



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XV B

REPORT

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.**

February 2017

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ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	free on board
FSI	food service and industrial
GAAP	generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration)
Golden Circle	Golden Circle Limited
the Manual	<i>Dumping and Subsidy Manual</i>
MSP	Malee Sampran Public Co
Natural, or the applicant	Natural Fruit Co., Ltd.
NIP	non-injurious price
OCOT	ordinary course of trade
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>
REP 334	<i>Anti-Dumping Commission Report No. 334</i>
review period	1 July 2015 to 30 June 2016
SEF	statement of essential facts
SEF 373	<i>Statement of Essential Facts No. 373</i>
SG&A	selling, general and administrative
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price

1 SUMMARY

1.1 Introduction

This final report sets out the facts on which the Commissioner of the Anti-Dumping Commission (the Commissioner) bases 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)¹ in relation to a review of the anti-dumping measures applying to food service and industrial (FSI) pineapple (also referred to as the goods)² exported to Australia from the Kingdom of Thailand (Thailand) by Natural Fruit Co., Ltd (referred to as the applicant, or Natural).

This review of anti-dumping measures is in response to an application from 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.

Natural claimed that a review was warranted because its normal value and export price have changed since last ascertained.³ The review also examined the non-injurious price (NIP).

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 anti-dumping measures covered by the application.⁵

The Commissioner must, within 155 days after the publication of the notice or such longer period as the Parliamentary Secretary allows, give the Parliamentary Secretary a report containing recommendations.⁶

¹ 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. For the purposes of this review of anti-dumping measures the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

² Refer to section 3.1 of this report for a full description of the goods.

³ Subsection 269T(4E).

⁴ All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

⁵ Subsection 269ZC(4)(a).

⁶ Subsection 269ZDA(1).

1.3 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 NIP has not changed.

The form of anti-dumping measures, the combination of fixed and variable duty method⁷, remains unchanged.

1.4 Recommendation

The Commissioner recommends to the Parliamentary Secretary that the dumping duty notice have effect in relation to Natural as if different variable factors (being the export price and normal value) had been ascertained.

⁷ The combination fixed and variable duty method applicable to FSI pineapple from Thailand consists of a fixed amount per kilogram plus the amount, if any, by which the actual export price is lower than the ascertained export price (the variable amount).

2 BACKGROUND

2.1 Application and initiation

On 30 August 2016, the Anti-Dumping Commission (Commission) received an application lodged by Natural 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 public record⁸ on 19 September 2016.⁹

Consideration Report No. 373 was published on the public record¹⁰ 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 anti-dumping measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia from Thailand. 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 for a further five years from 18 October 2006 and fix different variable factors relevant to the determination of duty.

On 15 April 2011, following consideration of an applications by Golden Circle, a continuation inquiry and review of anti-dumping measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia 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 anti-dumping measures was initiated for FSI pineapple from Thailand following an application by Tipco Foods Public Company Limited. The review of anti-dumping measures was extended to all exporters from Thailand. The then Minister for Home Affairs accepted the recommendations contained in *International Trade*

⁸ [Public record](#) item no. 3.

⁹ Available on the Commission's website at www.adcommission.gov.au

¹⁰ [Public record](#) item no. 2.

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Remedies Branch Report No. 196 and fixed different variable factors relevant to the determination of duty.

On 11 August 2016, following an application by Golden Circle for a continuation of the anti-dumping 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), to secure the continuation of the anti-dumping measures relating to FSI pineapple exported to Australia from Thailand from the expiry date of the anti-dumping measures; and
- 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 anti-dumping measures applicable to Natural

As a result of the most recent continuation inquiry, Natural is subject to the combination fixed and variable duty method applicable to ‘uncooperative and all other exporters’. This includes a fixed (confidential) amount per kilogram (equivalent to 28.6 per cent of the ascertained export price), plus the amount, if any, by which the actual export price is lower than the ascertained export price (the variable amount).

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 anti-dumping measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,¹¹ or the Parliamentary Secretary may request that the Commissioner conduct,¹² a review of those anti-dumping 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 publication of a notice declaring the outcome of the last review of the notice imposing the original anti-dumping measures.¹³

If an application for a review of anti-dumping measures is received and not rejected, 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 statement of essential facts

¹¹ Subsection 269ZA(1).

¹² Subsection 269ZA(3).

¹³ Subsection 269ZA(2)(a).

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(SEF) on which he proposes to base recommendations to the Parliamentary Secretary concerning the review of the anti-dumping measures.¹⁴

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.¹⁵ During the course of a review, the Commissioner will examine whether the variable factors have changed. Variable factors in this particular review are:

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

For this review, in making recommendations in his final report to the Parliamentary Secretary, the Commissioner must have regard to:¹⁶

- 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;
- the SEF; and
- any submission made in response to the 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 the Commissioner considers to be relevant to the review.¹⁷

In his final report the Commissioner must make a recommendation to the Parliamentary Secretary that the dumping duty notice:¹⁸

- remain unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained.

