



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

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NO.195A

REVIEW OF VARIABLE FACTORS

CONSUMER PINEAPPLE

EXPORTED FROM THAILAND

8 May 2013

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1. SUMMARY AND RECOMMENDATIONS

This review is in response to an application by Siam Agro-Food Industry Public Co., Ltd (SAICO) seeking a review of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by Thai Pineapple Canning Industry Corp Ltd (TPC). On 29 January 2013, the review was extended to all exporters of consumer pineapple from Thailand.

This Statement of Essential Facts (SEF 195A) sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendations to the Minister for Home Affairs (Minister) in relation to the review of the variable factors applicable to consumer pineapple exported to Australia from Thailand.

A SEF relating to the revocation review in relation to consumer pineapple exported to Australia by TPC forms SEF 195B.

A separate SEF, SEF196, has been issued for the review of the variable factors of the measures applicable to food service and industrial (FSI) pineapple exported to Australia from Thailand.

1.1 Proposed recommendation

The delegate proposes to recommend to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been fixed.

The result of the review would be that ascertained export prices, normal values and the non-injurious price for all exporters would change and the amount of interim dumping duty imposed would change.

This recommendation does not preclude any amendment to the dumping duty notice in relation to TPC that may be proposed as a result of the findings in SEF 195B.

1.2 Preliminary findings and conclusions

Customs and Border Protection has made the following preliminary findings and conclusions based on available information at this stage of the investigation.

1.2.1 Export Prices (Chapter 4 of this report)

The export prices for exporters of consumer pineapple from Thailand have been established as follows:

- the export price for consumer pineapple exported by TPC can be established using the invoice price¹ paid by the Australian importers to

¹ Ss 269TAB(1)(a)

TPC, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);

- the export price for consumer pineapple exported by Kuiburi Fruit Canning Co., Ltd (KFC) can be determined having regard to all relevant information, pursuant to s. 269TAB(3);
- the export price for consumer pineapple exported by Tipco Foods Public Company Limited (TIPCO) can be determined having regard to all relevant information pursuant to s. 269TAB(3); and
- revised export prices for consumer pineapple for all other Thai exporters can be determined having regard to all relevant information pursuant to s. 269TAB(3).

1.2.2 Normal values (Chapter 4 of this report)

The normal values for exporters of consumer pineapple from Thailand have been established as follows:

- the normal value for consumer pineapple exported by TPC can be determined using a constructed normal value adjusted for comparison with the export price pursuant to s. 269TAC(2)(c) and s. 269TAC(9);
- the normal value for consumer pineapple exported by KFC can be determined using a constructed normal value adjusted for comparison with the export price pursuant to s. 269TAC(2)(c) and s. 269TAC (9);
- the normal value for consumer pineapple exported by TIPCO can be determined using a constructed normal value adjusted for comparison with the export price pursuant to s. 269TAC(2)(c) and s. 269TAC (9); and
- revised normal values for consumer pineapple for all other Thai exporters can be determined having regard to all relevant information².

1.2.3 Non-injurious Price (Chapter 5 of this report)

Customs and Border Protection considers that the non-injurious price can be established by using Golden Circle's cost to make and sell during the review period plus the profit achieved in 2009, being a period unaffected by dumping.

1.2.4 Effect of the review (Chapter 6 of this report)

Based on these preliminary findings and subject to any submissions received in response to this SEF, the delegate proposes to recommend to the Minister that the variable factors of the measures be varied for all exporters of consumer pineapple.

² Ss 269TAC(6)

1.3 Final report

The delegate's final report and recommendation in relation to the review of measures applicable to exports of consumer pineapple from Thailand must be provided to the Minister by **22 June 2013**.

2. INTRODUCTION

2.1 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to apply for a review of those measures as they affect a particular exporter or exporters generally.

Accordingly the affected party may apply for, or the Minister may request that the Chief Executive Officer (CEO) conduct, a review of those measures if one or more of the variable factors has changed. The Minister may initiate a review at any time; however, no other interested party may apply for a review to take place earlier than 12 months since the publication of the dumping duty notice or the publication of a notice declaring the outcome of the last review of the notice.

If an application for a review of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures.

Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the public record a SEF on which it proposes to base its recommendation to the Minister concerning the review of the measures.

