



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

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R E P O R T

*CUSTOMS ACT 1901 - PART XVB*

**INTERNATIONAL TRADE REMEDIES BRANCH  
REPORT TO THE MINISTER NO.172c**

**REVIEW OF  
ANTI-DUMPING MEASURES**

**FOOD SERVICE AND INDUSTRIAL PINEAPPLE  
EXPORTED FROM  
THAILAND**

17 September 2011

**PUBLIC RECORD**

# PUBLIC RECORD

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## 1. SUMMARY AND RECOMMENDATIONS

This review is in response to an application by Golden Circle Limited (Golden Circle) seeking a review of the anti-dumping measures applying to food service and industrial (FSI) pineapple exported to Australia from the Kingdom of Thailand (Thailand). Exports of FSI pineapple by Malee Sampran Public Co (Malee) are not covered by this review as the measures do not apply to that company.

The Australian Customs and Border Protection Service (Customs and Border Protection) examined exports of FSI pineapple to Australia during the period 1 January 2010 to 31 December 2010 (the review period) to determine if the variable factors relevant to the taking of the anti-dumping measures had changed and whether grounds existed to revoke the measures.

This report sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of Customs and Border Protection Service is basing his recommendations to the Minister for Home Affairs (the Minister) for measures applicable to FSI pineapple from Thailand.

A separate report, REP 172d, has been issued for the review for consumer pineapple from Thailand.

### 1.1 Applicable law

Division 5 of Part XVB of the Act<sup>1</sup> enables affected parties to apply for the review of measures. The Division also empowers the Minister to initiate such a review. The Division, among other matters:

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

The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection (the delegate). After conducting a review of anti-dumping measures, the delegate must give the Minister a report containing recommendations<sup>2</sup>.

### 1.2 Recommendation

The delegate recommends to the Minister that the dumping duty notice have effect in relation to exporters generally as if different variable factors had been fixed.

The delegate recommends that the Minister sign the attached schedule (**confidential attachment 1**) and sign the attached public notice (**confidential attachment 2**) to declare that the dumping duty notice in respect of FSI

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

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

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pineapple from Thailand have effect in relation to exporters the subject of this review generally as if different variable factors had been ascertained.

## 1.3 Findings and conclusions

Based on all available information Customs and Border Protection has found that:

- the export price for FSI pineapple exported by Kuiburi Fruit Canning Co Ltd (KFC) has been established using the invoice price<sup>3</sup> paid by the Australian importers to KFC, less ocean freight (where appropriate);
- revised export prices for FSI pineapple for all other Thai exporters have been determined having regard to all relevant information<sup>4</sup>;
- the normal value for FSI pineapple exported by KFC has been determined using a constructed normal value<sup>5</sup> adjusted for comparison with the export price<sup>6</sup>;
- revised normal values for FSI pineapple for all other Thai exporters have been determined having regard to all relevant information<sup>7</sup>;
- FSI pineapple exported by KFC to Australia during the review period was dumped, with a margin of 2% to 7%%;
- FSI pineapple exported by all other exporters from Thailand to Australia during the review period was dumped with a dumping margin of 75% to 80%;
- the non-injurious price for FSI pineapple has been established by using Golden Circle's cost to make and sell during the review period plus the profit adjusted down achieved in 2009;
- there are grounds to be satisfied that had the measures not been taken, the Minister would now be entitled to take them.

Based on these findings, the delegate recommends to the Minister that the measures be varied for all exporters of FSI pineapple.

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<sup>3</sup> Ss 269TAB(1)(a).

<sup>4</sup> Ss 269TAB(3)

<sup>5</sup> Ss 269TAC(2)(c)

<sup>6</sup> Ss 269TAC(9)

<sup>7</sup> Ss 269TAC(6)

## 2. INTRODUCTION

### 2.1 Review process

If anti-dumping measures have been taken in respect of certain goods, an affected party may consider it appropriate to review those measures as they affect a particular exporter or exporters generally.

Accordingly the affected party may apply for, or the Minister may request that the Chief Executive Officer conduct, a review of those measures if one or more of the variable factors has changed. The Minister may initiate a review at any time, however, no other interested party may apply for a review to take place earlier than 12 months since the publication of the dumping duty notice or the publication of a notice declaring the outcome of the last review of the notice.

