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**Australian Customs and
Border Protection Service**

CUSTOMS ACT 1901 - PART XVB

**INTERNATIONAL TRADE REMEDIES BRANCH
REPORT TO THE MINISTER**

REPORT NUMBER 195A

**REVIEW OF VARIABLE FACTORS
CONSUMER PINEAPPLE
EXPORTED FROM THAILAND**

24 June 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 variable factors of the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by Thai Pineapple Canning Industry Corp Ltd (TPC).

At the time of application, SAICO also applied for a revocation of the measures (the revocation review). This review was initiated by the Australian Customs and Border Protection Service (ACBPS) on 19 December 2012. ACBPS recommendations to the Minister for Home Affairs (the Minister) in relation to the revocation review are set out in International Trade Remedies Report No. 195B (REP 195B).

On 29 January 2013, ACBPS extended the review of the variable factors of the anti-dumping measures (variable factors review) applying to consumer pineapple to all exporters of consumer pineapple from Thailand, in response to a request from the Minister to do so. The revocation review remains only in relation to the exports of TPC.

ACBPS examined information relating to the variable factors, being the export prices, normal values and non-injurious prices (NIP) during the period 1 October 2011 to 30 September 2012 (the review period) to determine if the variable factors relevant to the taking of anti-dumping measures had changed.

This report sets out the facts on which the delegate of the Chief Executive Officer (CEO) of ACBPS (the delegate) basis his recommendations to the Minister in relation to the review of the variable factors of the measures relating to consumer pineapple exported to Australia from Thailand.

1.1 Applicable law

Division 5 of Part XVB of the Act¹ enables parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

- sets out the procedures to be followed by the CEO of ACBPS in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the measures unaltered or to modify them as appropriate.

The CEO's powers under this Division have been delegated to certain officers of ACBPS (the delegate).

After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations.²

¹ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

1.2 Recommendation

The delegate recommends to the Minister that he re-ascertains the export prices, normal values and NIP for all exporters of FSI pineapple from Thailand.

The delegate recommends that the Minister sign the attached public notice (**confidential attachment 1**) to declare that the dumping duty notice in respect of consumer pineapple exported from Thailand has effect in relation to all exporters as if different variable factors have been ascertained, and sign the attached schedule (**confidential attachment 2**).

This recommendation does not preclude any further recommendations that arise from REP 195B related to the revocation review for exports of consumer pineapple by TPC.

1.2 Findings and conclusions

Based on all available information, ACBPS has made the following findings:

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 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 TPC can be established using the invoice price paid by the Australian importers to TPC, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- 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 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);

² Section 269ZDA(1).

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- 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 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 information pursuant to s. 269TAC(6).

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

ACBPS considers that the NIP 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 Form of Interim Dumping Duty (Chapter 6 of this report)

ACBPS recommends that the interim dumping duty payable in relation to consumer pineapple is an amount which will be worked out in accordance with the combination of fixed and variable duty method.

1.2.5 Effect of the review (Chapter 7 of this report)

The delegate recommends to the Minister that the variable factors of the measures be varied for all exporters of consumer pineapple.

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 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, ACBPS 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, ACBPS must place on the public record a statement of essential facts (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, ACBPS 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 ACBPS within 20 days of being placed on the public record.

ACBPS 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 notice:³

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

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

In accordance with the commencement of tranche 2 of the Streamlining Policy Amendments, the Minister's decision to vary a dumping duty notice following a

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

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review of the anti-dumping measures can be reviewed by the Anti-Dumping Review Panel (Review Panel).

Interested parties may seek a review of the Minister's decision resulting from this review of the variable factors of the measures applying to consumer pineapple by lodging an application in accordance with the requirements of Division 9 of Part XVB of the Act within 30 days of the publication of the Minister's notice.

2.2 Notification and participation

On 3 December 2012, ACBPS received an application from SAICO for the review of anti-dumping measures that apply to consumer pineapple exported to Australia from Thailand by TPC, an exporter of the goods.

Following consideration of the application, a review of the variable factors of the measures as they relate to TPC commenced on 19 December 2012. A revocation review was also commenced in relation to the exports of consumer pineapple by TPC as this time. 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. 2012/64 was also published.