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate 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 Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the review.

In respect of a dumping duty notice, the delegate must provide a proposed recommendation to the Minister that the dumping duty notice³:

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

³ s. 269ZDA(1)(a) of the *Customs Act 1901* (the Act)

Following the Minister's decision, a notice will be published advising interested parties of the decision.

2.2 Notification and participation

On 3 December 2012, Customs and Border Protection received an application from Siam Agro-Food Industry Public Company Limited (SAICO) (the applicant) for the review of anti-dumping measures that apply to consumer pineapple exported to Australia from Thailand by Thai Pineapple Canning Industry Corp Ltd (TPC), an exporter of the goods and wholly owned subsidiary of SAICO.

Following consideration of the application, a review of the measures commenced on 19 December 2012. The period of 1 October 2011 to 30 September 2012 was set as the review period.

Both a review of the variable factors, being the export price, normal value and non-injurious price (the variable factors review) and a review to determine whether the measures as they apply to TPC are no longer warranted (the revocation review) were initiated by Customs and Border Protection on 19 December 2012.

Public notification of initiation of the review was made on 19 December 2012 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2012/64 was also published.

On 29 January 2013, following a request by the Minister, Customs and Border Protection published a notice in *the Australian* newspaper notifying parties that the variable factors review had been extended to all exporters of consumer pineapple from Thailand. The revocation review remained in relation to the exports of TPC only. ACDN No. 2013/10 was also published.

Following an extension from the Minister, Customs and Border Protection is required to place the SEF for the variable factors review of measures relating to consumer pineapple exported from Thailand on the public record on or before **8 May 2013**.

The final report to the Minister, which outlines Customs and Border Protection's findings and recommendations, is due on or before **22 June 2013**.

2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this SEF. However Customs and Border Protection is not obliged to have regard to any submissions received after **28 May 2013** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

The Director
International Trade Remedies Operations 1
Australian Customs and Border Protection Service
5 Constitution Avenue

CANBERRA ACT 2601 AUSTRALIA

Submissions can also be faxed to (02) 6275 6990 or emailed to itrops1@customs.gov.au.

Submissions provided in confidence must be clearly marked “**FOR OFFICIAL USE ONLY**”. Interested parties intending to respond to the SEF must include a non-confidential version of their submission for placement on the public record.⁴

The public record contains non-confidential submissions already received from interested parties, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s consideration report and notices. This SEF should be read in conjunction these documents.

All documents on the public record are available on Customs and Border Protection’s electronic public record for the review, which may be accessed online at <http://www.customs.gov.au/anti-dumping/cases/EHP195.asp>.

The public record may also be viewed at Customs House Canberra by contacting International Trade Remedies Branch administration on (02) 6275 6547.

2.4 History of anti-dumping measures

On 8 January 2001 Golden Circle lodged an application requesting that the Minister publish a dumping duty notice in respect of certain pineapple products (the goods) from Thailand.

The Minister accepted the recommendations in Trade Measures Report No. 41 (REP 41) and published dumping duty notices for consumer pineapple exported to Australia from Thailand and FSI pineapple exported from Thailand with the exception of pineapple exported by Malee Sampran Public Co.

On 22 February 2006 following consideration of applications from Golden Circle, continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

On 28 September 2006 the Minister accepted the recommendations contained within REP 110 and REP 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.

Following a decision of the Federal Court in April 2008 measures applying to exports of consumer pineapple from Thailand by the Thai Pineapple Canning Co., Ltd (TPC) lapsed.

⁴ In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

On 4 February 2011 following consideration of an application by Golden Circle continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

On 11 October 2011 the Minister accepted the recommendations contained within REP 172c and 172d 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 the Minister initiated an investigation following consideration of an application by Golden Circle requesting that the Minister publish a dumping duty notice in respect of consumer pineapple products exported from Thailand by TPC.

On 11 October 2011 the Minister also accepted the recommendations contained in REP 173b to publish a dumping duty notice for consumer pineapple exported from Thailand by TPC.

3. GOODS SUBJECT TO THE REVIEW

3.1. Preliminary findings

The Australian industry produces consumer pineapple that has characteristics closely resembling those of consumer pineapple manufactured in Thailand and exported to Australia.