If an application for a review of anti-dumping measures is received and not rejected, Customs and Border Protection has up to 155 days, or such longer time as the Minister may allow, to inquire and report to the Minister on the review of the measures. Within 110 days of the initiation, or such longer time as the Minister may allow, Customs and Border Protection must place on the public record a statement of essential facts on which it proposes to base its recommendation to the Minister concerning the review of the measures.

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for a review of the anti-dumping measures;
- any submission relating generally to the review of the measures to which the delegate has had regard for the purpose of formulating the statement of essential facts;
- this statement of essential facts; and
- any submission made in response to this statement of essential facts that is received by Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the review.

In respect of a dumping duty notice, the delegate must provide a proposed recommendation to the Minister that the dumping duty notice<sup>8</sup>:

- remain unaltered; or
- be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
- have effect in relation to a particular exporter or to exporters generally as if different variable factors had been ascertained.

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

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<sup>8</sup> Ss 269ZDA(1)(a).

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## 2.2 Notification and participation

On 14 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for a review of the measures<sup>9</sup> applicable to consumer and FSI pineapple from Thailand and the Philippines.

Following consideration of the application the review of the measures commenced on 4 February 2011. The period of 1 January 2010 to 31 December 2010 was set as the review period.

Public notification of initiation of the review was made on 4 February 2011 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2011/05 was also published.

Following an extension from the Minister, Customs and Border Protection is required to place the statements of essential facts (SEFs) for measures relating to pineapple, consumer and FSI, exported from Thailand on the public record on or before 3 August 2011.

Customs and Border Protection placed the SEF for this review on the public record on 3 August 2011. Interested parties were invited to lodge submissions in response to the SEF not later than 23 August 2011.

This final report to the Minister which outlines Customs and Border Protection's findings and recommendations is due on or before 17 September 2011.

Customs and Border Protection visited Golden Circle and verified data relating to costs and sales for the reviews and inquiries. A non-confidential report of the visit was placed on the public record.

Only one exporter, KFC, co-operated with the review. Most major importers cooperated with the review.

## 2.3 Responses to the statement of essential facts

Customs and Border Protection received responses to the statement of essential facts (SEF) from Golden Circle, KFC and the Government of Thailand. Non-confidential versions of the submissions were placed on the public record.

## 2.4 History of anti-dumping measures

On 8 January 2001 Golden Circle lodged an application requesting that the Minister publish a dumping duty notice in respect of certain pineapple products (the goods) from Thailand.

The Minister accepted the recommendations in Trade Measures Report No 41 (REP 41) and published dumping duty notices for consumer pineapple exported to Australia from Thailand and FSI pineapple exported from Thailand with the exception of pineapple exported by Malee.

On 22 February 2006 following consideration of applications from Golden Circle, continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

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<sup>9</sup> Ss.269ZB.

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On 28 September 2006 the Minister accepted the recommendations contained within REP 110 and REP 111 to continue the anti-dumping measures applying to both consumer and FSI pineapple for another five years and fix different variable factors in relation to the anti-dumping measures. Following a decision of the Federal Court in April 2008 measures applying to exports of consumer pineapple from Thailand by the Thai Pineapple Canning Co (TPC) lapsed.

The measures have not been reviewed since the reviews in 2006. The current measures for Thailand are due to expire on 17 October 2011.

On 15 April 2011 following consideration of an application by Golden Circle an investigation was initiated into the alleged dumping of:

- consumer pineapple exported from the Republic of Indonesia (Indonesia), and exported from Thailand by TPC; and
- FSI pineapple exported from Indonesia.

SEF 173a for the investigation into FSI pineapple from Indonesia and SEF 173b for the investigation into consumer pineapple from Indonesia and Thailand by TPC were issued on 3 August 2011. The final reports to the Minister for the investigations are due by 17 September 2011.

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## 3. GOODS SUBJECT TO THE REVIEW

### 3.1 Findings

The Australian industry produces FSI pineapple that has characteristics closely resembling those of FSI pineapple manufactured in Thailand and exported to Australia and as such FSI pineapple produced by the Australian industry are like goods<sup>10</sup>.

### 3.2 The goods and like goods

The goods subject to measures (the goods) are:

- Pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple): and
- Pineapple prepared or preserved in containers exceeding one litre (food service & industrial pineapple).