On 29 January 2013, following a request by the Minister, ACBPS 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, ACBPS placed the SEF on the public record on 8 May 2013. Interested parties were notified and ACDN No. 2013/23 was published advising of the extension to the SEF.

The extension to the SEF extended the due date for the final report to the Minister. This final report (REP 195A) to the Minister, which outlines ACBPS findings and recommendations, is due on or before 24 June 2013.

ACBPS was provided information from Golden Circle Limited (Golden Circle), the sole manufacturer of FSI pineapple in Australia.

ACBPS was also provided and verified information from JAR Distribution Pty Ltd, an importer of the goods.

ACBPS received information and undertook visits for the purpose of verifying information from the following exporters:

- Kuiburi Fruit Canning Co., Limited (KFC);
- Siam Agro-Food Industry Public Company Ltd (SAICO), also operating as Thai Pineapple Canning Industry Corp Ltd (TPC); and
- Tipco Foods Public Company Ltd (TIPCO).

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Non-confidential versions of these visit reports are available on the public record.

2.3 Responses to the statement of essential facts

Submissions in response to the SEF were received from Golden Circle, SAICO and TIPCO. Non-confidential versions of these submissions are available on the public record.

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 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 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 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. 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.⁴

3.2. The goods and like goods

The goods the subject of this 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, ACBPS 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, ACBPS uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

⁴ For the purposes of s.269T.

ACBPS 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.

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.

ACBPS 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.

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

Production Likeness

Information from industry and exporters shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

ACBPS 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 Australia.⁵

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. ACBPS has not received any submissions from interested parties claiming that this has changed.

ACBPS 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.

⁵ Ss 269T(2) and 269T(3).

4. EXPORT PRICE AND NORMAL VALUE

4.1. Findings

- 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 TPC can be established using the invoice price paid by the Australian importers to TPC, less ocean freight and marine insurance (where appropriate) pursuant to s. 269TAB(1)(a);
- 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).
- 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 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 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 information pursuant to s. 269TAC(6).

4.2. Importers

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

JAR Distribution Pty Ltd fully co-operated with the review and provided verified information as requested by ACBPS.

4.3. Exporters

Exporter questionnaires were sent to all companies identified as suppliers of consumer pineapple from Thailand during the review period. The following exporters provided responses to the exporter questionnaire:

- Kuiburi Fruit Canning Co., Limited (KFC);
- Siam Agro-Food Industry Public Company Ltd (SAICO), also operating as Thai Pineapple Canning Industry, Corp (TPC); and
- Tipco Foods Public Company Limited (TIPCO).

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

ACBPS received no responses from other identified exporters.

4.4. Kuiburi Fruit Canning Co., Limited

4.4.1. Export price

During verification, it was confirmed that KFC did not export the goods to Australia during the review period. In this instance ACBPS cannot determine export price pursuant to s. 269TAB(1).

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

ACBPS finds 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.

ACBPS 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 s. 269TAC(2)(c).

Third country exports by KFC were not considered appropriate given that KFC had no exports of consumer pineapple to Australia during the review period for the purpose of comparison with third countries under s. 269TAC(5C).

ACBPS 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 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 s. 269TAC(9).

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ACBPS consideration of profit

ACBPS had regard to reg. 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, ACBPS was not able to determine a profit pursuant to reg. 181A(2).

In these circumstances, reg. 181A(3) sets out the options in which the Minister must determine 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)).

Simultaneous to this review, ACBPS also undertook a review of the measures related to food service and industrial (FSI) pineapple (the FSI pineapple review). During the FSI pineapple review, ACBPS obtained verified data in relation to KFC’s domestic sales of FSI pineapple during the review period.

FSI pineapple is distinguished from consumer pineapple in terms of the goods description, as the two categories of goods differ in commercial likeness. Consumer pineapple is sold predominately to the retail market while FSI pineapple is sold predominately into the distribution market. However, the two categories of goods share a physical and production likeness and can, in some circumstances, be substitutable. While this is not satisfactory for the determination of like goods, ACBPS is satisfied that FSI pineapple falls within the *same general category of the goods*.

Given that ACBPS 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), ACBPS 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".⁶ 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.⁷

ACBPS 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.

