



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

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NO.196

**REVIEW OF ANTI-DUMPING MEASURES
FOOD SERVICE AND INDUSTRIAL PINEAPPLE
EXPORTED FROM THAILAND**

8 May 2013

TABLE OF CONTENTS

1.	SUMMARY AND RECOMMENDATIONS.....	4
1.1	Proposed recommendation.....	4
1.2	Preliminary findings and conclusions.....	4
1.2.1	Export Prices (Chapter 4 of this report).....	4
1.2.2	Normal values (Chapter 4 of this report).....	5
1.2.3	Non-injurious Price (Chapter 5 of this report).....	5
1.2.4	Effect of the review (Chapter 6 of this report).....	5
1.3	Final report.....	6
2.	INTRODUCTION.....	7
2.1	Review process.....	7
2.2	Notification and participation.....	8
2.3	Responding to the statement of essential facts.....	8
2.4	History of anti-dumping measures.....	9
3.	GOODS SUBJECT TO THE REVIEW.....	11
3.1.	Preliminary findings.....	11
3.2.	The goods and like goods.....	11
3.2.1.	Tariff classification.....	11
3.2.2.	Like goods.....	11
3.3.	Australian industry.....	13
3.3.1.	Like goods.....	13
3.3.2.	Manufacturing process.....	13
4.	EXPORT PRICE AND NORMAL VALUE.....	14
4.1.	Preliminary findings.....	14
4.2.1	Export Prices.....	14
4.2.2	Normal values.....	14
4.2.	Importers.....	15
4.3.	Exporters.....	15
4.4.	Dole Thailand Limited.....	16
4.4.1.	Export price.....	16
4.4.2.	Normal value.....	16
4.4.3.	Dumping.....	17
4.5.	Kuiburi Fruit Canning Co., Limited.....	17
4.5.1.	Export price.....	17
4.5.2.	Normal value.....	17
4.5.3.	Dumping.....	18
4.6.	Natural Fruit Co., Limited.....	18
4.6.1.	Export price.....	18
4.6.2.	Normal value.....	18
4.6.3.	Dumping.....	20
4.7.	Siam Agro-Food Industry Public Company Limited.....	21
4.7.1.	Export price.....	21
4.7.2.	Normal value.....	21
4.7.3.	Dumping.....	22
4.8.	Tipco Foods Public Company Limited.....	22

4.8.1.	Export price	22
4.8.2.	Normal value	22
4.8.3.	Dumping	23
4.9.	All other exporters	23
4.9.1.	Export price	23
4.9.2.	Normal value	24
4.9.3.	Dumping	24
5.	NON-INJURIOUS PRICE	25
5.1	Preliminary findings.....	25
5.2	Introduction	25
5.3	Methods of calculating non-injurious price	25
5.4	Submissions from interested parties	26
5.5	Customs and Border Protection's assessment	26
6.	EFFECT OF THE REVIEW	27

1. SUMMARY AND RECOMMENDATIONS

This review is in response to an application by Tipco Foods Public Company Limited (TIPCO) seeking a review of the anti-dumping measures applying to food service and industrial (FSI) pineapple exported to Australia from Thailand by TIPCO.

This Statement of Essential Facts (SEF) 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 recommendation to the Minister for Home Affairs (Minister) in relation to the review of the variable factors of the measures applicable to FSI pineapple exported to Australia from Thailand.

A separate SEF, SEF195A, has been issued for the review of the variable factors of the measures applicable to consumer 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.

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 FSI pineapple from Thailand has been established as follows:

- the export price for FSI pineapple exported by Dole Thailand Limited (DTL) can be established pursuant to s. 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the export price for FSI pineapple exported by Kuiburi Fruit Canning Co., Ltd (KFC) can be established using the invoice price paid by the Australian importers to KFC, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- the export price for FSI pineapple exported by Natural Fruit Co., Ltd (Natural) can be established pursuant to s. 269TAB(1)(c), having regard to all the circumstances of the exportation;

- the export price for FSI pineapple exported by TIPCO can be established using the invoice price paid by the Australian importers to TIPCO, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- the export price for FSI pineapple exported by Siam Agro-Food Industry Public Company Limited (SAICO) can be determined having regard to all relevant information pursuant to s. 269TAB(3); and
- revised export prices for FSI 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 FSI pineapple from Thailand has been established as follows:

