

PUBLIC RECORD



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

**Anti-Dumping  
Commission**

---

*CUSTOMS ACT 1901 - PART XV B*

**ANTI-DUMPING COMMISSION REPORT  
NO. 478**

**REVIEW OF ANTI-DUMPING MEASURES APPLYING TO  
CONSUMER PINEAPPLE  
EXPORTED TO AUSTRALIA FROM THE KINGDOM OF  
THAILAND**

January 2019

## CONTENTS

<b>ABBREVIATIONS .....</b>	<b>3</b>
<b>SUMMARY .....</b>	<b>5</b>
1.1 INTRODUCTION.....	5
1.2 LEGISLATIVE BACKGROUND.....	5
1.3 FINDINGS.....	6
1.4 RECOMMENDATIONS.....	6
<b>2 BACKGROUND.....</b>	<b>7</b>
2.1 INITIATION.....	7
2.2 EXTENSION OF THE REVIEW TO INCLUDE ALL EXPORTERS GENERALLY.....	7
2.3 THE CURRENT ANTI-DUMPING MEASURES.....	8
2.4 HISTORY OF THE ANTI-DUMPING MEASURES.....	8
2.5 REVIEW PROCESS.....	10
2.6 EXTENSIONS GRANTED.....	12
2.7 SUBMISSIONS RECEIVED IN RELATION TO THE INITIATION OF THIS REVIEW.....	12
2.8 SUBMISSIONS RECEIVED IN RESPONSE TO THE SEF.....	12
<b>3 THE GOODS AND LIKE GOODS.....</b>	<b>13</b>
3.1 THE GOODS SUBJECT TO THE ANTI-DUMPING MEASURES.....	13
3.2 TARIFF CLASSIFICATION.....	13
3.3 LIKE GOODS.....	13
<b>4 VARIABLE FACTORS.....</b>	<b>14</b>
4.1 FINDING.....	14
4.2 EXPORTER COOPERATION.....	14
4.3 SUBMISSION RECEIVED IN RELATION TO THE REVIEW OF VARIABLE FACTORS.....	15
4.4 EXPORTER VERIFICATION.....	15
4.5 IMPORTER QUESTIONNAIRES AND VERIFICATION.....	16
4.6 EXPORT PRICE.....	16
4.7 NORMAL VALUE.....	19
4.8 ADJUSTMENTS TO THE NORMAL VALUES.....	23
4.9 DUMPING MARGIN.....	23
<b>5 NON-INJURIOUS PRICE AND FORM OF MEASURES.....</b>	<b>24</b>
5.1 ASSESSMENT OF THE NIP.....	24
5.1 FORM OF MEASURES.....	24
<b>6 FINDINGS AND RECOMMENDATIONS.....</b>	<b>26</b>
6.1 FINDINGS.....	26
6.2 RECOMMENDATIONS.....	26
<b>APPENDICES AND ATTACHMENTS .....</b>	<b>29</b>
<b>APPENDIX A - CONSIDERATION OF APPROPRIATE THIRD COUNTRY.....</b>	<b>30</b>

## ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the Applicant	Prime Products Industry Co.,Ltd.
the then Assistant Minister	the then Assistant Minister for Science, Jobs and Innovation
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
consumer pineapple	Pineapple fruit - Consumer
CTMS	cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Dumping Duty Regulation	<i>Customs Tariff (Anti-Dumping) Regulation 2013</i>
EPR	electronic public record
FSI pineapple	Pineapple fruit – Food services and industrial
GCL	Golden Circle Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
IDD	interim dumping duty
KFC	Kuiburi Fruit Canning Company Limited
KFCup	Kuiburi Fruit Cup Company Limited
The Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
OCOT	ordinary course of trade
the then Parliamentary Secretary	the then Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
PPI	Prime Products Industry Co.,Ltd.
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 195A	<i>International Trade Remedies Branch Report No. 195A</i>
REP 333	<i>Anti-Dumping Commission Report No. 333</i>
REP 397	<i>Anti-Dumping Commission Report No. 397</i>
REQ	exporter questionnaire response
review period	1 October 2016 to 30 September 2017
SAICO	Siam Agro-Food Industry Public Company Ltd
SEF	statement of essential facts
SFP	Siam Food Products Public Co.,Ltd.
SG&A	selling, general and administrative
SKM	SK Marketing

## PUBLIC RECORD

Thailand	the Kingdom of Thailand
US	the United States of America
USP	unsuppressed selling price
TPL	Tipco Pineapple Co.,Ltd.
TFP	Tipco Food Products Public Co.,Ltd.
TPC	Thai Pineapple Canning Industry Corp Ltd

## SUMMARY

### 1.1 Introduction

This report sets out the Commissioner of the Anti-Dumping Commission's (the Commissioner) recommendations to the Minister for Industry, Science and Technology (the Minister)<sup>1</sup> in relation to a review of the anti-dumping measures (in the form of a dumping duty notice) applying to certain pineapple fruit - consumer (referred to in this report as consumer pineapple or the goods) exported to Australia from the Kingdom of Thailand (Thailand).

This review was initiated on 18 June 2018, following an application by Prime Products Industry Co.,Ltd. (PPI). PPI considered it appropriate to review the anti-dumping measures because one or more of the variable factors relevant to the taking of the anti-dumping measures had changed. The variable factors that PPI claimed have allegedly changed are the export price and normal value.

Although the application for this review was made by PPI, the change in circumstances upon which the application was predicated was found to be common to all exporters from Thailand. As such, the Commissioner recommended to the then Assistant Minister for Science, Jobs and Innovation (the then Assistant Minister)<sup>2</sup> that the review be extended to all exporters of the goods from Thailand generally. This was to ensure that any changes to the measures are applied consistently across all exporters. The then Assistant Minister accepted this recommendation.

### 1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)<sup>3</sup> sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for review of anti-dumping measures. The division, among other matters:

- sets out the circumstances in which applications for the review of anti-dumping measures can be brought;
- sets out the procedure to be followed by the Commissioner in dealing with such applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate.

The Commissioner must, after conducting a review of the variable factors relevant to the taking of the anti-dumping measures, give the Minister a report recommending that:

- (i) the dumping duty notice remain unaltered; or

---

<sup>1</sup> For the purposes of this review, the Minister is the Minister for Industry, Science and Technology.

<sup>2</sup> At the time of initiation the relevant minister was the Assistant Minister for Jobs, Science and Innovation.

<sup>3</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

- (ii) the dumping duty notice have effect in relation to a particular exporter, or to exporters generally, as if different variable factors had been ascertained.

### **1.3 Findings**

The Commissioner has examined exports of consumer pineapple from Thailand for the review period (1 April 2017 to 31 March 2018) and has found that, in relation to all exporters, the variable factors have changed. Specifically:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the non-injurious price (NIP) has changed.

### **1.4 Recommendations**

The Commissioner recommends to the Minister that the dumping duty notice in respect of consumer pineapple exported to Australia from Thailand have effect as if different variable factors had been ascertained in relation to all exporters generally.