As such consumer pineapple produced by the Australian industry are like goods.⁵

3.2. The goods and like goods

The goods the subject of the review (the goods) are pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple).

3.2.1. Tariff classification

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

2008.20.00	Pineapples
2008.20.00/26	Canned, in containers not exceeding one litre
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

There is currently no general duty imposed on goods exported from Thailand in accordance with the Thailand-Australia Free trade agreement.

3.2.2. Like goods

The issue of like goods was considered during the original investigation into pineapple exported from Thailand in REP 41.

In REP 41, Customs and Border Protection was satisfied that there was an Australian industry producing like goods to the goods under consideration. This finding has been maintained through all reviews and continuation inquiries.

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'.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

⁵ For the purposes of s.269T.

Customs and Border Protection understands, from the basis of costs and sales information provided by Golden Circle, that its production and sales of consumer pineapple is unchanged from that found in the 2011 review (REP 172c refers).

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes not exceeding one litre (typically 225g, 425-450g, and 825-850g, although other sizes are available) sold into retail stores for the consumer market.

Physical Likeness

Golden Circle stated that it produces a range of pineapple products in the above container sizes.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices and crushed pineapple. The products can be sold in containers in either syrup or natural juice.

Sales of consumer pineapple by industry and importers that met the description of the goods and like goods were verified by Customs and Border Protection during the investigation.

Commercial Likeness

Golden Circle says that prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the consumer market segment.

Customs and Border Protection collected information during the investigation that confirmed this direct competition.

Functional Likeness

Golden Circle stated that its locally produced products are directly substitutable for the imported goods.

Customs and Border Protection collected information during the investigation that confirmed the locally produced product and imported product were substitutable for each other.

Production Likeness

Verified information from industry and exporter visits shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

Customs and Border Protection remains satisfied that there is an Australian industry producing like goods to the goods.

3.3. Australian Industry

3.3.1. Like goods

There is an Australian industry that is producing like goods, consisting of Golden Circle.

3.3.2. Manufacturing process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia⁶.

Golden Circle is the sole manufacturer of consumer pineapple in Australia.

A verification visit was undertaken to Golden Circle for the review of measures and continuation inquires in 2011 where the manufacturing process was observed and data was verified. Customs and Border Protection has not received any submissions from interested parties claiming that this has changed.

Customs and Border Protection considers that at least one substantial process in the manufacture of consumer pineapple is carried out in Australia, and therefore consumer pineapple is manufactured in Australia.

⁶ Ss 269T(2) and 269T(3).

4. EXPORT PRICE AND NORMAL VALUE

4.1. Preliminary findings

- The export price for consumer pineapple exported by Kuiburi Fruit Canning Co Ltd (KFC) has been determined having regard to all relevant information.
- The export price for consumer pineapple exported by TPC can be determined as the price paid or payable by the importer;
- The export price for consumer pineapple exported by TIPCO has been determined having regard to all relevant information.
- The normal value for consumer pineapple exported by KFC can be determined by constructing a domestic price using the cost of production of exported consumer pineapple plus amounts for S,G&A and profit;
- The normal value for consumer pineapple exported by TPC can be determined by constructing a domestic price using the cost of production of exported consumer pineapple plus amounts for S,G&A and profit;
- The normal value for consumer pineapple exported by TIPCO can be determined by constructing a domestic price using the cost of production of exported consumer pineapple plus amounts for S,G&A and profit.

4.2. Importers

Customs and Border Protection examined data from its import database and identified importers of consumer pineapple from Thailand during this period. Three importers were contacted by Customs and Border Protection to determine whether they would like to participate in the review.

JAR Distribution Pty Ltd (JAR) fully co-operated with the review, providing verified information on imports and sales.

4.3. Exporters

Exporter questionnaires were sent to all companies identified as suppliers of consumer pineapple from Thailand during the review period. Further questionnaires were sent to parties that were interested in potentially export to Australia.

The following exporters provided responses to the exporter questionnaire:

- KFC;
- TPC, and
- TIPCO.

Participating exporters provided completed responses to the questionnaire and the information was verified during a visit by Customs and Border Protection to each company. Non-confidential copies of the verification reports are available on the public record.

Customs and Border Protection received no responses from other identified exporters.

