



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**REPORT
NO. 334**

**INQUIRIES CONCERNING THE CONTINUATION OF
ANTI-DUMPING MEASURES APPLYING TO
FSI PINEAPPLE
EXPORTED FROM THE REPUBLIC OF THE PHILIPPINES AND
THE KINGDOM OF THAILAND**

11 AUGUST 2016

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ACS	Australian Customs Service
the Act	<i>Customs Act 1901</i>
the applicant or Golden Circle	Golden Circle Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
Dole Thailand	Dole Thailand Limited
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic public record
FOB	Free on board
FSI	Food Service and Industrial
GAAP	Generally accepted accounting principles
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Kuiburi	Kuiburi Fruit Canning Co. Ltd
MSP	Malee Sampran Public Co
NIP	Non-injurious price
NRV	Net realisable value
OCOT	Ordinary course of trade
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Philippines	the Republic of the Philippines
Prime Products	Prime Products Industry Co. Ltd.
QSR	Quick service restaurants
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 41	<i>Trade Measures Report No. 41</i>
REP 110	<i>Trade Measures Report No. 110</i>
REP 111	<i>Trade Measures Report No. 111</i>
REP 112	<i>Trade Measures Report No. 112</i>
REP 171a	<i>Trade Measures Branch Report No. 171a</i>
REP 171c	<i>Trade Measures Branch Report No. 171c</i>
REP 172a	<i>Trade Measures Branch Report No. 172a</i>
REP 172c	<i>Trade Measures Branch Report No. 172c</i>
SAICO	Siam Agro-Food Industry Public Company Limited

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SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
Thailand	the Kingdom of Thailand
USP	Unsuppressed Selling Price
Vita Food	Vita Food Factory (1999) Company Limited

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This final report (REP 334) is in response to an application by Golden Circle Limited (Golden Circle) seeking the continuation of the anti-dumping measures, in the form of a dumping duty notices, applying to Food Service and Industrial (FSI) pineapple exported to Australia from the Republic of the Philippines (the Philippines) and the Kingdom of Thailand (Thailand).

This final report sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)¹ concerning the inquiries conducted by the Anti-Dumping Commission (the Commission) into the continuation of the anti-dumping measures applying to FSI pineapple exported to Australia from the Philippines and Thailand.

A separate final report, REP 333, has been issued in relation to the continuation inquiries into consumer pineapple from the Philippines and Thailand.

1.2 Recommendation to the Parliamentary Secretary

The Commissioner recommends to the Parliamentary Secretary that he take steps to secure the continuation of the anti-dumping measures applicable to FSI pineapple exported to Australia from the Philippines and Thailand.

The Commissioner recommends that the dumping duty notices have effect as if the Parliamentary Secretary had ascertained different variable factors for all exporters.

1.3 Application of law to facts

1.3.1 Authority to make decision

Division 6A of Part XVB of *Customs Act 1901* (the Act)² sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting inquiries into the continuation of measures that exist in relation to certain goods.

1.3.2 Application

On 2 December 2015, in accordance with subsection 269ZHB(1), a notice (Anti-Dumping Notice (ADN) No. 2015/136) was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on FSI pineapple exported to Australia from the Philippines and Thailand.

¹ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

On 29 January 2016, Golden Circle, a member of the Australian industry producing FSI pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.

1.3.3 Initiation of the inquiry

Consideration Report No. 334 and ADN 2016/21, available on the Electronic Public Record (EPR)³ sets out the Commissioner's reasons for initiating the continuation inquiries.

1.3.4 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an inquiry, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3), place on the public record a Statement of Essential Facts (SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary.

In formulating the SEF, the Commissioner must have regard to the application concerned, and any submissions concerning publication of the notice that are received within 37 days after the date of initiation of the inquiry and may have regard to other matters that he considers to be relevant.

The Commissioner published the SEF on 27 June 2016.

1.4 Findings and conclusions

The Commissioner has made the following findings and conclusions based on available evidence.

1.4.1 The goods and like goods (Chapter 3)

Locally produced FSI pineapple is like to the goods under consideration from the Philippines and Thailand.

1.4.2 Australian industry (Chapter 4)

There is an Australian industry producing like goods, comprising of Golden Circle.

1.4.3 Australian market (Chapter 5)

The Australian market for FSI pineapple is supplied by the Australian industry and imports, predominately from the Philippines. Imports from Thailand and countries not subject to measures make up the remainder of the Australian market.

³ The EPR is located at www.adcommission.gov.au. Refer to nos. 2 and 3 of EPR 334.

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1.4.4 Economic condition of the Australian industry (Chapter 6)

The Australian industry remains susceptible to injury from dumped imports from the Philippines and Thailand.

1.4.5 Likelihood of dumping and material injury recurring (Chapter 7)

The Commission has found that:

- Australian importers have maintained distribution links with exporters of FSI pineapple from the Philippines and Thailand;
- exports of FSI pineapple from the Philippines and Thailand were dumped during the inquiry period (1 January 2015 to 31 December 2015);
- imported FSI pineapple from the Philippines and Thailand has undercut the Australian industry's selling prices; and
- if the measures were to expire, FSI pineapple from the Philippines and/or Thailand would likely be exported at increased levels of price undercutting that would lead to the continuation or recurrence of material injury to the Australian industry,

Based on the above findings, the Commissioner concludes that the expiration of the measures from the Philippines and/or Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent.

1.4.6 Review of variable factors (Chapter 8)

The Commission has found that the variable factors in relation to exports of FSI pineapple from the Philippines and Thailand have changed. Revised dumping margins have been calculated as set out below.

Country	Exporter	Dumping margin
The Philippines	All Exporters	18.7%
Thailand	Kuiburi Fruit Canning Co. Ltd	7.9%
	Siam Agro-Food Industry Public Company Ltd	22.0%
	Dole Thailand Limited	13.8%
	Prime Products Industry Co. Ltd	N/A
	Uncooperative and All Other Exporters (except MSP)	28.6%

Table 1: Dumping margins

1.4.7 Non-injurious price (Chapter 9)

The non-injurious price (NIP) should be based on an unsuppressed selling price (USP) calculated as Golden Circle's cost to make and sell (CTMS) and an amount for profit.

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1.4.8 Form of measures (Chapter 10)

In relation to both the Philippines and Thailand, the Commission proposes to leave the form of measures unchanged.

2 BACKGROUND

2.1 Background

On 2 December 2015, in accordance with subsection 269ZHB(1), a notice (ADN No. 2015/136) was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on FSI pineapple exported to Australia from the Philippines and Thailand.

On 29 January 2016, Golden Circle, a member of the Australian industry producing FSI pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.

2.2 Legislative framework

Division 6A of Part XVB sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures and preparing a report for the Parliamentary Secretary.

Subsection 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Parliamentary Secretary concerning the continuation of the anti-dumping measures. Subsection 269ZHE(2) requires that in doing so, the Commissioner must have regard to the application, any submissions relating generally to the inquiry received within 37 days of the initiation of the inquiry and may have regards to any other matters that he considers relevant. The SEF was published on 27 June 2016.

Pursuant to subsection 269ZHF(2), in order to recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

2.3 History of the anti-dumping measures

2.3.1 FSI pineapple from Thailand

On 8 January 2001, Golden Circle lodged an application requesting, among other things, that the then Minister for Justice and Customs publish a dumping duty notice in respect of FSI pineapple exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 41) and published a dumping duty notice for FSI pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co (MSP).

On 26 February 2006, following consideration of applications by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia from Thailand. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 111* (REP 110 and REP 111) to continue the anti-dumping measures applying to FSI pineapple for a

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further five years and fix different variable factors in relation to the anti-dumping measures.

On 15 April 2011, following consideration of an application for the continuation of measures by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on FSI pineapple from Thailand. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 172c* (REP 171c) and (REP 172c), to continue the anti-dumping measures and fix different variable factors in relation to the anti-dumping measures for a further five years from 18 October 2011.

On 10 December 2012, a review of measures was initiated for FSI pineapple from Thailand following an application by Tipco Foods Public Company Limited. The review of measures was extended to all exporters from Thailand. The then Minister for Home Affairs, accepted the recommendations contained in *International Trade Remedies Branch Report No. 196* and fixed different variable factors in relation to the anti-dumping measures.

On 8 September 2015, following an accelerated review, the Parliamentary Secretary altered the dumping duty notice as it applied to Prime Products by fixing different variable factors relevant to the determination of duty payable by Prime Products. The duty applicable to Prime Products is currently worked out in accordance with the floor price duty method.

The anti-dumping measures for FSI pineapple from Thailand (except by MSP) are due to expire on 17 October 2016.

2.3.2 FSI pineapple from the Philippines

On 21 March 2006, Golden Circle lodged an application with the Australian Customs Service, requesting, among other things, that the then Minister publish a dumping duty notice in respect of FSI pineapple exported to Australia from the Philippines.

The then Minister accepted the recommendations in *Trade Measures Report No. 112* (REP 112) and published a dumping duty notice for FSI pineapple exported to Australia from the Philippines.

On 4 February 2011, following an application for the continuation of measures by Golden Circle, the then Australian Customs and Border Protection Service commenced a continuation inquiry in relation to the anti-dumping measures imposed on FSI pineapple exported to Australia from the Philippines. The then Minister for Home Affairs accepted the recommendations in *Trade Measures Branch Report No. 171a* (REP 171a) and *Trade Measures Branch Report No. 172a* (REP 172a), to continue the measures for a further five years and fix different variable factors in relation to the anti-dumping measures from 14 November 2011.

The anti-dumping measures applicable to FSI pineapple from the Philippines are due to expire on 13 November 2016.

2.4 Submission regarding legality of the notices and inquiries

2.4.1 Dole Thailand's submission

Following the SEF, Dole Thailand Limited (Dole Thailand)⁴ submitted that the Commissioner's decision to initiate the continuation inquiries is invalid and should be revoked, Golden Circle's application should be rejected and the continuation inquiries should be abandoned. In particular, Dole Thailand's submission raised issues relating to:

- the validity of the original dumping duty notice in relation to Thailand;
- the decision of the CEO of the then Australian Customs Service (ACS) to subdivide the goods in Investigation No. 41;
- the validity of Golden Circle's application in relation to the 2011 continuation inquiries and the present continuation inquiries; and
- the Commissioner's initiation of the present inquiries.

2.4.2 Commissioner's response

The original dumping duty notice

Dole Thailand submits that the publication requirements under subsections 269TG(1) and 269TG(2) and section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) were not met when the subsections 269TG(1) and (2) notice was published in 2001.

The Commission is of the view that the subsections 269TG(1) and (2) notice published in the *Commonwealth Gazette (Gazette)* on 17 October 2001 complied with the then requirements of section 269ZI. In particular, the Commission notes that there was (and is) no explicit requirement in the Act that a section 269TG notice be signed by the relevant Minister. The Commission is in possession of copies of the relevant subsection 8(5) notices which have been signed by the then Minister but it is not clear whether the then ACS published these notices in the *Gazette* which was a requirement of the then subsection 8(5C) of the Dumping Duty Act (unless the publication of that notice would adversely affect the business or commercial interests of any person).

Despite alleged potential breaches of the Act and the Dumping Duty Act in respect of these notices, the Commission is of the view that the objective of these notices has been achieved and that the imposition of the measures and subsequent continuation of those measures (including the present continuation inquiries) are not invalidated.⁵ The Commission is of the view that effective notice of the imposition of anti-dumping measures against both consumer and FSI pineapple from Thailand was given in 2001 as the legislative purpose of the notices was achieved (i.e. publishing a notice in the *Gazette* advising that the requirements of section 269TG have been met, that is, dumping duty will apply to certain pineapple products from Thailand and that section 8 of the Dumping Duty Act applies to those goods and like goods). In particular, the notice published in the *Gazette* states that the Minister had accepted the recommendations of the ACS and declared that section 8 of the Dumping Duty Act applies to past exports of the goods and

⁴ No 21 of EPR 334

⁵ See *Project Blue Sky Inc v. Australian Broadcasting Authority* (1988) 194 CLR 355 at 388-9.

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future exports of the like goods. The Commission is also of the view that an interested party cannot now claim to have been aggrieved by this notification process when the measures have been in place for 15 years and in that time numerous exporters and importers have been aware of the measures, have paid the relevant dumping duty and have participated in various proceedings relating to the measures.

Subdividing the goods

The 2001 application from the Australian industry, which led to the original dumping duty notice against consumer and FSI pineapple from Thailand, covered two types of goods: pineapple juice concentrate and prepared fruit. The application further subdivided prepared fruit by size (containers greater than 1L (FSI) and containers not exceeding 1L (consumer)) and acknowledged separate markets for these goods.

In Investigation No. 41, ACS sought submissions as to whether consumer pineapple and FSI pineapple should be considered separate goods. In REP 41 the then CEO of ACS found that pineapple juice, FSI pineapple and consumer pineapple were not “like goods” to each other due to various differences, including differences in end use and limited substitutability. In REP 41 juice, FSI pineapple and consumer pineapple were treated as separate goods and the investigation undertook a separate injury analysis for each product and their respective market. REP 41 ultimately recommended that measures be imposed on this differentiated basis. In the Commission’s view this was not a redefinition of the goods under consideration. Rather, it was an analysis of whether certain goods are “like goods” to each other (as defined in subsection 269T(1)) and whether the effect of those goods on the Australian industry should be assessed using the Australian market as a whole or separate segments of the market. There is nothing in the Act which prohibits subdividing the goods to consider them separately for the purposes of the dumping and injury analysis, and, in the Commission’s view, it was appropriate for ACS to do so in this case as consumer and FSI pineapple were found to be different goods. Moreover, the Commission notes that in all of the subsequent and related proceedings since the imposition of anti-dumping measures in 2001, FSI and consumer pineapple have consistently been treated as separate goods sold into separate segments of the Australian market.

Dole Thailand submits that what was done in Investigation No. 41 was inconsistent with *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, which found that dumping cannot exist for only a type, model or category of a product.⁶ The Commission is of the view that what was done in Investigation No. 41 is distinguishable from the Federal Court’s judgment in *Panasia*. In particular, *Panasia* addressed the Commission’s practice of calculating different dumping margins for different subsets of the same good whereas in Investigation No. 41 consumer pineapple and FSI pineapple were found to be different goods and the entire investigation was considered on that basis (i.e. separate dumping margins were calculated and separate injury and causation analyses were conducted for each separate good).

