



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

---

***CUSTOMS ACT 1901 - PART XVB***

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

**REPORT NO.196**

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

24 June 2013

## CONTENTS

1.	SUMMARY AND RECOMMENDATIONS .....	4
1.1	Applicable law.....	4
1.2	Recommendation.....	5
1.2	Findings and conclusions .....	5
1.2.1	Export Prices (Chapter 4 of this report) .....	5
1.2.2	Normal values (Chapter 4 of this report).....	5
1.2.3	Non-injurious Price (Chapter 5 of this report) .....	6
1.2.4	Form of Interim Dumping Duty (Chapter 6 of this report).....	6
1.2.5	Effect of the review (Chapter 7 of this report) .....	6
2.	INTRODUCTION .....	7
2.1	Review process .....	7
2.2	Notification and participation .....	8
2.3	Responses to the statement of essential facts.....	9
2.4	History of anti-dumping measures .....	9
3.	GOODS SUBJECT TO THE REVIEW .....	11
3.1.	Finding .....	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 .....	12
3.3.1.	Like goods .....	12
3.3.2.	Manufacturing process .....	12
4.	EXPORT PRICE AND NORMAL VALUE .....	14
4.1.	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.	Submissions by DTL .....	16
4.4.2.	Export price .....	16
4.4.3.	Normal value .....	18
4.4.4.	Dumping.....	21
4.5.	Kuiburi Fruit Canning Co., Limited .....	21
4.5.1.	Submission by KFC.....	21
4.5.2.	Export price .....	21

4.5.3.	Normal value .....	21
4.5.4.	Dumping .....	23
4.6.	Natural Fruit Co., Limited.....	23
4.6.1.	Export price.....	23
4.6.2.	Normal value.....	23
4.6.3.	Dumping .....	25
4.7.	Siam Agro-Food Industry Public Company Limited.....	25
4.7.1.	Submissions by SAICO.....	25
4.7.2.	Export price.....	26
4.7.3.	Normal value.....	26
4.7.4.	Dumping .....	27
4.8.	Tipco Foods Public Company Limited .....	28
4.8.1.	Submissions by TIPCO.....	28
4.8.2.	Export price.....	28
4.8.3.	Normal value.....	28
4.8.4.	Dumping .....	29
4.9.	All other exporters.....	29
4.9.1.	Export price.....	29
4.9.2.	Normal value.....	30
4.9.3.	Dumping .....	30
5.	NON-INJURIOUS PRICE .....	31
5.1	Findings .....	31
5.2	Introduction .....	31
5.3	Methods of calculating non-injurious price.....	31
5.4	Submissions from interested parties.....	32
5.5	Customs and Border Protection's assessment .....	32
6.	FORM OF INTERIM DUMPING DUTY .....	33
6.1	Findings .....	33
6.2	Introduction .....	33
6.3	Forms of interim dumping duty .....	33
6.4	Submissions from interested parties.....	33
6.5	Customs and Border Protection's assessment .....	33
7.	EFFECT OF THE REVIEW .....	34
8.	RECOMMENDATIONS.....	35
9.	ATTACHMENTS AND APPENDICES.....	37

## **1. SUMMARY AND RECOMMENDATIONS**

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

At the time of application, TIPCO also applied for a revocation of the measures. This application was rejected by the delegate of the Chief Executive Officer (CEO) on the basis that the Australian Customs and Border Protection Service (ACBPS) was not satisfied that there were reasonable grounds for asserting that the measures are no longer warranted. Accordingly, revocation of the measures was not examined during this review.

On 29 January 2013, ACBPS extended the review of the variable factors of the anti-dumping measures applying to FSI pineapple to all exporters from Thailand, after receiving a request from the Minister to do so.

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 the anti-dumping measures had changed.

This report sets out the facts on which the delegate of the CEO of ACBPS (the delegate) bases his recommendations to the Minister for Home Affairs (the Minister) in relation to the review of the variable factors of the measures applicable to FSI pineapple exported to Australia from Thailand.

### **1.1 Applicable law**

Division 5 of Part XVB of the Act<sup>1</sup> 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.<sup>2</sup>

---

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

<sup>2</sup> Section 269ZDA(1).

## **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 FSI 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**).

## **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 FSI pineapple from Thailand has been established as follows:

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

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.