## 2 BACKGROUND

### 2.1 Initiation

On 7 May 2018, PPI lodged an application for a review of the anti-dumping measures applying to certain consumer pineapple exported to Australia from Thailand insofar as they relate to exports by PPI.

Following consideration of the application, the Commissioner decided not to reject the application and on 18 June 2018, initiated a variable factors<sup>4</sup> review of the anti-dumping measures on the goods exported to Australia from Thailand.

Notification of the initiation of the review was made in Anti-Dumping Notice (ADN) No. 2018/101, which was published on the Anti-Dumping Commission (the Commission) website<sup>5</sup> on 18 June 2018.

*Consideration Report No. 478* was also published on the Commission's website detailing the Commissioner's reasons for not rejecting the application.

For the purposes of assessing the variable factors in this review, a period of 1 April 2017 to 31 March 2018 (the review period) was examined.

### 2.2 Extension of the review to include all exporters generally

Subsection 269ZC(4)(b) provides that if the Commissioner decides not to reject an application for a review of anti-dumping measures, the Commissioner may, if he considers that the review applied for should be extended to include any additional matter, recommend to the relevant Minister that the review be extended accordingly.

As the change in circumstances upon which the application for review of anti-dumping measures was based (being changes to the variable factors arising from changes to a significant cost input, being raw pineapple) is common to all Thai manufacturers of consumer pineapple, the Commissioner considered that it would be appropriate to ensure that any changes to the anti-dumping measures are applied consistently across all exporters of consumer pineapple from Thailand generally. Based on the Commissioner's recommendation, prior to initiation of the review, the then Assistant Minister requested the Commissioner to extend the review to all exporters generally.

On 18 June 2018, the Commissioner initiated a review of the anti-dumping measures in respect of consumer pineapple exported from Thailand by all exporters. The review is limited to examining whether the variable factors, relevant to the taking of the

---

<sup>4</sup> It is noted that the application also included an application for a revocation review, however this was rejected by the Commissioner as outlined in *Consideration Report No. 478* which is available at [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 003 on the electronic public record (EPR) for Review 478. Accordingly this review does not examine whether the measures are no longer warranted.

<sup>5</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 003 on the EPR for Review 478.

anti-dumping measures as they affect the goods exported from Thailand by all exporters, have changed. Notification of the initiation of the review was made in ADN No. 2018/101.

### **2.3 The current anti-dumping measures**

Exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC) are not subject to measures.

Kuiburi Fruit Canning Co.,Ltd (KFC) and Kuiburi Fruit Cup Co.,Ltd (KFCup), as a joint exporter, is subject to a 'floor price'. A variable rate of interim dumping duty (IDD) is payable only where KFC and KFCup's actual export price is below the ascertained export price.

All other exporters of consumer pineapple from Thailand are subject to an 'All other exporters' rate of IDD. This includes a fixed (confidential) amount of IDD per kilogram and a variable component of IDD where the actual export price is below the ascertained export price.

### **2.4 History of the anti-dumping measures**

Since 2001, the Commission has conducted numerous investigations, reviews and inquiries relating to consumer pineapple. Full details can be found on the case pages on the Commission's website. The matters most relevant to this review are outlined below:

#### **2.4.1 Original investigation**

On 8 January 2001, Golden Circle Limited (GCL), representing the Australian industry, lodged an application requesting that the then Minister for Justice and Customs publish dumping duty notices in respect of certain pineapple products exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* and published dumping duty notices for consumer pineapple and pineapple fruit - food service and industrial (FSI pineapple) exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co.

#### **2.4.2 First continuation inquiry**

On 26 February 2006, following consideration of applications by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos. 110 and 111* to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

On 4 April 2008, the Federal Court set aside the then Minister for Justice and Customs' decision to continue measures in relation to exports of consumer pineapple from TPC.

#### **2.4.3 Second continuation inquiry**

On 15 April 2011, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in



relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos. 171c and 171d*, to continue the anti-dumping measures for a further five years from 18 October 2011.

#### **2.4.4 Accelerated Review 191**

On 8 June 2012, KFC lodged an application for an accelerated review of the measures applicable to consumer pineapple exported from Thailand. The outcome of the accelerated review was published in Australian Customs Dumping Notice No. 2012/49 and the *Commonwealth Gazette* on 10 October 2012. The reasons of the findings of the accelerated review are contained in *International Trade Remedies Report No. 191*.

As a result of this accelerated review, no IDD was to be payable unless KFC's export price was below the relevant normal value (this is referred to as a floor price).

#### **2.4.5 Review 195**

On 19 December 2012, following an application by Siam Agro-Food Industry Public Company Ltd (SAICO), a review of measures was initiated in relation to consumer pineapple from Thailand. On 29 January 2013 the review was extended to all exporters from Thailand. The findings were published in *International Trade Remedies Branch Report No. 195A* on 26 July 2013.

#### **2.4.6 Third continuation inquiry**

On 9 March 2016, following consideration of an application by GCL, a continuation inquiry was initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Parliamentary Secretary accepted the recommendations contained in *Anti-Dumping Commission Final Report No. 333 (REP 333)*, to continue the anti-dumping measures for a further five years from 17 October 2016 (with the exception of consumer pineapple exported by TPC) and alter the variable factors in relation to exporters generally.

#### **2.4.7 Accelerated Review 397**

On 16 February 2017, KFCup lodged an application for an accelerated review of the dumping measures applying to consumer pineapple exported to Australia from Thailand. The outcome of the review was published in ADN No. 2017/69 on 29 May 2017.

The Commissioner found that KFCup was not eligible to apply for an accelerated review because the circumstances in which an accelerated review could be sought under subsection 269ZE(1) had not been satisfied.

In particular, the Commission found that a declaration that applied to KFCup had already been made under subsection 269ZG(3)(b) because the Commission determined that KFCup and KFC are joint exporters of the goods and a declaration has already been made under subsection 269ZG(3)(b) in respect of KFC. The reasons for the findings of the accelerated review are contained in *Final Report No. 397 (REP 397)*.

As a result of this accelerated review KFCup remained subject to the “All other exporters” rate in relation to Thailand; and the Commission established that KFC and KFCup are to be regarded as a joint exporter.

#### **2.4.8 Review 453**

On 24 November 2017, following consideration of an application by PPI, the Commissioner initiated a review of measures in relation to the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by PPI. The outcome of the review was published in ADN No. 2018/70 on 23 May 2018.

The Commissioner found that PPI had not cooperated with the review and that the dumping duty notice was to remain unaltered. PPI hence remained subject to the ‘All other exporters’ rate in relation to Thailand.

#### **2.4.9 Review 455**

On 24 November 2017, following consideration of a joint application by KFC and KFCup, the Commissioner initiated a review of measures in relation to the anti-dumping measures applying to consumer pineapple exported to Australia from Thailand by KFC and KFCup. The outcome of the review was published in ADN No. 2018/122 on 7 September 2018.

The Commissioner found that the variable factors had changed, and that the dumping duty notice applying to the goods exported to Australia from Thailand was to be take to have effect as if different variable factors had been fixed in respect of KFC and KFCup. Specifically, as a result of Review No. 455 (REP 455), KFC and KFCup are subject to a floor price only.