The Parliamentary Secretary must make a declaration within 30 days of receiving the report or, if the Parliamentary Secretary considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Parliamentary Secretary considers appropriate¹⁹ that the dumping duty notice:²⁰

- remain unaltered; or

¹⁴ Subsection 269ZD(1).

¹⁵ Subsection 269ZDA(1).

¹⁶ Subsection 269ZDA(3)(a).

¹⁷ Subsection 269ZDA(3)(b).

¹⁸ Subsection 269ZDA(1)(a).

¹⁹ Subsection 269ZDB(1A).

²⁰ Subsection 269ZDB(1)(a).

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- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Parliamentary Secretary must give notice of the decision.²¹

2.4 Statement of essential facts

On 9 January 2017, the Commissioner placed on the public record²² *Statement of Essential Facts No. 373* (SEF 373) to inform all interested parties of the essential facts on which the Commissioner proposed to base a recommendation to the Parliamentary Secretary in relation to the review of anti-dumping measures.

2.4.1 Submissions in response to SEF 373

The only submission received in response to SEF 373 was from Natural, dated 26 January 2017. A non-confidential version of the submission is on the public record.²³ The Commissioner has had regard to the submission in making his recommendations to the Parliamentary Secretary in this report. Details of Natural's submission, and the Commissioner's consideration, are included in section 5.5.3 of this report.

The Commissioner did not receive any other submissions during the course of the review.

²¹ Subsection 269ZDB(1).

²² [Public record](#) item no. 6.

²³ [Public record](#) item no. 7.

3 THE GOODS AND LIKE GOODS

3.1 The goods subject to the anti-dumping measures

The goods subject to anti-dumping measures (the goods) are:

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

3.2 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 a general rate of customs duty.

3.3 Like 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”.

The definition of like goods is relevant in the context of this review in determining the normal value of goods exported to Australia, the goods subject to the dumping duty notice, and in determining the NIP. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the *Dumping and Subsidies Manual*.²⁴

²⁴ Available on the Commission’s website at www.adcommission.gov.au

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

Natural completed the exporter questionnaire, providing detailed information and 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 Natural's data

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 public record.²⁵

4.3.1 Post verification visit data

Prior to the publication of Natural's visit 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 revised its CTMS data. The Commission advised Natural that the revised CTMS data, without a satisfactory explanation and importantly, subsequent to verification, would not be accepted. The variance in the revised data was material. Natural could not explain the variation to the Commission's satisfaction. The revised data is considered unreliable in calculating the normal value in accordance with subsection 269TAC(7). Given the previous findings at section 4.3, the Commission did not accept the revised CTMS data.

²⁵ [Public record](#) item no. 5.

5 EXPORT PRICE AND NORMAL VALUE

5.1 Finding

The Commissioner finds that the export price and normal value relevant to the taking of anti-dumping measures in relation to FSI pineapple exported to Australia by Natural have changed.

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.²⁶

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. This was confirmed in the Australian Border Force importer database.

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.

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 Commissioner recommends that the export price be determined under subsection 269TAB(1)(c), having regard to all the circumstances of the exportation. Specifically, the Commission considered the role of the various parties

²⁶ The Manual, Chapter 6.2, p.27.

involved in the export sales and considers that the price paid to Natural by the intermediary in the country of export best represents the export price at FOB terms.

The Commission's export price calculations are at **Confidential Attachment 1**.

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 (OCOT) 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 OCOT;²⁷ 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 sales²⁸ (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 by Natural on the exporter's domestic market. The Commission 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).

The Commission's policy, set out at Chapter 10 of the Manual, outlines an approach which preferences the use of subsection 269TAC(2)(c) 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 certain applicant's exports to Australia and other exporters from Thailand from the recent continuation inquiry who produce like goods is available. Consistent with the Commission's policy and the circumstances of this

²⁷ Subsection 269TAC(14) refers.

²⁸ Subsection 269TAC(2)(a)(i).

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review, the normal value has been constructed in accordance with subsection 269TAC(2)(c).

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 OCOT in the country of export, the amounts for selling, general and administrative (SG&A) costs associated with the sale, and the profit on that sale.

The Commission's construction of normal values under subsection 269TAC(2)(c) in relation to all domestic sales by Natural are at **Confidential Attachment 2**. 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.²⁹

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 Manual for assessing whether Natural's cost of production reasonably reflect competitive market costs.