4.4. Kuiburi Fruit Canning Co., Limited

4.4.1. Export price

Customs and Border Protection confirmed during verification of KFC's response to the export questionnaire that KFC did not export the goods to Australia during the review period. In this instance Customs and Border Protection cannot determine export price pursuant to s. 269TAB(1).

Export prices for KFC have therefore been determined having regard to all relevant information pursuant to s. 269TAB(3). Customs and Border Protection relied on the verified information supplied by KFC in response to the exporter questionnaire.

Customs and Border Protection's preliminary finding is that export price should be ascertained to be equal to the normal value.

4.4.2. Normal value

During verification, it was confirmed that KFC did not sell like goods for home consumption in Thailand during the review period.

Customs and Border Protection is satisfied that it is unable to establish normal values for KFC under s. 269TAC(1) and considers that constructed normal values should be determined pursuant to paragraph 269TAC(2)(c).

Third country exports by KFC were not considered appropriate given that KFC had no exports of consumer pineapple during the review period.

Customs and Border Protection used verified quarterly production costs from KFC for the pineapple products it intends to export to Australia. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses was used to estimate SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

Adjustments were made for inland freight, handling and other expenses, credit terms and other income items to ensure the normal value was comparable to export prices pursuant to subsection 269TAC (9).

Customs and Border Protection had regard to Regulation 181A which sets out the manner in which the Minister must determine an amount of profit to be included in a constructed normal value.

Pursuant to reg. 181A(2), "the Minister must, if reasonably possible, work out the amount [for profit] by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade".

As KFC had no domestic sales of like goods, Customs and Border Protection was not able to determine a profit pursuant to reg. 181A(2).

If the Minister is unable to work out the amount for profit pursuant to reg. 181A(2), reg. 181A(3) sets out the options in which the Minister must work out profit, as follows:

- (a) by identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
- (b) by identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
- (c) by using any other reasonable method and having regard to all relevant information (subject to reg. 181A(4)).

During the course of the concurrently running review of FSI pineapple, Customs and Border Protection obtained verified data in relation to KFC's domestic sales of FSI pineapple during the review period. Whilst FSI pineapple is distinguished from consumer pineapple in terms of the goods description, Customs and Border Protection is preliminarily satisfied that FSI pineapple falls within the same general category of the goods.

Given that Customs and Border Protection has verified information that outlines the actual amounts of profit realised by KFC from the sale of the same general category of goods in the domestic market, reg. 181A(3)(a) applies.

In determining which domestic sales to use when calculating an amount for profit pursuant to s.181A(3)(a), Customs and Border Protection is guided by the World Trade Organisation's (WTO) interpretation of Article 2.2.2(i) of the *Agreement in Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement).

The WTO Appellate Body has found that the phrase "actual amounts incurred and realised" should be interpreted in the ordinary sense to include "*profits or losses actually realised* by other exporters or producers in respect of production and sales of the like product in the domestic market of the country of origin".⁷ The Appellate Body concluded that, when calculating the amount for profit under Article 2.2.2(i), (ii) or (iii) an authority may not exclude sales by exporters or producers that are not made in the ordinary course of trade.⁸

Customs and Border Protection calculated the rate of profit as a percentage of costs, by reference to the total revenue and total cost to make and sell associated with all of KFC's domestic sales of FSI pineapple during the review period.

Customs and Border Protection's preliminary finding is that it is appropriate to apply a rate of profit to the constructed normal value for KFC. This profit

⁷ Appellate Body Report, *European Communities – Anti-Dumping Duties on imports of Cotton-type Bed Linen from India*, WT/DS141/AB/9 at para 80.

⁸ Above, at para 84.

represents the profit realised by KFC on domestic sales of FSI pineapple during the review period, calculated in accordance with reg. 181A(3)(a).

4.4.3. Dumping margin

As there were no export sales to Australia by KFC during the review period, Customs and Border Protection has found the export price to be equal to the normal value for the purpose of reviewing the variable factors.

4.5. Thai Pineapple Canning Industry Corp., Ltd

4.5.1. Relationship between TPC and SAICO

When interim dumping duties were first imposed in 2001, TPC was recognised as an individually operated privately owned company established in Thailand.

In December 2005, TPC acquired 90.69% of Siam Agro Industry Pineapple and Others Public Company Limited.