### **1.2.4 Form of Interim Dumping Duty (Chapter 6 of this report)**

ACBPS recommends that the interim dumping duty payable in relation to FSI 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 FSI 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 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:<sup>3</sup>

- 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

---

<sup>3</sup> s. 269ZDA(1)(a) of the *Customs Act 1901* (the Act)

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 FSI 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 10 December 2012, ACBPS received an application from TIPCO 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 variable factors of the measures as they relate to TIPCO commenced on 19 December 2012. 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, ACBPS 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, ACBPS placed the SEF on the public record on 8 May 2013. Interested parties were notified and ACDN 2013/24 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 196) 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 information from RD2 International Limited (RD2 International), an importer of the goods. ACBPS undertook a desk audit to verify the information provided by RD2 International. A non-confidential desk audit report is available on the public record.

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

- Dole Thailand Limited (DTL);
- Kuiburi Fruit Canning Co., Limited (KFC);
- Natural Fruit Co., Ltd (Natural);
- 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).

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, Dole Group, KFC, 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 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 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. Finding

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.<sup>4</sup>

#### 3.2. The goods and like goods

The goods the subject of this review (the goods) are pineapple prepared or preserved in containers exceeding one litre (food service & industrial 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
2008.20.00/27	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.

---

<sup>4</sup> For the purposes of s.269T.

ACBPS understands, on 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.

#### 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

ACBPS collected information during the review 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.<sup>5</sup>

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. 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 FSI pineapple is carried out in Australia, and therefore FSI pineapple is manufactured in Australia.

---

<sup>5</sup> Ss 269T(2) and 269T(3).

## **4. EXPORT PRICE AND NORMAL VALUE**

### **4.1. 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 the Dole Group can be established pursuant 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 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 Siam Agro-Food Industry Public Company Limited (SAICO) can be determined having regard to all relevant information pursuant to s. 269TAB(3);
- 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); 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 the Dole Group 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 SAICO 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); 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**

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

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 ACBPS 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. ACBPS did not rely on the information provided in these responses to determine whether the variable factors as they related to each exporter had changed.

ACBPS received no responses from other identified exporters.

## 4.4. Dole Thailand Limited

### 4.4.1. Submissions by DTL

In response to the SEF, DTL outlined that ACBPS erred in its determination of normal value in relation to a particular product. DTL submitted that the sale of this product did not occur in the ordinary course of trade, if a broader interpretation of the phrase were applied. DTL submit that in the circumstances, it is inappropriate for ACBPS to determine normal value for that particular product pursuant to s. 269TAC(1).

DTL propose that, where normal value cannot be established under s. 269TAC(1), third country sales should be used pursuant to s. 269TAC(2)(d) . Subsequent to ACBPS verification, DTL submitted a third country it deemed appropriate for the purpose of comparison under s. 269TAC(2)(d).

Where s. 269TAC(2)(c) is applied, DTL made the following submissions in relation to profit:

- profit should be applied for a particular product, not as a weighted average of all sales of like goods in the ordinary course of trade;
- as there is no comparable product sold on the domestic market, the profit achieved on the sales of the same product to a third country made in the ordinary course of trade should be used. DTL submit this is permissible under reg. 181A(2) as it is silent on *which* sales in the ordinary course of trade are preferred; and
- if this is not preferred, DTL submit, by reference to ACBPS finding that DTL is the exporter of the goods, that to ensure compliance with reg. 181A(2), the amount for profit should be taken from DTL's sales to its affiliated selling agent in the domestic market, Thai American Food Co. (TAF), and not TAF's sales to domestic customers.

### 4.4.2. Export price

In its response to the SEF, DTL referred to the finding that the exporter of FSI canned pineapple was determined to be DTL and that this was relevant to the calculation of profit for comparable domestic models that were being constructed under s.269TAC(2)(c).

The term "exporter" is not defined in either the Act or the *Agreement in Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement).

The Celpav case<sup>6</sup> has provided some guidance, particularly in multipartite export situations. It provides that in such multipartite situations the facts must be carefully considered and evaluated before a conclusion can be made as to which party can be properly categorised as the exporter.

---

<sup>6</sup> Companhia Votorantim de Celulose e Papel ("Celpav") v the ADA (1996) 71 FCR 80



At section 6.10 of the DTL visit report, the verification team considered DTL to be the exporter of the goods on the grounds that:

- it was the manufacturer of the goods and manufactured the goods to the specific order of the Australian customer;
- owned the goods at the time of export; and
- made the decision to export to the selected market and selected customers and was aware of the identity of the purchaser of the goods.

