpose of calculating an amount for SG&A costs under subsection 44(3)(c) of the Regulation.

²¹ Subsection 269TAC(5A)(b).

PUBLIC RECORD

The approach described above departs from the method utilised for calculating the dumping margin contained in Natural's exporter questionnaire verification report.²² The Commission does not consider that utilising Natural's export related SG&A costs is appropriate when other exporter's SG&A costs incurred in the sale of like goods on the Thai domestic market is available.

5.5.3 Profit

When constructing normal values under subsection 269TAC(2)(c), the amount of profit included in the normal value is to be determined having regard to section 45 of the Regulation.²³

Subsection 45(2) of the Regulation provides that, if reasonably practicable, profit is to be determined by using data relating to the production and sale of like goods sold by the exporter in the ordinary course of trade.

The Commission notes that there are no relevant sales made by Natural in its domestic market in the same general category of goods as the goods under consideration, and therefore the Commission is unable to determine a profit under subsection 44(3)(a) of the Regulation. As with SG&A costs (outlined in section 5.5.2), the Commission does not have contemporaneous domestic sales data for other exporters of the like goods, and therefore the Commission is unable to determine profit under subsection 45(3)(b) of the Regulation. Accordingly, the Commission must determine profit by reference to any other reasonable method, as required by subsection 45(3)(c) of the Regulation.

As a result of the recently completed continuation inquiry (REP 334 refers), the Commission has the profit margin reported by other exporters for the sale of like goods in the domestic market of the country of export. The data from the continuation inquiry overlaps with the first six months of the review period (that is, from July to December 2015).

As with Natural's SG&A costs, the Commission compared the trends and relativities of profits achieved on domestic sales by cooperating exporters in the continuation inquiry. The Commission observed that profits achieved are generally consistent in all quarters, and exhibit a similar trend. The trend in profits reported by the selected exporters in the continuation inquiry does not appear to be subject to cyclical or seasonal variation. As a result, the Commission considers it reasonable to apply the weighted average of the profit from the six months that the continuation inquiry and review period have in common for the purpose of calculating an amount for profit under subsection 45(3)(c) of the Regulation

The Commission's profit margin calculations are at **Confidential Appendix 4**.

²² Public Record Item No.5.

²³ Subsection 269TAC(5B).

5.6 Dumping margin

The dumping margin has been assessed by comparing the weighted average Australian export prices of each model to the corresponding quarterly weighted average normal values for the review period.²⁴

The Commission has calculated a dumping margin in respect of FSI pineapple exported to Australia by Natural for the review period of **11.8 per cent**.²⁵

The Commission's dumping margin calculations are at **Confidential Appendix 5**.

²⁴ In accordance with subsection 269TACB(2)(a).

²⁵ The dumping margin calculated during verification of Natural's exporter questionnaire data was 7.3%. Post verification, the Commission has reassessed the approach to constructing the normal value; Section 5.5 refers.

6 NON-INJURIOUS PRICE

6.1 Preliminary assessment of NIP

The Australian industry and the applicant have not made submissions on the non-injurious price (NIP) during the course of the current review.

The Commission considers that the approach to determining the NIP for the previous continuation inquiry (REP 334 refers) remains valid for the purpose of this review.

6.2 General

Dumping duties may be applied where it is established that dumped imports have caused, or threaten to cause, material injury to an Australian industry producing like goods. The level of dumping duty imposed cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

Under subsection 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975*, if the NIP is less than the normal value, the Parliamentary Secretary must have regard to the desirability of specifying a method such that the sum of the export price and the interim dumping duty payable does not exceed the NIP (the 'lesser duty rule'). Subsection 269TACA(a) identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

The Commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP). Deductions from this figure are made for post-exportation costs to derive a NIP that is expressed in similar delivery terms to the export price and normal value (e.g. FOB).

Where the NIP is lower than the normal value, the duty is calculated with respect to the difference between the export price and the NIP, thereby giving effect to the lesser duty rule.

6.3 Commission's assessment

As dumping was found during the previous continuation inquiry (REP 334 refers), and was also found to have occurred throughout the review period in relation to Natural's exports of FSI pineapple to Australia, the Commission is unable to use contemporaneous Australian industry selling prices at a time unaffected by dumping to establish an USP.

Therefore, the Commission recommends calculating an USP by constructing an Australian industry price based on its CTMS plus an amount for profit.

The Commission considers that the approach to determining the USP and NIP in REP 334 for the previous continuation inquiry remains valid for the purpose of this review on the basis that data relied on overlaps the current review period. The Commission has therefore had regard to the verified Australian industry CTMS and profit information from the previous continuation inquiry using data for the six months that the continuation inquiry and review period have in common.

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Post-exportation cost data gathered from importers during the previous continuation inquiry formed the basis of deductions from the USP to calculate the NIP.

The Commission has found that the NIP is higher than the normal value. In such a case, the Parliamentary Secretary is not required to have regard to the lesser duty rule. Accordingly, the Commissioner proposes to recommend that dumping duty be based on the full margin of dumping.

The Commission's NIP calculations are at **Confidential Appendix 6**.

7 FINDINGS AND PROPOSED RECOMMENDATIONS

7.1 Findings

The Commissioner finds that, in relation to exports to Australia of FSI pineapple from Thailand by Natural during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP has changed.

7.2 Proposed recommendations

The Commissioner proposes to recommend to the Parliamentary Secretary that the dumping duty notice have effect in relation to Natural as if different variable factors had been ascertained.²⁶

The Commissioner proposes to recommend that the ascertained normal values for FSI pineapple exported to Australia by Natural be set in accordance with the respective weighted average normal values used to calculate the dumping margin for the review.

The Commissioner also proposes to recommend that the ascertained export prices for FSI pineapple exported by Natural be set in accordance with the weighted average export price calculated for the purposes of this review.

The Commissioner also proposes to recommend that the ascertained NIP at the FOB level be determined by calculating a USP based on Australian industry's CTMS plus profit, net of deductions for post exportation expenses as outlined in section 6.3.

7.3 Form of measures

The current form of measures applicable to FSI pineapple exported from Thailand is an amount which will be worked out in accordance with the combination of the fixed and variable duty method (combination method) pursuant to subsection 5(2) of the *Customs Tariff (Anti-Dumping) Regulation 2013*. The combination method consists of:

- an amount equal to the interim dumping duty rate per kilogram (fixed); plus,
- the amount, if any, by the which the actual export price is lower than the ascertained export price (variable).

A summary of the variable factors as they apply to Natural is at **Confidential Appendix 6**.

²⁶ Subsection 269ZDA(1)(a)(iii).

7.4 Effect of the review

The result of this recommendation is that Natural's exports of FSI pineapple will attract a fixed amount of interim duty on the higher of the actual export price or the ascertained exported price of the goods, and a variable amount of interim dumping duty if the actual export price is lower than the ascertained export price.

8 APPENDICES AND ATTACHMENTS

Confidential Appendix 1	ABF import database analysis
Confidential Appendix 2	Export price
Confidential Appendix 3	Normal value
Confidential Appendix 4	Profit margin
Confidential Appendix 5	Dumping margin
Confidential Appendix 6	Non-injurious price and summary of variable factors