- the normal value for FSI pineapple exported by DTL can be determined using the price paid for like goods sold in the ordinary course of trade on the domestic market adjusted for comparison with the export price pursuant to s. 269TAC(1) and s. 269TAC(8);
- the normal value for FSI 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 (9);
- the normal value for FSI pineapple exported by Natural can be determined using a constructed normal value adjusted for comparison with the export price pursuant to s. 269TAC(2)(c) and (9);
- the normal value for FSI 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 (9);
- the normal value for FSI pineapple exported by SAICO can be determined using a constructed normal value pursuant to s. 269TAC(2)(c); and
- revised normal values for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information pursuant to s. 269TAC(6).

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.

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 FSI pineapple.

1.3 Final report

The delegate's final report and recommendation in relation to whether the variable factors of the measures applicable to FSI pineapple exported to Australia from Thailand have changed 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;
- this SEF; and
- any submission made in response to this 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 notice¹:

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

¹ 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 10 December 2012, Customs and Border Protection received an application from TIPCO (the applicant) for a review of the anti-dumping measures that apply to FSI pineapple exported to Australia from Thailand by TIPCO, an exporter of the goods.

Following consideration of the application, a review of the measures commenced on 19 December 2012. Customs and Border Protection initiated a review of the variable factors of the measures as they relate to TIPCO. The period of 1 October 2011 to 30 September 2012 was set as the review period.

Public notification of initiation of the review was made on 19 December 2012 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2012/65 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 FSI pineapple from Thailand. ACDN No. 2013/09 was also published.

Following an extension from the Minister, Customs and Border Protection is required to place the SEF for measures relating to FSI 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 also include a non-confidential version of their submission for placement on the public record.²

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 which may be accessed online at <http://www.customs.gov.au/anti-dumping/cases/EPR196.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.

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

² In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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 FSI pineapple that has characteristics closely resembling those of FSI pineapple manufactured in Thailand and exported to Australia.

As such FSI pineapple produced by the Australian industry are like goods.³

3.2. The goods and like goods

The goods the subject of the review (the goods) are pineapple prepared or preserved in containers exceeding one litre (food service & industrial pineapple).

Consumer pineapple and FSI pineapple are subject to individual reviews. FSI pineapple forms the subject of this SEF.

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
2008.20.00/27	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

³ For the purposes of s.269T.

physical likeness, commercial likeness, functional likeness and production likeness.

It is Customs and Border Protection's understanding, from the basis of costs and sales information provided by Golden Circle, that its production and sales of FSI 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 exceeding one litre (typically 3.0-3.2kg) which are sold into the FSI market.

Physical Likeness

Golden Circle produces a range of pineapple products in the above container sizes for FSI pineapple.

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

Sales of FSI pineapple by cooperating importers that met the description of the goods and like goods were verified by Customs and Border Protection during the review.

Commercial Likeness

Prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the FSI market segment. This has previously been confirmed by distributor catalogues displaying a mix of locally produced and imported goods.

Functional Likeness

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

Production Likeness

Verified information from exporter visits during the review 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 Australia⁴.

Golden Circle is the sole manufacturer of FSI pineapple in Australia. No other interested party has claimed to be an Australian producer of FSI pineapple during this review.

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 FSI pineapple is manufactured in Australia.

⁴ Ss 269T(2) and 269T(3).

4. EXPORT PRICE AND NORMAL VALUE

4.1. Preliminary findings

4.2.1 Export Prices

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

- the export price for FSI pineapple exported by Dole Thailand Limited (DTL) can be established pursuant to s. 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the export price for FSI pineapple exported by Kuiburi Fruit Canning Co., Ltd (KFC) can be established using the invoice price paid by the Australian importers to KFC, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- the export price for FSI pineapple exported by Natural Fruit Co., Ltd (Natural) can be established pursuant to s. 269TAB(1)(c), having regard to all the circumstances of the exportation;
- the export price for FSI pineapple exported by TIPCO can be established using the invoice price paid by the Australian importers to TIPCO, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- the export price for FSI pineapple exported by Siam Agro-Food Industry Public Company Limited (SAICO) can be determined having regard to all relevant information pursuant to s. 269TAB(3); and
- revised export prices for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information pursuant to s. 269TAB(3).