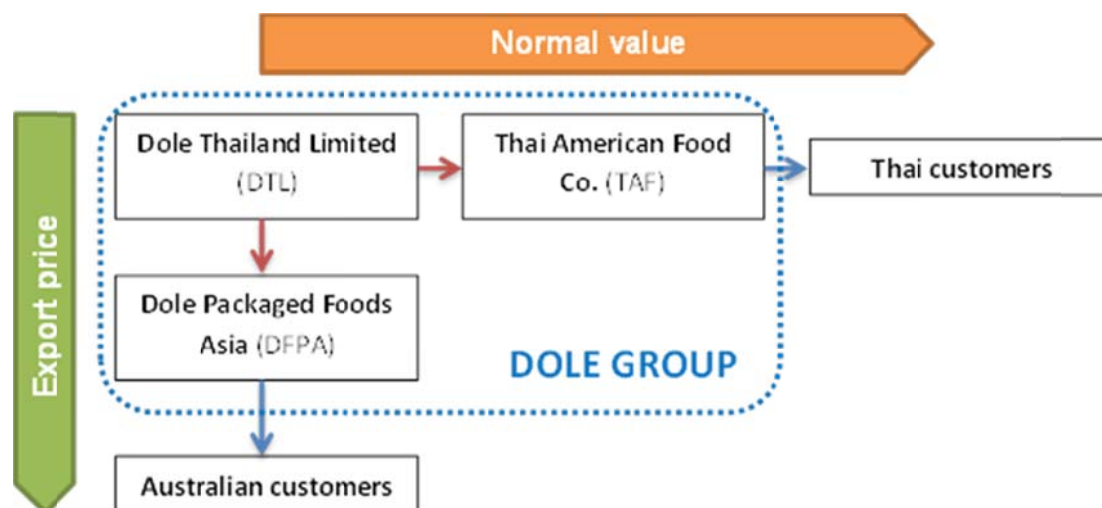
The report adds:

*(Dole Packaged Foods Asia) DPFA performs the function of selling the goods to the Australian customer on behalf of Dole Group and is an affiliated company; however, we still consider DTL is the exporter of the goods.*

For the purposes of determining export prices, the verification team recommended that export price for FSI pineapple exported by DTL via its affiliate Dole Packaged Foods Asia (DPFA) can be determined under s.269TAB(1)(c), having regard to all the circumstances of the exportation. As a result, export prices had been calculated for each export transaction using the price between DPFA and the Australian customers.

ACBPS accepted those recommendations and preliminarily found in SE 196 that DTL was the exporter of the goods and determined export prices by reference to the invoice price issued by DPFA to the Australian importing customer. Deductions were made for post-exportation expenses where appropriate.

After reviewing the matter raised in DTL's submission, ACBPS is satisfied that it is appropriate to 'collapse' the related parties under the heading of one corporate entity, Dole Group, and base export prices on the first arms-length transaction outside of the single entity. This is consistent with the preliminary finding that export prices should be determined at the point of sale made by DPFA. The diagram below identifies the relevant parties and the points at which export prices were determined.



ACBPS considers it appropriate to collapse these related entities given the close structural and commercial relationship between the two companies. The issue of collapsing related parties was considered by a World Trade Organisation (WTO) dispute settlement panel dealing with *Korea – Anti-Dumping Duties on Imports of Certain Paper from Indonesia*.<sup>7</sup>

Article 6.10 of the Anti-Dumping Agreement states that “(t)he authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation.”

The Panel found that the treatment of related parties as a single exporter was consistent with Article 6.10.

Therefore, in the case of export sales of FSI canned pineapple to Australia produced by DTL and sold via its affiliate, DPFA, ACBPS finds the Dole Group to be the exporter and:

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

We consider that the export price for FSI canned pineapple exported by the Dole Group can be determined under s. 269TAB(1)(a).

Export prices have been calculated for each export transaction using the price between DPFA and the Australian customers.