⁶ 2013 FCA 870 [*Panasia*].

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The 2011 Inquiries

Dole Thailand submits that the 2011 continuation of the anti-dumping measures was invalid because Golden Circle lodged a single application relating to three dumping duty notices which resulted in four separate reports.

It is acknowledged by the Commission that there are currently three original dumping duty notices in place relating to pineapple – one dumping duty notice which covers consumer and FSI pineapple from Thailand, one which covers consumer pineapple from the Philippines and one which covers FSI pineapple from the Philippines. However, in the Commission's view, the original dumping duty notice relating to pineapple fruit from Thailand clearly distinguished between consumer and FSI pineapple and referred to separate conclusions and separate measures being imposed on each good.

The Commission notes that there was no explicit requirement in Division 6A that a separate application for a continuation inquiry must be lodged in respect of each set of anti-dumping measures that an applicant is seeking to have continued. Therefore, in the Commission's view, the fact that the 2011 application referred to more than one set of measures is not, in and of itself, a basis for rejecting an application that otherwise complies with section 269ZHC and appears to contain reasonable grounds for asserting that the expiration of the measures to which the application relates might lead, or might be likely to lead, to a continuation or recurrence of, the material injury that the measures are intended to prevent.

In addition, the then section 269ZHC did not expressly require that the application identify the original dumping duty notices. While it does require that the application contain the information required by the approved form, the approved form at that time did not expressly require that the original dumping duty notices be identified. The form only required details of the current anti-dumping measure(s) the subject of this continuation application, including: tariff classification; the countries or companies specified; and the date of publication of the measures. Those details were included in the application.

Turning next to the initiation of the 2011 continuation inquiries, there was no explicit requirement in the then subsection 269ZHD(5) that an initiation notice must only relate to one set of anti-dumping measures. In fact, subsection 269ZHD(5) refers to goods and measures in the plural, which suggests that a notice may cover more than one good or more than one set of measures. Similarly, there was nothing in the then Division 6A which prescribes the number of reports that must be published following an inquiry. In 2011 the then CEO of Australian Customs and Border Protection decided to provide the then Minister with four separate reports and the Commission does not see that the CEO's decision to do so is contrary to the Act.

The present continuation inquiries

Dole Thailand submits that ADN 2015/136 is not a valid notice for the purposes of section 269ZHB, that Golden Circle's application did not comply with subsections 269ZHB and 269ZHC and, as a result, the Commissioner's decisions not to reject the application and the public notice of his decision to initiate inquiries did not meet the requirements of the Act.

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The Commission notes that ADN 2015/136 does refer to the anti-dumping measures that are due to expire, that is certain pineapple fruit and consumer pineapple from Thailand and the Philippines. In addition, subsection 269ZHB(1)(a) does not expressly require separate notifications for each set of anti-dumping measures nor does it prohibit a notice under that section from providing notification in relation to more than one set of measures. Although the Commissioner's notice under section 269ZHB did not specifically reference the original dumping duty notices, the Commission is of the view that effective notice was given as ADN 2015/136 identified the relevant measures by providing details of the goods, the countries to which the notices apply, the continuation notices which continued the original measures and the expiry day of the measures. The effectiveness of the notice is confirmed by the fact that an application for the continuation of the measures was lodged by the Australian industry in response to this notice.

As noted above, section 269ZHC does not expressly require that an application identify the original dumping duty notices. While it does require that the application contain the information required by the form approved by the Commissioner, the approved form does not expressly require that the original dumping duty notices be identified. Section 5 of the form requires that the applicant provide the 'specified date of publication of the measure'. Although the application does not identify the full date of publication of the original measures, it does identify the year that notice of the measures was published and the date of publication of the continuation notices. Therefore, and as noted in the consideration report,⁷ the Commissioner is satisfied that the application provided sufficient detail to identify the original notices by providing details of the continuation of those notices, and the goods and countries the subject of those notices. Accordingly, the Commissioner did not reject the application for non-compliance with section 269ZHC.

Sections 269ZHB and 269ZHC do not expressly require that applications for the continuation of multiple anti-dumping measures be lodged separately. Golden Circle's application complied with sections 269ZHB and 269ZHC.

Conjoining of countries for which there are separate anti-dumping measures

Although Golden Circle have combined its applications in respect of consumer and FSI pineapple from Thailand and the Philippines into one application, they have clearly set out separate requests for continuation of the measures relating to the goods from each country.

As noted above, and in the relevant consideration report, the Commissioner was satisfied that the application met the requirements of section 269ZHD(2)(a) and (b). In addition there is no explicit requirement in section 269ZHD(5) that separate initiation notices must be published in respect of each set of anti-dumping measures to which a continuation inquiry relates. The notice published on 9 March 2016 gave effective notice of these continuation inquiries. Also as noted above, section 269ZHD does not require that the application considered by the Commissioner be in relation to only one set of measures as the provision expressly allows more than one application (and dumping duty notice) to be considered. Therefore, the initiation of inquiries following the publication of one initiation notice under section 269ZHD in relation to these anti-dumping measures is not necessarily a conflation of the separate measures/notices relating to Thailand and the

⁷ No. 3 of EPR for 334.

Philippines. In this case, the Commissioner's consideration of the continuation of the measures in relation to each country is distinct and separate. Although the Commission has combined certain elements of these inquiries for administrative convenience, the SEFs and final reports contain separate analyses, findings and recommendations for each country. The decision to subdivide each of the inquiries into consumer pineapple and FSI pineapple, as discussed above, is based on an analysis of whether consumer and FSI pineapple are "like goods" to each other.

2.5 Conduct of inquiries

2.5.1 Cooperation from interested parties

Following initiation of the continuation inquiries, the Commission requested sales and CTMS data from Golden Circle and sent importer questionnaires and exporter questionnaires to importers and exporters of FSI pineapple from the Philippines and Thailand.

2.5.2 Australian industry

The Commission did not identify any company other than Golden Circle (the applicant) manufacturing like goods in Australia.

The Commission conducted a verification visit to Golden Circle's Northgate, Queensland production facility on 6-7 April 2016, and at its head company Kraft Heinz Melbourne offices on 14 and 20 April 2016. A report of the visits is available on the EPR.⁸

2.5.3 Importers

A response to the importer questionnaire was received from seven importers:

- FTA Food Solutions Pty Ltd (FTA);
- Woolworths Ltd (Woolworths);
- Pave Brands Limited (Pave);
- Grocery Holdings Pty Ltd;
- Juremont Pty Ltd;
- MacEwen Falconer and Company Limited; and
- SPC Ardmona Operations Ltd.

In relation to FSI pineapple, the Commission conducted a verification visit to FTA. A report of this visit is available on the EPR.⁹

2.5.4 Exporters from Thailand

A response to the exporter questionnaire for FSI pineapple was received from five exporters from Thailand:

- Kuiburi Fruit Canning Col Ltd (Kuiburi);
- Siam Agro-Food Industry Public Company Limited (SAICO);

⁸ No. 9 of EPR 334

⁹ No. 13 of EPR 334

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- Prime Products;
- Dole Thailand; and
- Vita Food Factory (1999) Company Limited (Vita Food).

Kuiburi

The Commissioner considers that Kuiburi has cooperated with the inquiry for Thailand.

In May 2016, the Commission conducted an on-site verification of the information provided by Kuiburi and calculated a dumping margin based on this information. A visit report for Kuiburi is available on the EPR.¹⁰

SAICO

The Commissioner considers that SAICO has cooperated with the inquiry for Thailand.

In May and June 2016, the Commission conducted a desk-top verification of the information provided by SAICO and calculated a dumping margin based on this information. A dumping margin report for SAICO is available on the EPR.¹¹

Prime Products

The Commissioner considers that Prime has cooperated with the inquiry for Thailand.

In May and June 2016, the Commission conducted a desktop verification of the information provided by Prime Products and calculated a dumping margin based on this information. A dumping margin report for Prime is available on the EPR.¹²

Dole Thailand

The Commissioner considers that Dole Thailand has cooperated with the inquiry for Thailand.

In May and June 2016, the Commission conducted a desk-top verification of the information provided by Dole Thailand and calculated a dumping margin based on this information. A dumping margin report for Dole Thailand is available on the EPR.

Vita Food

In May and June 2016, the Commission conducted a desk-top verification of the information provided by Vita Food and calculated a dumping margin. Vita Food was unable to provide evidence of the selling, general and administrative cost (SG&A) allocations used in its CTMS calculations to the Commission's satisfaction. As a result, the Commission has not used Vita Food's data to calculate a separate dumping margin for Vita Foods. Refer section 8.4.5 below.

¹⁰ No. 14 of EPR 334

¹¹ No. 16 of EPR 334

¹² No. 19 of EPR 334

2.5.5 Exporters from the Philippines

No responses to the exporter questionnaire for FSI pineapple were submitted by exporters from the Philippines.

2.6 Submissions in response to the SEF

On 27 June 2016, the Commissioner published a SEF, inviting interested parties to make submissions by 17 July 2016.

The Commissioner received 9 submissions in response to the SEF. These submissions and the Commissioner's response, are addressed in this report. Non-confidential versions of all submissions received following the publication of the SEF are listed below and are available on the EPR.

EPR No.	Interested Party	Date Received
21	Dole Thailand	1 July 2016
22	SAICO	8 July 2016
23	Kuiburi	11 July 2016
24	Prime Products	17 July 2016
25	Kuiburi	17 July 2016
26	SAICO	18 July 2016
27	Golden Circle	18 July 2016
28	Prime Products	22 July 2016
29	Republic of Philippines Depart of Agriculture	9 August 2016

Table 1: Submissions received in response to SEF 334

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the Australian industry (Golden Circle) produces FSI pineapple that has characteristics closely resembling FSI pineapple manufactured in the Philippines and Thailand and exported to Australia. Therefore, the Commissioner is satisfied that FSI pineapple manufactured by the Australian industry are like goods.¹³

3.2 The goods

The goods subject to measures (the goods) are:

Pineapple prepared or preserved in containers exceeding one litre (food service and industrial pineapple).

3.3 Tariff classification

The goods are generally 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

FSI pineapple imported from the Philippines and Thailand is not subject to Customs Duty.

3.4 Like goods

As discussed above, the issue of like goods was considered during the original investigation into FSI pineapple exported from Thailand in REP 41 and the original investigation into FSI pineapple exported from the Philippines in REP 112.

In REP 41 and REP 112, for FSI pineapple, the then ACS was satisfied that there was an Australian industry producing like goods to the goods under consideration.

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*'.

As outlined in the *Dumping and Subsidy Manual*¹⁴ (the Manual), in assessing like goods, the Commission uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

¹³ In terms of subsection 269T(1).

¹⁴ <http://adcommission.gov.au/accessadsystem/Pages/Dumping-and-Subsidy-Manual.aspx>

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Golden Circle describes the locally produced like goods as prepared or preserved pineapple fruit in container sizes exceeding one litre, typically sold into FSI markets through distributors or directly.

3.4.1 Physical likeness

Golden Circle produces a range of pineapple products in container sizes of greater than 1 litre. 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.

As part of the continuation inquiries, the Commission verified the sales of FSI pineapple made by the Australian industry and importers during the inquiry period and is satisfied that the products are physically alike.

3.4.2 Commercial likeness

Golden Circle claims that prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports of the goods in the FSI market segment.

The Commission collected information during the inquiries that confirmed this direct competition through sales data supplied by importers and retailers.

3.4.3 Functional likeness

Golden Circle stated that its locally produced products are directly substitutable for the imported goods.

The Commission collected information during the inquiries that confirmed the locally produced FSI pineapple and imported FSI pineapple are directly substitutable.

3.4.4 Production likeness

Verified information from the Australian industry and exporters during the inquiries shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

3.4.5 Commissioner's assessment – like goods

Based on the above findings, the Commissioner remains satisfied that there is an Australian industry producing like goods to the goods under consideration.

4 THE AUSTRALIAN INDUSTRY

4.1 Finding

Consistent with previous investigations and continuation inquiries, the Commission concludes there is an Australian industry that is producing like goods, consisting of Golden Circle.

4.2 Legislative framework

The Commissioner must be satisfied that the “like” goods are produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

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

A verification visit was undertaken to Golden Circle during the inquiries where the production process was observed and data was verified. A report of the visit is available on the EPR.¹⁵

4.4 Submissions following the SEF

Following the SEF, SAICO¹⁶ asserted that Golden Circle could not be considered a domestic industry based on Article 4.1(i) of the Anti-Dumping Agreement, which states:

When producers are related to exporters or importers or are themselves importers of the alleged dumped products, the term “domestic industry” may be interpreted as referring to the rest of the producers.

The Commission refers SAICO to the Manual which in the context of Australian legislation, states:

There are no provisions in the Act to exclude from the definition of Australian industry a producer/manufacturer that is related to an exporter, or that is itself an importer of allegedly dumped or subsidised goods.

The Commission also notes that Article 4.1(i) of the Anti-Dumping Agreement includes permissive (as opposed to mandatory) language and even if it were possible to exclude Golden Circle under the Act, the fact that Golden Circle was importing to fill a pineapple shortage due to growing conditions/limited crop in Australia, would not justify excluding Golden Circle from the Australian industry.

¹⁵ No. 8 of EPR 334

¹⁶ No 26 of EPR 334

4.5 Commissioner's assessment

Based on the production processes observed by the Commission during the verification visit to Golden Circle, the Commissioner considers that at least one substantial process in the production of FSI pineapple is carried out in Australia and is satisfied that FSI pineapple is wholly produced in Australia.

5 AUSTRALIAN MARKET

5.1 Finding

The Australian market for FSI pineapple is supplied by the Australian industry and imports, predominately from Thailand. Imports from Philippines and countries not subject to measures make up the remainder of the Australian market.

5.2 Background

The Commission used information from past investigations and inquiries and information collected during the current inquiries in its examination of the Australian market for FSI pineapple.

The Commission established the size of the Australian market for FSI pineapple by using information from the Australian Border Force's (ABF) import database and information supplied by the Australian industry, importers and cooperating exporters.

FSI pineapple is primarily sold into four key market segments:

- distributors, the largest group of FSI pineapple buyers;
- quick service restaurants (QSR) who use the pineapple product in fast foods sold direct to the consumer, for example, McDonald's, KFC, Hungry Jacks etc.;
- food manufacturers, who use pineapple as an ingredient in fresh and frozen meals and other prepared products; and
- catering companies that include pineapple as an ingredient to bulk meal distribution.