Consumer pineapple and FSI pineapple are two separate goods.

#### 3.2.1 Tariff classification

The goods are classified to the following tariff classifications in Schedule 3 to the *Customs Tariff Act 1995*:

2008.20.00	Pineapples
2008.20.00/26	Canned, in containers not exceeding one litre
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

There is currently no general duty imposed on goods exported from Thailand in accordance with the Thailand-Australia free trade agreement.

Special safeguard measures on canned pineapple were imposed from the date of entry into force of the Thailand-Australia Free Trade Agreement, until 31 December 2008.

Section 16A of the Tariff Act specified the quantities of Thai safeguard goods that could be imported into Australia in a particular calendar year (between 2005 through to 2008) with a 'Free' rate of customs duty, provided that other requirements of the Thailand - Australia Free Trade Agreement were met. Any safeguard goods imported in excess of these quantities during that calendar year were dutiable at the full rate of customs duty, being 5%.

#### 3.2.2 Like goods

The issue of like goods was considered during the original investigation into pineapple FSI exported from Thailand in REP 41.

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<sup>10</sup> S.269T.

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In REP 41 for FSI pineapple Customs and Border Protection 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'.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes exceeding one litre (typically 3.0-3.2kg) which are sold into the FSI market.

### Physical Likeness

Golden Circle produces a range of pineapple products in the above container sizes for FSI pineapple.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices, crushed pineapple and pineapple pizza cuts. The products can be sold in containers in either syrup or natural juice.

Sales of FSI pineapple by the Australian industry and importers that met the description of the goods and like goods were verified by Customs and Border Protection during the review.

### Commercial Likeness

Prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the FSI market segment. This was confirmed by distributor catalogues displaying a mix of locally produced and imported goods.

### Functional Likeness

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

Customs and Border Protection collected information during the review that confirmed the locally produced product and imported product were substitutable for each other.

### Production Likeness

Verified information from industry and exporter visits during the review shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

Customs and Border Protection remains satisfied that there is an Australian industry producing like goods to the goods.

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## 3.3 Australian Industry

### 3.3.1 Findings

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

### 3.3.2 Manufacturing process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia<sup>11</sup>.

Golden Circle is the sole manufacturer of FSI pineapple in Australia, no other interested party has claimed during this review to be an Australian producer of FSI pineapple.

A verification visit was undertaken to Golden Circle during the review where the manufacturing process was observed and data was verified. A non-confidential version of the industry visit report is available on the public record.

Customs and Border Protection considers that at least one substantial process in the manufacture of FSI pineapple is carried out in Australia, and therefore FSI pineapple is manufactured in Australia.

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<sup>11</sup> Ss 269T(2) and 269T(3).

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## 4. MARKET

Customs and Border Protection used information from past investigations and information collected during the review in its examination of the Australian market for FSI pineapple.

Customs and Border Protection established the market for FSI pineapple during the review period using information from its import database and information supplied by the industry, importers, and the sole cooperating exporter.

Customs and Border Protection identified that some imports of FSI pineapple had been incorrectly classified and took account of those errors in establishing the market.

The FSI market comprises the food service and industrial sectors and the goods are typically supplied in 3.0 to 3.2 kg cans, although sometimes supplied in large aseptic plastic bags and drums.

The food service sector includes pizza outlets, quick service restaurants and institutions. The industrial sector includes customers that use the product as an ingredient for other processed foods including fruit salads, frozen pizzas, sauces, packaged meals, confectionery etc. FSI pineapple is primarily sold to wholesalers/distributors or end users, with customers being less concerned with brand and driven primarily by price.

The market conditions and determinants of demand for FSI pineapple are unchanged from the original investigation period with price being pivotal to customers purchasing decisions.

The majority of imports of FSI pineapple are principally sourced from Thailand, with smaller volumes from Indonesia and the Philippines. Import data shows that the volume of FSI pineapple imported from Thailand has increased in 2010.

FTA Food Solutions Pty Ltd (FTA Food) an importer of FSI pineapple from Thailand advised that it supplies to numerous customers in the FSI sector. FTA Food stated that the Australian market in the FSI sector was extremely competitive and was cost based driven.