Following a submission from KFC in response to the statement of essential facts in relation to the FSI pineapple review (SEF 196), ACBPS has examined the information presented by KFC and accepts KFC submission that it is inappropriate to undertake the period of comparison on a quarterly basis. As noted in the *Dumping and Subsidy Manual*, 'there may be circumstances when a monthly or annual period is used.'⁸ In these circumstances, ACBPS calculated the profit achieved on domestic sales sold in the ordinary course of trade using the weighted average production costs for the whole of the review period. This impacted the calculation of actual profit, so that the rate of profit now applied to consumer pineapple exported by KFC has changed to that which was applied at the time of SEF 195A.

ACBPS finds that it is appropriate to apply a rate of profit to the constructed normal value for KFC. This profit 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, ACBPS 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

ACBPS has confirmed that, in 2010, TPC was restructured so that it became a holding company in SAICO. TPC operations were incorporated into SAICO operations at that time.

ACBPS 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.

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.

⁸ ACBPS, *Dumping and Subsidies Manual* (August 2012) at p. 29

4.5.2. Submissions by SAICO

In response to SEF 195A, SAICO submitted that ACBPS erred in its preliminary determination of profit. SAICO submit that ACBPS incorrectly found that the profit realised on Dole Group's and KFC's domestic sales of FSI pineapple represented profit realised on "like goods". SAICO referred to ACBPS findings in REP 41 that consumer and FSI pineapple are not like goods and submit that given these findings it is unreasonable to apply profit achieved on the sale of FSI pineapple in the domestic market to a constructed normal value for consumer pineapple.

4.5.3. Export price

TPC was the exporter of the goods and sales of consumer pineapple to its Australian customers are considered to be arm's length transactions. The export price for consumer pineapple exported by TPC 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).

4.5.4. Normal value

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

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

On the basis of information provided by SAICO, ACBPS did not consider that there was an appropriate third country for comparison of sales pursuant to s. 269TAC(2)(d).

ACBPS used verified monthly 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 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 transport, shipping, export charges, bank charges and commission to ensure the normal value was comparable to an FOB export sale pursuant to s. 269TAC(9).

ACBPS consideration of profit

As set out in section 4.4.2 above, the Minister must, if reasonably possible, work out the amount for profit 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), as set outlined above at 4.4.2.

During verification in relation to the FSI pineapple review, ACBPS confirmed that SAICO (operating as either TPC or SAICO) did not have domestic sales of FSI pineapple in the review period. TPC confirmed 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.

ACBPS 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, 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. 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. As outlined at section 4.4.2 above, ACBPS is satisfied that FSI pineapple falls within the same general category of goods as consumer pineapple.

During the course of the FSI pineapple review, ACBPS was provided information of the domestic sales of FSI pineapple by KFC, Dole Group (made up of Dole Thailand Limited, Dole Packaged Foods Asia and Thai American Food Co.) and Prime Products Industry Co., Ltd (Prime Products).

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

Pursuant to reg. 181A(4), ACBPS is able to apply an amount for profit based on the information provided by Dole Group and KFC, so long as the amount applied does not exceed the highest amount of profit actually achieved by either of Dole Group or KFC.

ACBPS 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 Dole Group

and KFC on sales of FSI pineapple. ACBPS has calculated the weighted average profit, as a percentage of costs, to equal approximately 11.8%.

ACBPS has also calculated the individual profits realised by Dole Group and KFC to establish the maximum profit that can be applied pursuant with reg. 181A(4). ACBPS is satisfied that the weighted average profit of approximately 11.8% does not exceed the actual amounts realised by one of Dole Group or KFC.

ACBPS finds that it is appropriate to apply a profit of approximately 11.8% in determining a constructed normal value for TPC pursuant to s. 269TAC(2)(c). This represents the weighted average of Dole Group and KFC's actual profit realised for sales of the same general category of goods in the domestic market, calculated in accordance with reg. 181A(3)(c).

4.5.5. 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 -7.65%.

4.6. Tipco Foods Public Company Limited

4.6.1. Submissions by TIPCO

In response to SEF 195A, TIPCO submitted that ACBPS erred in construction of the normal value in both the inclusion of an adjustment for commission and in its calculation of profit.