#### 4.4.3. Normal value

DTL sold like goods for home consumption during the review period via its related sales agent, TAF. In assessing whether the transactions between these related parties were at arms-length, it is necessary to look beyond the legal or functional relationship between the parties. ACBPS must also consider whether the entities dealt with each other at arm's length, and whether the sales price between the parties is the result of real bargaining.<sup>8</sup>

The DTL exporter visit report highlights that the sales agreement between DTL and TAF provides for prices to be set by DTL on 1 January each year based on the budgeted cost for the year. This price may be adjusted from time to time during the year if there is a movement in interim standard costs that might warrant a sales price change. As a result, ACBPS is satisfied that the transactions are not the result of real bargaining and therefore not arms-length transactions.

ACBPS also considered whether it was appropriate to collapse TAF into the Dole Group entity for the purposes of establishing like good sales by the exporter. Given that TAF performs a similar function to that of DPFA, which is to

---

<sup>7</sup> WT/DS312/R

<sup>8</sup> This principle is referred to by Lockhart J in *Castle Bacon v Customs* where he expressly concurs with Hill J's statement in [Trustee of AW Furse v the Commissioner of Taxation \[1990\]](#) – para 37.

undertake the selling function of DTL's products, ACBPS considers it appropriate to include TAF into the Dole Group entity.

The diagram in the previous section of this report shows the relevant entities that comprise the exporter, Dole Group, and the points at which arms-length transactions were used to determine and calculated normal values and export prices.

Sales by TAF to domestic customers were found to be arm's length transactions.

The SEF outlined ACBPS preliminary finding that Dole Group had suitable comparable products of FSI pineapple which were sold in sufficient volumes and sold in the ordinary course of trade for all but one export model. 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. In the case of this model, DTL claimed that it was primarily produced for and sold to export markets. However on one occasion it was used to replace a domestic product that was not stocked at the time. DTL submitted that there are significant differences between the two products and the exported model was a one-off sale that has not occurred since.

ACBPS notes that *Dumping and Subsidy Manual*<sup>9</sup> states:

*Article 2.2.1 of the Anti-Dumping Agreement states that sales below cost of production may be treated as "...not being in the ordinary course of trade by reason of price..", recognising there are other situations that might require a finding that sales are not in the ordinary course of trade. Therefore, Customs policy reflects that in certain circumstances, profitable sales may not be in the ordinary course of trade. These may include sample sales, promotional sales made at special prices, end of season sales, low quality sales, or sales in other unusual circumstances.*

Having regard to the evidence presented by DTL, it is considered that DTL's one-off domestic sale during the review period was made in unusual circumstances and not made in the ordinary course of trade.

For these two products, ACBPS is not satisfied that normal value can be determined pursuant to s. 269TAC(2)(d). ACBPS is not satisfied that the exports of DTL to the country submitted for comparison is similar to that exported to Australia for the purpose of s. 269TAC(5C).

Accordingly, normal values for these two products were determined pursuant to s. 269TAC(2)(c) using the verified cost of production of the exported model plus administrative, selling and general costs incurred on domestic sales.

---

<sup>9</sup> ACBPS, *Dumping and Subsidies Manual* (August 2012) at p. 29

Adjustments were made for inland transport, distribution and warehousing, domestic selling costs, duty on imported tin plate, selling and administrative expenses, packaging and credit terms to ensure normal values are properly comparable to export prices pursuant to s. 269TAC(8) and s. 269TAC(9).

ACBPS considered the amount of profit that should be determined for the constructed normal values.

#### ACBPS 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 DTL had domestic sales of like goods in the ordinary course of trade, ACBPS was able to use this verified data to determine a profit pursuant to reg. 181A(2).

ACBPS is satisfied that there are two categories of FSI pineapple products sold by Dole Group on the domestic market that are not directly comparable due to quality differences and alternative methodologies to costing the products. In this circumstance, it is not appropriate to apply the weighted average profit of all sales of FSI pineapple in the ordinary course of trade to the constructed normal values. Instead, the weighted average of sales of the relevant category of products has been applied. This ensures that the amount for profit applied to the constructed normal values represents an amount that can be achieved by Dole Group on the domestic market.

ACBPS considers that the correct or preferable interpretation of reg. 181A(2) gives precedence to the actual profit achieved on domestic sales of like goods rather than the amount for profit worked out by reference to profit made on third country sales of like goods in the ordinary course of trade. Regulation 181A provides the framework for the Minister to determine profit for the purpose of a constructed normal value under s. 269TAC(2)(c), which states that an amount for profit should be added “on the assumption that the goods, instead of being exported, had been *sold for home consumption in the ordinary course of trade in the country of export*”. In circumstances where there are domestic sales in the ordinary course of trade, the amount for profit when constructing the normal value should be taken from data relating to actual domestic sales.