### **2.5 Review process**

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally. Accordingly, the affected party may apply for,<sup>6</sup> or the Minister may request that the Commissioner conduct,<sup>7</sup> a review of those measures if one or more of the variable factors has changed.

The Minister may initiate a review at any time. However, a review application must not be lodged earlier than 12 months after publication of the dumping duty notice or countervailing duty notice or the notice(s) declaring the outcome of the last review of the dumping or countervailing duty notice.<sup>8</sup>

---

<sup>6</sup> Subsection 269ZA(1).

<sup>7</sup> Subsection 269ZA(3).

<sup>8</sup> Subsection 269ZA(2)(a).

## PUBLIC RECORD

If an application for a review of anti-dumping measures is received and not rejected, the Commissioner has up to 155 days, or such longer time as is allowed, to conduct a review and report to the Minister on the review of the anti-dumping measures.<sup>9</sup>

During the course of a review, the Commissioner will examine whether the variable factors have changed.

Variable factors in this particular review are a reference<sup>10</sup> to:

- the ascertained export price;
- the ascertained normal value; and
- the ascertained NIP.

For this review, in making recommendations in his final report to the Minister, the Commissioner must have regard to:<sup>11</sup>

- the application for review of the anti-dumping measures;
- any submission relating generally to the review of the anti-dumping measures to which the Commissioner has had regard for the purpose of formulating the SEF;
- the SEF; and
- any submission made in response to the SEF that is received by the Commissioner within 20 days of it being placed on the public record.

The Commissioner may also have regard to any other matter considered to be relevant to the review.<sup>12</sup>

At the conclusion of the review, the Commissioner must provide a final report to the Minister. In his final report he must make a recommendation to the Minister that the dumping duty notice:<sup>13</sup>

- remains unaltered; or
- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Minister must make a declaration within 30 days of receiving the report or, if the Minister considers there are special circumstances that prevent the declaration being made within that period, such longer period as the Minister considers appropriate<sup>14</sup> that the dumping duty notice:<sup>15</sup>

- remain unaltered; or

---

<sup>9</sup> Subsection 269ZDA(1).

<sup>10</sup> Subsection 269T(4E).

<sup>11</sup> Subsection 269ZDA(3)(a).

<sup>12</sup> Subsection 269ZDA(3)(b).

<sup>13</sup> Subsection 269ZDA(1)(a).

<sup>14</sup> Subsection 269ZDB(1A).

<sup>15</sup> Subsection 269ZDB(1)(a).

- have effect, in relation to a particular exporter or to exporters generally, as if different variable factors had been fixed relevant to the determination of duty.

The Minister must give notice of the decision.<sup>16</sup>

## 2.6 Extensions granted

On 27 September 2018, a delegate of the Commissioner notified interested parties of an extension of 25 days to the SEF and final report for this review.<sup>17</sup> On 20 December 2018, a delegate of the Commissioner notified interested parties of an extension of 32 days to the final report.<sup>18</sup>

The final report and recommendations must now be provided to the Minister on or before 21 January 2019 or such longer period as may be allowed.

## 2.7 Submissions received in relation to the initiation of this review

Following the initiation of the review, the Commission received a submission from SAICO.<sup>19</sup>

In this submission, SAICO asserted that its exports are exempt from the measures and therefore it is not subject to the review.

On 31 August 2018, the Commission responded to SAICO's submission by letter. Subsequent to the Commission's letter, SAICO requested a meeting with the Commission. A meeting was held between representatives of SAICO and the Commission on 11 September 2018. A file note of that meeting, including a copy of the letter sent to SAICO by the Commission, is available on the Commission's website.<sup>20</sup>

This document provides a detailed response to SAICO's assertion that its exports are exempt from the measures under review. In summary, the Commission outlined its view that SAICO is subject to the measures and reinvited SAICO to participate in the review by completing an exporter questionnaire by 21 September 2018.

SAICO did not submit an exporter questionnaire by this due date.

## 2.8 Submissions received in response to the SEF

No submissions were received in response to the SEF.

---

<sup>16</sup> Subsection 269ZDB(1).

<sup>17</sup> ADN No. 2018/153 refers.

<sup>18</sup> ADN No. 2018/199 refers.

<sup>19</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 007 on the EPR for Review 478

<sup>20</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 013 on the EPR for Review 478

### 3 THE GOODS AND LIKE GOODS

#### 3.1 The goods subject to the anti-dumping measures

The goods the subject to the anti-dumping measures in relation to Thailand are:

*Pineapple prepared or preserved in containers not exceeding one litre.*

Glacé and/or dehydrated pineapple are excluded from the measures.

#### 3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff	Statistical code	Description
2008.20.00	26	Pineapples – Canned, in containers not exceeding one litre
2008.20.00	28	Pineapples – Other

#### 3.3 Like goods

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”.*

The definition of like goods is relevant in the context of this review in determining the variable factors. The Commission’s framework for assessing like goods is outlined in Chapter 2 of the Commission’s *Dumping and Subsidy Manual* (the Manual).<sup>21</sup>

---

<sup>21</sup> Available at [www.adcommission.gov.au](http://www.adcommission.gov.au)

## 4 VARIABLE FACTORS

### 4.1 Finding

The Commissioner finds that the variable factors (being the export price, the normal value and the NIP) relevant to the determination of dumping duty payable under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act) have changed.

The Commissioner recommends to the Minister that the dumping duty notice have effect as if different variable factors had been ascertained.

### 4.2 Exporter cooperation

Subsection 269T(1) provides that, in relation to a review of a dumping duty notice, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the review and the exporter was not an 'uncooperative exporter'. Upon initiation of this review, the Commission contacted all known exporters of consumer pineapple during the review period from Thailand, requesting their cooperation through the completion of an exporter questionnaire. The Commission received a response to the exporter questionnaire (REQ) from the following exporters:

- KFC and KFCup (as a joint exporter);
- PPI;
- Siam Food Products Public Co.,Ltd. (SFP); and
- Tipco Pineapple Co., Ltd.(TPL), containing cost and sales information for parent company Tipco Food Products Public Co.,Ltd. (TFP).

KFC and KFCup, PPI, SFP and TPL are considered to be cooperative exporters. The Commission has calculated exporter-specific variable factors for these cooperative exporters.

Subsection 269T(1) provides that, in relation to a review of a dumping duty notice, 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 review within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The Commissioner considers those exporters that did not provide a response to the exporter questionnaire, including SAICO, to be uncooperative exporters, because they did not give the Commissioner information considered to be relevant to the review (a completed REQ). Given that these exporters have not provided relevant information to the review via a REQ, the Commission used subsection 269TAB(3) to determine export prices and subsection 269TAC(6) to determine normal values for those exporters, having regard to all relevant information, as required by subsection 269TACAB(1).

The Commission notes that TFP is no longer an exporter of consumer pineapple to Australia. Should TFP export consumer pineapple to Australia in the future it will be subject to the 'uncooperative and all other exporters' rate.

