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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

STATEMENT OF ESSENTIAL FACTS NO.172c

REVIEW OF

ANTI-DUMPING MEASURES

FOOD SERVICE AND INDUSTRIAL PINEAPPLE

EXPORTED FROM

THAILAND

3 August 2011

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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 Republic of the Philippines (Philippines) and the Kingdom of Thailand (Thailand).

This statement of essential facts (SEF) sets out the facts on which the delegate of the Chief Executive Officer (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) proposes to base his recommendation to the Minister for Home Affairs (Minister) for measures applicable to FSI pineapple from Thailand.

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

Customs and Border Protection is also conducting continuation inquiries into the measures applicable to consumer pineapple and FSI pineapple exported from Thailand. SEF 171c has been issued for the continuation inquiry into FSI pineapple from Thailand. SEF 171d has been issued for the continuation inquiry into consumer pineapple from Thailand.

Customs and Border Protection issued separate SEFs on 25 May 2011 for measures applicable to FSI pineapple and consumer pineapple from the Philippines. The final reports for those inquiries and reviews have been provided to the Minister who is considering the recommendations contained within.

1.1 Proposed recommendation

The delegate proposes to recommend to the Minister:

- that the dumping duty notice be revoked as it applies to Kuiburi Fruit Canning Co Ltd (KFC), and
- that the dumping duty notice have effect in relation to exporters generally (except for Kuiburi Fruit Canning Co Ltd) as if different variable factors had been fixed.

The result of the review would be that ascertained export prices, normal values and the non-injurious price for all exporters (except for KFC) would increase and the amount of interim dumping duty imposed would increase.

1.2 Preliminary findings and conclusions

Based on all available information Customs and Border Protection's preliminary findings are that:

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- the export price for FSI pineapple exported by KFC can be established using the invoice price¹ paid by the Australian importers to KFC, less ocean freight (where appropriate);
- revised export prices for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information²;
- the normal value for FSI pineapple exported by KFC can be determined using a constructed normal value³ adjusted for comparison with the export price⁴;
- revised normal values for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information⁵;
- FSI pineapple exported by KFC to Australia during the review period was not dumped, with a negative dumping margin of - 8.2%;
- FSI pineapple exported by all other exporters from Thailand to Australia during the review period was dumped with a dumping margin of 58.9%;
- the non-injurious price for FSI pineapple can be 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 against exports by KFC, the Minister would not now be entitled to take them and therefore the dumping duty notice be should revoked as it applies to KFC; and
- there are grounds to be satisfied that had the measures not been taken against exports by all other Thai exporters, the Minister would now be entitled to take them.

Based on these preliminary findings, and subject to any submissions received in response to this SEF and SEF 171c⁶, the delegate proposes to recommend to the Minister that the measures be varied for all exporters (except KFC) of FSI pineapple and that the notice be revoked for KFC.

1.3 Final report

The delegate's final report and recommendation in relation to measures applicable to FSI pineapple from Thailand must be provided to the Minister by **17 September 2011**.

¹ Ss 269TAB(1)(a). A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

² Ss 269TAB(3)

³ Ss 269TAC(2)(c)

⁴ Ss 269TAC(9)

⁵ Ss 269TAC(6)

⁶ SEF 171c relates to the inquiry into the continuation of measures on FSI pineapple from Thailand published on 3 August 2011.

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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 the final report to the Minister, the delegate 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.

The delegate may also have regard to any other matter considered 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 notice⁷:

- 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.

⁷ Ss 269ZDA(1)(a) of the *Customs Act 1901* (the Act)

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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 measures⁸ applicable to pineapple, consumer and FSI, 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.

Customs and Border Protection issued separate SEFs on 25 May 2011 for measures applicable to FSI pineapple and consumer pineapple from the Philippines.

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

The final report to the Minister for pineapple FSI from Thailand 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 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this statement of essential facts. However Customs and Border Protection is not obliged to have regard to any submissions received after **23 August 2011** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

The Director
International Trade Remedies Branch Operations 1
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Submissions can also be faxed to (02) 6275 6990 or emailed to tmops1@customs.gov.au.

Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the

⁸ In accordance with s.269ZB.

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public record⁹. Submissions provided in confidence must be clearly marked “**IN-CONFIDENCE**”.

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s initiation report, notices and other information. These documents should be read in conjunction with this statement of essential facts.

All documents on the public record are available on Customs and Border Protection’s electronic public record which may be accessed on the internet at www.customs.gov.au by following the prompts for “anti-dumping”.

The public record may also be viewed at Customs House Canberra by contacting International Trade Remedies administration on (02) 6275 6547.

2.4 History of anti-dumping measures

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

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

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

On 28 September 2006 the Minister accepted the recommendations contained within REP 110 and REP 111 to continue the anti-dumping measures applying to both consumer and FSI pineapple for 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.

⁹ In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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3 GOODS SUBJECT TO THE REVIEW

3.1 Preliminary 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 goods¹⁰.

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.

¹⁰ In terms of 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 Preliminary 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 Australia¹¹.

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.

¹¹ 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 Preliminary findings

- The export price for FSI pineapple exported by Kuiburi Fruit Canning Co Ltd (KFC) has been established using the invoice price¹² paid by the Australian importers to KFC, less ocean freight (where appropriate).
- The export price for FSI pineapple exported by all other Thai exporters can be determined having regard to all relevant information¹³;
- The normal value for FSI pineapple exported by KFC can be determined using a constructed normal value ¹⁴ adjusted for comparison with the export price¹⁵;
- The normal value for FSI pineapple for all other Thai exporters can be determined having regard to all relevant information¹⁶;
- FSI pineapple exported by KFC to Australia during the review period was not dumped with a negative dumping margin of - 8.2%;
- FSI pineapple exported by all other exporters from Thailand to Australia during the review period was dumped with a dumping margin of 58.9%.

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. Most of the major importers fully co-operated providing verified information on imports and sales.

5.3 Australian Industry's claims

The Australian industry claims that one or more of the variable factors relevant to the taking of anti-dumping measures have changed¹⁷.

The applicants claim 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.

5.4 Exporters

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

¹² Ss 269TAB(1)(a)

¹³ Ss 269TAB(3)

¹⁴ Ss 269TAC(2)(c)

¹⁵ Ss 269TAC(8)

¹⁶ Ss 269TAC(6)

¹⁷ In accordance with s.269ZC(2)

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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.

5.4.1 Export price

The export price for FSI pineapple exported by KFC can be established using the invoice price paid by the Australian importers to KFC, less ocean freight (where appropriate)¹⁸.

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 investigation 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 importer¹⁹;
- the price paid at which the goods were sold by the importer less prescribed deductions²⁰; or
- the price determined having regard to all the circumstances of the exportation²¹.

Customs and Border Protection therefore established export prices for all other exporters having regard to all relevant information²², using information from importers and the Customs and Border Protection import database.

5.4.2 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.

Customs and Border Protection is satisfied that it is unable to establish normal values for KFC under subsection 269TAC(1) and considers that 'constructed' normal values should be determined under paragraph 269TAC(2)(c).

Customs and Border Protection used verified quarterly production costs from KFC for each pineapple product exported to Australia in the review period. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses was used to estimate SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

¹⁸ Ss. 269TAB(1)(a) of the Act

¹⁹ Ss. 269TAB(1)(a) of the Act

²⁰ Ss. 269TAB(1)(b) of the Act

²¹ Ss. 269TAB(1)(c) of the Act

²² Ss. 269TAB(3) of the Act

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Adjustments were made for inland transport, handling and other expenses and commission.

Customs and Border Protection considered the amount of profit that should be determined for the constructed normal values.

KFC's claim

KFC submitted 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.