TIPCO contended that there are no reasonable grounds for inclusion of commission in the constructed normal value as this charge related to three exports of FSI pineapple to Australia during the review period. TIPCO submit that the commission was paid to a broker acting on behalf of the importer in those transactions and was not a sales agent of TIPCO, or likely to be involved in future exports to Australia.

In relation to the calculation of an amount for profit, TIPCO submit that ACBPS incorrectly found that the profit realised on Dole Group's and KFC's domestic sales of FSI pineapple represented profit realised on "like goods". TIPCO referred to ACBPS findings in REP 41 that consumer and FSI pineapple are not like goods and submit that given these findings it is unreasonable to apply profit achieved on the sale of FSI pineapple in the domestic market.

4.6.2. Export price

During verification by ACBPS, it was confirmed that TIPCO did not have export sales to Australia during the review period. In this instance ACBPS cannot determine export price pursuant to s. 269TAB(1).

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

ACBPS finds is that the export price should be ascertained to be equal to the normal value.

4.6.3. Normal value

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

ACBPS 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).

Third country exports by TIPCO were not considered appropriate given that TIPCO had no exports of consumer pineapple to Australia during the review period for the purpose of comparison with third countries under s. 269TAC(5C).

ACBPS used verified 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 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 and handling to ensure the normal value was comparable to an FOB export sale. ACBPS accepts TIPCO's submissions related to the commission and did not make an adjustment to the normal value for this expense.

ACBPS consideration of profit

As TIPCO had no domestic sales of like goods in the ordinary course of trade, ACBPS 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), as set out above at 4.4.2.

ACBPS 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 4.5.4 above, ACBPS 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 4.5.4 above, ACBPS has verified information related to Dole Group's and KFC's domestic sales of FSI pineapple during the review period. ACBPS considers that FSI pineapple falls within the same

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general category of goods for the purpose of determining an amount for profit pursuant to reg. 181A(3)(c).

ACBPS is not aware of any reason why the methodology for calculating an amount for profit as outlined in relation to TPC at section 4.5.4 above cannot also be applied to TIPCO.

ACBPS finds that it is appropriate to apply a profit of approximately 11.8% in determining a constructed normal value for TIPCO pursuant to s. 269TAC(2)(c). This represents the weighted average of Dole Group and KFC's actual profit realised for sales of the same general category of goods in the domestic market, calculated in accordance with reg. 181A(3)(c).

4.6.4. Dumping margin

As there were no export sales to Australia by TIPCO during the review period, ACBPS 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 consumer 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 consumer 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 consumer pineapple exported to Australia from Thailand by other exporters to be determined under ss. 269TAC(1) or (2).

The normal value for consumer 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 consumer 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).

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The dumping margin calculated for other exporters of consumer pineapple from Thailand is 10%.

5. NON-INJURIOUS PRICE

5.1 Findings

The 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.

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 dumping.⁹

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 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.

The preferred approach by ACBPS 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, ACBPS 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 ACBPS determined the USP for consumer pineapple using Golden Circle's cost to make and sell plus the rate of profit achieved by Golden Circle in sales of consumer pineapple in 2009. This profit

⁹ The non-injurious price is defined in s.269TACA.

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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

ACBPS has not received any submissions from interested parties in relation to the calculation of the USP.

5.5 ACBPS assessment

ACBPS 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, ACBPS has found that the consumer pineapple market in Australia has been affected by dumping.

ACBPS 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. FORM OF INTERIM DUMPING DUTY

6.1 Findings

ACBPS recommends that the interim dumping duty (IDD) payable in relation to consumer pineapple is an amount which will be worked out in accordance with the combination of fixed and variable duty method.

6.2 Introduction

In accordance with the commencement of tranche 3 of the Streamlining Policy Amendments, the Minister may utilise additional forms of IDD beyond the single form that was previously available in the Act, as set out in the *Customs Tariff (Anti-Dumping) Regulation 2013*.

6.3 Forms of interim dumping duty

Regulation 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* sets out the methods of IDD payable on goods subject of a notice under s. 269TG(1) or (2) of the Act. These are the:

- combination of fixed and variable duty method;
- floor price duty method;
- fixed duty method; and
- *Ad valorem* duty method.