The goods include thins, slices, pieces, tidbits and crushed pineapple. The fruit is packed in either syrup or natural juice, predominantly in steel cans but may also be packaged in hard or soft plastic containers and pouches.

FSI pineapple can include branded product, such as the Golden Circle brand, manufacturer branding or generic branding. However, in contrast to consumer pineapple, for FSI pineapple there is less value attached to brand because end consumers are unlikely to be aware of the brand of the FSI pineapple being consumed.

Selling prices of FSI pineapple are more likely to be influenced by volume. FSI pineapple is a bulk product which is typically packaged in multi-kilogram packs. FSI pineapple achieves a significantly lower selling price per kilogram than consumer pineapple and as a result, sales compete predominantly on unit price. As a bulk product, the CTMS per kilogram is lower, due to lower packaging and processing costs.

5.3 Market structure

The Australian market is predominately supplied by imports from Thailand, with the Australian industry and imports from countries not subject to measures having a share of the remainder of the market. Imports from the Philippines make up a small portion of the market.

5.3.1 Australian industry

The Australian industry for FSI pineapple services each of the four above named market segments, with the majority of sales being to third party distribution channels that service the QSR, manufacturing and catering segments.

Like most primary industries, pineapple availability is subject to weather and other disruptions and in 2014 and 2015 supply was a significant issue for Golden Circle, leading to a shortfall in available fresh pineapple for processing. As a result, Golden Circle was required to restructure the planned volumes to consumer and FSI pineapple customers. Golden Circle also imported FSI pineapple in order to service its customer base. Golden Circle imports FSI pineapple from Thailand and Indonesia.

Given the lower unit price achievable in the FSI pineapple market, Golden Circle directed much of its reduced production towards the higher value retail market and imported the more commoditised FSI pineapple products to supplement its own production and maintain market competitiveness and market share.

While this shortage has led Golden Circle to alter its normal manufacturing and marketing plans through 2014 and 2015, it plans to increase its production output of consumer and FSI pineapple in 2016 and beyond, having agreed to work with growers to source an increased intake of fresh pineapples.

Golden Circle provided the Commission with grower estimates (by grower) as evidence of the additional planned production volumes to year end 2017.

5.3.2 Global supply

The global market for pineapple is dominated by production from a few large countries. The major pineapple growing countries are Costa Rica, Brazil, the Philippines and Thailand. The main pineapple products are fresh and processed (usually canned) pineapple.

Costa Rica is the largest producer of fresh pineapple. At the end of 2014, the two largest canners of processed pineapples were Thailand, with an estimated global market share of 47 per cent and the Philippines, with an estimated global market share of 16 per cent.¹⁷

Weather and market forces can change the supply and demand balance quickly. Weather impacts can cause global shortages from key pineapple producing countries, leading to higher global prices.

When fresh pineapple supply is reduced, the price of fresh pineapple increases. The availability of pineapple for sale to processors is further restricted as pineapple growers who might have otherwise sold to processors sell into the fresh pineapple markets.

Pineapple production was disrupted in 2014 and 2015 which led to challenging times for the pineapple processors, for example:

¹⁷ Source: <http://www.statista.com/statistics/502716/global-canned-pineapple-export-value-share-by-country/>

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- Costa Rican pineapple exports dropped 12 per cent by volume between January and July year-on-year driven by an adverse business environment that prompted the departure of 500 farmers.¹⁸
- Due to weather conditions since beginning of 2015, the total Thai pineapple crop from January through August 2015 was 11 per cent shorter than the previous year. The shortage of pineapple has led to quality issues as pineapple farmers are harvesting immature fruit because demand is so strong.¹⁹
- Prices for fresh pineapple from Thailand (the major producer of canned pineapples) rose significantly, up 70 per cent year on year and up 6 per cent month on month in June 2014. The rise is due to tight supplies caused by adverse weather conditions. Heavy rains in Thailand at the end of 2013 destroyed around 50 per cent of the crop due to be harvested in 2014 and this led to a reduction in supply and resulted in an increase in prices. Fresh pineapple production in Thailand in 2015 is projected to increase reaching 1.6m Tonnes, up 18 per cent year on year. However, due to increased export demand, prices might remain at high levels as demand outweighs production.²⁰
- In addition, some Philippine producers suffered significant stock losses due to extreme weather events, including typhoons in 2013 and 2015 leaving some processors unable to acquire enough stock for canning.

Some analysts are predicting improved 2016 yields, while others believe that global production growth will not recover significantly until 2017.

5.3.3 Supply in the Philippines and Thailand

As noted above, production from the Philippines has been impacted by a significant shortage of fresh pineapple in 2015 and pineapple processors have not been able to fill all domestic and export orders. The Commission was informed by Dole Thailand that, like the Australian industry, pineapple processors from the Philippines have been rationing to lower priority customers and markets as a means of managing supply. Production is expected to improve in 2016 and beyond as both independent growers and integrated producers increase planting to meet demand.

Thailand also experienced a shortage of fresh pineapple in 2015, with integrated producers buying fruit from other suppliers in order to maintain supply volumes.

5.4 Market share and market size

5.4.1 Market share

Figure 1 below shows that while the Australian industry maintains a significant share of the Australian market, imports from Thailand dominate the Australian FSI pineapple market.

¹⁸ Source: <https://www.agra-net.com/agra/foodnews/canned/canned-fruit/pineapple/costa-rican-pineapple-exports-slump-491354.htm>

¹⁹ Source: <http://www.bwgroc.com/media/Market%20Report%202010-2-15.pdf>

²⁰ Source: <https://www.mintecglobal.com/2015/07/price-increase-fresh-thai-pineapples/>

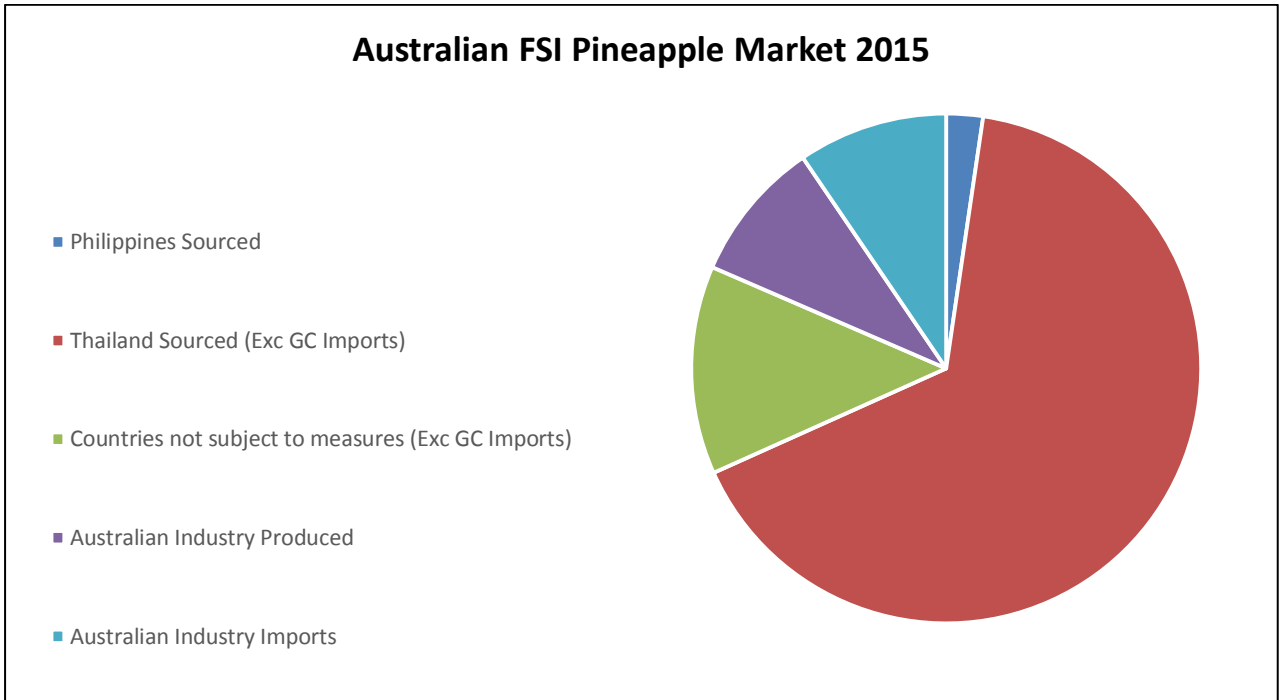


Figure 1 – Australian FSI pineapple market share

Source: ABF import database combined with verified Golden Circle and exporter sales data

Figure 2 below shows a shift in market share over the past three years. The Australian industry lost market share in 2014 but achieved a small growth in volumes and market share by supplementing its own production with imported product in 2015. Thai imports increased their share of the Australian market in 2015, displacing imports from the Philippines and countries not subject to measures.

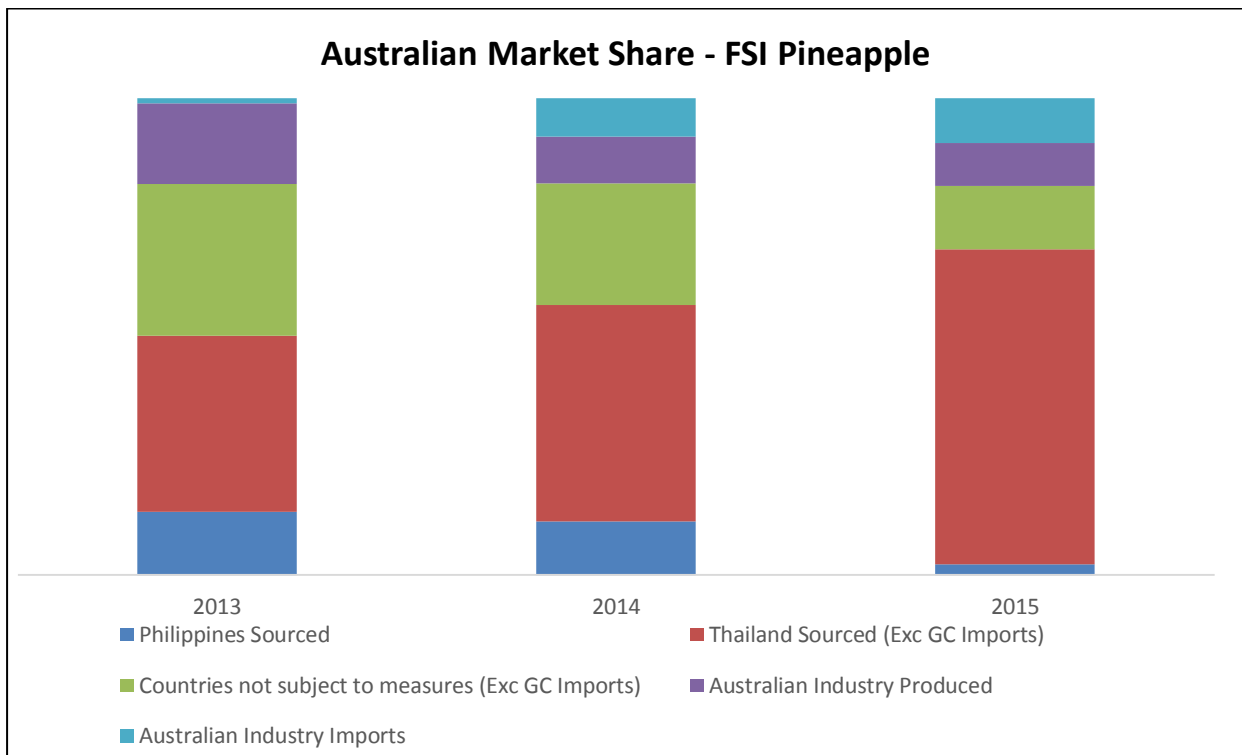


Figure 2 – Australian FSI pineapple market share 2013 to 2015

Source: ABF import database combined with verified Golden Circle and exporter sales data.

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Figure 3 below shows the size of the Australian FSI pineapple market for the past three years. The Commission estimates that the size of the Australian market for FSI pineapple was approximately 14,600 tonnes in 2015. Raw pineapple shortages over the past few years have caused the Australian FSI pineapple market to be more volatile than the consumer pineapple market, with a contraction of approximately 20 per cent in 2014 before a partial recovery in 2015. The partial recovery appears to have continued in the first 5 months of 2016 with the volume of imports being 12.5 per cent higher than the same period in 2015.

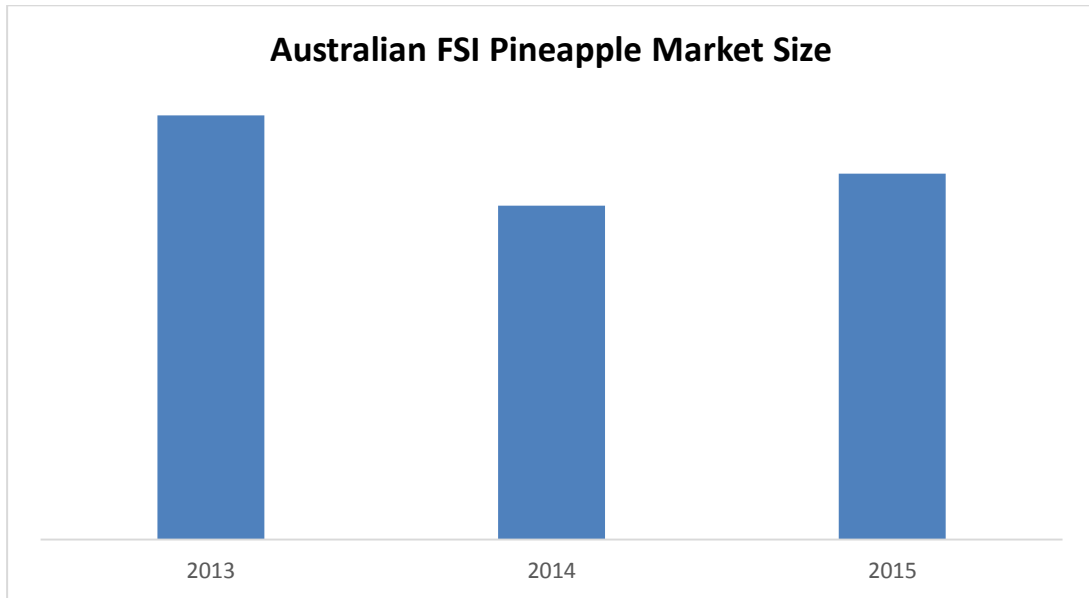


Figure 3 – Australian FSI pineapple market size 2013 to 2015

Source: ABF import database combined with verified Golden Circle and exporter sales data

5.5 Pricing in Australia and importance of brand

As mentioned previously, the FSI pineapple sector is highly price sensitive and manufacturer branding has less relevance to end users than in the consumer pineapple sector where branded products demand a premium.