FTA Food stated that it does not believe that prepared pineapple fruit is being dumped in the Australian market from Thailand. FTA Food believes that the Australian industry is unable to supply the Australian FSI market and concentrates on the consumer market. FTA Food only supplies to the FSI market.

Rivianna Foods Pty Ltd (Rivianna) an importer of FSI pineapple, stated that the Australian market in the food services sectors was extremely competitive and was cost based driven. Rivianna advised that the pineapple fruit market was relatively mature and stable, and it did not envisage much change in the total market size.

Juremont Pty Ltd (Juremont), an importer of FSI pineapple, advised it has been supplying FSI pineapple fruit over a long period. Juremont stated that FSI pineapple it imports has a strong brand position (like the Golden Circle product) based on a consistent high quality product.

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## 5. EXPORT PRICE AND NORMAL VALUE

### 5.1 Findings

- The export price for FSI pineapple exported by Kuiburi Fruit Canning Co Ltd (KFC) has been established using the invoice price<sup>12</sup> paid by the Australian importers to KFC, less ocean freight (where appropriate).
- The export price for FSI pineapple exported by all other Thai exporters has been determined having regard to all relevant information<sup>13</sup>;
- The normal value for FSI pineapple exported by KFC has been determined using a constructed normal value<sup>14</sup> adjusted for comparison with the export price<sup>15</sup>;
- The normal value for FSI pineapple for all other Thai exporters has been determined having regard to all relevant information<sup>16</sup>;
- FSI pineapple exported by KFC to Australia during the review period was dumped by a margin of 2% to 7%;
- FSI pineapple exported by all other exporters from Thailand to Australia during the review period was dumped with a dumping margin of 75% to 80%.

### 5.2 Importers

Customs and Border Protection examined data from its import database and identified approximately 40 importers of FSI pineapple from Thailand during this period. The major importers, comprising approximately 60% of the import volume from Thailand, fully co-operated providing verified information on imports and sales.

### 5.3 Australian Industry's claims

The Australian industry claimed that one or more of the variable factors relevant to the taking of anti-dumping measures have changed<sup>17</sup>.

The applicants claimed that the normal value for FSI pineapple exported from Thailand is now higher than during the original investigation.

The applicants also claimed that the price of FSI pineapple exported from Thailand is also higher when compared with the original investigation.

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<sup>12</sup> Ss 269TAB(1)(a)

<sup>13</sup> Ss 269TAB(3)

<sup>14</sup> Ss 269TAC(2)(c)

<sup>15</sup> Ss 269TAC(8)

<sup>16</sup> Ss 269TAC(6)

<sup>17</sup> Ss.269ZC(2)

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## 5.4 Exporters

Exporter questionnaires were sent to companies identified as suppliers of FSI pineapple from Thailand during the review period.

KFC provided a completed response to the questionnaire and the information was verified during a visit to KFC. A non-confidential copy of the verification report is available on the public record. KFC was one of the major exporters of FSI pineapple by volume from Thailand to Australia.

Customs and Border Protection received either no or deficient responses from other identified exporters.

## 5.5 Export price

The export price for FSI pineapple exported by KFC has been established using the invoice price paid by the Australian importers to KFC, less ocean freight (where appropriate)<sup>18</sup>.

Export prices have been calculated for each export transaction using the price between KFC and the Australian customers. The individual transactions have been used to determine a weighted average export price for all shipments exported during the review period.

For all other exporters Customs and Border Protection considered that sufficient information was not furnished to enable Customs and Border Protection to establish the export price using:

- the price paid or payable for the goods by the importer<sup>19</sup>;
- the price paid at which the goods were sold by the importer less prescribed deductions<sup>20</sup>; or
- the price determined having regard to all the circumstances of the exportation<sup>21</sup>.

Export prices for all other exporters have been determined having regard to all relevant information<sup>22</sup>, using information from importers and the Customs and Border Protection import database.

Export price calculations are at **Confidential Attachment 3**.

## 5.6 Normal value

KFC does not sell like goods for home consumption in Thailand. Customs and Border Protection did not receive cooperation from other Thai exporters and does not have verified information on other sellers of like goods in Thailand.

Because of the absence of sales of like goods normal values for KFC cannot be established under subsection 269TAC(1). 'Constructed' normal values for KFC have been determined under paragraph 269TAC(2)(c).