4.2.2 Normal values

The normal values for exporters of FSI pineapple from Thailand has been established as follows:

- the normal values for FSI pineapple exported by DTL can be determined in accordance with s. 269TAC(1) and s. 269TAC(2)(c) adjusted for comparison with the export price pursuant to s.269TAC(8) and s. 269TAC(9) respectively;
- the normal value for FSI 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 (9);
- the normal value for FSI pineapple exported by Natural can be determined using a constructed normal value adjusted for comparison with the export price pursuant to s. 269TAC(2)(c) and (9);

- the normal value for FSI 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 (9);
- the normal value for FSI pineapple exported by SAICO can be determined using a constructed normal value pursuant to s. 269TAC(2)(c); and
- revised normal values for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information pursuant to s. 269TAC(6).

4.2. Importers

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

FTA Food Solutions Pty Ltd and RD2 International Limited fully co-operated with the review, by providing verified information on imports and sales.

4.3. Exporters

Exporter questionnaires were sent to all companies identified as suppliers of FSI pineapple from Thailand during the review period. Further questionnaires were sent to exporters that were interested in exporting FSI pineapple in the future.

The following exporters provided responses to the exporter questionnaire:

- Dole Thailand Limited (DTL);
- Kuiburi Fruit Canning Co., Limited (KFC);
- Natural Fruit Co., Ltd (Natural);
- Prime Products Industry Co., Ltd (Prime Products);
- Siam Agro-Food Industry Public Company Limited (SAICO);
- Takerng Pineapple Industrial Co., Ltd (Takerng);
- Tipco Foods Public Company Limited (TIPCO); and
- V&K Pineapple Canning Co., Ltd (V&K).

DTL, KFC, Natural, SAICO and TIPCO provided completed responses to the exporter questionnaire. This 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.

The responses provided by Prime Products, Takerng and V&K were incomplete. Customs and Border Protection did not rely on the information provided in these responses to determine whether the variable factors as they related to each exporter had changed.

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

4.4. Dole Thailand Limited

4.4.1. Export price

In the case of export sales of FSI canned pineapple to Australia by DTL via its affiliate, we consider:

- that the goods have been exported to Australia otherwise than by the importer but have not been purchased by the importer from the exporter; and
- the purchases of the goods were arms length transactions.

Therefore, we consider that the export price for FSI canned pineapple exported by DTL via its affiliate can be determined under s. 269TAB(1)(c), having regard to all the circumstances of the exportation.

Export prices have been calculated for each export transaction using the price between DTL's affiliate and the Australian customers.

4.4.2. Normal value

DTL sold like goods for home consumption on the domestic market during the review period in what were found to be arm's length transactions.

For all but one export model, it was established that DTL had suitable comparable products of FSI pineapple which were sold in sufficient volumes and sold in the ordinary course of trade. For these models, domestic sales were used to establish normal values pursuant to s. 269TAC(1).

For the remaining export model, there was insufficient volume of comparable domestic sales. Accordingly, normal values were determined pursuant to s. 269TAC(2)(c) the verified cost of production of the exported model plus administrative, selling and general costs incurred on comparable domestic sales plus the level of profit achieved by DTL in domestic sales of all FSI pineapple product.

The following adjustments are necessary to ensure normal values are properly comparable to export prices and have been made pursuant to s. 269TAC(8) and s. 269TAC(9):

- Inland transportation;
- Domestic distribution and warehousing;
- Domestic selling costs;
- Duty on imported tin plate;
- Export selling and administrative expenses;
- Export packaging expenses;
- Domestic credit, and
- Export credit.

4.4.3. Dumping

A comparison of DTL's export price and normal values shows that exports of FSI pineapple were dumped by a margin of 22.3% during the review period.

4.5. Kuiburi Fruit Canning Co., Limited

4.5.1. Export price

KFC was the exporter of the goods and sales of FSI pineapple to its Australian customers are considered to be arm's length transactions. The export price for FSI pineapple exported by KFC can be established pursuant to s. 269TAB(1)(a) using the invoiced price for sales to Australia less amounts for any post FOB expense incurred (where appropriate).

4.5.2. Normal value

KFC sold like goods for home consumption in Thailand during the review period in what were found to be arm's length transactions. However, there were no comparable products of FSI pineapple exported to Australia with sufficient volume of sales in the domestic market sold in the ordinary course of trade.