Although brand is less relevant in the FSI pineapple sector, product profile and quality can be important. An example of this is the unique thin pineapple rings which Golden Circle produces in Australia. Golden Circle claim that an equivalent product is not available from imported FSI pineapple suppliers. Golden Circle advised that for some FSI pineapple applications, the thin slices were preferred as they were more cost effective. Golden Circle also stated that while there was some product advantage in the thin pineapple slices, low priced thicker slices remained a direct competitor and any drop in competitor pricing would have a significant detrimental effect on its sales.

6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

6.1 Finding

Australian selling prices rose marginally in 2014 and to a greater extent in 2015 for both locally produced and imported FSI pineapple. These price increases appear to reflect the tight supply conditions experienced in 2014 and 2015.

Profitability in the Australian FSI pineapple market is mixed. Although improving, Golden Circle has recorded losses for the past three years. In contrast, verified importer's data shows overall profits.

The Commissioner is of the view that the Australian industry is currently experiencing injury from dumping and the expiration of the measures from either the Philippines or Thailand, would lead or be likely to lead to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.

6.2 Australian industry claims

In its application, Golden Circled claimed that:

- the Australian industry's sales volumes in the FSI pineapple market deteriorated in 2014 and even more so in 2015;
- import volumes of FSI pineapple from the Philippines and Thailand have continued in substantial volumes since the measures were continued in 2011 and hold large proportions of the total import volume into Australia in 2015;
- the Australian industry is experiencing price undercutting from imported FSI pineapple from the Philippines and Thailand. This price undercutting has caused the selling prices for locally produced FSI pineapple to be lower than it otherwise would have been.

6.3 Approach to injury analysis

The Commission has analysed verified Golden Circle data to assess the economic performance of the Australian industry. The following analysis examines trends in respect of sales of local production and imports where noted, on a calendar year basis.

6.4 Volume effects

6.4.1 Australian industry sales volumes

Trends in Golden Circle's sales volumes are illustrated in Figure 4 below. Figure 4 shows that Golden Circle's sales declined substantially in 2014 before improving in 2015.

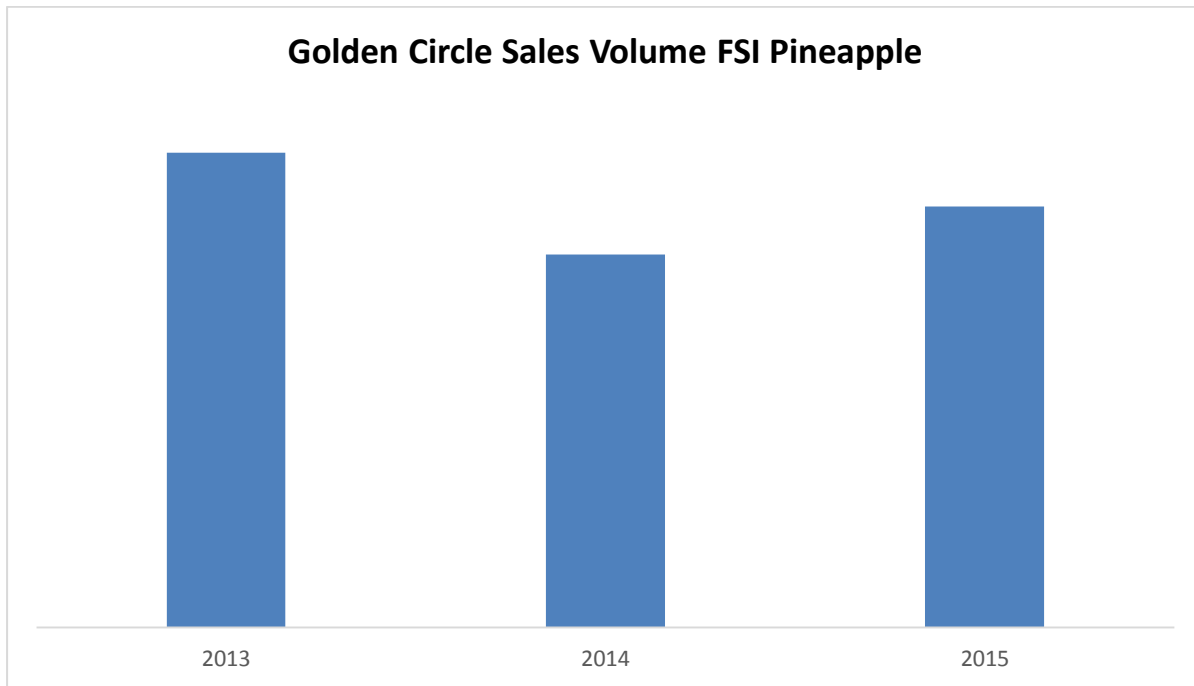


Figure 4 – Golden Circle’s FSI Sales Volumes 2013 to 2015

Source: Golden Circle

6.4.2 Import volumes

The profile of the Australian market for FSI pineapple has shifted over the past few years. Following the 2011 continuation inquiries, imports from Thailand decreased while imports from the Philippines and countries not subject to measures increased. This trend continued in 2013 at which point imports from the Philippines and countries not subject to measures began to decline. In 2015, imports from Thailand increased dramatically, growing by 69 per cent compared to 2014.

Due to the shortage of fresh pineapple, the Australian industry’s locally produced sales volumes more than halved between 2013 and 2014 and remained at similar levels in 2015. Golden Circle imported FSI pineapple from Thailand and Indonesia, in order to maintain market share.

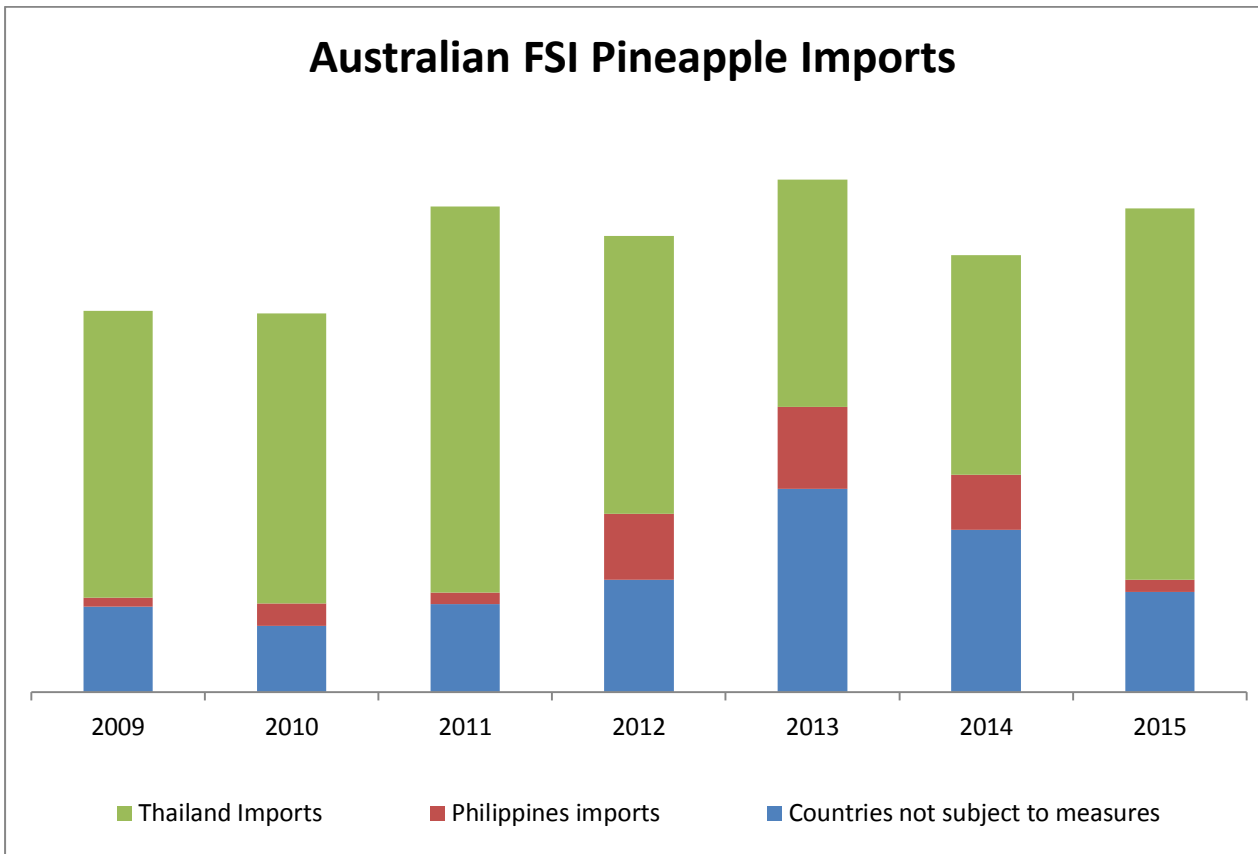


Figure 5 – FSI pineapple import volumes by country 2009-2015
 Source: ABF import database

Figure 6 shows that imports of FSI pineapple from the Philippines grew in 2012 and 2013 (off a low base) however in 2014 and 2015 have fallen back to 2011 levels.

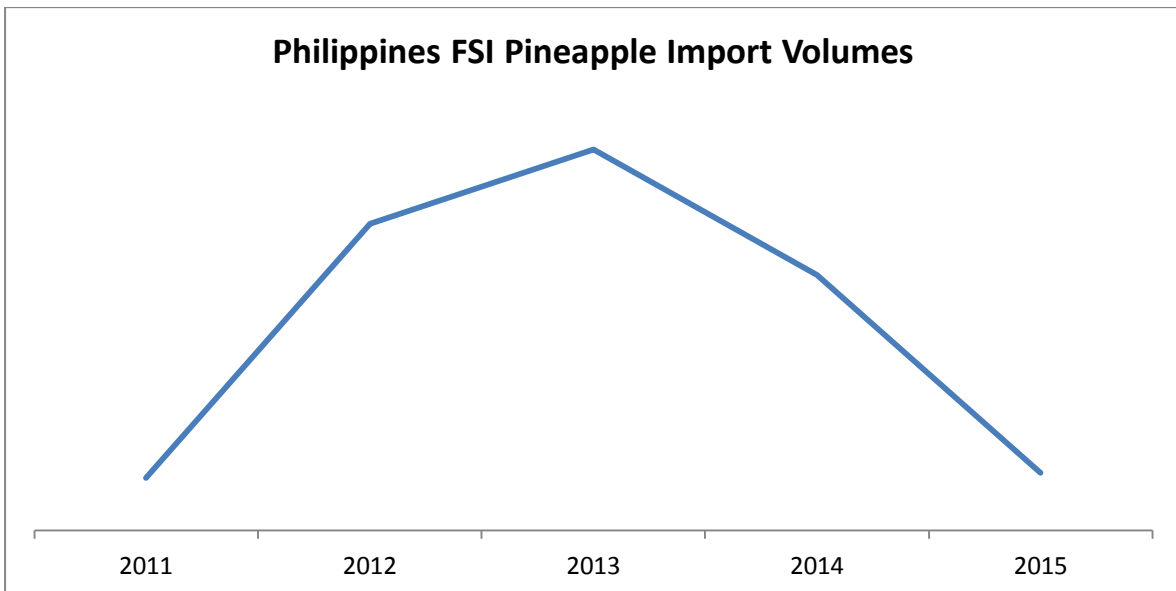


Figure 6 – Philippines FSI pineapple exports to Australia 2011 to 2015
 Source: ABF import database

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After falling away year on year between 2011 and 2014, Thailand exports of FSI pineapple spiked in 2015 and are consistent with 2011 levels. This trend is inverse to the imports from the Philippines.

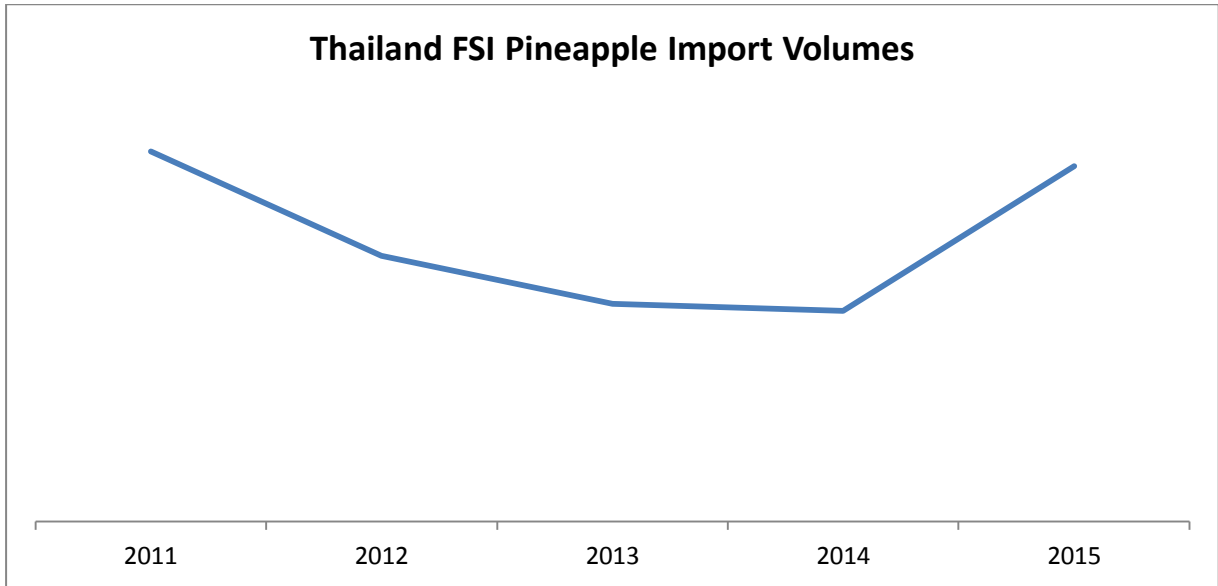


Figure 7 – Thailand FSI pineapple exports to Australia 2011 to 2015
Source: ABF import database

After significant growth between 2011 and 2013, imports from countries not subject to measures declined in 2014 and 2015 as displayed in Figure 8 below.