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<sup>18</sup> Ss. 269TAB(1)(a)

<sup>19</sup> Ss. 269TAB(1)(a)

<sup>20</sup> Ss. 269TAB(1)(b)

<sup>21</sup> Ss. 269TAB(1)(c)

<sup>22</sup> Ss. 269TAB(3)

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Verified quarterly production costs from KFC for each pineapple product exported to Australia in the review period have been used to determine the cost of production. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses has been used to determine SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

Adjustments were made for inland transport, handling and other expenses and commission<sup>23</sup>.

### 5.6.1 Profit

KFC submits that no profit should be included if a construction of domestic selling prices was to be used to establish normal values. It claimed that packaged pineapple could not be sold profitably in Thailand and it sought to demonstrate this in two ways.

KFC found a 567 gram can of Dole brand sliced pineapple in a supermarket that KFC stated caters for the expatriate market in Thailand. Following adjustments to the retail can price, KFC estimated that its selling price of an A10 size can would be below the cost to make and sell the product. KFC did not provide evidence to support its estimate of the supermarket or distributor margins in Thailand.

KFC calculated the weighted average price of the pineapple 'meat' in an A10 size can of pineapple using the drained weight drained. It then compared this with the price of fresh pineapple meat and said that this demonstrated that canned pineapple could not be sold at a profit in Thailand when fresh fruit was available at significantly lower prices. KFC did not provide evidence of the cost of pineapple.

KFC submitted that sufficient information does not exist of the existence of a domestic market in Thailand for FSI pineapple and that profits from 2005 have no relevance for the 2010 situation.

In responding to the SEF, Golden Circle raised the following points:

- information is available of a domestic market for consumer and FSI pineapple in Thailand as evidenced by the previous review of measures in 2006;
- normal values should reflect sales of canned pineapple at profitable levels, based on profit levels in earlier continuation and review inquiries of 2006;
- inclusion of a profit in KFCs normal value would result in KFC exports being dumped; and
- to exclude a level of profit require Golden Circle to compete with export prices that are injurious and will contribute to further price undercutting resulting in price suppression.

### Customs and Border Protection's assessment

The amount determined to be the profit for constructed normal values must be

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<sup>23</sup> Ss TAC(9)

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worked out as set out in regulation 181A.<sup>24</sup> In SEF 172c, Customs and Border Protection made a preliminary finding that no profit should be added to KFC's constructed normal value.

Following submissions to the SEF Customs and Border Protection has re-examined information gathered during the 2006 review of measures. In particular, the profit achieved on domestic sales of FSI pineapple by the two cooperating exporters during that review<sup>25</sup>, Siam Agro Industry Pineapple and Others Public Company Limited (SAICO) and Dole Thailand Limited (DTL). SAICO and DTL were identified as exporters for the current review but declined to cooperate with this review.

Domestic profits from sales of FSI pineapple by these other exporters were not insignificant and were achieved on sales that were in sufficient volume to be considered representative sales. Whilst there were initial concerns around the use of profits from 2005 given the short supply of pineapple fruit in 2010, Customs and Border Protection now considers that it is reasonable to expect that the price of fresh pineapple in 2005 was considerably lower than prices in 2010. That is, the supply of fresh pineapple, whether in excess or shortage, would have similar impacts on the purchasing costs of processors and consumers.

It is reasonable then to expect that profits that were achieved on domestic sales by other exporters in 2005, were done so in competition with lower prices of fresh pineapple fruit. Therefore, it is reasonable to expect that producers of FSI pineapple in 2010 would continue to sell like goods on the domestic market profitably.

A profit has been calculated using domestic sales information from SAICO and DTL during 2005. Customs and Border Protection considers this to be a reasonable amount of profit that could be achieved on domestic sales of like goods in Thailand.

### 5.6.2 All other exporters

Sufficient information was not available to enable the normal value for FSI pineapple exported by all other exporters to be determined under any of the preceding sections to s.269TAC(6).

Normal values have been determined for all other exporters having regard to all relevant information<sup>26</sup>, using the adjusted normal value determined for KFC.

Normal value calculations are at **Confidential Attachment 3**.

## 5.7 Dumping margin

Measurement of a dumping margin is not required for the purposes of revising the variable factors, however, it may be relevant to the consideration of whether measures should be revoked (refer section 7).