### 4.3 Submission received in relation to the review of variable factors

The Commission received a submission from GCL in relation to the variable factors.<sup>22</sup>

GCL noted that it had examined the REQs for the cooperating exporters and recommended that the Commission determine normal values for:

- SFP and KFC under subsection 269TAC(1) on the basis of domestic sales in the ordinary course of trade (OCOT); and
- PPI, TPL and KFCup under subsection 269TAC(2)(c) on a constructed basis and in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

In relation to the amount of profit to be applied when constructing normal values, GCL suggested that profit be determined for:

- PPI and TPL under subsection 45(3)(b) which permits the profit to be determined in accordance with that achieved by other exporters on sales of like goods in the domestic market in Thailand; and
- KFCup by reference to the profit achieved by KFC.

The Commission's determinations of normal value for each exporter, and the reasons for those determinations, are detailed in section 4.8 below.

### 4.4 Exporter verification

#### 4.4.1 Determination of exporter

The term 'exporter' is not defined in the Act, however the Commission will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped. Based on the information provided, the Commission is satisfied that the cooperative exporters are manufacturers and exporters of the goods under consideration.

Based on the information provided and assessed during verification activities conducted by the Commission (including source documents such as commercial invoices, packing lists, production records, bills of lading and proof of payment documentation), and having regard to the respective roles of the various parties involved in the export of the goods to Australia, the Commission is satisfied that the cooperative exporters are the manufacturers and exporters of the goods under consideration.

---

<sup>22</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 014 on the EPR for Review 478

#### 4.4.2 Verification of exporter questionnaires

The Commission conducted an on-site verification of the information provided in PPI's REQ.

The Commission had conducted an on-site verification of the information provided in KFC and KFCup's REQ for REP 455. Two quarters of the information verified for REP 455 was relevant to the review period for its review. The Commission requested and verified two additional quarters of information from KFC and KFCup.

The other cooperative exporters' data was benchmarked against the two verified exporters, KFC and KFCup (as a joint exporter) and PPI. On the basis that the data of the other cooperative exporters was consistent with the verified data, the Commission elected not to undertake further verification visits.

#### 4.5 Importer questionnaires and verification

The Commission performed a search of the Australian Border Force (ABF) import database and identified importers of consumer pineapple from Thailand during the review period.

The Commission contacted major importers requesting that they provide a response to an importer questionnaire. The Commission received and reviewed importer information from:

- Grocery Holdings Pty Ltd;
- SK Marketing Pty Ltd (SKM); and
- SPC Ardmona Limited.

In relation to the goods exported to Australia by these entities, the Commission had regard to the relevant commercial documentation (including invoices, bills of lading, Customs entry documents, importation records and proof of payment documents).

The Commission considers that these entities were the beneficial owners of the goods at the time of importation, and therefore were the importers of the goods.

The Commission has verified the data from SKM. The importer verification report is available on the public record.<sup>23</sup> The Commission has had regard to the verified importer data in ascertaining the variable factors for cooperative exporters.

#### 4.6 Export Price

##### 4.6.1 KFC and KFCup

Neither KFC nor KFCup exported consumer pineapple to Australia during the review period.

---

<sup>23</sup> [www.adcommission.gov.au](http://www.adcommission.gov.au) – refer to item 011 on the electronic public record (EPR) for Review 478



KFC was founded in 1992, as a private company limited by shares. The company manufactures and exports fruit products in cans, mainly pineapple. In 2010 KFC invested in a production line for plastic cups. KFC set up a subsidiary for the plastic cup division being KFCup. KFCup is wholly controlled by KFC.

The Commission considers that KFC and KFCup jointly manufacture and export the goods under consideration.<sup>24</sup> Consequently, the Commission has calculated variable factors jointly for KFC and KFCup, and recommends that KFC and KFCup's exports be subject to the same anti-dumping measures.

In REP 455, the Commission considered KFC and KFCup (as a joint exporter) to be a low volume exporter under subsection 269TAB(2A), and therefore determined KFC and KFCup's export price under subsection 269TAB(2B)(b), having regard to the price paid or payable for like goods sold by KFC and KFCup in arms length transactions for exportation from Thailand to a third country determined to be an appropriate third country.

The Commission verified the additional two quarters of financial information submitted by KFC and KFCup and determined that neither KFC nor KFCup exported consumer pineapple to Australia during the additional quarters, and that the pattern of export sales was consistent with the findings of REP 455.<sup>25</sup>

On that basis, it is appropriate to calculate the export price for this review using the same methodology as was adopted in REP 455. That is, to consider KFC and KFCup (as a joint exporter) to be a low volume exporter under subsection 269TAB(2A), and therefore determine KFC and KFCup's export price under subsection 269TAB(2B)(b), having regard to the price paid or payable for like goods sold by KFC and KFCup in arms length transactions for exportation from Thailand to a third country determined to be an appropriate third country.

The Commission has calculated export prices for KFC and KFCup (as a joint exporter) under subsection 269TAB(2B)(b) using the invoiced price for KFC and KFCup's sales to its US customers, less transport and other costs arising after exportation.

**Non-confidential Appendix A** to this report contains the Commission's considerations in making the determination of the US as an appropriate third country. Non-confidential Appendix A was prepared in relation to REP 455 but is relevant to this review given that the review period for this review and the review period examined for REP 455 overlap for a period of 6 months, and because there has not any significant change in circumstances (e.g. pattern in volume of trade or nature of trade) which would warrant a departure from the selection of the US as an appropriate third country.

#### 4.6.2 PPI

PPI manufactured and exported consumer pineapple to Australia during the review period.

---

<sup>24</sup> Consistent with the findings in REP 397 and REP 455.

<sup>25</sup> REP 455 is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Based on information obtained as part of the exporter verification visit, as well as information obtained from importers, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchase of the goods by the importer were arms length transactions.

The export prices for PPI have therefore been calculated under subsection 269TAB(1)(a) using the invoiced price, less transport and other costs arising after exportation.

#### 4.6.3 SFP

SFP manufactured and exported consumer pineapple to Australia during the review period.

Based on information obtained as part of the exporter verification activities conducted by the Commission, as well as information obtained from importers, the Commission considers that:

- the goods have been exported to Australia otherwise than by the importer;
- the goods have been purchased by the importer from the exporter; and
- the purchase of the goods by the importer were arms length transactions.

The export prices for SFP have therefore been calculated under subsection 269TAB(1)(a) using the invoiced price, less transport and other costs arising after exportation.

#### 4.6.4 TPL

TPL did not export consumer pineapple to Australia during the review period. The Commission is satisfied that TPL is a new exporter that has not previously exported the goods to Australia.

As TPL did not export during the review period, the Commission is unable to establish an export price under subsection 269TAB(1) for the purposes of this review.