Irrespective of the policy position outlined above, ACBPS is not satisfied that the profit from third country sales made in the ordinary course of trade can be applied in this instance, for the same reasons that these sales cannot be relied on for comparison pursuant to s. 269TAC(2)(d).

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 only those

domestic sales of the same category of like goods made by Dole Group in the ordinary course of trade.

ACBPS finds that it is appropriate to apply a rate of profit to the constructed normal value for Dole Group. This profit represents Dole Group's profit on domestic sales of the same category of FSI pineapple product, made in the ordinary course of trade, calculated in accordance with reg. 181A(2).

#### **4.4.4. Dumping**

A comparison of Dole Group's export price and normal values shows that exports of FSI pineapple were dumped by a margin of approximately 18% during the review period.

### **4.5. Kuiburi Fruit Canning Co., Limited**

#### **4.5.1. Submission by KFC**

In response to the SEF, KFC submitted that due to the nature of its domestic and export sales, normal values should not be determined on a quarterly basis for the purpose of comparison with export price. KFC provided evidence of its method for determining selling price and requested that ACBPS revise its calculation of normal value in light of this evidence.

#### **4.5.2. 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).

#### **4.5.3. 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, domestic sales were not of a sufficient volume to warrant comparison to export sales for the purpose of s. 269TAC(1).

ACBPS is satisfied that it is unable to establish normal values for KFC under s. 269TAC(1). ACBPS is satisfied that, given KFC had domestic sales of goods in the ordinary course of trade, there is sufficient information to construct normal values pursuant to s. 269TAC(2)(c).

ACBPS has examined the information presented by KFC and accepts KFC's 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."<sup>10</sup> In these circumstances, ACBPS considers it appropriate to calculate the profit achieved

---

<sup>10</sup> ACBPS, *Dumping and Subsidies Manual* (August 2012) at p. 29

on domestic sales sold in the ordinary course of trade using the weighted average production costs for the whole of the review period.

Information from KFC's audited financial statements on its total 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 s. 269TAC(9).

ACBPS considered the amount of profit that should be determined for the constructed normal values.

#### ACBPS consideration of profit

As set out in 4.4.3 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).

As KFC had domestic sales of like goods in the ordinary course of trade, ACBPS was able to use this verified data to determine a profit pursuant to reg. 181A(2).

ACBPS 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 WTO Panel in relation to Article 2.2.2 of 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 ACBPS 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."<sup>11</sup>

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

---

<sup>11</sup> Panel Report, *European Communities – Anti-Dumping Measure on Farmed Salmon from Norway*, WT/DS337/r at para 7.304



ACBPS finds 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).

#### **4.5.4. Dumping**

A comparison of KFC's export price and normal value shows that exports of FSI pineapple were not dumped 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 goods were sold to Thai trading companies who in turn exported the goods.

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

ACBPS 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.

ACBPS considered the amount of profit that should be determined for the constructed normal values.

#### ACBPS consideration of profit

As set out in section 4.4.3 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 profit cannot be established 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)).

ACBPS 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.

Dole Group, 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), ACBPS 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".<sup>12</sup> 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.<sup>13</sup>

ACBPS therefore calculated the amount for profit to be applied by determining the weighted average profit for all sales of FSI pineapple made by Dole Group, KFC and Prime Products on the domestic market. The weighted average rate of profit as a percentage of costs equalled 20.6%.

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

ACBPS recalculated profit using all sales of FSI pineapple by Dole Group and KFC on the domestic market. To ensure that the profit calculation would represent an amount achievable by other exporters, ACBPS removed the profit

---

<sup>12</sup> Appellate Body Report, *European Communities – Anti-Dumping Duties on imports of Cotton-type Bed Linen from India*, WT/DS141/AB/9 at para 80.

<sup>13</sup> Above, at para 84.



made on domestic sales of certain products by Dole Group where the costs were structured differently to other exporters due to the nature of the product.

Profit in this instance was approximately 11.8%.

As ACBPS 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).

ACBPS finds that it is appropriate to apply of profit of 11.8% to a constructed normal value for Natural. This represents the weighted average of Dole Group 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 during the review period.