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<sup>24</sup> Ss 269TAC(5B)

<sup>25</sup> REP 111 & REP 112

<sup>26</sup> Ss 269TAC(6)

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A dumping margin has been calculated for FSI pineapple exported by KFC over the review period based upon a comparison of the quarterly normal values and the export prices<sup>27</sup>. The dumping margin calculated for KFC was in the range of 2% to 7%.

A dumping margin has been calculated for FSI pineapple exported by all other exporters over the review period by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period<sup>28</sup>. The dumping margin calculated for all other exporters was in the range of 75% to 80%.

Dumping margin calculations are at **Confidential Attachment 3**.

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<sup>27</sup> Ss 269TACB(2)(a).

<sup>28</sup> Ss 269TACB(2)(a).

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## 6. NON-INJURIOUS PRICE

### 6.1 Findings

Customs and Border Protection finds that the non-injurious price (NIP) can be established for FSI pineapple by using industry's cost to make and sell during the review period plus the profit adjusted down it achieved on FSI pineapple in 2009.

### 6.2 Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury.

The calculation of the non-injurious price provides the mechanism whereby this lesser duty provision is given effect. The non-injurious price is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping<sup>29</sup>.

Anti-dumping duties are usually based on FOB prices in the country of export. Therefore a non-injurious price is calculated in FOB terms for the country of export.

### 6.3 Methods of calculating non-injurious price

The method of calculating a non-injurious price is not given in the legislation, but it is generally derived from Australian industry's unsuppressed selling price. The unsuppressed selling price is a price at which the Australian industry might reasonably be able to sell the goods in a market unaffected by dumped imports.

Customs and Border Protection's preferred approach to establishing the unsuppressed selling price observes the following hierarchy:

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

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia.

In the original investigation the unsuppressed selling price for FSI pineapple was determined using Golden Circle's cost to make and sell plus a rate of profit

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<sup>29</sup> S.269TACA.

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achieved in the same general category of goods. The profit rate used was the Australian Bureau of Statistics profitability for the fruit and vegetable processing sector.

### 6.4 Australian industry's claims

Golden Circle submitted that the most appropriate method for determining the unsuppressed selling price for FSI pineapple was to use its cost to make and sell (CTMS) during the review period plus the profit it achieved on FSI pineapple in 2009. Golden Circle acknowledged that the profit for 2009 should be adjusted down to account for certain costs that were not accounted for in Golden Circle's accounts.

### 6.5 Customs and Border Protection's assessment

A review into FSI pineapple from the Philippines has recently been completed. In that review Golden Circle submitted the same approach for a USP as it has for this review<sup>30</sup>.

Customs and Border Protection did not receive any responses to the proposed USP outlined in the SEF for that review.

Accordingly Customs and Border Protection considers that the USP methodology proposed by Golden Circle for the review period is appropriate.

Customs and Border Protection used Golden Circle's CTMS for 2010 for FSI pineapple plus a profit. The profit has been calculated by deducting the certain costs from the 2009 profit achieved on FSI pineapple

To establish the non-injurious price at the FOB level, deductions have been made from the unsuppressed selling price for:

- overseas freight and marine insurance;
- Australian landing and port charges;
- Customs and quarantine clearances;
- delivery charges from the port to the warehouse and to the customer; and
- sales and administration expenses and profit.

Non-injurious price calculations are at **Confidential Attachment 3**.

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<sup>30</sup> SEF 172a

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## 7 SHOULD THE MEASURES BE REVOKED

### 7.1 Findings

Customs and Border Protection has found that for all exporters, if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take such measures.

### 7.2 Introduction

After reviewing the variable factors Customs and Border Protection considered whether a recommendation to the Minister should be made to revoke the dumping duty notice published under s.269TG(1) and (2) as it applies to a particular exporter or to exporters generally.

This section outlines the factors Customs and Border Protection considers relevant in drawing the finding stated at 7.1 above.

### 7.3 Likelihood of dumping occurring

The measures for FSI pineapple exported from Thailand were last reviewed in 2006<sup>31</sup>. That review found that FSI pineapple from Thailand was exported at dumped prices that were not negligible.