Specifically, there is insufficient information to determine the export price of the goods using:

- the price paid or payable by the importer;<sup>26</sup>
- the price in Australia less prescribed deductions (deductive export price);<sup>27</sup> or
- the price having regard to all the circumstances of the exportation.<sup>28</sup>

For a Division 5 review, the export price may be determined in accordance with subsection 269TAB(2B), if the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia, having regard to (i) previous volumes of exports by that exporter, (ii)

---

<sup>26</sup> Subsection 269TAB(1)(a).

<sup>27</sup> Subsection 269TAB(1)(b).

<sup>28</sup> Subsection 269TAB(1)(c).

patterns of trade for like goods, and (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

The Commission is satisfied that TPL is a new exporter and does not have previous volumes of exports to Australia. Therefore, taking into account the factors listed in 269TAB(2A)(b), TPL has not been considered a 'low volume' exporter in accordance with subsection 269TAB(2A) for the purposes of this review.

The Commission has therefore determined TPL's export price under subsection 269TAB(3), having regard to all relevant information.

The Commission has determined the ascertained export price for TPL to be the same amount as that determined to be TPL's ascertained normal value.

#### **4.6.5 Export price - uncooperative exporters**

Export prices for uncooperative exporters were established pursuant to subsection 269TACAB(1)(d) which directs that export prices for uncooperative exporters be worked out under subsection 269TAB(3) having regard to all relevant information. The export price is based on the lowest weighted average export price of the cooperative exporters who exported the goods to Australia during the review period.

### **4.7 Normal value**

#### **4.7.1 Applicable legislation**

Under subsection 269TAC(1), the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the OCOT for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Subsection 269TAC(2)(a)(i) provides that the normal value of the goods exported to Australia cannot be ascertained under subsection 269TAC(1), where the Minister is satisfied:

*... of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1)...*

None of the cooperating exporters sold sufficient volumes of like goods on the domestic market. However, subsection 269TAC(1) provides that, where an exporter has an absence or low volume of sales of like goods in the domestic market, normal values can be determined using OCOT sales made by other sellers in the country of export. TFP, who supplied a REQ to the review, made OCOT domestic sales of like goods during the review period.

The Commission gave consideration to the suitability of using TFP's domestic OCOT sales to determine normal values for the cooperating exporters.

However, the Commission was constrained in doing so due to the fact that there was only one seller of like goods during the review period, TFP. In keeping with the principles

outlined in the Manual, the Commission considered that the sales information of TFP could not be used for the purposes of determining normal values under subsection 269TAC(1) without breaching TFP's confidentiality, other than in relation to TFP's related entity TPL.

If the normal value cannot be ascertained under subsection 269TAC(1), the Commission may calculate the normal value:

- as required by subsections 269TAC(5A) and 269TAC(5B), under subsection 269TAC(2)(c), in accordance with sections 43, 44 and 45 of the Regulation<sup>29</sup>; or
- under subsection 269TAC(2)(d), as the price paid or payable for like goods sold in the OCOT in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country.

#### 4.7.2 Normal value – KFC and KFCup

KFC and KFCup sold insufficient volumes of like goods domestically during the review period.

The Commission is satisfied that because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1).

The Commission calculated normal values of the goods exported by KFC and KFCup under subsection 269TAC(2)(c) as:

- the cost to make the goods exported to the US in accordance with subsection 43(2) of the Regulation;
- the SG&A expenses associated with the sale on the assumption that the goods, instead of being exported, were sold domestically in the OCOT, in accordance with subsection 44(2) of the Regulation; and
- an amount of profit based on the net profit realised by KFC and KFCup during the review period pursuant to subsection 45(3)(c) of the Regulation.

In accordance with subsection 45(4) of the Regulation, if an amount of profit is calculated under subsection 45(3)(c) of the Regulation, this amount must not exceed the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export. To satisfy this requirement, the profit calculated for KFC and KFCup under subsection 45(3)(c) of the Regulation was compared to profits achieved by other exporters during the most recently completed reviews and inquiries, where exporters from Thailand cooperated. The most contemporaneous information available is from REP 195A. Relying on information from this review, the Commission is satisfied that the profit calculated under subsection 45(3)(c) of the Regulation for KFC and KFCup does not exceed the profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export.

---

<sup>29</sup> As required by subsections 269TAC(5A) and 269TAC(5B).

#### 4.7.3 Normal value – PPI

PPI did not sell like goods on its domestic market during the review period.

The Commission is satisfied that because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1).

The Commission therefore calculated normal values of the goods exported by PPI under subsection 269TAC(2)(c) as:

- the cost to make the goods exported to Australia, accounting for the net realisable value of different cuts of pineapple, in accordance with subsection 43(2) of the Regulation;
- the SG&A amounts associated with the sale on the assumption that the goods, instead of being exported, were sold domestically (at delivered terms), in accordance with subsection 44(3)(a) of the Regulation<sup>30</sup>; and
- profit calculated under subsection 45(3)(c) of the Regulation, using any other reasonable method and having regard to all relevant information.<sup>31</sup> Specifically, PPI's profit has been calculated using PPI's profit achieved on domestic sales of FSI pineapple. This profit figure has been adjusted downwards pursuant with subsection 45(4) of the Regulation.

In accordance with subsection 45(4) of the Regulation, if an amount of profit is calculated under subsection 45(3)(c) of the Regulation, this amount must not exceed the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export. To satisfy this requirement, the profit calculated for PPI under subsection 45(3)(c) of the Regulation was compared to profits achieved by other exporters during the most recently completed reviews and inquiries, where exporters from Thailand cooperated.

The most contemporaneous information available is from Review 195A (REP 195A).<sup>32</sup> Relying on information from this review, the Commission found that the profit amount calculated under subsection 45(3)(c) of the Regulation exceeded the weighted average profit achieved by the exporters examined in REP 195A. The Commission therefore disregarded the amount by which the amount worked out exceeded the weighted average profit achieved by the exporters examined in REP 195A.

The Commission's profit calculations are contained at **Confidential Attachment 1**.

#### 4.7.4 Normal value – SFP

SFP did not sell like goods on its domestic market during the review period.

---

<sup>30</sup> Subsection 44(2) of the Regulation was not available due to there being no sales of like goods.

<sup>31</sup> Subsection 45(2) of the Regulation was not available due to there being no sales of like goods.

<sup>32</sup> REP 195A is available at [www.adcommission.gov.au](http://www.adcommission.gov.au).

## PUBLIC RECORD

The Commission is satisfied that because of the absence of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a normal value, the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1).

The Commission assessed both the cost and sales information submitted by SFP in its REQ for the purposes of determining the appropriateness of determining a normal value pursuant to subsection 269TAC(2)(c) or subsection 269TAC(2)(d).

The Commission first considered whether SFP's normal value should be constructed under subsection 269TAC(2)(c) in accordance with sections 43, 44 and 45 of the Regulation.

In terms of costs, the Commission noted that SFP's REQ contained cost to make information relating to the goods exported to Australia which satisfies the requirements of subsection 43(2) of the Regulation.

However, due to the absence of domestic sales of like goods, and goods which could be considered as being in the same general category as consumer pineapple, the Commission did not have relevant information for the purposes of determining SFP's SG&A expenses under subsections 44(2) or 44(3)(a) and profit under subsections 45(2) or 45(3)(a) of the Regulation.