The Commission has not received any submissions regarding Natural's production costs, and a comparison between Natural's verified cost of production and other exporter's verified production costs from the recent continuation inquiry did not reveal any significant variation. Therefore, the Commission is satisfied that Natural's cost of production reasonably reflect competitive market costs.

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

²⁹ Subsection 269TAC(5A)(a).

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.³⁰

Subsection 44(2) of the Regulation requires the Commission to determine SG&A costs using the information set out in an exporter's records if the exporter keeps records relating to the sale of 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 no sales of like goods in the country of export by Natural, the Commission 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.

Given that this review of anti-dumping measures is relevant only to Natural, the Commission does not have domestic sales data for other exporters of like goods for the entire review period. However, the Commission does have data relating to the verified actual amounts of SG&A costs incurred by other exporters for the sale of like goods in the domestic market of the country of export from the recent continuation inquiry. That inquiry covered six months of the review period (that is, the period from 1 July 2015 to 31 December 2015).³¹ The Commission has therefore calculated the weighted average of the SG&A costs for those six months under subsection 44(3)(b) of the Regulation.³²

The approach described above departs from the method for calculating the normal value that was in the visit report.³³ The visit report had utilised Natural's SG&A costs applicable to its export sales. Subsequent to the publication of the visit report, the Commission decided that it was not appropriate to utilise Natural's export related SG&A costs when data relating to other exporter's SG&A costs incurred in the sale of like goods on the Thai domestic market was available.

The Commission's SG&A costs calculations are at **Confidential Attachment 3**.

³⁰ Subsection 269TAC(5A)(b).

³¹ Inquiry 334 examined the period 1 January 2015 to 31 January 2015.

³² It is noted that SEF 373 referred to this calculation of SG&A costs having been carried out under subsection 44(3)(c) of the Regulation. The Commission has subsequently reconsidered the explanation in SEF 373 and notes that SG&A costs should be calculated under subsection 44(3)(b) of the Regulation. The amount of SG&A costs calculated remains the same as in the SEF, hence there is no impact on the calculation of the normal value. It is further noted that pineapples are grown in Thailand year round and that there was a significant volume and value of production and sales of like goods by the other exporters in the six month period.

³³ [Public record](#) item no. 5.

5.5.3 Submission in relation to selling, general and administrative costs

Natural made a submission on 26 January 2017 in response to SEF 373. Natural contested the Commission's approach to determining SG&A costs, and requested that SG&A costs be calculated on a quarterly basis in determining its normal value and dumping margin.

The Commission's reasons for including an amount of SG&A costs from other exporters is outlined above at 5.5.2. The Commission notes that when calculating the weighted average SG&A costs of other exporters for the purposes of subsection 44(3)(b) of the Regulation, regard must be given to subsection 269T(5A), which applies to all calculations that are undertaken under Part XVB. Subsection 269T(5A) outlines how the calculation of a weighted average amount of prices, values, costs or amounts is to be performed for a particular period. In this case the particular period in which the SG&A costs relate is the period 1 July 2015 to 31 December 2015. The Commission considers it reasonable to calculate the weighted average unit SG&A costs for the six month period, noting that the SG&A for the other exporters did not vary significantly on a quarterly basis.

5.5.4 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.³⁴

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 OCOT. As discussed previously this is not possible because Natural do not sell like goods on the Thai domestic market.

Similarly, 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 45(3)(a) of the Regulation.

As explained in section 5.5.2, although the Commission does not have domestic sales data for other exporters of the like goods for the entire review period, it is in possession of verified actual amounts of profit from other exporters for the sale of like goods in the domestic market of the country of export for six months of the review period.

The Commission has calculated the weighted average of the profit from those six months under subsection 45(3)(b) of the Regulation.³⁵ The Commission's profit calculations are at **Confidential Attachment 3**.

³⁴ Subsection 269TAC(5B).

³⁵ It is noted that SEF 373 referred to the calculation of profit having been carried out under subsection 45(3)(c) of the Regulation. The Commission has subsequently reconsidered the position in SEF 373, and notes that SG&A costs should be calculated under subsection 44(3)(b) of the Regulation. The amount of profit calculated is the same as in the SEF, hence there is no impact on the calculation of the normal value.

5.6 Adjustments

The Commission is satisfied that there is sufficient and reliable information to justify the following adjustments, in accordance with subsection 269TAC(9), and considers these adjustments are necessary to ensure a fair comparison of normal value and export price.

Adjustment type	Deduction/addition
Packing	Deduct an amount for domestic packing. Add an amount for export packing.
Inland transport	Deduct an amount for domestic inland transport Add an amount for export inland transport.
Export credit	Add an amount for export credit based on Natural's average short-term borrowing rate.

