



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 Siam Agro-Food Industry Public Company Limited (“SAICO”), is in response to Statement of Essential Facts No. 196 (“the SEF”).

We take issue with the following in relation to excessive profit inclusion in SAICO’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 SAICO’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 SAICO’s constructed normal value without regard for differences in costs to make and sell of DLT, KFC and SAICO.

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 2% 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.

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

Head Office: Level 1, 2 Mercantile Dock, Port Adelaide S.A. 5015 Australia

Postal: P.O. Box 2112, Business Centre, Port Adelaide S.A. 5015 Australia

Tel: 61 8 8447 3699; **Fax:** 61 8 8447 2661

Email: roger@panpac.biz

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 SAICO'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 SAICO's normal value and export price.

This can be readily overcome by ascertaining SAICO'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). SAICO 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 SAICO's preliminary normal value assessment.

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,

A handwritten signature in black ink, appearing to be 'Roger Simpson', written over a large, loopy circular flourish.

Roger Simpson