Similarly, given the lack of domestic sales of like goods by other exporters examined during the course of the review, the Commission did not consider that sufficient information was available to determine SG&A expenses under subsection 44(3)(b) or (c) and profit under subsection 45(3)(b) or (c) of the Regulation in this instance.

Given these limitations in constructing a normal value, the Commission turned its attention to the appropriateness of determining the normal value based on third country sales under subsection 269TAC(2)(d).

SFP sold consumer pineapple into a range of export destinations. Subsection 269TAC(5C) provides that, without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of subsection 269TAC(2)(d), the Minister may have regard to the following matters:

- (a) whether the volume of trade from the country of export referred to in subsection 269TAC(2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and
- (b) whether the nature of the trade in goods concerned between the country of export referred to in subsection 269TAC(2)(d) is similar to the nature of trade between the country of export and Australia.

The Commission analysed the third country sales information submitted by SFP for the purposes of the review. The Commission determined the US to be an appropriate country, since the sales to the US included goods manufactured to specifications similar to the goods exported to Australia and were sold to a common customer in sufficient volumes.

The Commission therefore assessed the US sales by SFP as being suitable for determining the normal value under subsection 269TAC(2)(d).

#### **4.7.5 Normal value – TPL**

TPL did not sell consumer pineapple on its domestic market during the review period.

TPL's related entity TFP did however sell consumer pineapple domestically during the review period. TFP's domestic sales were found to be sold in the OCOT and were arms length transactions. The Commission therefore determined TPL's normal value under subsection 269TAC(1) as the price paid for like goods sold in the OCOT for home consumption in the country of export by other sellers of like goods, specifically, TFP.

#### **4.7.6 Normal value - Uncooperative and all other exporters**

The normal value for uncooperative and all other exporters has been determined under subsection 269TACAB(1)(e) being the normal value worked out under subsection 269TAC(6) having regard to all relevant information. Specifically, the normal value is based on the highest weighted average normal value of the cooperative exporters during the review period.

### **4.8 Adjustments to the normal values**

Where applicable, adjustments to the normal value for each cooperative exporter were made under subsections 269TAC(9) to ensure comparability with the corresponding export price. Adjustments to normal value were made for differences in:

- packaging;
- inland transport;
- handling and other expenses;
- credit;
- commission; and
- export incentive.<sup>33</sup>

### **4.9 Dumping margin**

The Commission has calculated dumping margins based on the revised variable factors. For this review the dumping margins for the review period has been calculated by comparing the weighted average export price of the goods during the review period, with the weighted average of corresponding normal values in accordance with subsections 269TACB(2)(a) and 269TACB(4).

---

<sup>33</sup> The reasons for making adjustments is explained in each of the exporter verification reports available at EPR for Review 478 item nos. 015-018.

PUBLIC RECORD

The dumping margin for each exporter is listed below:

Exporter	Dumping margin
KFC and KFCup	-8.1%
PPI	-11.7%
SFP	2.6%
TPL	0%
Uncooperative and all other exporters	16.8%

A summary of the export price, normal value and dumping margin calculations is at **Confidential Attachment 2**.



## 5 NON-INJURIOUS PRICE AND FORM OF MEASURES

### 5.1 Assessment of the NIP

Although PPI did not allege that there has been a change in the NIP as part of its application, subsection 269T(4E) defines that, in relation to a review of a dumping duty notice, the variable factors are the export price, normal value and NIP.

Under subsection 8(5B) of the Dumping Duty Act, if the NIP is less than the normal value, the Minister must have regard to the desirability of specifying a method such that the sum of the export price and the IDD payable does not exceed the NIP (the 'lesser duty rule'). Subsection 269TACA(a) identifies the NIP of the goods exported to Australia as the minimum price necessary to remove the injury caused by the dumping.

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 unsuppressed selling price (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.

In REP 333, as the Commission was unable to use contemporaneous Australian industry selling prices at a time unaffected by dumping, the Commission calculated a USP by constructing an Australian industry price based on its CTMS and a profit.

GCL provided updated data for the purposes of this review, relevant to ascertaining the USP and NIP. The Commission has ascertained an updated USP and recalculated the NIP using this contemporary data, by constructing an Australian industry price based on its CTMS and a profit.

The Commission found that the NIP is higher than the normal value of the goods for all exporters from Thailand and therefore the lesser duty rule does not apply.

A summary of the NIP calculation is at **Confidential Attachment 3**.

### 5.1 Form of measures

The current anti-dumping measures are in the form of:

## PUBLIC RECORD

- a floor price for KFC and KFCup; and
- the combination fixed and variable duty method for all other exporters subject to the measures.

As a result of this review, and as summarised in the table below, the Commissioner recommends to the Minister that:

- SFP and the category of 'Uncooperative and all other exporters' be subject to a combination of fixed and variable duty. For these exporters, this includes a fixed (confidential) amount of IDD per kilogram and a variable component of IDD where the actual export price is below the ascertained export price; and
- for KFC and KFCup, PPI and TPL:
  - given that the export prices are higher than the respective normal values (i.e. the goods are not dumped), IDD be calculated using a floor price.
  - IDD will only be payable on exports by these exporters, if the actual export price is below the ascertained normal value, which is a specified (confidential) amount per kilogram.

<b>Exporter</b>	<b>Form of measures</b>
KFC and KFCup	Floor price
PPI	Floor price
SFP	Combination fixed and variable duty method
TPL	Floor price
Uncooperative and all other exporters	Combination fixed and variable duty method

## 6 FINDINGS AND RECOMMENDATIONS

### 6.1 Findings

The Commissioner finds that, in relation to exports of consumer pineapple to Australia from Thailand for all exporters generally during the review period:

- the ascertained export price has changed;
- the ascertained normal value has changed; and
- the ascertained NIP has changed.

### 6.2 Recommendations

The Commissioner recommends that the Minister consider this report, and if agreed, **declare**, by notice published on the Commission's website, that:

- in accordance with subsection 269ZDB(1)(a)(iii), with effect from the date of signature of the determination, and for the purposes of the Act and the Dumping Duty Act, the dumping duty notice in respect of exports of consumer pineapple exported to Australia from Thailand is taken to have effect in relation to all exporters as though different variable factors, as set out in **Confidential Attachment 2**, had been fixed relevant to the determination of duty.

The Commissioner recommends that the Minister be **satisfied** that:

- in accordance with subsection 269TAB(3), sufficient information has not been furnished, and is not available, to enable the export price of consumer pineapple exported to Australia from Thailand by 'uncooperative and all other' exporters, and in relation to goods exported to Australia from Thailand by TPL, to be ascertained under subsections 269TAB(1)(a), (b), or (c) or subsection 269TAB(2B);
- in accordance with subsection 269TAC(2)(a)(i), the normal value of consumer pineapple exported to Australia from Thailand by KFC and KFCup (as a joint exporter), SFP and PPI cannot be ascertained under subsection 269TAC(1) because there is an absence, or low volume, of sales of like goods in the market of the country of exporter;
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of consumer pineapple exported to Australia from Thailand to be ascertained under the preceding provisions of subsection 269TAC for 'uncooperative and all other' exporters; and
- in accordance with subsection 269TACB(4), the goods exported to Australia by SFP and 'uncooperative and all other' exporters during the review are taken to have been dumped and the dumping margin in respect of those exporters is the difference between the weighted average of export prices over the review period and the weighted average of corresponding normal values over the review period as calculated in accordance with subsection 269TACB(2).