It is noted that the normal value calculated for SEF 373 incorrectly included amounts for domestic packing and domestic inland transport and that these amounts were based on other exporter's domestic SG&A. The Commission has corrected the normal value for this report by deducting the domestic packing and domestic inland transport from the constructed normal value calculations and adding amounts for packing and inland transport applicable to Natural's export sales to ensure that the normal value is at FOB terms and properly comparable to the export price.

5.7 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.³⁶

The Commission has calculated a dumping margin in respect of FSI pineapple exported to Australia by Natural for the review period of **9.6 per cent**.³⁷

The Commission's dumping margin calculations are at **Confidential Attachment 4**.

³⁶ In accordance with subsection 269TACB(2)(a).

³⁷ The dumping margin calculated in Natural's visit report was 7.3 per cent, which was revised for the reasons outlined in sections 5.5 and 5.6. Natural were advised of this change on 14 February 2017.

6 NON-INJURIOUS PRICE

6.1 Assessment of NIP

The Australian industry and the applicant have not made submissions on the NIP during the course of the review.

The Commissioner considers that the approach to determining the NIP for the recent 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 Commissioner's assessment

As dumping was found during the most recent 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 overlaps the review period. The Commission therefore had regard to the verified Australian industry CTMS and profit information from the previous continuation inquiry.

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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 lesser duty rule does not apply. Accordingly, the Commissioner proposes to recommend that the fixed component of dumping duty be based on the full margin of dumping.

The Commission's NIP calculations are at **Confidential Attachment 5**.

7 EFFECT OF THE REVIEW

7.1 Findings

The Commissioner finds that, in relation to exports of FSI pineapple to Australia 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 not changed.

7.2 Recommendations

The Commissioner recommends that the Parliamentary Secretary be satisfied that, in accordance with subsection 269TAC(2)(a)(i), the normal value of the goods exported to Australia from Thailand by Natural cannot be ascertained under subsection 269TAC(1) because of an absence of sales of like goods in the Thai domestic market that would be relevant for the purpose of determining a price under subsection 269TAC(1).

The Commissioner recommends that the Parliamentary Secretary determine that:

- in accordance with subsection 269TAB(1)(c), having regard to all the circumstances of the exportation, the export price for the goods exported to Australia from Thailand by Natural during the review period be ascertained using the price paid or payable for the goods to Natural by an intermediary, as set out in Confidential Attachment 1;
- in accordance with subsection 269TAC(2)(c), the normal value of the goods exported to Australia from Thailand by Natural be the sum of:
 - Natural's cost of production of the goods in Thailand as set out in Confidential Attachment 2, and
 - on the assumption that the goods, instead of being exported, had been sold for home consumption in the OCOT in Thailand, the SG&A costs associated with the sale, and an amount for profit of other exporters as set out in Confidential Attachment 3,

as adjusted in accordance with subsection 269TAC(9), as set out in Confidential Attachment 2, to ensure that the normal value of the goods so ascertained is properly comparable with the export price of the goods;

- having applied subsection 269TACB(2)(a), and in accordance with subsection 269TACB(4), the dumping margin in respect of the goods exported to Australia from Thailand by Natural is the difference between the weighted average export prices of the goods over the review period and the weighted average of corresponding normal values over that period as set out in Confidential Attachment 4.

The Commissioner recommends that the Parliamentary Secretary ascertain the NIP at the FOB level 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 of this report.

The Commissioner recommends that the Parliamentary Secretary not have regard to:

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- in accordance with subsection 8(5B), the desirability of specifying a method such that the sum of amounts outlined in subsections 8(5B)(c) and (d) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) do not exceed the NIP in light of the findings in 6.3 that the NIP is greater than the normal value.

The Commissioner recommends that the Parliamentary Secretary declare, by notice published on the Commission's website that:

- in accordance with subsection 269ZDB(1)(a)(iii), for the purposes of the Act and the Dumping Duty Act, and with effect from the date specified in the declaration, the dumping duty notice is taken to have effect, in relation to Natural, as if different variable factors of export price and normal value (as set out in Confidential Attachment 5) had been fixed in respect of Natural relevant to the determination of dumping duty.

7.3 Form of anti-dumping measures

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

- a fixed (confidential) amount per kilogram (equivalent to 9.6 per cent of the ascertained export price); plus
- the amount, if any, by which the actual export price is lower than the ascertained export price (the variable component).

A summary of the variable factors as they apply to Natural is at **Confidential Attachment 5**.

8 ATTACHMENTS

Confidential Attachment 1	Export price
Confidential Attachment 2	Normal value
Confidential Attachment 3	SG&A costs and profit margin
Confidential Attachment 4	Dumping margin
Confidential Attachment 5	Non-injurious price and summary of variable factors