Customs and Border Protection has calculated a dumping margin for FSI pineapple exported during this review period ranging from 2% to 7% for KFC and from 75% to 80% for all other exporters.

The dumping margins found suggests that exports would have been dumped had anti-dumping measures not been taken. In addition, information available to Customs and Border Protection shows that a large proportion of those exports were at prices lower than established in the review in 2006. Customs and Border Protection considers that is reasonable to expect that FSI pineapple would likely have been exported at dumped prices had anti-dumping measures not been taken.

### 7.4 Likelihood of injury in the absence of measures

Golden Circle claimed in its application for the continuation of the measures that material injury will continue and/or recur on the grounds that:

- Golden Circle's processed pineapple operation is vulnerable to dumped exports of pineapple fruit from Thailand;
- Golden Circle's sales volume in the FSI segments of the processed pineapple market has deteriorated in 2009 and 2010;
- FSI pineapple from Thailand is undercutting Golden Circle's prices by up to 50%;

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<sup>31</sup> Rep 110 and REP 111

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- had the measures not been taken, the Australian industry would have suffered an escalation in the level of material injury already sustained in 2009 and 2010.

Golden Circle also submitted that:

- pricing in the FSI market operates differently to that in consumer in that there is no brand visibility;
- whilst it estimated that it held its market share in 2010 this was due to it reducing its net sale price;
- the measures are out of date, not having being reviewed since 2006 and exports are at dumped levels; and
- the absence of dumping by KFC is an anomaly associated with no attribution of profit for the normal value for KFC.

KFC submitted that as its exports were not dumped, they cannot contribute to the continuation/recurrence of material injury through the effects of dumping.

### Customs and Border Protection's Assessment

It is widely accepted that demand in the FSI pineapple market is primarily driven by price. Brand is not a critical factor as the final consumer is generally not aware of the product brand used. The FSI market is also highly competitive with the main imports being from the Philippines, Thailand, Indonesia and to a lesser extent Vietnam, China and Taiwan.

Sales in the FSI segment are primarily to wholesalers/ distributors and large end users. The wholesalers/ distributors on-sell to customers either through warehouses or delivered. Prices in this sector are generally transparent via advertising catalogues showing the different product brands and pricing. Pricing in the catalogues shows the imported product at 20% - 60% below the Golden Circle product.

Customs and Border Protection also compared pricing from importers and Golden Circle at the wholesale/distributor level and found imported FSI pineapple significantly undercut the industry prices. The undercutting was to individual customers and in the market generally.

Information available to Customs and Border Protection from importers and its import database suggests that prices in the market for imported products are at similar levels regardless of the importation source.

Pricing to the larger end users may not be as transparent as sales can involve closed tenders with the unsuccessful parties unaware of the final results. Large end users can include customers in the industrial sector that use the product as an ingredient for other processed foods and also quick service restaurant chains that tender supply for their outlets.

Golden Circle's sales in the FSI market are mainly to the wholesale and distributor sector where prices are more transparent. Customs and Border Protection considers that the size of the dumping margins for FSI pineapple from Thailand has enabled importers to undercut Golden Circle's prices and compete with other import prices in the market.

Prices for FSI pineapple from Thailand sold in the Australian market are significantly lower than Golden Circle's prices and significantly lower than what

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they would have otherwise been had they been exported at prices equal to the normal value.

Golden Circle has lost sales volume from 2008 to 2010. A significant part of Golden Circle's sales volumes in 2008 was due to sales of imported FSI by Golden Circle. However the information shows that Golden Circle lost volumes of its sales of its own production of FSI from 2008 to 2010.

Golden Circle increased sales volumes of its own production from 2009 to 2010 but volumes were not at the levels it had in 2008. Golden Circle's prices for FSI pineapple were lower in 2010 as it responded to dumped imports and attempted to regain lost sales. This ultimately led to Golden Circle experiencing reduced revenues and profits.

The market for FSI decreased from 2008 to 2009, the market was relatively stable in 2010 whilst imports from Thailand increased in volume from 2008 to 2009 and 2009 to 2010.

Customs and Border Protection also notes that there are forward orders for FSI pineapple from Thailand and that exports of FSI pineapple from Thailand have continued into the first half of 2011.

The market analysis and the price under cutting analysis are at **Confidential Attachment 4**.