## PUBLIC RECORD

The Commissioner recommends that the Minister **deem** that:

- in accordance with subsection 269TAB(2C), as there is an absence of exports of consumer pineapple to Australia by KFC and KFCup, such exports have occurred for the purpose of applying subsections 269TAB(2A) and (2B).

The Commissioner recommends that the Minister **direct** that:

- subsection 269TAC(2)(d) applies in respect of SFP.

The Commissioner recommends that the Minister **determine** that:

- in accordance with subsection 269TAB(1)(a), the export prices of consumer pineapple exported to Australia from Thailand by PPI and SFP, are as set out in **Confidential Attachment 2**;
- in accordance with subsection 269TAB(2A)(b), there is insufficient information to ascertain the export price of the goods exported to Australia from Thailand by KFC and KFCup, due to an absence of exports of consumer pineapple to Australia by KFC and KFCup;
- in accordance with subsection 269TAB(2B)(b), the export price of consumer pineapple exported from Thailand to Australia by KFC and KFCup is, as set out in **Confidential Attachment 2**, the price paid or payable for like goods sold by KFC and KFCup in arm's length transactions for exportation from Thailand to a third country (the US) determined to be an appropriate third country, as set out in **Non-confidential Appendix A**;
- in accordance with subsection 269TAB(3), the export prices for TPL and 'uncooperative and all other' exporters, are as set out in **Confidential Attachment 2**, having regard to all relevant information;
- in accordance with subsection 269TAC(1), the normal value of consumer pineapple exported to Australia from Thailand by TPL is, as set out in **Confidential Attachment 2**, the price paid for like goods sold in the OCOT for home consumption in the country of export by other sellers of like goods;
- in accordance with subsection 269TAC(2)(c), the normal value of consumer pineapple exported to Australia from Thailand by PPI and, KFC and KFCup is the sum of each exporter's:
  - cost of production of the goods in Thailand; and
  - on the assumption that the goods, instead of being exported, had been sold for home consumption in the OCOT in Thailand, the selling, general and administrative costs associated with such a sale and the profit on that sale,

as adjusted in accordance with subsection 269TAC(9) to ensure that the normal value so ascertained is properly comparable with the export price, as set out in **Confidential Attachment 2**;

- in accordance with subsection 269TAC(2)(d), the normal value of consumer pineapple exported to Australia from Thailand by SFP is the price paid or payable for like goods sold by SFP in arms length transactions for exportation from Thailand to a third country (the US), as set out in **Confidential Attachment 2**;

## PUBLIC RECORD

- in accordance with subsection 269TAC(6), the normal values of consumer pineapple exported from Thailand to Australia by 'uncooperative and other' exporters', are as set out in **Confidential Attachment 2**, having regard to all relevant information;
- in accordance with subsection 8(5) of the Dumping Duty Act, the IDD payable in respect of the goods exported to Australia from Thailand by PPI, TPL and KFC and KFCup (as a joint exporter) is an amount which will be worked out in accordance with the floor price duty method pursuant to subsections 5(4) and 5(5) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (Dumping Duty Regulation) with effect from the date of signature of the determination;
- in accordance with subsection 8(5) of the Dumping Duty Act, the IDD payable in respect of the goods exported to Australia from Thailand by SFP and 'uncooperative and all other exporters' is an amount which will be worked out in accordance with the combination fixed and variable duty method pursuant to subsections 5(2) and 5(3) of the Dumping Duty Regulation with effect from the date of signature of the determination.

## APPENDICES AND ATTACHMENTS

<b>Confidential Attachment 1</b>	Subsection 45(4) profit analysis
<b>Confidential Attachment 2</b>	Summary of the variable factors and dumping margins
<b>Confidential Attachment 3</b>	NIP calculations
<b>Non-confidential Appendix A</b>	Consideration of appropriate third country

## APPENDIX A - CONSIDERATION OF APPROPRIATE THIRD COUNTRY

### Consideration of appropriate third country

#### Summary

For the reasons set out below, the Commission considers that the US is an appropriate third country for the purpose of determining an export price under subsection 269TAB(2B)(b).

#### Legislation

In determining whether a third country is an appropriate third country (in accordance with subsection 269TAB(2F)), the Commission may have regard to the following matters:

- (a) whether the volume of trade from Thailand to the third country is similar to the volume of trade from Thailand to Australia;<sup>34</sup>
- (b) whether the nature of the trade in goods concerned between Thailand and the third country is similar to the nature of trade between Thailand and Australia.<sup>35</sup>

Subsection 269TAB(2F) does not limit the matters that may be taken into account in determining whether a third country is an appropriate third country. Therefore, the Commission also had regard to other matters, being:

- consumer purchasing power,
- domestic production of like goods,
- similarities of products sold to third countries and products that may be sold to Australia; and
- import tariffs and anti-dumping measures.

The Commission also sought KFC and KFCup's opinion of which countries they considered would be the most suitable as part of Review No. 455. KFC and KFCup recommended the US and Germany.<sup>36</sup>

#### Selection methodology

The Commission followed a two-step process to select an appropriate third country.

After reviewing KFC and KFCup's application for Review No. 455<sup>37</sup> the Commission found that KFC sold like goods to 40 countries during the relevant review period and that KFCup sold like goods to one country, being the US.

---

<sup>34</sup> Subsection 269TAB(2F)(a).

<sup>35</sup> Subsection 269TAB(2F)(b).

<sup>36</sup> Email dated 23 November 2017.

<sup>37</sup> KFC and KFCup provided EQR spreadsheets in their application for Review No. 455.

As the first step the Commission selected three countries, and requested KFC to provide total sales listings for each of these countries for the review period. As the second step in the process, the Commission analysed the new data provided to determine, out of the three countries, the most appropriate third country.

## **Step 1**

### **Volume of trade**

Under subsection 269TAB(2F)(a), the Commission may have regard to the volume of trade from Thailand to the third country, and Thailand to Australia. Subsection 269TAB(2F)(a) is not limited to a consideration of like goods, and since the Commission did not have reliable information concerning the volume of trade of consumer pineapple only, the Commission has based its analysis of all preserved pineapple products that fall under tariff code 2008.20.00. This tariff code also includes FSI pineapple and goods that are exempt from dumping duties in Australia, such as glacé and dehydrated pineapple.

The Commission compared the value of exports of preserved pineapple from Thailand to Australia and the countries listed at KFC's third country listing.<sup>38</sup> The Commission found that a number of KFC's export destinations (for the goods) had similar volume of trade as Australia at a macro level.