The corporate structure of TPC and SAICO was rationalised in 2010 in order to increase efficiencies in production and management across both companies. Specifically, TPC was restructured so that it became a holding company in SAICO and the operation of TPC was transferred under the official corporate purview of SAICO.

Following the 2010 restructure, the organization became known as the Siam Agro-Food Industry Public Company Limited (SAICO). The affiliation between TPC and SAICO and the corporate restructure which streamlined TPC's commercial operations under SAICO, were noted by Customs and Border Protection in previous visits to TPC/SAICO in the context of investigation No.173, pursuant to which measures were imposed on consumer pineapple exported from Thailand by TPC (the measures currently in force).

There have been no further significant changes to the corporate structure of SAICO in relation to the commercial operations of TPC. Therefore, Customs and Border Protection is satisfied that SAICO and TPC are the same corporate entity, and it is reasonable to treat them as a single exporter for the purpose of determining variable factors and applicable dumping duties.

4.5.2. Export price

In the case of export sales to Australia by TPC, it was established that consumer pineapple was exported during the review period. Customs and Border Protection finds that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchases of the goods were arms' length transactions

Therefore, export prices for consumer pineapple by TPC can be established under section 269TAB(1)(a) of the Customs Act, being the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation.

4.5.3. Normal value

During verification, it was confirmed that TPC did not have domestic sales as like goods were not sold for home consumption.

Customs and Border Protection is satisfied that it is unable to establish normal values for TPC/SAICO under s. 269TAC(1) and considers that 'constructed' normal values should be determined pursuant paragraph 269TAC(2)(c).

Customs and Border Protection used verified quarterly production costs from TPC for the consumer pineapple products exported to Australia during the review period. Total SG&A expenses incurred by TPC in relation to its export sales, which incorporated adjustments for any export sales expense, such as inland freight, and any post-FOB expense, were used to estimate the amount of SG&A it would expect to incur if selling on the domestic market of Thailand.

Adjustments were made for inland freight, handling, loading and ancillary charges to ensure the normal value was comparable to an FOB export sale pursuant to s. 269TAC(9).

In considering the appropriate level of profit, TPC submits that the nature of the Thai domestic market for consumer pineapple is such that it is inappropriate to include an amount for profit in constructing normal values. Regulation 181A sets out the manner in which the Minister must determine an amount of profit to be included in a constructed normal value.

As set out in section 4.4.2 above, the Minister must, if reasonably possible, work out the amount for profit by using data relating to the production and sale of like goods by the exporter of the goods in the ordinary course of trade, pursuant to reg. 181A(2). Given that there are no domestic sales of like goods sold by TPC, reg. 181A(2) cannot be applied.

In the absence of domestic sales in the ordinary course of trade, the Minister must work out profit pursuant to reg. 181A(3). The options for the determination of profit pursuant to reg. 181A(3) is set out at 4.4.2 above.

In considering whether profits achieved by TPC on the domestic sale of the same general category of goods are relevant, it is noted that neither TPC or SAICO had domestic sales of FSI pineapple during the review period. In fact TPC provided evidence that it had withdrawn supply of FSI pineapple to the domestic market as it had become unprofitable to do so. For this reason, TPC submitted that the profit realised by TPC during the 2005 review of measures was no longer relevant to the domestic market.

As there is no information in relation to actual profits realised by TPC from the sale of the same general category of goods on the domestic market in Thailand, reg. 181A(3)(a) cannot be applied.

Customs and Border Protection was not provided with any information by other exporters in respect of domestic sales of consumer pineapple to enable a profit to be determined. Given this, Customs and Border Protection does not have information as to the actual amounts of profit realised by other exporters from the sale of consumer pineapple on the domestic market. In this instance, reg. 181A(3)(b) cannot be applied.

Regulation 181A(3)(c) allows the Minister to work out profit by using any other reasonable method and having regard to all relevant information. This is subject to the application of reg. 181A(4), which outlines that the Minister must disregard an amount of profit that exceeds the amount normally realised by other exporters or producers on sales of goods in the same general category on the domestic market.

As outlined at 4.4.2 above, this calculation of profit must not exclude domestic sales that were not made in the ordinary course of trade.⁹ Regulation 181A(4) therefore limits the level of profit to be applied under reg. 181A(3)(c) to the maximum amount of actual profit achieved by an exporter in the sale of the same general category of goods on the domestic market.