Customs and Border Protection is satisfied that:

- had the measures not been taken, imports of FSI pineapple from Thailand by exporters would likely have been exported at dumped prices, and
- the dumped FSI pineapple would likely have led to the material injury previously experienced by the Australian industry in the form of price undercutting, loss of sales volume, price suppression, and reduced profitability.

### 7.5 Conclusion

Customs and Border Protection has found that if the anti-dumping measures had not been taken, the Minister would have been entitled to take such measures as:

- Exports of FSI pineapple from Thailand were dumped during the review period and would likely continue to be dumped in the absence of measures;
- imports of FSI pineapple from Thailand have significantly undercut industry prices contributing to lost sales volume, reduced revenues and profits; and
- had measures not been taken, FSI pineapple exported at dumped prices would likely have led to material injury.

Customs and Border Protection does not recommend that the Minister revoke the measures.

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## 8 EFFECT OF THE REVIEW

As a result of this review, Customs and Border Protection has found that export prices have generally decreased and normal values have increased. The non-injurious price has also increased.

From this review of the variable factors, the normal value is the operative<sup>32</sup> measure for FSI pineapple. The amount of interim dumping duty imposed would increase.

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<sup>32</sup> The operative measure is the lesser of the normal value or non-injurious price. The difference between the revised operative measures and the revised export prices provide for the fixed component of interim dumping duty per unit.

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## 9 RECOMMENDATIONS

Customs and Border Protection recommends that the Minister considers this report, and if agreed, sign the attached schedule (**confidential attachment 1**) and sign the attached public notice (**confidential attachment 2**) to **declare**:

- under s. 269ZDB of the Act, that, for the purpose of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice, that, with effect from the date of publication of the notice, the notice is taken to have effect in relation to all other exporters the subject of this review generally as if different variable factors had been fixed in respect of those exporters, relevant to the determination of duty.

Customs and Border Protection recommends that the Minister **be satisfied** that:

- in accordance with s. 269TAB(3) of the Act, sufficient information has not been furnished or is not available to enable export prices for FSI pineapple exported to Australia from Thailand by all exporters the subject of this review, other than by Kuiburi Fruit Canning Co Ltd, to be ascertained under the preceding subsections of s. 269TAB of the Act;
- in accordance with s. 269TAC(2)(a) of the Act that because of the absence of sales of like goods the normal value of goods exported to Australia from Thailand by Kuiburi Fruit Canning Co Ltd cannot be ascertained under subsection 269TAC(1);
- in accordance with s. 269TAC(6) of the Act, sufficient information has not been furnished or is not available to enable normal values for FSI pineapple exported to Australia from Thailand by all exporters the subject of this review, other than by Kuiburi Fruit Canning Co Ltd, to be ascertained under the preceding subsections of s. 269TAC of the Act.

Customs and Border Protection recommends that the Minister **determine**:

- in accordance with s. 269TAB(3) of the Act, the export prices for FSI pineapple exported to Australia from Thailand by all exporters the subject of this review, other than by Kuiburi Fruit Canning Co Ltd, is the amount having regard to all relevant information;
- in accordance with s. 269TAC(2)(c) of the Act, the normal value for FSI pineapple exported to Australia from Thailand by Kuiburi Fruit Canning Co Ltd using the verified cost of production and administrative, selling and general costs adjusted in accordance with s. 269TAC(9) of the Act, for inland transport, handling and other expenses and commission;
- in accordance with s. 269TAC(5B) of the Act and Regulation 181A(3)(c) and 181A(4), the amount of profit for the normal value for FSI pineapple exported to Australia from Thailand by Kuiburi Fruit Canning Co Ltd be determined by having regard to the profit achieved by the Siam Agro Industry Pineapple and Others Public Company Limited and Dole Thailand Limited (DTL) in 2005; and
- in accordance with s. 269TAC(6) of the Act, the normal value for FSI pineapple exported to Australia from Thailand by all exporters the subject

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of this review, other than by Kuiburi Fruit Canning Co Ltd, is the amount having regard to all relevant information.

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### 10 CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Schedule – determine
Confidential attachment 2	Section 269ZDB public notice
Confidential attachment 3	Export prices, normal values, dumping margins, USP & NIP
Confidential attachment 4	Market and price undercutting