### **Consumer purchasing power**

The Commission consider that consumer purchasing power should be a factor in determining the appropriate third country because it is a determinant of how much consumers are prepared to pay for the goods. The Commission therefore matched Australia and the countries of similar level of trade as Australia to the Worldbank consumer purchasing power data 'Household final consumption expenditure per capita'.

The Commission found that a number of the countries on KFC's third country listing had similar volume of trade and similar consumer purchasing power as Australia.

### **Domestic production of like goods in the third country**

In Investigation No. 41, and in each of the following continuation inquiries and reviews, the Commission found that consumer pineapple produced by the Australian industry directly competes with imports in the Australian market. The Commission considers that competition between domestically produced goods and imported goods is relevant to determining whether the export price in a third country is a suitable proxy for the export price of goods exported to Australia. Therefore, the Commission considered whether there are any domestic manufacturers that produce and sell like goods in the third country domestic market.

---

<sup>38</sup> International Trade Centre (ITC) calculations based on The Customs Department of the Kingdom of Thailand sourced from ITC Trade Map website accessed at [www.trademap.org](http://www.trademap.org)



The Commission found that of the countries of similar consumer purchasing power as Australia the US was the only country that grows pineapple domestically.

### **Step 1 summary**

The Commission decided to seek detailed listings from KFC of KFC's sales to US, Canada and France during the review period for Review No. 455. It was found that France and Canada both had similar volume of trade and similar consumer purchasing power as Australia.

The Commission notes that, while the US has similar consumer purchasing power as Australia, the volume of total Thai exports of the goods to the US is much larger than the corresponding volume to Australia. However, the Commission included the US on the basis that the US is a pineapple growing country.

### **Step 2**

#### **Nature of trade**

In accordance with subsection 269TAB(2F)(b), the Commission has considered whether the nature of the trade in goods concerned between Thailand and the three selected third countries is similar to the nature of the trade between Thailand and Australia.

In comparing the nature of the trade, the Commission has considered the terms of trade, such as commercial trade terms including delivery and credit terms, and the level of trade.

The Commission has compared the terms of trade of KFC's transactions to the US, France and Canada during the review period to the terms of trade of KFC's sales of FSI pineapple to Australia during Continuation Inquiry 334.<sup>39</sup> The Commission found that KFC sold pineapple to these markets at various level of trade and that the terms of trade differed by individual customer, rather than by country.

The Commission also found that the level of trade of KFC's customers in Canada and the US is similar to the level of trade of the final customers in Australia during Continuation Inquiry 334. The Commission found that KFC had one customer only in France. This customer was not at the same level of trade as KFC's customers in Australia during Continuation Inquiry 334.

The Commission has no other information to indicate that the nature of the trade in goods between Thailand and the US and Canada respectively, and between Thailand and Australia, differs.

Therefore, the Commission considers that the nature of the trade in the goods exported from Thailand by KFC to the US and Canada respectively is similar to the nature of the trade from Thailand to Australia. The Commission considers that the nature of the trade in the goods exported from Thailand by KFC to France is not similar to the nature of the trade from Thailand to Australia.

---

<sup>39</sup> Subsection 269TAB(2F) is not limited to consideration of the goods.

### **Other matters taken into account**

In considering whether the US or Canada is the most appropriate third country for the purposes of determining an export price of the goods exported by KFC and KFCup, the Commission also had regard to the following matters:

- domestic production of like goods in the third country;
- similarities of products sold to third countries and products that may be sold to Australia;
- import tariffs and anti-dumping measures.

In having regard to each of the matters listed above, the Commission considered whether the relevant factors were sufficiently similar to conclude that the market conditions in the US and Canada are reasonably similar to the market conditions in Australia, and therefore, whether the export price of like goods sold by KFC and KFCup to the US or Canada would be a suitable proxy for the export price of the goods had KFC and KFCup exported the goods to Australia.

#### *Domestic production of like goods*

There are no growers or processors of pineapple in Canada due to unfavourable growing conditions. Pineapples grow in tropical and sub-tropical climates.

Until 20 years ago, Hawaii, in the US, supplied a large proportion of the world's canned pineapple. However, due to increasing labour costs and competition from Asian canneries the Hawaiian canneries later closed production. The large producers Dole and Del Monte, that formerly operated canneries in Hawaii, now own canneries in the Philippines that produce consumer pineapple. The pineapple plantations in Hawaii now supply fresh pineapple to the American market.<sup>40</sup> Canned pineapple is still processed in Puerto Rico, a territory of the US.

The Commission considers that the market structure for consumer pineapple in Canada is different to Australia, since Canada has no domestic industry for pineapple, fresh or processed.

The Commission further considers that the market structure for consumer pineapple in the US is similar to Australia in part, since pineapple is grown in the US and fresh American pineapple is sold in the US. However, the Commission notes that consumer pineapple canned in the US would make up but a small segment of the total US market for consumer pineapple.

#### *Similarity of products sold*

---

<sup>40</sup> Bartholomew et al: Hawaii Pineapple: The Rise and Fall of an Industry, HortScience October 2012

The Commission has found that KFC's exports of consumer pineapple to the US and Canada have similar product characteristics and specifications to the consumer pineapple that KFC and KFCup may sell to Australia in the future.

The Commission notes that KFCup did not sell to Canada during the review period. The Commission also notes that KFCup unsuccessfully applied for an accelerated review related to its exports of consumer pineapple in plastic cups in 2015, which indicates that KFCup intends to export consumer pineapple in plastic cups to Australia in the future.

Given the similarity of the characteristics and specifications of the consumer pineapple sold by KFC and KFCup to the US and Canada and the consumer pineapple that they may sell in the Australian market, and given that product characteristics and specifications are one determinant of price, the Commission considers that the export price of like goods sold by KFC and KFCup to the US would be a more suitable proxy for the export price of the goods had KFC and KFCup exported the goods to Australia.

#### *Import tariffs and anti-dumping measures*

Preserved pineapple products<sup>41</sup> exported to Canada from Thailand are subject to a zero per cent rate of duty. Canada does not impose anti-dumping measures on pineapple products.

Preserved pineapple products exported to the US from Thailand are subject to a rate of duty of 0.35 US cent per kg. The US does not impose anti-dumping measures on pineapple products.

Preserved pineapple products exported to Australia from Thailand are subject to a zero per cent rate of duty. Certain pineapple products, including the goods, are however subject to anti-dumping measures.

The Commission considers that neither the US nor Canada has a similar tariff rate to Australia.

#### **Step 2 summary**

In having regard to each of the matters listed above, the Commission considers that the US is an appropriate third country for the purpose of determining an export price under subsection 269TAB(2B)(b) because:

- the US has a domestic market for pineapple;
- the US purchased consumer pineapple from both KFC and KFCup during the review period; and
- KFC and KFCup considers the US to be an appropriate third country.

Accordingly, KFC and KFCup's sales to the US are a suitable country in determining the export price of the goods under subsection 269TAB(2B)(b).

---

<sup>41</sup> Goods classified to tariff subheading 2008.20.00

PUBLIC RECORD