During the course of the concurrently running review of the measures related to FSI pineapple, Customs and Border Protection was provided information of the domestic sales of FSI pineapple by KFC, Dole Thailand Limited (DTL) and Prime Products Industry Co., Ltd (Prime Products). Whilst FSI pineapple is distinguished from consumer pineapple in terms of the goods description, Customs and Border Protection is preliminarily satisfied that FSI pineapple falls within the same general category of the goods.

Pursuant to reg. 181A(5), the Minister may disregard any information that he or she considers to be unreliable. Customs and Border Protection could not verify the information provided by Prime Products due to deficiencies in its response to the exporter questionnaire. Given that Customs and Border Protection has been unable to test the reliability of the information provided by Prime Products, the preliminary view is to disregard this information pursuant to reg. 181A(5).

Given this, Customs and Border Protection is able to apply an amount for profit based on the information provided by DTL and KFC, so long as the amount applied does not exceed the highest amount of profit actually achieved by either of DTL or KFC.

At this stage, Customs and Border Protection considers that the best representation of profit that can be achieved on the domestic market in the same general category of goods to consumer pineapple, would be the weighted average profit realised by both DTL and KFC. Customs and Border Protection

⁹ Above, at para 80.

has calculated the weighted average profit, as a percentage of costs, to equal approximately 17%.

Customs and Border Protection has also calculated the individual profits realised by DTL and KFC to establish the maximum profit that can be applied pursuant with reg. 181A(4). Customs and Border Protection is satisfied that the weighted average profit of approximately 17% does not exceed the actual amounts realised by one of DTL or KFC.

Customs and Border Protection's preliminary finding is that it is appropriate to apply a profit of approximately 17% in determining a constructed normal value for TPC pursuant to s. 269TAC(2)(c). This represents the weighted average of DTL and KFC's actual profit realised for sales of like goods in the domestic market, calculated in accordance with reg. 181A(3)(c).

4.5.4. Dumping margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors. However a dumping margin has been calculated for consumer pineapple exported by TPC over the review period, based on a comparison of normal values and corresponding export price, as it is relevant to the revocation review. The dumping margin calculated for TPC was -3.1%.

4.6. Tipco Foods Public Company Limited

4.6.1. Export price

Customs and Border Protection confirmed during verification of TIPCO's response to the export questionnaire that TIPCO did not export the goods to Australia during the review period. In this instance Customs and Border Protection cannot determine export price pursuant to s. 269TAB(1).

Export prices for TIPCO have therefore been determined having regard to all relevant information pursuant to s. 269TAB(3). Customs and Border Protection relied on the verified information supplied by TIPCO in response to the exporter questionnaire.

Customs and Border Protection's preliminary finding is that the export price should be ascertained to be equal to the normal value.

4.6.2. Normal value

During verification, it was confirmed that TIPCO did not have domestic sales as like goods were not sold for home consumption.

Customs and Border Protection is satisfied that it is unable to establish normal values for TIPCO under s. 269TAC(1) and considers that constructed normal values should be determined pursuant paragraph 269TAC(2)(c).

Customs and Border Protection used verified quarterly production costs from TIPCO for the pineapple products it exported to Australia during the review period. Information from TIPCO's audited financial statements on its total

selling general and administration (SG&A) expenses was used to estimate SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

Adjustments were made for inland freight, handling, loading and ancillary charges to ensure the normal value was comparable to an FOB export sale.

As TIPCO had no domestic sales of like goods in the ordinary course of trade, Customs and Border Protection was not able to determine a profit pursuant to reg. 181A(2).

In the absence of domestic sales in the ordinary course of trade, the Minister must work out profit pursuant to reg. 181A(3).

Customs and Border Protection was not provided any information in relation to actual profits realised by TIPCO from the sale of the same general category of goods on the domestic market in Thailand. In this instance, reg. 181A(3)(a) cannot be applied.

As set out in section 4.5.2 above, Customs and Border Protection does not have information as to the actual amounts of profit realised by other exporters from the sale of consumer pineapple on the domestic market. In this instance, reg. 181A(3)(b) cannot be applied.