### **4.7. Siam Agro-Food Industry Public Company Limited**

#### **4.7.1. Submissions by SAICO**

During verification, SAICO submitted that profit realised by SAICO during the 2005 review of measures was no longer relevant to the domestic market, as SAICO has withdrawn supply of FSI pineapple to the domestic market as it was unprofitable to do so. The verification team accepted this submission and made a recommendation to the delegate that it was not appropriate to apply the profit determined in the 2005 review in this instance.

In response to the SEF, SAICO submitted that it was incorrect of ACBPS to include profit from domestic sales of KFC given that KFC's domestic sales were not of a sufficient volume to warrant a comparison to export price pursuant to s. 269TAC(1). SAICO claim that to apply a profit in circumstances of low volume domestic sales undermines the objective of finding a comparable normal value to export price, as reflected in s. 269TAC(8) of the Act and Article 2.4 of the Anti-Dumping Agreement. SAICO submit the WTO Panel's<sup>14</sup> interpretation of the silence of Article 2.2.2 (reflected in reg. 181A(3)(b)) on low volume domestic sales should not alter ACBPS long-term policy to "not include profit from low volume domestic sales in normal value construction".

SAICO also submit that it is incorrect of ACBPS to include the weighted average profits of Dole Group and KFC's domestic sales to SAICO's constructed normal value without having regard to the differences in the cost to make and sell between the three exporters. SAICO propose that ACBPS should compare SAICO's cost to make and sell to Dole Group's constructed cost to make and sell and selling price to ascertain whether the inclusion of a profit is reasonable.

---

<sup>14</sup> EC – AD measures on farmed salmon from Norway (WT/DS337/r)

#### **4.7.2. Export price**

During verification, it was confirmed that SAICO 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 SAICO have been determined having regard to all relevant information pursuant to s. 269TAB(3). ACBPS relied on the verified information supplied by SAICO in response to the exporter questionnaire.

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

#### **4.7.3. Normal value**

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

ACBPS is satisfied that it is unable to establish normal values for SAICO under s. 269TAC(1). ACBPS is also satisfied that it is unable to determine an appropriate third country for comparison pursuant to s. 269TAC(2)(d) as SAICO has not made export sales to Australia in the review period. ACBPS therefore considers that 'constructed' normal values should be determined pursuant to s. 269TAC(2)(c).

ACBPS used verified 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.

Adjustments were made to the normal value for inland transport and handling, loading and ancillary charges to ensure a fair comparison to export price pursuant to s. 269TAC(9).

ACBPS considered the amount of profit that should be determined for the constructed normal values.

#### **ACBPS consideration of profit**

As SAICO 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).

ACBPS 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, Dole Group, KFC and Prime Products provided details of domestic sales relevant to the determination of profit pursuant to reg. 181A(3)(b). ACBPS has disregarded the information from Prime Products pursuant to reg. 181A(5), as it was unable to test the reliability of its data.

ACBPS considers it appropriate to include profit realised by KFC in the weighted average to be applied to other exporters pursuant to reg. 181A(3)(b). ACBPS policy is consistent with the interpretation of article 2.2.2 of the Anti-Dumping Agreement, where it states:

*Customs and Border Protection will, in accordance with Article 2.2.2 of the ADA, rely on profit from data relating to the low volume of domestic sales that were found to be unsuitable for determination of a normal value under s. 269TAC(1) of the Act where these sales were made in the ordinary course of trade.*<sup>15</sup>

ACBPS intention to remain consistent with Article 2.2.2 of the Anti-Dumping Agreement is also reflected in the Explanatory Statement to the *Customs Amendment Regulations 2004 (No. 2)*<sup>16</sup>, which amended the current Customs Regulations to include reg. 181A, “to ensure consistency with Article 2 of the WTO Agreement”. For these reasons ACBPS does not consider it appropriate to depart from the WTO Panel findings discussed above in section 4.5.3.

As outlined at 4.6.2 above, ACBPS removed domestic sales by Dole Group of certain products to ensure that the amount for profit reflects an amount achievable by any exporter on the domestic market. ACBPS therefore considers that the profit methodology outlined in relation to Natural above can also be applied to SAICO.

SAICO's costs of production were compared to KFC and Dole Group to determine whether profits achieved by the two other exporters were reasonable when added to SAICO's costs. Analysis shows that production costs across all three exporters were consistent with no significant deviation from the average. Therefore ACBPS considers the recommended calculation of profits for determining SAICO's normal value to be reasonable.

