

**ANTI – DUMPING SPECIALISTS**

ACN 056 514 213 ABN 87 056 514 213

27 May 2013

**NON - CONFIDENTIAL**

Mr John Bracic  
Director  
Trade Measures Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
Canberra ACT 2600

Dear Mr Bracic,

**REVIEW OF VARIABLE FACTORS – FSI PINEAPPLE FROM THAILAND**

This submission, made on behalf of Tipco Foods Public Company Ltd (“Tipco”), is in response to Statement of Essential Facts No. 196 (“the SEF”).

The issues we have with the SEF are as follows:

- The inclusion of an excessive profit of 17.3% in a s269TAC(2)(c) constructed normal value for Tipco;
- Calculation of a normal value for Tipco’s exports on the basis of the cost to make and sell just one product type; and
- Inclusion of an amount for commission in Tipco’s normal value.

**Profit**

We have two particular concerns with the excessive profit amount included in Tipco’s normal value –

1. The inclusion of the profit in domestic sales of Kuiburi Fruit Canning (“KFC”) in the calculation of the 17.3% profit included in Tipco’s constructed normal value when domestic sales by KFC represent less than █% of its export sales to Australia; and
2. The inclusion of the weighted average profits of Dole Thailand Ltd (“DLT”) and KFC from their domestic sales in Tipco’s constructed normal value without regard for differences in costs to make and sell of DLT, KFC and Tipco.

Concerning 1 above, it is illogical and unreasonable to take into account in a constructed normal value, profit achieved in domestic sales of like product which constitute less than █% of export sales under investigation.

That Regulation 181A(3)(b) is silent on low volume domestic sales, does not obligate their use in determining the amount of profit to be included in a constructed normal value.

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That Regulation 181A(3)(b) is silent on low volume domestic sales, does not obligate their use in determining the amount of profit to be included in a constructed normal value.

Underlying the determination of normal value is comparability with export price – Article 2.4 of the WTO Anti-Dumping Agreement (“the Agreement”) and s269TAC(8) of the Act (“the Act”) refer.

Section 269TAC(2)(a) of the Act and Article 2.2 of the Agreement provide that prices in low volume domestic sales of like goods, ie domestic sales which constitute less than 5% of export sales, do not provide a suitable base for normal value determination. The reason for this provision is that normal value based on such low volume domestic sales does not provide for a fair comparison with export price.

As you know well, a normal value constructed vide s269TAC(2)(c) of the Act is a proxy for a normal value determined on the basis of domestic price of like goods vide s269TAC(1) of the Act. That is, it is the construction of a proxy domestic price.

In this case, by adding the profit in domestic sales of like goods by KFC to the costs to make and sell the goods involved in those sales, Customs has created a proxy price for domestic sales of like goods which constitute less than █% of export sales to Australia and used it for determination of a normal value for these exports.

It logically follows that, if KFC’s prices in domestic sales of like goods are unsuitable for normal value determination because such domestic sales constitute less than 5% of KFC’s exports to Australia, then a proxy domestic price created by the addition of the profit achieved in those sales to their cost to make and sell must also be unsuitable for normal value determination.

This logic is the basis for Customs’ long-term policy to not include profit from low volume domestic sales in normal value construction. And the opinion of the WTO DSD Panel in the *EC – AD measures on farmed salmon from Norway (WT/DS337/r)* should not change this policy when it is open to Customs to not include profit from low volume domestic sales in constructed normal values and to do so is illogical, unreasonable and provides for normal values which do not provide for fair comparison with export prices.

With regard to 2 above, it was put to you and Mr Kenna during verifications of SAICO and Tipco respectively that, because one exporter takes a particular level of profit from its domestic selling prices of particular products, does not mean that other sellers of like product will take the same level of profit if they were to sell those products in the domestic market. You both agreed that when using the profit from other exporter(s) in normal value constructions for a particular exporter, regard should be had for the relativity of the costs of that exporter to the costs of the other exporter(s).

Again, to not do this could create constructed normal values which do not provide a fair comparison between normal value and export price, which is fundamental to the anti-dumping discipline.



The fair and logical approach to this matter is to determine the profit which could have been achieved by the exporter under investigation who does not have domestic sales, by comparison of the price achieved in sales of particular product types by other exporter(s) who do have suitable domestic sales with the exporter under investigation's cost to make and sell those particular product types.

As the preliminary constructed normal value determined for Tipco's exports includes the weighted average of profits taken by DLT and KFC in domestic sales of particular products, it does not provide for a fair comparison between Tipco's normal value and export price. This can be readily overcome by ascertaining Tipco's costs to make and sell the particular types of products which were used for the profit determination of DLT (KFC's being unsuitable for reasons outlined above) to compare with DTL's selling price(s). Tipco is willing to provide such data, we just need advice of the particular products involved in DTL's domestic sales used to determine the profit to be taken into account in Tipco's preliminary normal value assessment.

### **Reference to just one product type in normal value determination**

We consider it unreasonable to take into account just the product type exported at particular times during the review period in the calculation of the normal value to be applicable to future FSI pineapple exports of a range of product types in the future.

Tipco made [REDACTED] shipments of FSI pineapple to Australia during the period, each of [REDACTED] – [REDACTED] required by Australian customer [REDACTED]  
[REDACTED]

In the reviews concerning Tipco's consumer and SAICO's FSI pineapple, where there were no exports to Australia during the review period, Customs determined normal values for exports to Australia on the basis of the review period average costs to make and sell the product types likely to be exported to Australia in the future, which is logical.

We submit that Customs should base its normal value for Tipco's exports to Australia on the average cost to make and sell the product types likely to be exported to Australia, rather than the one specialty product type in respect of which [REDACTED] were shipped during the review period.

Furthermore, if it is considered not possible to determine a normal value using the cost to make and sell other than the product exported during the investigation period, the normal value should be based on the average cost to make and sell the exported product during the review period, rather than the average of [REDACTED] in which they were exported.

### **Commission**

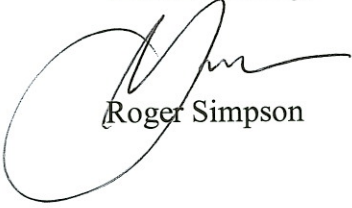
There are no reasonable grounds for inclusion of commission in Tipco's constructed normal value. The included commission is commission paid to a Thai broker who was involved in the [REDACTED] sales to Australia during the review period on behalf of the Australian importer. The

broker received an inquiry from the Australian importer and negotiated the sales with Tipco on the importer's behalf and the commission paid by Tipco represents the broker's profit in those sales. The broker is not a sales agent of Tipco and is unlikely to be involved in Tipco's future exports to Australia, as the importer during the review period on whose behalf the broker acted

[REDACTED]

I would like the opportunity to discuss the content of this submission with you at a meeting during the week commencing 3 June. I will call to request an appointment.

Yours sincerely,



Roger Simpson