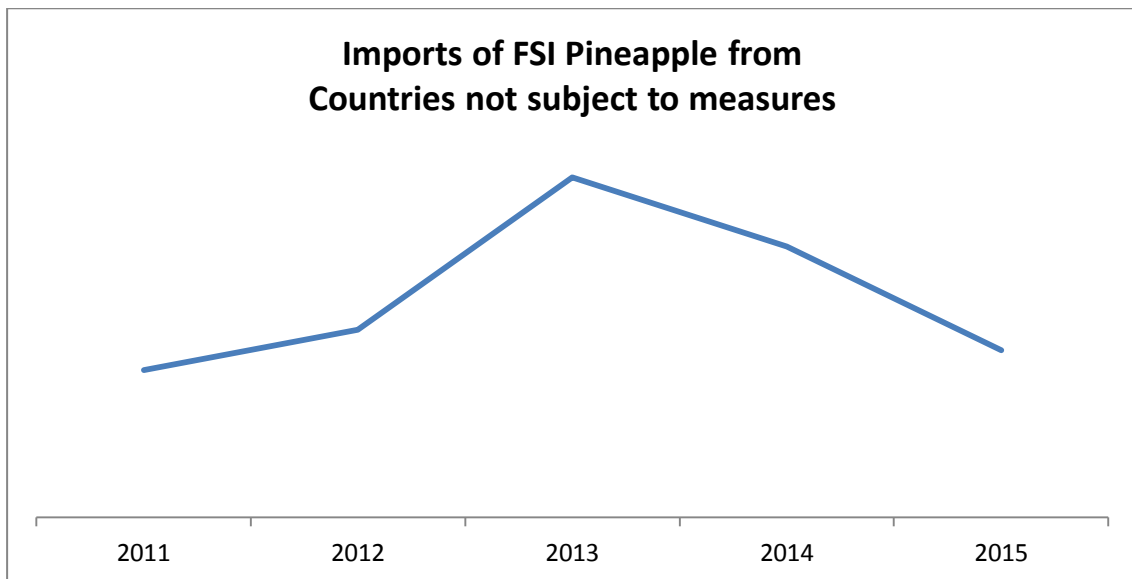


Figure 8 – Imports of FSI pineapple from countries not subject to measures - 2011 to 2015
Source: ABF import database

6.5 Price effects

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which would otherwise have occurred, have been prevented.

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In assessing price effects, the Commission analysed the Australian selling prices for FSI pineapple using verified information of the Australian industry and importers. In addition, the Commission used the ABF import database to measure weighted average export prices movements for imported goods.

6.5.1 Australian industry

Figure 9 below shows that the Australian industry’s selling prices have increased in 2014 and 2015. Unit CTMS dropped in 2014 and 2015. In no year did the unit selling prices exceed unit CTMS.

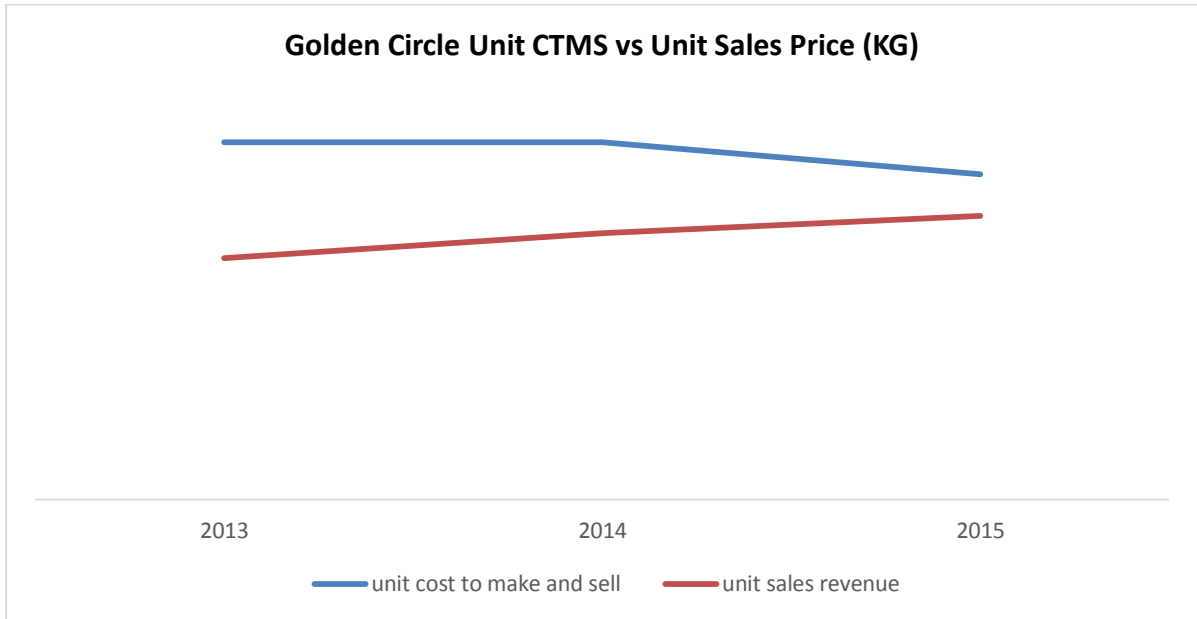


Figure 9 – Comparison of Golden Circle Unit CTMS and Unit Selling Price
Source: Golden Circle

6.5.2 Price undercutting

Figure 10 below shows the level of undercutting at a gross sales level (all products) of FSI pineapple in the Australian market. Figure 10 includes sales of FSI pineapple imported from the Philippines and Thailand. It compares the weighted average selling price from two importers of FSI pineapple to the weighted average selling price of the Australian industry’s locally produced FSI pineapple. Consistent with previous investigations and continuation inquiries, the data shows substantial price undercutting.

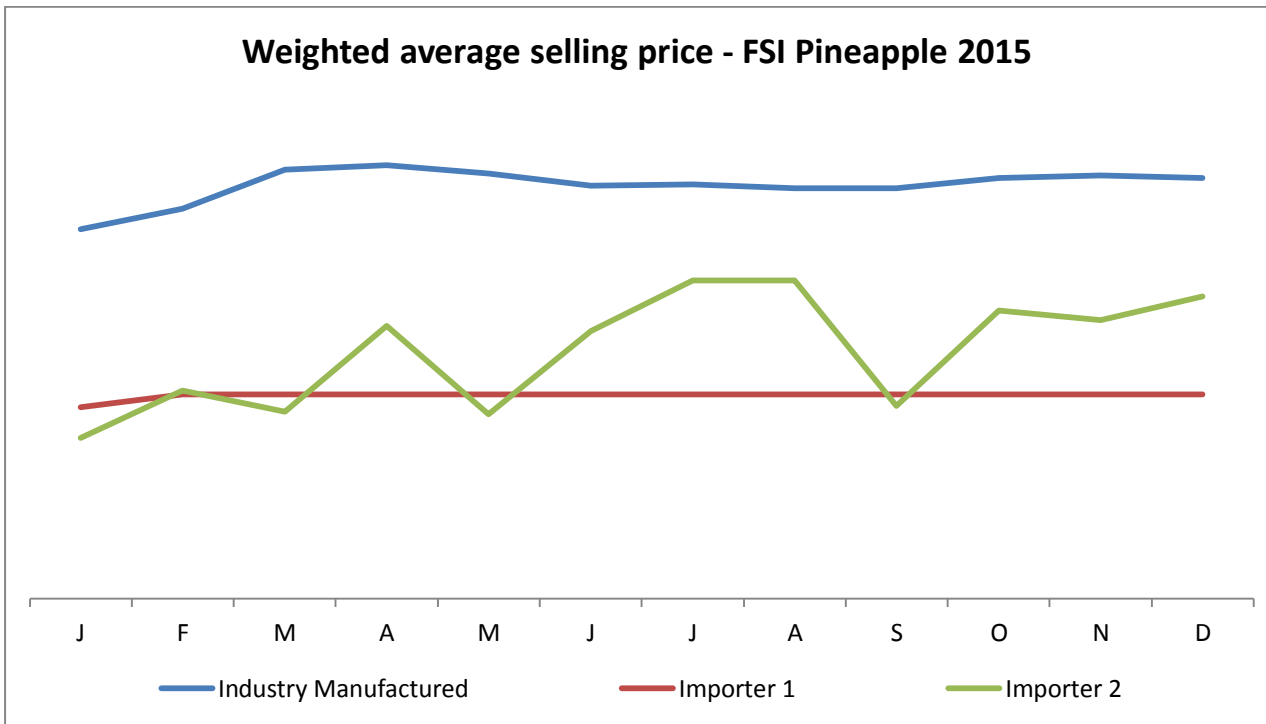


Figure 10 – Weighted average domestic pricing comparison
 Source: Golden Circle and importer transactional data

Figure 11 below compares Australian selling prices to a single major FSI pineapple distributor (Distributor 1). Figure 11 includes sales of FSI pineapple imported from the Philippines and Thailand. The data highlights significant undercutting across all months, where data was available.

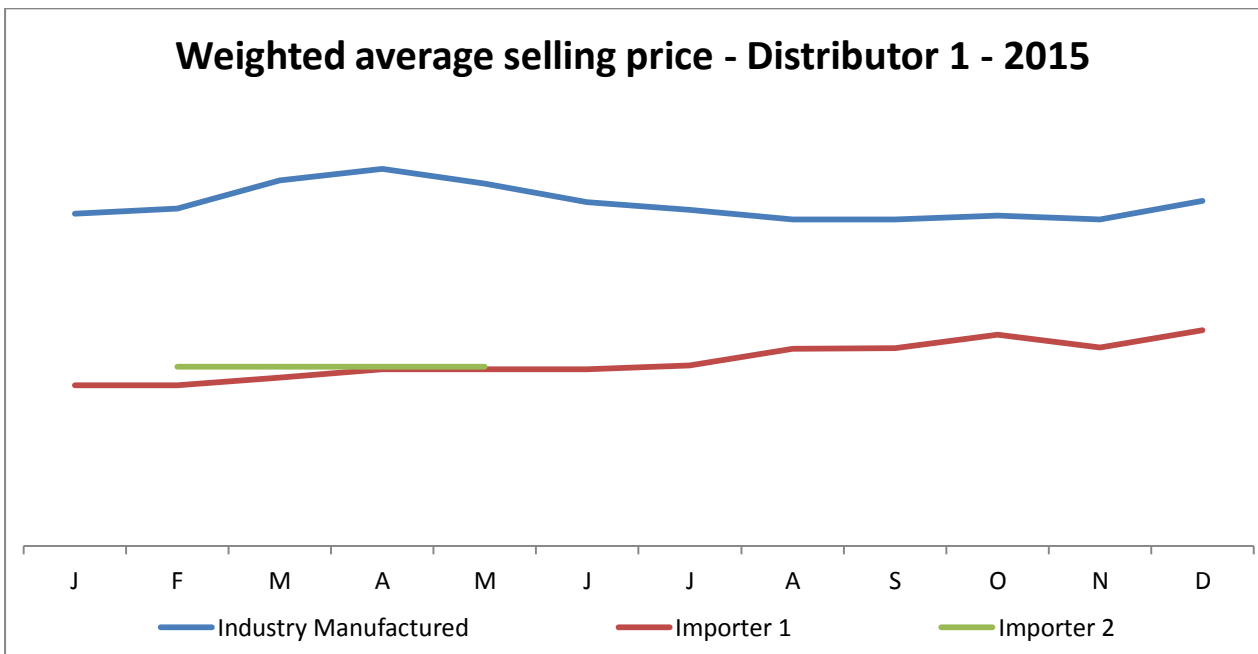


Figure 11 – Competitive pricing to major FSI pineapple buyer (Distributor 1)
 Source: Golden Circle and importer transactional data

Figure 12 below compares the Australian selling prices to a single major QSR buyer. Figure 12 includes sales of FSI pineapple imported from Thailand. The data highlights

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that while the importer's prices undercut the Australian industry prices by a relatively small amount in January 2015, the level of undercutting increased and remained significant across the remainder of the 2015 year.

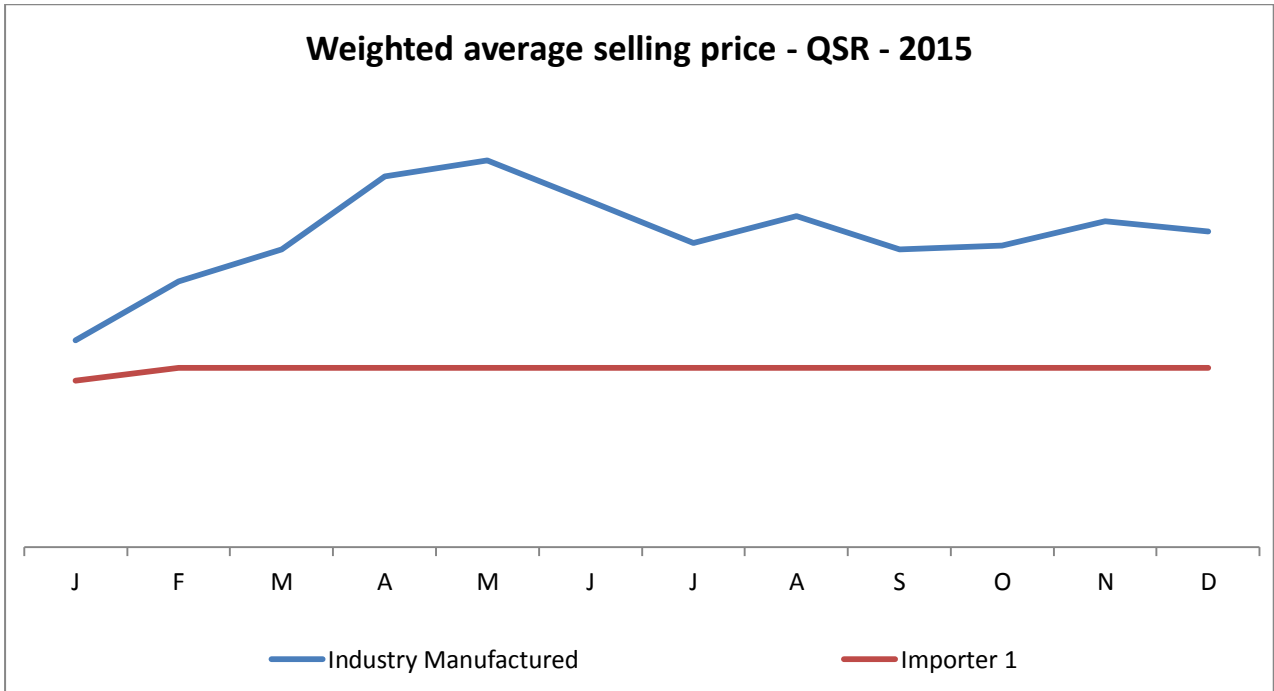


Figure 12 – Competitive pricing to major FSI pineapple buyer (QSR)
Source: Golden Circle and Importer transactional data.