As further outlined in section 4.5.2 above, Customs and Border Protection has verified information related to DTL and KFC's domestic sales of FSI pineapple during the review period. Customs and Border Protection makes the preliminary finding that FSI pineapple falls within the same general category of goods for the purpose of determining an amount for profit pursuant to reg. 181A(3)(c).

Customs and Border Protection is not aware of any reason why the methodology for calculating an amount for profit as outlined in relation to TPC at section 4.5.2 above cannot be also applied to TIPCO.

Customs and Border Protection's preliminary finding is that it is appropriate to apply a profit of approximately 17% in determining a constructed normal value for TIPCO pursuant to s. 269TAC(2)(c). This represents the weighted average of DTL and KFC's actual profit realised for sales of like goods in the domestic market, calculated in accordance with reg. 181A(3)(c).

4.6.3. Dumping margin

As there were no export sales to Australia by TIPCO during the review period, Customs and Border Protection has found the export price to be equal to the normal value for the purpose of reviewing the variable factors.

4.7. All other exporters

4.7.1. Export price

Sufficient information has not been furnished to enable export prices of FSI pineapple exported to Australia from Thailand by other exporters to be determined under ss. 269TAB(1)(a), (b) or (c).

The export price for other exporters of FSI pineapple from Thailand has been determined pursuant to s. 269TAB(3), having regard to all relevant information, by reference to the lowest verified weighted average export price of the goods exported to Australia from Thailand over the review period.

4.7.2. Normal value

Sufficient information has not been furnished to enable normal values of FSI pineapple exported to Australia from Thailand by other exporters to be determined under ss. 269TAC(1) or (2).

The normal value for FSI pineapple for other exporters from Thailand has been determined pursuant to s. 269TAC(6), having regard to all relevant information, by reference to the highest weighted average normal value in Thailand over the review period without any favourable adjustments.

4.7.3. Dumping margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors. However a dumping margin has been calculated for FSI pineapple exported by other exporters from Thailand over the review period based on a comparison of normal values and corresponding export price in accordance with s. 269TACB(2)(a).

The dumping margin calculated for other exporters of consumer pineapple from Thailand is 4.2%.

6. NON-INJURIOUS PRICE

6.1 Preliminary findings

The non-injurious price (NIP) can be established for consumer pineapple by using industry's cost to make and sell during the review period plus the profit achieved on sales of consumer pineapple in 2009.

6.2 Introduction

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

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping¹⁰.

Anti-dumping duties are usually based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

6.3 Methods of calculating non-injurious price

The method of calculating a non-injurious price is not given in the legislation, but it is generally derived from Australian industry's unsuppressed selling price (USP). The USP is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

Customs and Border Protection's preferred approach to establishing the USP observes the following hierarchy:

1. Industry selling prices at a time unaffected by dumping (known as an unsuppressed selling price).
2. Constructed industry prices – industry cost to make and sell plus an appropriate profit.
3. Selling prices of undumped imports

Having calculated the USP, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

In the 2011 review of measures Customs and Border Protection determined the USP for consumer pineapple using Golden Circle's cost to make and sell plus

¹⁰ The non-injurious price is defined in s.269TACA.

the rate of profit achieved by Golden Circle in sales of consumer pineapple in 2009. This profit was adjusted down to account for certain costs that were not included in Golden Circle's 2009 financial statements.

6.4 Submissions from interested parties

Customs and Border Protection has not received any submissions from interested parties in relation to the calculation of the USP.

6.5 Customs and Border Protection's assessment

Customs and Border Protection does not consider that industry selling prices are suitable to be used as a basis for the USP as, since commencement of measures in 2001, Customs and Border Protection has found that the consumer pineapple market in Australia has been affected by dumping.

Customs and Border Protection considers that it is appropriate to apply the USP methodology adopted in the 2011 review of measures.

The NIP has been calculated by deducting from the USP amounts for into-store costs, overseas freight and marine insurance as verified from importers.

For all exports from Thailand, the lesser duty rule does not come into effect.

7. EFFECT OF THE REVIEW

As a result of this variable factors review, Customs and Border Protection has found that export prices have generally increased whilst normal values have generally decreased.

From this review of the variable factors, the normal value would be the operative¹¹ measure for consumer pineapple. The amount of interim dumping duty imposed would generally have decreased.

¹¹ The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.