Customs and Border Protection consideration of profit

The amount determined to be the profit for constructed normal values must be worked out as set out in regulation 181A.²³

Customs and Border Protection notes the KFC submission lacks verified information in regards to the margins and costs of pineapple and examined other available information.

Customs and Border Protection did not receive information from any other exporter in regards to domestic selling prices for FSI pineapple in Thailand.

Customs and Border Protection considered a profit using the weighted average of the amounts established in the last review by other exporters or producers from the sale of like goods in the domestic market of the country of export²⁴.

Customs and Border Protection has the verified profit on domestic sales of FSI pineapple from two cooperating exporters from the review of the measures in 2006²⁵, 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. SAICO and DTL declined to provide any information for this review.

However, given that this information is now five years out of date, Customs and Border Protection has concerns about whether the profits achieved on the Thai domestic market in 2005 are reflective of the profits that could be achieved on the domestic market in 2010. This is primarily due to the pineapple supply

²³ Ss 269TAC(5B)

²⁴ Regulation 181A(3)(b)

²⁵ REP 111 & REP 112

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shortage being experienced in Thailand during the review period and the impact that this has had on exporter's costs.

Customs and Border Protection also considered publicly available information from another exporter of pineapple from Thailand, TIPCO Foods (Thailand) Public Company Limited. TIPCO was identified as an exporter for the current review but declined to provide any information for this review.

The TIPCO website identifies the company as a manufacturer and exporter of pineapple products and a manufacturer and seller of ready to drink fruit juice products on the Thai domestic market. TIPCO's annual report for 2010 is available on its website.

Customs and Border Protection considered using the profit on sales of goods in the same general category in the domestic market of Thailand²⁶ using information from the TIPCO 2010 annual report. The goods in the same general category were fruit and vegetable juices and other beverages and the profit calculated on domestic sales was 7.5%.

However, the information in regards to TIPCO has not been verified by Customs and Border Protection and TIPCO may have a different cost structure to KFC that would enable it to sell profitably on the domestic market. Customs and Border Protection therefore considers that applying the profit of TIPCO to the costs of KFC may not be reasonable.

Customs and Border Protection considers that there is no reliable information to demonstrate that domestic sales of FSI pineapple would be profitable. Therefore Customs and Border Protection's preliminary view is that no profit should be added to the constructed normal value.

All other exporters

Customs and Border Protection considers that the normal value for FSI pineapple exported by all other exporters cannot be determined under any of the preceding sections to s.269TAC(6), therefore normal values have been determined having regard to all relevant information²⁷.

Customs and Border Protection considers that the adjusted normal value for KFC can be used to determine a normal value for all other exporters.

5.4.3 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).

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 prices²⁸. The dumping margin calculated for KFC was negative at - 8.3%.

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

²⁶ Regulation 181A(3)(c)

²⁷ Ss 269TAC(6)

²⁸ Ss 269TACB(2)(a).

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prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period²⁹. The dumping margin calculated for all other exporters was 58.9%.

Late Submissions

Customs and Border Protection received submissions from KFC and Golden Circle in the week before the SEF was due. Consideration to the submissions has not been given for this SEF as in the delegates opinion to do so may delay the placement of the SEF on the public record. Customs and Border Protection will consider the submissions in full in its report to the Minister.

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²⁹ Ss 269TACB(2)(a).

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6. NON-INJURIOUS PRICE

6.1 Preliminary findings

The non-injurious price (NIP) can be established for consumer pineapple by using industry's cost to make and sell during the review period plus the profit adjusted down it achieved on consumer 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 dumping³⁰.

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 (USP) 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

³⁰ The non-injurious price is defined in 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 claimed in the application that industry's selling prices for FSI pineapple have increased from the prices established in the original investigation in 2006 and that this has resulted in a change in the non-injurious price for the Australian industry.

Golden Circle submitted that the most appropriate method for determining the unsuppressed selling price for consumer pineapple was to use its cost to make and sell (CTMS) during the review period plus the profit it achieved on consumer 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 financial statements.

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 review³¹.