6.5.3 Export prices

Export prices from Thailand and countries not subject to measures prices remained relatively stable during 2011 and 2012 but increased in 2014 and 2015, possibly as a result of fresh pineapple shortages. Export prices from the Philippines fell in 2012 and 2013, before increasing in 2014 and 2015. Export prices converged in 2015.

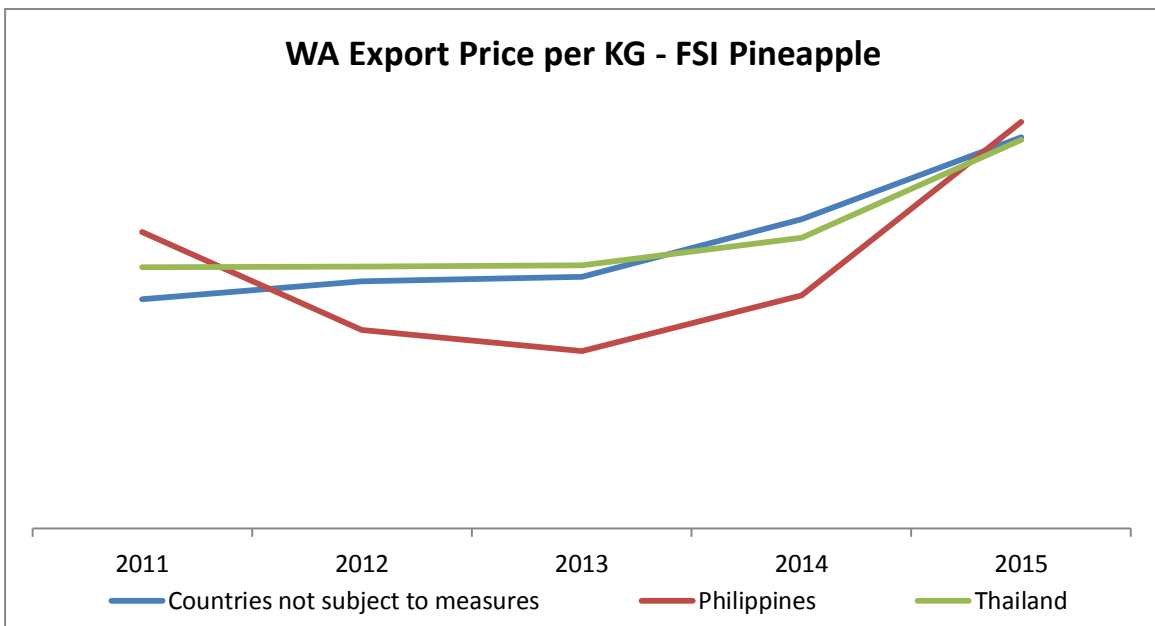


Figure 10 – Weighted average export pricing comparison

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Source: ABF import database

6.6 Profits and profitability

Although improving through a combination of improved selling prices and lower CTMS Golden Circle has been unable to achieve a profit on its FSI pineapple sales over the past three years.

To demonstrate the price competitiveness of the FSI pineapple market, Golden Circle supplied evidence of tenders where it has lost sales to imported goods that were lower than previous contracts and at a price point that Golden Circle was unable to compete against profitably. In addition, Golden Circle provided evidence of FSI pineapple price negotiations which were clearly influenced by imported goods from the Philippines and Thailand.

The Commissioner is satisfied that the Australian market for FSI pineapple is price sensitive and that Golden Circle is required to respond to the price of imports from the Philippines and Thailand in order to remain price competitive.

7 LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING

7.1 Finding

The expiration of measures from either the Philippines or Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of the dumping and the material injury that the anti-dumping measure is intended to prevent.

7.2 Continuation test

Under subsection 269ZHF(2), the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

7.3 Australian industry claims

Golden Circle claimed in its application that dumping and material injury will continue and/or recur on the grounds that:

- exporters of FSI pineapple in the Philippines and Thailand have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping measures;
- the Philippines and Thailand pineapple processing industry has significant capacity from which it can increase export volumes to Australia in the absence of anti-dumping measures;
- both the Philippines and Thailand were affected by poor growing conditions which reduced its volume of pineapple available for supply over the inquiry period. Expected improvements in growing conditions would see a sharp increase in the supply of pineapple which could be easily directed towards the Australian market;
- imported goods from the Philippines and Thailand have undercut the Australian industry's prices;
- should the measures be allowed to expire, the Australian industry will likely experience further lost sales volumes and loss of market share caused by price undercutting; and
- material injury will be likely to continue and or recur in the form of price depression (as export prices decline in the absence of the floor price imposed by the current measures) and price suppression, resulting in a deterioration of profits and profitability.

7.4 Likelihood of dumping continuing or recurring

7.4.1 History of dumping

Thailand

In relation to FSI pineapple from Thailand:

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- The original investigation in 2001 found that, with the exception of MSP, the goods were dumped in the range of 3 per cent to 27.2 per cent.
- A review of measures in 2006 found that the goods were dumped at prices.
- A review of measures in 2011 found that the goods were dumped at margins ranging between 2 per cent and 80 per cent.
- A review of measures in 2012 found that with the exception of Natural Fruit Co., Limited, Kuiburi, Tipco Foods Public Company Limited and SAICO, the goods dumped at margins ranging between 18 per cent and 25.5 per cent.²¹

As outlined further in Chapter 8, the Commission has reviewed the variable factors and calculated dumping margins for FSI pineapple exported from Thailand during the inquiry period and with the exception of Prime Products, dumping margins ranged between 7.9 per cent and 28.6 per cent.

The Philippines

In relation to FSI pineapple from the Philippines:

- The original investigation in 2006 found that the goods were dumped at margins ranging from 2 per cent to 20 per cent.
- A review of measures in 2011 found that the goods were dumped at margins ranging between 17.7 per cent and 57.3 per cent.

The Commission has reviewed the variable factors and calculated a dumping margin for FSI pineapple exported from the Philippines during the inquiry period of 18.7 per cent.

7.4.2 Capacity

Whilst the supply of pineapple has been a limiting factor over the past few years, exporters from the Philippines and Thailand have significant scope to increase production capacity of FSI pineapple once pineapple supply improves. This is evidenced through the capacity utilisation rates supplied to the Commission by the cooperative exporters.

7.4.3 Dependence on export markets

Both the Philippines and Thailand producers of FSI pineapple are export focussed. Local domestic sales in both the Philippines and Thailand are very low for most producers and non-existent for the others. In part this is due to the consumer preferences for fresh pineapple in these markets, but mainly due to the operations having been set up or expanded specifically to service export markets. The Commission considers that the goods from the Philippines and Thailand are highly substitutable and for this reason, removal of the measures from either country could led to a shift in the source of imports.

7.4.4 Commission's assessment - likelihood of dumping continuing or recurring

The Commission considers that there is sufficient evidence to establish that the Australian industry's selling prices for FSI pineapple were lower than they otherwise would have been during 2015 had the goods not been exported at significant dumping margins.

²¹ Noting that for certain exporters sufficient information was not available to allow the calculation of a dumping margin

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The Commissioner is satisfied that the dumping margins in relation to exporters from the Philippines and Thailand, in and of themselves, are likely to enable importers of FSI pineapple to have a competitive advantage on price compared to the Australian industry and in the absence of measures, the levels of price undercutting, which are already substantial, would increase.

The Commission has given consideration to the regional and global supply and demand situation during recent years, where tight supply over 2014 and 2015 allowed exporters and the Australian industry to raise prices.

Market expectations are that additional planting in key global grower markets including the Philippines and Thailand, as well as in Australia, will bring supply closer to equilibrium with demand over the next few years.

The Commission considers that the willingness of exporters from the Philippines and/or Thailand to sell at dumped prices would be further magnified as markets regain normal production and capacity utilisation.

The Commission's finding is that the expiration of anti-dumping measures on FSI pineapple from Thailand and/or the Philippines would lead, or would be likely to lead, to a continuation of the goods being exported at dumped prices.

7.5 Likelihood of material injury continuing or recurring

7.5.1 Previous findings

During the original dumping investigation for Thailand in 2001 (REP 41) ACS found that dumped FSI pineapple exports from Thailand had of itself caused material injury to the Australian industry producing like goods.

In the review and continuation of the measures in 2006 (REP 110 and 111) Customs and Border Protection found that FSI pineapple from Thailand were purchased at dumped prices that significantly undercut the Australian industry's 'Golden Circle' brand.

In the review and continuation of the measures in 2011 (REP 171a, 171c, 172a and 17cd) FSI pineapple products were purchased at dumped prices that significantly undercut the Australian industry's 'Golden Circle' brand.

In line with previous inquiries, these inquiries have found that FSI pineapple exported from the Philippines and Thailand was sold at dumped prices and significantly undercut the Australian industry's 'Golden Circle' brand.

7.5.2 State of the Australian industry

While brand and sentiment for Australian made produce may have had some value to FSI buyers, the market is price sensitive. This makes building brand premiums into FSI pineapple pricing very difficult. Although there may be some price premiums, any premiums are more likely to be the result of producers being able to offer consistent quality and supply.

Golden Circle produced product sales fell dramatically between 2013 and 2014 and remained at the lower levels in 2015 mainly due to a shortage of fresh pineapple fruit as

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input during 2014 and 2015. The company lost market share between 2013 and 2014, but was able to maintain market share in 2015 by importing FSI pineapple to supplement its own production.

Golden Circle has been able to increase prices in 2014 and 2015 as have many of the other sellers into the FSI pineapple market, due mainly to the shift in supply and demand as a result of supply shortages.

Although improving, Golden Circle's financial performance in the FSI pineapple segment has shown losses for the past three years.

As noted above, Golden Circle imports of FSI pineapple increased significantly during the 2014 and 2015 years due to supply shortages. Golden Circle believes that as supply increases from 2016, it will be able to allocate more pineapple to local FSI production and reduce its reliance on imports. Currently, the vast majority of Golden Circle FSI pineapple production is allocated to producing the "thins" sliced product which has a functional advantage to some end users. Golden Circle aim to expand its production into other types of FSI pineapple.

Submissions regarding the state of the Australian industry

A number of submissions²² highlighted the length of time that the measures have been in place and alleged that Golden Circle's ongoing poor performance supports a conclusion that the Australian industry has been injured by factors other than dumping.

The Commission rejects those claims. In the original investigation and in each subsequent continuation inquiry, the Commission has found ongoing dumping of the goods from the Philippines and Thailand. That dumping, in and of itself, has impacted Golden Circle's financial and operational performance. While Golden Circle's FSI pineapple business is currently unprofitable, it has improved in recent years. In the absence of measures, this injury will likely worsen as the level of price undercutting would likely increase.

7.5.3 Commission's assessment—likelihood of material injury continuing or recurring

An analysis of the Australian selling prices relative to the volume of the imports, together with discussions with the Australian industry, importers and exporters leads the Commission to conclude that price is a key factor in the purchasing decisions of FSI distributors and FSI pineapple users.

Despite Golden Circle's product advantage for "thins" sliced pineapples, if imported regular sliced pineapple become cheaper, the attractiveness and value of Golden Circle's "thins" would reduce.

Notwithstanding the increased prices over 2014 and 2015 due to the supply constraints, the Commission considers that there is sufficient evidence to demonstrate that selling prices for FSI pineapple were lower than what they would have otherwise been during 2015 had the goods not been exported at significantly dumped prices. The Commission

²² EPR Nos 11, 12, 26 and 28

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considers that exporters' willingness to sell at dumped prices within a tight supply market would be further magnified as markets regain normal production and processing capacities.

The Commission concludes that dumped FSI pineapple from the Philippines and Thailand that is subject to measures, while not the sole cause of injury, continued to cause material injury to the Australian industry during the inquiry period. The Commission also acknowledges that due to the shortages in local and overseas pineapple fruit, the injury has been reduced.

However, the Commission also concludes that if the measures were to expire, the removal of the measures would lead to a continuation of dumping.

Therefore, the Commission is satisfied that:

- imports of FSI pineapple from the Philippines and Thailand continued to cause material injury to the Australian industry, and
- the dumped FSI pineapple from the Philippines and Thailand would likely lead to a continuation of the material injury previously experienced by the Australian industry in the form of price suppression and depression, loss of sales and market share, and reduced profits.

The Commission's finding is that the expiration of anti-dumping measures on FSI pineapple from either the Philippines or Thailand would lead or would be likely to lead to a continuation or recurrence of the material injury that the anti-dumping measure is intended to prevent.

7.6 Factors other than dumping

7.6.1 Higher costs of production for locally grown pineapples

The Commission acknowledges that Golden Circle has operated unprofitably for the past three years. Golden Circle has however reduced its losses for FSI pineapple sales by two thirds over the past three years and is forecasting further improvements as the price of local fresh pineapple falls, in line with forecast increased supply.

7.7 Commission's overall assessment

The Commission's view is that the following factors support a finding that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent:

- exports of FSI pineapple from the Philippines and Thailand were dumped during the inquiry period;
- imports of FSI pineapple from Philippines and Thailand have undercut the Australian industry's prices;
- importers have maintained distribution links with exporters of FSI pineapple from the Philippines and Thailand; and
- FSI pineapple from the Philippines and Thailand would likely be exported at increased levels of price undercutting that would lead to the recurrence of material injury to the Australian industry.

8 REVIEW OF VARIABLE FACTORS

8.1 Finding

The Commission has found that the variable factors have changed. Dumping margins have been calculated as set out below.