6.4 Submissions from interested parties

ACBPS invited interested parties to provide submissions on which form of IDD was appropriate. Submissions were received from Golden Circle, SAICO and TIPCO.

All submissions outlined that the preferred form of IDD in relation to consumer pineapple is the combination of a fixed and variable duty method. Golden Circle further proposed that the floor price duty method may also be appropriate.

Golden Circle outlined that a fixed price duty or an *ad valorem* duty would not be appropriate for consumer pineapple as ACBPS has made findings that the raw material pricing is “inherently volatile” and, where a fixed duty or *ad valorem* duty were applied, that it is likely that Australian industry would be exposed to injurious prices where export prices decline sharply.

6.5 ACBPS assessment

ACBPS accepts the submissions of interested parties and recommends, given the volatility of the major cost component of consumer pineapple and the nature of sales to Australia, that a combination of fixed price and variable duty be imposed.

7. EFFECT OF THE REVIEW

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

From this review of the variable factors, the normal value is the operative measure¹⁰ for consumer pineapple. The amount of interim dumping duty imposed has generally decreased.

¹⁰ 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.

8. RECOMMENDATIONS

ACBPS recommends that the Minister considers this report, and if agreed:

- declare, by public notice under s. 269ZDB, that the dumping duty notice applying to exports of consumer pineapple exported from Thailand have the effect as if different variable factors have been fixed; and
- re-ascertain the export prices, normal values and non-injurious prices as set out in **confidential attachment 3**; and

ACBPS recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for consumer pineapple exported to Australia from Thailand by KFC to be ascertained under the preceding subsections of s. 269TAB of the Act; and
- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for consumer pineapple exported to Australia from Thailand by TIPCO to be ascertained under the preceding subsections of s. 269TAB of the Act; and
- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for consumer pineapple exported to Australia from Thailand by all other exporters to be ascertained under the preceding subsections of s. 269TAB of the Act; and
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable the normal value of like goods to consumer pineapple exported from Thailand by all other Thai exporters to be ascertained under the preceding subsections of s. 269TAC.

ACBPS recommends that the Minister determine:

- in accordance with s. 269TAB(3), the export price of like goods to the goods exported to Australia from Thailand by KFC having regard to all relevant information; and
- in accordance with s. 269TAB(3), the export price of like goods to the goods exported to Australia from Thailand by TIPCO having regard to all relevant information; and
- in accordance with s. 269TAB(3), the export price of like goods to the goods exported to Australia from Thailand by all other exporters having regard to all relevant information; and
- in accordance with s. 269TAC(2)(c), the normal value of like goods to be exported to Australia from Thailand by KFC using KFC's cost to make and sell plus an amount for administrative, selling and general costs; and
- in accordance with s. 269TAC(5B), the amount of profit for the normal value of the goods exported to Australia from Thailand by KFC; and

- in accordance with s. 269TAC(2)(c), the normal value of like goods to be exported to Australia from Thailand by SAICO using SAICO's cost to make and sell plus an amount for administrative, selling and general costs; and
- in accordance with s. 269TAC(5B), the amount of profit for the normal value of the goods exported to Australia from Thailand by SAICO; and
- in accordance with s. 269TAC(2)(c), the normal value of like goods to be exported to Australia from Thailand by TIPCO's using TIPCO's cost to make and sell plus an amount for administrative, selling and general costs; and
- in accordance with s. 269TAC(5B), the amount of profit for the normal value of the goods exported to Australia from Thailand by TIPCO; and
- in accordance with s. 269TAC(6), the normal value of like goods to the goods exported to Australia from Thailand by all other exporters having regard to all relevant information; and
- in accordance with reg. 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013* that the combination of fixed and variable duty method be used.

To give effect to these recommendations, ACBPS recommends that the Minister sign the attached public notice (**confidential attachment 1**) and sign the attached schedule (**confidential attachment 2**).

9. ATTACHMENTS AND APPENDICES

Confidential attachment 1	Public Notice
Confidential attachment 2	Schedule
Confidential attachment 3	Tables
Confidential appendix 1	Ascertained export prices and ascertained normal values
Confidential appendix 2	Profit calculation
Confidential appendix 3	Ascertained non-injurious prices