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 proposes to use Golden Circle's CTMS for 2010 for consumer pineapple plus a profit. The profit has been calculated by deducting the certain costs from the 2009 profit achieved on consumer pineapple.

To determine 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.

³¹ SEF 172a

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7 SHOULD THE MEASURES BE REVOKED

7.1 Preliminary findings

Customs and Border Protection proposes recommending that:

- The dumping duty notice as it applies to KFC should be revoked; and
- For all other exporters, if the anti-dumping measures to which this review relates had not been taken, the Minister would be entitled to take such measures. The measures should not be revoked for all other exporters.

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 preliminary finding stated at 7.1 above.

7.3 Likelihood dumping would have occurred

The measures for FSI pineapple exported from Thailand were last reviewed in 2006³². That review found that FSI pineapple from Thailand was exported at un-dumped and dumped prices that were not negligible.

Customs and Border Protection has calculated a dumping margin for FSI pineapple exported during this review period by KFC of -8.2%.

The negative dumping margin calculated for an exporter to a review would not generally in itself suggest that the exporter would not export at dumped prices in the absence of the measures. The intended consequence of imposing anti-dumping measures is to remove the injurious effect of dumping and it would be contradictory to remove measures simply because they are having their intended effect. That is anti-dumping measures may cause exporters to modify their prices so that they are not dumping whilst the measures are in place.

However in the case of KFC's exports during the review period, there is sufficient evidence to show that its export prices were set independent of a number of potentially influencing factors. This includes:

- the measure applicable to KFC was a floor price with no fixed amount of interim dumping duty to be paid on imports. The floor price has not been reviewed since 2006 and was significantly below KFC's undumped export prices in 2010. Therefore, it is reasonable to conclude that the measure had no bearing on KFC setting its prices to its Australian customers;

³² Rep 110 and REP 111

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- a comparison of KFC's export prices with the declared export prices of other Thai exporters shows that KFC was being significantly undercut during the review period. With price being the predominant factor in customers purchasing decisions in the FSI market, it shows that KFC was not influenced by the price competition from other exports, and
- the size of the dumping margin indicates that KFC has significant scope to reduce its export prices without exporting at dumped prices.

These factors suggest that KFC would have continued to export FSI pineapple at undumped prices in the absence of measures.

Customs and Border Protection has calculated a dumping margin for FSI pineapple exported during this review period by all other exporters of 58.9%.

The size of the dumping margin suggests that exports by all other exporters would have been dumped had anti-dumping measures not been taken. In addition, information available to Customs and Border Protection shows that the majority of exports of FSI pineapple from Thailand were considerably below the export prices verified for KFC and a large share of those exports were at prices lower than established in the review in 2006.

Customs and Border Protection considers that it is reasonable to expect that FSI pineapple would likely have been exported by all other exporters at dumped prices had anti-dumping measures not been taken.

7.4 Likelihood of dumping causing material 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%;
- 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; and
- the measures are out of date, not having been reviewed since 2006 and exports are at dumped levels.

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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 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.

Therefore, Customs and Border Protection is preliminarily satisfied that:

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- had the measures not been taken, imports of FSI pineapple from Thailand by exporters other than KFC 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 for all other exporters

Customs and Border Protection's preliminary view is that the following factors support a finding that if the anti-dumping measures had not been taken, the Minister would have been entitled to take such measures:

- Exports of FSI pineapple from Thailand (other than by KFC) 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.

Therefore, subject to responses to the statement of essential facts, Customs and Border Protection does not propose to recommend that the Minister revoke the measures for exporters, other than KFC.

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8 EFFECT OF THE REVIEW

As a result of this variable factors review, Customs and Border Protection has found that export prices have decreased and normal values have increased for all exporters (except KFC) of FSI pineapple from Thailand. The non-injurious price has also increased.

From this review of the variable factors, the normal value is the operative³³ measure for FSI pineapple. The amount of interim dumping duty imposed would increase.

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³³ 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.