Country	Exporter	Dumping margin
The Philippines	All Exporters	18.7%
Thailand	Kuiburi Fruit Canning Co. Ltd	7.9%
	Siam Agro-Food Industry Public Company Ltd	22.0%
	Dole Thailand Limited	13.8%
	Prime Products Industry Co. Ltd	NA
	Uncooperative and all other exporters (except MSP)	28.6%

Table 2: dumping margins

8.2 Introduction

In its application, Golden Circle claimed that one or more of the variable factors relevant to the taking of anti-dumping measures have changed. Exporter questionnaires were sent to companies identified as suppliers of FSI pineapple from the Philippines and Thailand in the ABF import database during the inquiry period.

The Commission received five responses to the FSI exporter questionnaire from Thailand based exporters. No responses were received from exporters from the Philippines.

8.3 Dumping – the Philippines

Subsection 269T(1) provides that an exporter is an “uncooperative exporter” where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

As no exporter questionnaires were received from exporters from the Philippines, having regard to the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction), and in particular subsection 8(b) of the Direction, the Commissioner is treating all exporters of the goods from the Philippines as uncooperative exporters as defined in subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

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The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all available information. Specifically, the Commission has used a weighted average export price for the Philippines as recorded in the ABF import database at FOB terms in the inquiry period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used a weighted average normal value established for Thailand exporters in the inquiry period, as there were no cooperating exporters from the Philippines.²³

The dumping margin for all exporters of FSI pineapple from the Philippines is 18.7 per cent.

8.4 Dumping - Thailand

8.4.1 Kuiburi

Verification

The Commission conducted an in-country visit to Kuiburi in May 2016 to verify the information disclosed in its exporter questionnaire response. A detailed report covering the visit findings is available on the EPR.²⁴

Export price

The Commission considers that sufficient information is available to establish the export price for Kuiburi under subsection 269TAB(1)(a). In particular, the Commission found that goods were exported by Kuiburi to Australia and were purchased in arms length transactions by the importer from Kuiburi. Therefore, export price was determined to be the price paid by the importer to the exporter less transport and other costs arising after exportation.

Normal value

In accordance with subsection 269TAC(2)(a)(i), the Commission found that Kuiburi's domestic sales of like goods in Thailand would not be relevant for the purpose of determining a normal value under subsection 269TAC(1) because there was a low volume of sales in the ordinary course of trade (OCOT).

The normal value was determined using a constructed method, as permitted under subsection 269TAC(2)(c).

As the Commissioner is satisfied that Kuiburi's records are in accordance with generally accepting accounting principles in Thailand and reasonably reflect competitive market costs associated with the production or manufacture of like goods, the cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records.

²³ Consistent with Chapter 13.3 of the Manual which permits the use of information gathered from other countries subject of the same investigation in establishing normal values under subsection 269TAC(6)

²⁴ No. 16 of EPR 334

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Similarly, SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records because the Commissioner is satisfied that those records reasonably reflect the administrative, general and selling costs associated with the sale of like goods. The amount of profit was worked out under subsection 45(2) of the Regulation.

Following the SEF, Kuiburi submitted that the Commission erred by excluding one model sold domestically in the calculation of its profit margin. Kuiburi stated that, a particular model relating to pulp pineapple, is a like good and should be used in the determination of its profit for the purposes of subsection 45(2) of the Regulation.

The Commission has reconsidered Kuiburi's claims and agrees that the relevant model should be considered a like good. As a result, the Commission has recalculated the amount of profit to be used in Kuiburi's constructed normal value.

The effect of including the additional model in the profit calculation was a slight reduction in overall profit for like goods, which in turn led to a lower normal value and a reduction in the dumping margin from 9.2 per cent to 7.9 per cent.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9).²⁵

Dumping margin

A dumping margin has been calculated for FSI pineapple exported by Kuiburi over the inquiry period based upon a comparison of the weighted average export prices over the whole of the inquiry period (calculated on a quarterly basis) with the weighted average of corresponding normal values (calculated on a quarterly basis) over the whole of that period.²⁶ The dumping margin calculated for Kuiburi was 7.9 per cent.

8.4.2 SAICO

Verification

Based on the low volume of SAICO's exports of FSI pineapple relative to the total export volume during the inquiry period, the Commission elected not to conduct an on-site verification visit to SAICO's premises.

Whilst an on-site verification visit was not conducted, the Commission analysed the data submitted by SAICO and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate a dumping margin.

²⁵ Where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, adjustments are required for maintaining price comparability pursuant to subsection 269TAC(9). A full list of the adjustments are available in the visit report.

²⁶ All dumping margins have been calculated in accordance with subsection 269TACB(2)(a).

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The Commission's verification report is available on the EPR.²⁷

Export price

The Commission considers that sufficient information is available to establish the export price for SAICO under subsection 269TAB(1)(a). In particular, the Commission found that goods were exported by SAICO to Australia and were purchased in arms length transactions by the importer from SAICO. Therefore, export price was determined to be the price paid by the importer to the exporter less transport and other costs arising after exportation.

Normal value

In accordance with subsection 269TAC(2)(a)(i), the Commission found that SAICO's domestic sales of like goods in Thailand would not be relevant for the purpose of determining a normal value under subsection 269TAC(1) because there was a low volume of sales in the OCOT.

The normal value was determined using a constructed method, as permitted under subsection 269TAC(2)(c).

As the Commissioner is satisfied that SAICO's records are in accordance with generally accepting accounting principles in Thailand and reasonably reflect competitive market costs associated with the production or manufacture of like goods, the cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records. Similarly, SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records because the Commissioner is satisfied that those record reasonably reflect the administrative, general and selling costs associated with the sale of like goods.

As there were no sales in the OCOT for SAICO, the amount of profit was worked out under subsection 45(3)(b) of the Regulation. Subsection 45(3)(b) of Regulation allows for the profit to be determined by using the weighted average of the actual amount realised by other exporters or producers from the sale of like goods in the domestic market.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9).²⁸

Dumping margin

A dumping margin has been calculated for FSI pineapple exported by SAICO over the inquiry period based upon a comparison of the weighted average export prices over the whole of the inquiry period (calculated on a quarterly basis) with the weighted average of

²⁷ No. 17 of EPR 334

²⁸ A full list of the adjustments are available in the visit report.

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corresponding normal values (calculated on a quarterly basis) over the whole of that period. The dumping margin calculated for SAICO is 22.0 per cent.

8.4.3 Dole Thailand Limited

Verification

Based on the low volumes of Dole Thailand's exports of FSI pineapple relative to the total export volume during the inquiry period, the Commission elected not to conduct an on-site verification visit at Dole Thailand's premises.

Whilst an on-site verification visit was not conducted, the Commission analysed the data submitted by Dole Thailand and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate a dumping margin.

The Commission's verification report is available on the EPR.²⁹

Export price

The Commission considers that sufficient information is available to establish the export price for Dole Thailand under subsection 269TAB(1)(a). In particular, the Commission found that goods were exported by Dole Thailand to Australia and were purchased in arms length transactions by the importer from Dole Thailand. Therefore, export price was determined to be the price paid by the importer to the exporter less transport and other costs arising after exportation.

Normal value

The Commission is satisfied that like goods were sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by Dole Thailand. As such, Dole Thailand's normal value for FSI pineapple exported to Australia during the inquiry period was calculated under subsection 269TAC(1).

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(8).³⁰

Dumping margin

A dumping margin has been calculated for FSI pineapple exported by Dole Thailand over the inquiry period based upon a comparison of the of the weighted average export prices over the whole of the inquiry period (calculated on a quarterly basis) with the weighted average of corresponding normal values (calculated on a quarterly basis) over the whole of that period. The dumping margin calculated for Dole Thailand is 13.8 per cent.

²⁹ No. 17 of EPR 334

³⁰ Where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, adjustments are required for maintaining price comparability pursuant to subsection 269TAC(8). A full list of the adjustments can be found in the verification report.

8.4.4 Prime Products

Verification

Based on the low volume of Prime Product's exports of FSI pineapple relative to the total export volume during the inquiry period, the Commission elected not to conduct an on-site verification visit at Prime Product's premises.

Whilst an on-site verification visit was not conducted, the Commission analysed the data submitted by Prime Products and is satisfied that the data is reasonably accurate, relevant and complete. This data was used to calculate a dumping margin.

The Commission's verification report is available on the EPR.

Export price

The Commission considers that sufficient information is available to establish the export price for Prime Products under subsection 269TAB(1)(a). In particular, the Commission found that goods were exported by Prime Products to Australia and were purchased in arms length transactions by the importer from Prime Products. Therefore, the export price was determined to be the price paid by the importer to the exporter less transport and other costs arising after exportation.

Normal value

In accordance with subsection 269TAC(2)(a)(i), the Commission found that Prime Product's domestic sales of like goods in Thailand that would not be relevant for the purpose of determining a normal value under subsection 269TAC(1) because there was a low volume of sales in the OCOT.

The normal value was determined using a constructed method, as permitted under subsection 269TAC(2)(c).

As the Commissioner is satisfied that Prime Product's records are in accordance with generally accepting accounting principles in Thailand and reasonably reflect competitive market costs associated with the production or manufacture of like goods, the cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records. Similarly, SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records because the Commissioner is satisfied that those records reasonably reflect the administrative, general and selling costs associated with the sale of like goods.

As there were no sales in the OCOT for Prime Products, the amount of profit was worked out under subsection 45(3)(b) of the Regulation using the weighted average of the actual amount realised by other exporters or producers from the sale of like goods in the domestic market.

Net realisable value

Following the SEF, Prime Products³¹ questioned the Commission's ability to calculate exporters' costs on a NRV basis, particular if an exporter does not normally cost or keep its records in this manner.

Prime Products asserts that the Commission's determination of costs of production in accordance with a NRV is inconsistent with the mandatory requirements imposed on the Parliamentary Secretary, and violates the principle that costs be determined based on the exporter's records where those records are in accordance with generally accepted accounting principles and reasonably reflect competitive market costs.

The Commission outlines the following reasoning from REP 41:

The method of cost allocation recommended to Customs as appropriate is the net realisable value method (NRV), which allocates costs on the basis of the products final sales value less any separate costs of production to further process the joint products to their final stage of completion and an allowance for selling and distribution costs.

Customs also sought advice on the extent to which Thai GAAP or International GAAP placed constraints on the allocation methods employed by exporters where joint products were involved.

On the basis of the advice received, Customs is of the view that the key guidance provided by GAAP in respect of the allocation of joint costs is:

When the costs of conversion of each product are not separately identifiable, they are allocated between products on a rational and consistent basis.

The use of the word 'rational' infers reasonableness. However, as previously stated Customs is of the view that despite the guidance provided by GAAP, accounts may not reflect a sufficiently accurate allocation of costs between joint products, simply because the purpose of the accounts is not for use in anti-dumping investigations. This recognises that in a dumping investigation the accounts of a company will be used for a purpose other than that for which they were prepared.

Thai exporters' accounts were prepared in accordance with Thai GAAP, but the allocation methods used were quite varied.

Customs is of the view that consistency with Thai GAAP does not necessarily ensure the degree of accuracy required when allocating joint costs for the purposes of a dumping investigation.

Consistent with the findings of Investigation No. 41, for the purposes of these inquiries, the Commission considers that the NRV methodology is consistent with the Regulation because it allows for the accurate allocation of costs. This ensures that costs most reasonably reflect competitive market costs associated with the production or

³¹ No 24 of EPR 334

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manufacture of like goods, whilst relying on information from the exporters' records. In addition, more than one accounting methodology may conform to generally accepted accounting principles.

Further to its submission regarding NRV, Prime Products stated that the Commission had not provided sufficient information and reasoning for it to properly understand and respond to the Commission's determination of profit.

In particular, Prime Products questioned whether the profit applied in its constructed normal value was calculated:

- on the basis of cooperating exporter's domestic selling price compared to their actual costs or costs following a NRV methodology;
- based on the sale of all like goods on the domestic market or only like goods that were most like to the exported goods; and
- on an amount realised basis or based on OCOT sales only.

The Commission confirms that the profit used in Prime Products' constructed normal value was based:

- only on the weighted average of the actual amounts realised by other exporters;
- from the sale of all like goods on the domestic market; and
- following a NRV methodology.

As noted above in 8.4.1, the Commission has reviewed Kuiburi's profit calculation. The change in Kuiburi's profit calculation has impacted Prime Products' normal value and dumping margin, which has reduced from 3.1 per cent as stated in the SEF to -6.5 per cent.

Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsection 269TAC(9).³²

Dumping margin

A dumping margin has been calculated for FSI pineapple exported by Prime Products over the inquiry period based upon a comparison of the weighted average export prices over the whole of the inquiry period (calculated on a quarterly basis) with the weighted average of corresponding normal values (calculated on a quarterly basis) over the whole of that period. The dumping margin calculated for Prime Products is -6.5 per cent.

Given the negative dumping margin, the Commission considered whether to remove Prime Products from the relevant notice. However, the Commission notes that Prime Products is a relatively new exporter of FSI pineapple to Australia. As discussed on page 162 of the Manual, as part of continuation inquiries, the Commission has regard to a number of factors in assessing the likelihood of dumping continuing or recurring. Given that the measures have been in place for the entire time Prime Products has exported to Australia, it would be difficult to assess the likelihood of dumping recurring by Prime

³² A full list of the adjustments are available in the visit report.

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Products, if removed from the notice. In this instance, the Commission recommends not removing Prime Products from the notice. The Commission considers that the floor price duty method, where the floor price is set to Prime Products' normal value as recommended in chapter 10, will be effective in the circumstances because dumping duty will only be incurred by Prime Products where its actual export price is less than the ascertained normal value.

8.4.5 Vita Food

Verification

Based on the low volume of Vita Food's exports of FSI pineapple relative to the total export volume during the inquiry period, the Commission elected not to conduct an on-site verification visit at Vita Food's premises.

Treatment of Vita Food as an uncooperative exporter

At the time of publication of the SEF, the Commission considered Vita Food to be a cooperative exporter. However, the SEF also noted that Vita Food was unable to evidence the SG&A expense allocations used in its CTMS calculations to the Commission's satisfaction.

For the purposes of the SEF, the Commission replaced components of Vita Food's SG&A expenses using best available information.

Following the SEF, the Commission made further attempts to verify Vita Food's CTMS in relation to like goods. Vita Food was unable to adequately satisfy the Commission of the relevance, accuracy and completeness of its SG&A expenses and therefore CTMS data. Vita Food has since shut down its operations until later in the year and have made themselves unavailable to provide further information and respond to the Commission's attempts to verify its data.