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 under paragraph 269TAC(2)(c).

Customs and Border Protection used verified quarterly production costs from KFC for the pineapple products it had exported to Australia. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses, adjusted for export expenses such as ocean freight, terminal handling and port charges, 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 considered the amount of profit that should be determined for the constructed normal values.

Customs and Border Protection consideration of profit

Regulation 181A 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 domestic sales of like goods in the ordinary course of trade, Customs and Border Protection was able to use this verified data to determine a profit pursuant to reg. 181A(2).

Customs and Border Protection is not required to have regard to the “sufficiency” of the volume of domestic sales in the ordinary course of trade when determining a profit to be applied to a constructed normal value pursuant to s. 269TAC(c)(ii). This interpretation of reg. 181A(2) results from findings of the World Trade Organisation (WTO) Panel in relation to Article 2.2.2 of the *Agreement in Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement).

Article 2.2.2 forms the basis of reg. 181A(2) and states:

[The amounts] for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

The WTO Panel affirms Customs and Border Protection’s interpretation of reg. 181A(2) insofar as it has found “that Article 2.2.2 does not envisage a “low-volume” sales exception to the rule that SG&A costs and profit used for the purpose of constructing normal value be calculated on the basis of data pertaining to sales made in the ordinary course of trade.”⁵

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 only those domestic sales of like goods made by KFC in the ordinary course of trade.

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 represents KFC’s profit on domestic sales made in the ordinary course of trade, calculated in accordance with reg. 181A(2).

4.5.3. Dumping

A comparison of KFC’s export price and normal value shows that exports of FSI pineapple were dumped by a margin of 10% during the review period.

4.6. Natural Fruit Co., Limited

4.6.1. Export price

Natural was the exporter of the goods and sales of FSI pineapple to its Australian customer are considered to be arm’s length transactions. The export price for FSI pineapple exported by Natural can be established pursuant to s. 269TAB(1)(c), having regard to all the circumstances of the exportation.

4.6.2. Normal value

During verification, it was established that the domestic sales listed in Natural’s response to the exporter questionnaire were not true domestic sales, as the like

⁵ Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/r at para 7.304

goods were sold to Thai trading companies who in turn exported the goods.

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

Customs and Border Protection used verified quarterly production costs from Natural for the pineapple product exported to Australia in the review period. Total SG&A expenses incurred by Natural 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.

Customs and Border Protection considered the amount of profit that should be determined for the constructed normal values.

Customs and Border Protection consideration of profit

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 4.5.2 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 true domestic sales of like goods sold by Natural, reg. 181A(2) cannot be applied.

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)).

Customs and Border Protection was not provided any information related to the actual amounts realised by Natural from the sale of the same general category of goods in the domestic market in Thailand. Therefore, reg. 181A(3)(a) cannot be applied.

DTL, KFC and Prime Products provided information of their respective sales of FSI pineapple in the domestic market. Pursuant to reg. 181A(3)(b), the Minister must determine profit using the weighted average of the actual amounts of profit realised by exporters with domestic sales.

In determining which domestic sales to use when calculating an amount for profit pursuant to s.181A(3)(b), Customs and Border Protection is guided by the WTO's interpretation of Article 2.2.2(ii) of the Anti-Dumping Agreement, which is mirrored in reg. 181A(3)(b).

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".⁶ The Appellate Body concluded that, when calculating the amount for profit under Article 2.2.2(ii), an authority may not exclude sales by other exporters or producers that are not made in the ordinary course of trade.⁷

Customs and Border Protection therefore calculated the amount for profit to be applied by determining the weighted average profit for all sales of FSI pineapple made by DTL, KFC and Prime Products on the domestic market. The weighted average rate of profit as a percentage of costs equalled 15.4%.

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, our preliminary view is to disregard this information pursuant to reg. 181A(5).

Customs and Border Protection recalculated profit using all sales of FSI pineapple by DTL and KFC on the domestic market. Profit in this instance was approximately 17%.

As Customs and Border Protection was able to work out profit pursuant to reg. 181A(3)(b), there is no requirement to determine profit by using any other reasonable method and having regard to all relevant information pursuant to reg. 181A(3)(c).