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

#### **4.7.4. Dumping**

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

---

<sup>15</sup> ACBPS, *Dumping and Subsidy Manual* (August 2012) at pg. 39

<sup>16</sup> Available online at <http://www.comlaw.gov.au/Details/F2004B00188/Explanatory%20Statement/Text>

## **4.8. Tipco Foods Public Company Limited**

### **4.8.1. Submissions by TIPCO**

In response to the SEF, TIPCO raised the same issues with the determination of profit outlined by SAICO (above at 4.7.1), namely that the low volume domestic sales of KFC should not have been included, and that ACBPS failed to have regard to cost differences between TIPCO, Dole Group and KFC.

TIPCO further submitted that ACBPS incorrectly used the only product exported during the review period as the basis of the normal value. TIPCO proposed that the normal value for FSI pineapple should be determined in the same manner as consumer pineapple exported by TIPCO, where no export sales to Australia occurred during the review period. In that instance, ACBPS used the average cost to make and sell of product types likely to be exported to Australia.

TIPCO also submitted that there are no reasonable grounds for the inclusion of commission in TIPCO's constructed normal value as the broker is not a sales agent of TIPCO and is unlikely to be involved in future exports to Australia.

### **4.8.2. 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).

### **4.8.3. Normal value**

During verification, it was confirmed that TIPCO did not have true 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 s. 269TAC(2)(c).

ACBPS used TIPCO's verified production costs for the corresponding month in which canned pineapple was exported to Australia during the review period. As there were export sales made to Australia during the review period, ACBPS is satisfied that these costs are appropriate for the purpose of s. 269TAC(2)(c).

Adjustments were made to the normal value for inland transport and handling and other expenses to ensure a fair comparison to export price pursuant to s. 269TAC(9). ACBPS accepts TIPCO's submission that the commission expense in this instance did not represent a continuing export expense. No adjustment for commission was made.

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.

ACBPS considered the amount of profit that should be determined for the constructed normal values.

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).

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 4.6.2 above, Dole Group, KFC and Prime Products provided details of domestic sales relevant to the determination of profit pursuant to reg. 181A(3)(b). ACBPS has disregarded the information from Prime Products pursuant to reg. 181A(5), as it was unable to test the reliability of its data.

ACBPS considers that the profit methodology outlined in relation to Natural above at 4.6.2, and SAICO, above at 4.7.3, can also be applied to TIPCO.

ACBPS finds that it is appropriate to apply of 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 like goods in the domestic market, calculated in accordance with reg. 181A(3)(b).

**4.8.4. Dumping**

A comparison of TIPCO's export price and normal values shows that exports of FSI pineapple were not dumped 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 approximately 25.5% during the review period.

## **5. NON-INJURIOUS PRICE**

### **5.1 Findings**

The 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 dumping.<sup>17</sup>

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.

ACBPS preferred approach to establishing the USP observes the following hierarchy:

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

Having calculated the USP, ACBPS 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 ACBPS determined the USP for FSI pineapple using Golden Circle's cost to make and sell plus the rate of profit achieved by Golden Circle in sales of FSI pineapple in 2009. This profit was adjusted down

---

<sup>17</sup> The non-injurious price is defined in s.269TACA.



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 FSI 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 FSI 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 FSI 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 FSI 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, given the volatility of the major cost component of FSI pineapple and the nature of sales to Australia, recommends 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 increased whilst normal values have generally also increased.

From this review of the variable factors, the normal value would be the operative<sup>18</sup> measure for FSI pineapple. The amount of interim dumping duty imposed would generally have decreased.

---

<sup>18</sup> 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 FSI pineapple exported from Thailand have the effect as if different variable factors have been fixed; and
- re-asertain 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 FSI pineapple exported to Australia from Thailand by SAICO 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 FSI 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 FSI 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(1)(c), the export price of like goods to the goods exported to Australia from Thailand by Natural having regard to all the circumstances of the exportation; and
- in accordance with s. 269TAB(3), the export price of like goods to the goods exported to Australia from Thailand by SAICO 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 Natural using Natural'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 Natural; 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 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.

ACBPS recommends that the Minister declare:

- in accordance with s. 269TAC(8) of the Act, in assessing normal value for Dole Group, that the price paid for like goods be adjusted for inland transportation, distribution and warehousing; domestic selling costs, duty on imported tin plate, export selling and administrative expenses, packaging expenses and credit.

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	Schedules
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