Pursuant to subsection 269T(1) and the Direction, the Commissioner is satisfied that Vita Food did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable. The Commissioner also considers that Vita Food has impeded the investigation. As a result, for the purposes of these inquiries, Vita Food is considered to be an uncooperative exporter.

Given this, in accordance with section 269TACAB, the export price and normal value for Vita food must be calculated having regard to all relevant information in accordance with subsections 269TAB(3) and 269TAC(6) respectively. The Commission considers that the unverified data provided by Vita Food is unreliable in accordance with subsections 269TAB(4) and 269TAC(7). The Commission considers that the most relevant information for Vita Food is the export price and normal value calculated for uncooperative and all other exporters from Thailand, as outlined below. As a result, Vita Food will effectively attract the uncooperative and all other rate.

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8.4.6 Uncooperative and all other exporters - Thailand

The Commission is treating all exporters of the goods from Thailand other than Kuiburi, SAICO, Prime Products, and Dole Thailand as uncooperative exporters as defined in subsection 269T(1).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all relevant information. Specifically, the Commission has used the lowest weighted average export price of those established for cooperating exporters from Thailand in the inquiry period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the highest of the weighted average normal values established for the cooperating exporters from Thailand in the inquiry period.

The Commission has calculated a dumping margin for uncooperative and all other exporters of FSI pineapple from Thailand of 28.6 per cent.

9 NON-INJURIOUS PRICE

9.1 Introduction

The NIP is defined in section 269TACA as “the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry” caused by the dumped goods the subject of a notice under section 269TG.

The calculation of the NIP is relevant for the purposes of the lesser duty rule as set out under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).³³ The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must (unless certain circumstances apply) also have regard to the desirability of fixing a lesser amount of duty.

9.2 USP and NIP

The Commission generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in the Australian market unaffected by dumping. This price is referred to as the USP.

The Commission’s preferred approach to establishing an USP observes the following hierarchy:

- Australian industry selling prices at a time unaffected by dumping;
- constructed Australian industry prices – based on the Australian industry’s CTMS plus a profit (if appropriate); or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission 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. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

9.2.1 Submissions regarding USP and NIP

Golden Circle

Prior to the SEF, Golden Circle³⁴ submitted that the USP should be constructed using its CTMS and an amount for profit.

For the purposes of the SEF, the Commission calculated an USP using Golden Circle’s CTMS and, on the basis that Golden Circle’s FSI pineapple sales were unprofitable, an amount for profit in relation to consumer pineapple for the inquiry period.

³³ Subsection 8(5B) of the Dumping Duty Act.

³⁴ No 15 of EPR 334

Kuiburi

Following the SEF, Kuiburi³⁵ submitted that the amount of profit from consumer pineapple related to a different market and was inappropriate for use in an USP for FSI pineapple.

The Commission refers to the Manual, which states, in the context of determining a reasonable amount for profit, a profit rate from the Australian industry's similar category of goods may be used, provided that the data for the similar category of goods is verified. The Commission considers the consumer pineapple category to be similar category of goods as FSI pineapple. Information in relation to FSI pineapple was verified. Furthermore, the Commission considers that the return made by Golden Circle in consumer pineapple was reasonable. As a result, the Commission has not altered its approach to establishing the USP following the SEF.

9.2.2 Commission's assessment

As dumping was found during the previous continuation inquiries, and occurred throughout the inquiry period for these continuation inquiries, the Commission is unable to use contemporaneous Australian industry selling prices at a time unaffected by dumping.

Therefore, the Commission has calculated an USP by constructing an Australian industry price based on its CTMS and a profit.

Post-exportation cost data gathered from importers during the inquiry form the basis of deductions from the USP to calculate the NIP.

The Commission has found that the NIP is higher than the normal values for all exports of the goods from the Philippines and Thailand. In such cases, the Parliamentary Secretary is not required to have regard to the lesser duty rule³⁶ and accordingly, the Commissioner proposes to recommend that dumping duties be based on the full margins of dumping.

³⁵ No 23 of EPR 334

³⁶ Subsection 8(5B)(b) of the Dumping Duty Act.

10 FORM OF MEASURES

10.1 Current form of measures

The form of measures currently applicable to FSI pineapple from the Philippines and Thailand is the combination fixed and variable duty method, which consists of:

- an amount equal to the interim dumping duty rate per kilogram; plus
- the amount, if any, by which the actual export price is lower than the ascertained export price.

For the purposes of the SEF, with the exception of Prime Products, the Commission recommended leaving the form of measures unchanged.

10.2 Submissions regarding form of measures

Following the SEF, the Commission received submissions regarding the form of measures from SIACO³⁷ and KFC³⁸. Both exporters maintain that prices of FSI pineapple increased significantly during the inquiry period and that the fixed and variable duty method would be punitive if prices were to fall substantially in the future.

SAICO stated that its pineapple prices reached an all-time high of 12.18 THB per kg in November of 2015 (during the inquiry period) and suggested that as the prices of fresh pineapple (which constitute a major portion of the cost of production of FSI pineapple) decrease, the export prices of FSI pineapple will also decrease. SAICO predict that by December 2017, fresh pineapple will decrease to 8.50 THB per kg. SAICO submit that this will have impacts on downstream users.

10.3 Commissioner's assessment

While the Commission accepts that FSI pineapple prices are extrinsically linked to fresh pineapple prices, and that as supply improves the market prices of fresh pineapple may fall, the Commission cannot accurately predict future pineapple prices, given the unpredictable nature of the pineapple market. The Commission adds that predictions of future pineapple prices by industry experts in the industry are varied.

While medium and long term supply and pricing is difficult to predict, various sources suggest that the high Thailand pineapple prices of recent years is expected to continue into the foreseeable future.

A 17 June 2016 market update by global food buyer and distributor Abbot Blackstone recommended to customers:

"If you need pineapple, or will need before the end of the year, buy now." And added: "The situation in Thailand is quickly getting worse: Raw material prices have come up very close to last year's high peak, with the realization that this year there will not be a "peak season" due to El Niño. Only 3000 tons of fruit per day are

³⁷ No 22 of EPR 334

³⁸ No 25 of EPR 334

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coming into the canneries, and since April the temperature in plantations has been consistently over 40° Centigrade, thus burning the fruit, a situation made worse by the lack of rain. This has reduced both the quantity and the quality of the raw material, and is also going to affect the outlook for the coming winter crop”.

This is supported by an article from Agra-net dated 16 May 2016 entitled “*Early optimism for Thai pineapple now dashed*”. The article examines pricing trends with the following observations:

“Both raw material and finished product prices have rebounded slightly, following months of decline, The fruit price in Prachuab was around THB9.50-10.00 (27-28 US cents) per kilo just before the Songkran holidays in mid-April but is back to THB11.20-11.70/kg this week. Fruit from the northern provinces are already being traded at THB12.20-12.50/kg”.

At approximately 12.00 THB per KG, these prices are currently higher than the average prices of the inquiry period and there appears to be reasonable expectation that prices will not fall in the short and medium term by any significant amount. In the event that they do, after a period of 12 months, exporters will be entitled to apply for a review. In the interim, any overpayment of duty by importers is able to be refunded under the duty assessment system.

The Commission remains satisfied that the combination of fixed and variable duty method is satisfactory form of measure in this instance, for all exporters except Prime Products. As discussed in section 8.4.4, the Commission considers that the appropriate form of measure in relation to Prime Products’ exports is the floor price duty method. Given that these recommendations are consistent with the current form of measures, the Commissioner proposes to leave the form of measures unchanged.

11 RECOMMENDATION

On the basis of the reasons contained in this report, and in accordance with subsection 269ZHF(2), the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to FSI Pineapple exported to Australia from the Philippines and Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

As such, the Commissioner recommends that the Parliamentary Secretary take steps, in accordance with subsection 269ZHG(1)(b), to secure the continuation of the anti-dumping measures relating to FSI pineapple exported to Australia from Thailand from the expiry date of 17 October 2016.

The Commissioner also recommends that the Parliamentary Secretary take steps, in accordance with subsection 269ZHG(1)(b), to secure the continuation of the anti-dumping measures relating to FSI pineapple exported to Australia from the Philippines from the expiry date of 13 November 2016

The Commissioner recommends the Parliamentary Secretary be satisfied:

- in accordance with subsection 269TAAD(1), certain sales of like goods were sold in Thailand by Kuiburi, SAICO and Prime Products, in sales that are arms length transactions in substantial quantities during an extended period for home consumption in Thailand at a price less than the cost of such goods and it is unlikely that the sellers of the goods were able to recover the cost of such goods within a reasonable period;
- for exports of FSI pineapple exported to Australia from Thailand by Kuiburi, SAICO, Dole Thailand and Prime Products, that sufficient information has been furnished to enable the export price to be determined under subsection 269TAB(1)(a);
- that sufficient information has been furnished to enable the normal value of FSI pineapple exported to Australia from Thailand by Dole Thailand to be ascertained under subsection 269TAC(1);
- in accordance with subsection 269TAC(2)(a)(i), that the normal value of FSI pineapple exported to Australia from Thailand by Kuiburi, SAICO and Prime Products cannot be ascertained under subsection 269TAC(1) because of an absence or low volume of sales of like goods in Thailand that would be relevant for the purpose of determining a price under subsection 269TAC(1);
- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of FSI pineapple exported to Australia from Thailand by Vita Food and all exporters other than Kuiburi, SAICO, Dole Thailand and Prime Products of Thailand to be determined under subsection 269TAB(1);
- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of FSI pineapple exported to Australia from the Philippines to be determined under subsection 269TAB(1);

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- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of FSI pineapple exported to Australia from Vita Food and all exporters from Thailand (other than Kuiburi, SAICO, Dole Thailand and Prime Products) to be determined under preceding subsections of 269TAC; and
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of FSI pineapple exported to Australia from the Philippines to be determined under preceding subsections of 269TAC.

The Commissioner recommends that the Parliamentary Secretary determine:

- in accordance with subsection 269ZHG(4)(a)(iii), that after 17 October 2016 the dumping duty notice in relation to FSI Pineapple exported from Thailand have effect in relation to all exporters from Thailand as if different variable factors, as set out in **Confidential Attachment 10**, had been fixed relevant to the determination of duty;
- in accordance with subsection 269ZHG(4)(a)(iii), that after 13 November 2016 the dumping duty notice in relation to FSI pineapple from the Philippines have effect in relation to all exporters from the Philippines as if different variable factors, as set out in **Confidential Attachment 10**, had been fixed relevant to the determination of duty;
- in accordance with subsection 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, that the amounts for the cost of production or manufacture of FSI pineapple by Kuiburi, SAICO, Dole Thailand and Prime Products in Thailand and the administrative, selling and general costs associated with the sale of those goods are as set out in each exporter's records;
- being satisfied that subsection 269TAB(1)(a) applies, that the export price of FSI pineapple exported to Australia from Thailand by Kuiburi, SAICO, Dole Thailand and Prime Products is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in **Confidential Attachments 4-7**;
- in accordance with subsection 269TAC(1), being satisfied that like goods are sold in the ordinary course of trade for home consumption in Thailand in sales that are arms length transactions by Dole Thailand, that the normal value of FSI pineapple exported to Australia from Thailand by Dole Thailand is the price paid or payable for like goods as set out in **Confidential Attachment 6**;
- in accordance with subsection 269TAC(2)(c), that the normal value of FSI pineapple exported by Kuiburi, SAICO and Prime Products is the sum of:
 - the cost of production or manufacture of those goods as set out in **Confidential Attachments 4, 5 and 7**; and
 - on the assumption that those goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the Philippines, the administrative, selling and general costs associated with the sale and the profit

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on that sale as set out in **Confidential Attachment 4, 5 and 7**, as adjusted in accordance with subsection 269TAC(9), as set out in chapter 8 of this report, to ensure that the normal value of the goods so ascertained is properly comparable to with the export price of the goods;

- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of FSI pineapple exported from Vita Food and all other exporters from Thailand (other than Kuiburi, SAICO, Dole Thailand and Prime Products) are set out in **Confidential Attachments 8**;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of FSI pineapple exported from the Philippines is set out in **Confidential Attachments 3**;
- in accordance with subsection 269TAC(6), that the normal value of FSI pineapple exported from Vita Food and all other exporters from Thailand (other than Kuiburi, SAICO, Dole Thailand and Prime Products) are set out in **Confidential Attachment 8**;
- in accordance with subsection 269TAC(6), that the normal value of FSI pineapple exported from the Philippines is as set out in **Confidential Attachment 3**; and
- having applied subsection 269TACB(2)(a) and in accordance with subsection 269TACB(1) that the dumping margins in respect of the goods is the difference between the weighted average export prices of the goods over the inquiry period and the weighted average of corresponding normal values over that period as set out in chapter 8.

The Commissioner recommends that the Parliamentary Secretary directs:

- in accordance with subsection 269TAC(8), that, as the normal value of FSI pineapple exported to Australia from Thailand by Dole Thailand is the price paid or payable for like goods sold in Thailand, the normal value be adjusted for specified differences between like goods sold in Thailand and export sales, as set out in section 8.4.3.

The Commissioner recommends that the Parliamentary Secretary declare:

- in accordance with subsections 269ZHG(1)(b) and 269ZHG(5) that the dumping duty notice as it applies to FSI pineapple from Thailand continue in force after 17 October 2016; and
- in accordance with subsections 269ZHG(1)(b) and 269ZHG(5) that the dumping duty notice as it applies to FSI pineapple from the Philippines continue in force after 13 November 2016.

The Commissioner recommends the Parliamentary Secretary be of the opinion that:

- in accordance with subsection 269TAB(4), information provided by Vita Food is unreliable and therefore disregard that information; and
- in accordance with subsection 269TAC(7), information provided by Vita Food is unreliable and therefore disregard that information.

12 APPENDICES AND ATTACHMENTS

Confidential Attachment 1	Market Analysis
Confidential Attachment 2	Injury Analysis
Confidential Attachment 3	Philippines All Exporters Dumping Margin
Confidential Attachment 4	Kuiburi Dumping Margin
Confidential Attachment 5	SAICO Dumping Margin
Confidential Attachment 6	Dole Thailand Dumping Margin
Confidential Attachment 7	Prime Products Dumping Margin
Confidential Attachment 8	Thailand All Other Dumping Margin
Confidential Attachment 9	USP and NIP calculations
Confidential Attachment 10	Variable Factors Summary