Customs and Border Protection's preliminary finding is that it is appropriate to apply of profit of 17% to a constructed normal value for Natural. 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)(b).

4.6.3. Dumping

A comparison of Natural's export price and normal values shows that exports of FSI pineapple were not dumped at a margin of -12% during the review period.

⁶ Appellate Body Report, *European Communities – Anti-Dumping Duties on imports of Cotton-type Bed Linen from India*, WT/DS141/AB/9 at para 80.

⁷ Above, at para 84.

4.7. Siam Agro-Food Industry Public Company Limited

4.7.1. Export price

Customs and Border Protection confirmed during verification of SAICO's response to the export questionnaire that SAICO 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 SAICO have been determined having regard to all relevant information pursuant to s. 269TAB(3). Customs and Border Protection relied on the verified information supplied by SAICO 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.

4.7.2. Normal value

During verification, it was confirmed that SAICO did not have true 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 Natural 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 SAICO for the pineapple products it intends to export to Australia. Information from SAICO's audited financial statements on its total selling general and administration (SG&A) expenses, adjusted for export expenses such as ocean freight, terminal handling and port charges, was used to estimate SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

Customs and Border Protection considered the amount of profit that should be determined for the constructed normal values.

SAICO's claim

During the verification visit, SAICO 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, SAICO submitted that the profit realised by SAICO during the 2005 review of measures was no longer relevant to the domestic market.

Recommendation of the verification team

The verification team accepted the evidence provided by SAICO and recommended that the profit realised by SAICO in the 2005 review of measures may not be appropriate in the current review. The verification report recommended that no profit be applied, noting that information obtained by other exporters of the goods may become relevant to the consideration of profit.

Customs and Border Protection consideration of profit

As SAICO 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 SAICO 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 4.6.2 above, DTL, KFC and Prime Products provided details of domestic sales relevant to the determination of profit pursuant to reg. 181A(3)(b).

Customs and Border Protection's preliminary finding is that it is appropriate to apply of profit approximately of 17% in determining a constructed normal value for SAICO 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)(b).

4.7.3. Dumping

In the absence of exports during the review period, a margin of dumping is unable to be calculated.

4.8. Tipco Foods Public Company Limited

4.8.1. Export price

TIPCO was the exporter of the goods and sales of FSI pineapple to its Australian customers are considered to be arm's length transactions. The export price for FSI pineapple exported by TIPCO can be established pursuant to s. 269TAB(1)(a) using the invoiced price less any amount that represents a post-FOB expense (where appropriate).

4.8.2. Normal value

During verification, it was confirmed that TIPCO did not have true 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. Total SG&A expenses incurred by TIPCO 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.

Customs and Border Protection considered the amount of profit that should be determined for the constructed normal values.

Customs and Border Protection consideration of profit

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 4.6.2 above, DTL, KFC and Prime Products provided details of domestic sales relevant to the determination of profit pursuant to reg. 181A(3)(b).

Customs and Border Protection's preliminary finding is that it is appropriate to apply of 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)(b).

4.8.3. Dumping

A comparison of TIPCO's export price and normal values shows that exports of FSI pineapple were not dumped by a margin of -9.7% during the review period.

4.9. All other exporters

4.9.1. 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.

4.9.2. 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 verified weighted average normal value in Thailand over the review period without any favourable adjustments.

4.9.3. Dumping

A comparison of export price and normal value for all other exporters shows that exports of FSI pineapple were dumped by a margin of 41.3% during the review period.

5. NON-INJURIOUS PRICE

5.1 Preliminary findings

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

5.2 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 dumping⁸.

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.

5.3 Methods of calculating non-injurious price

The method of calculating a NIP 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 unsuppressed selling price 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 NIP 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 unsuppressed selling price for FSI pineapple using Golden Circle's cost to make and sell plus the rate of profit achieved by Golden Circle in sales of consumer

⁸ The non-injurious price is defined in s.269TACA.

pineapple in 2009. This profit was adjusted down to account for certain costs that were not included in Golden Circle's 2009 financial statements.

5.4 Submissions from interested parties

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

5.5 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 FSI 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.

6. EFFECT OF THE REVIEW

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

From this review of the variable factors, the normal value would be the operative⁹ measure for FSI pineapple. The amount of interim dumping duty imposed would generally have decreased.

⁹ 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.