Australian Government
Anti-Dumping Review Panel

APPLICATION FOR REVIEW OF A DECISION BY THE MINISTER FOLLOWING A REVIEW INQUIRY

Anti-Dumping Review Panel
c/o Legal Services Branch
Australian Customs and Border Protection Service
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APPLICATION FOR REVIEW OF A DECISION OF THE MINISTER FOLLOWING A REVIEW INQUIRY

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

To alter: ☒ a dumping duty notice(s) following a review inquiry;

☐ a countervailing duty notice(s) following a review inquiry.

OR

To revoke:

☐ a dumping duty notice(s) following a review inquiry; and/or

☐ a countervailing duty notice(s) following a review inquiry.

OR

Not to alter:

☐ a dumping duty notice(s) following a review inquiry; and/or

☐ a countervailing duty notice(s) following a review inquiry.

OR

☐ that the terms of an undertaking are to remain unaltered;

☐ that the terms of an undertaking are to be varied;

☐ that an investigation is to be resumed;

☐ that a person is to be released from the terms of an undertaking;

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken;
- provides reasonable grounds for the decision not being the correct or preferable decision; and
- is complete and correct to the best of my knowledge and belief.

I have included the following information in an attachment to this application:

☒ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☒ Name, title/position, telephone and facsimile numbers and e-mail address of a contact within the organisation.

☒ Name of consultant/adviser (if any) representing the applicant and a copy of

☒ Full description of the imported goods to which the application relates.

☒ The tariff classification/statistical code of the imported goods.

☒ A copy of the reviewable decision.

☒ Date of notification of the reviewable decision and the method of the notification.

☒ A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.

☒ [If the application contains material that is confidential or commercially sensitive] an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Signature:.....

Name: Eakchat Ratanasila

Position: Legal Director

Applicant Company/Entity:

Dole Thailand Limited

Date: 23 / 08 / 2013

Applicant

Dole Thailand Limited
10th Floor, Panjathani Tower
127/10-11 Nonsee Road, Yannawa
Bangkok 10120 Thailand

Company

Contact

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Legal Director
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Representative

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25 National Circuit, Forrest ACT 2604
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Facsimile: +61 2 6225 1781
Email: john.cosgrave@minterellison.com

To the Anti-Dumping Review Panel

Minter Ellison is authorised to act on our behalf in relation to the consideration by the Panel of certain decisions of the Minister concerning the review of variable factors applying to FSI pineapple exported to Australia from Thailand.

Yours Faithfully

(Eakchat Ratanasila)
Legal Director

The reviewable decision.

Australian Government
Anti-Dumping Commission

ANTI-DUMPING NOTICE NO. 2013/63

Food service and industrial pineapple

Exported from Thailand

Findings in Relation to a Review of Anti-Dumping Measures

***Customs Act 1901* – Part XVB**

The Anti-Dumping Commission (the Commission) has completed its review, which commenced on 19 December 2012, of the anti-dumping measures applying to food service and industrial (FSI) pineapple ("the goods") exported to Australia from Thailand.

The Commission, (then the Australian Customs and Border Protection Service) reported its findings and recommendations to the Minister for Home Affairs (the Minister) in *International Trade Remedies Branch Report No. 196* (REP 196). The Minister has considered REP 196 and has accepted the Commission's recommendations and reasons for the recommendations, including all material findings of fact or law set out in the Report.

Under subsection 269ZDB(1) of the *Customs Act 1901* (the Act), the Minister declared, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975*, that with effect from 26 July 2013 the notice is to be taken to have effect as if different variable factors had been fixed in respect of exporters of FSI pineapple from Thailand, relevant to the determination of duty.

The duty that has been determined is an amount worked out in accordance with the combination of fixed and variable duty method.

Affected parties should contact the Commission on 1300 884 159 or at clientsupport@adcommission.gov.au for further information regarding the actual duty liability calculation in their particular circumstance.

To preserve confidentiality, details of the revised variable factors such as Ascertained Export Price, Normal Value and Non-Injurious Price will not be published. Bona fide importers of the goods can obtain details of the new rates from the Regional Dumping Liaison Officer in their respective capital city.

Interested parties, as defined by section 269T(1) of the Act, may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au) in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Notice of the Minister's decision was published in *The Australian* newspaper and the *Commonwealth of Australia Gazette* on 26 July 2013.

REP 196 has been placed on the Commission's public record, available at www.adcommission.gov.au. Alternatively, the public record may be examined at the Commission office during business hours by contacting the case manager on the details provided below.

Enquiries about this notice may be directed to the case manager on telephone number +61 2 6275 5675, fax number +61 2 6275 6990 or email Operations1@adcommission.gov.au.

Paul Benussi
A/g National Manager Operations
Anti-Dumping Commission

26 July 2013

Notification of the reviewable decision

The reviewable decision was notified on 26 July 2013 by way of publication in *The Australian Newspaper* and the *Commonwealth of Australia Gazette*.

Statement of Reasons for Application – Commercial in Confidence

A confidential detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision is contained in Appendix A

Statement of Reasons for Application – Non-Confidential: For Public Record

A non-confidential version of the statement of reasons in Appendix A is contained in Appendix B

MinterEllison
LAWYERS

APPENDIX B

Non-Confidential – For Public Record

STATEMENT BY DOLE THAILAND LIMITED RELATING TO THE DECISION OF THE MINISTER UNDER SECTION 269ZDB(1)(a) TO FIX DIFFERENT VARIABLE FACTORS FOR FSI PINEAPPLE FROM THAILAND.

INTRODUCTION

1. Dole Thailand Limited (**DTL**) is an interested party concerned with the production in Thailand and the exportation to and importation into Australia of FSI pineapple.

2. On 28 October 2010, the Minister published a notice of decision pursuant to s.269ZDB(1)(a) of the *Customs Act 1901 (Cth)* (Act) to fix different variable factors for the goods under consideration.

3. The decision of the Minister was based on Report No. 196 (**Report**) and recommendations by the Commissioner of the Anti-Dumping Commission (**Commission**).

4. We request that, pursuant to paragraph 269ZZA(1)(c) of the Act, the Review Panel review the decision and certain essential elements of that decision and recommend to the Minister under paragraph 269ZZK(1)(b) that he revoke the decision and substitute a new specified decision.

5. The grounds that support our request for revocation and substitution are set out in the following sections of this submission.

6. The elements of the decision that we contend are incorrect and/or non-preferred relate to errors in the identification of the exporter and the determination of normal values and are summarised as follows:

   A the finding at p. 18 of the Report that the 'Dole Group' rather than DTL is the exporter of the goods;

   B the absence of any finding by the Minister that he was satisfied that he could not ascertain under s.269TAC(1) the normal value of Group 4 (see below) goods exported to Australia by DTL;

   C the Minister's failure to consider whether he should direct that the normal value of Group 4 goods should be ascertained under s.269TAC(2)(d);

D The Minister's failure to direct that the normal value of Group 4 goods should be ascertained under s.269TAC(2)(d) and the Commission's failure to recommend, as it did for other exporters, that he should determine that the normal value of Group 4 goods should be ascertained under s.269TAC(2)(c) ;

E The Minister's acceptance of a finding by the Commission that for the purpose of calculating an amount of profit under s.269TAC(2)(c)(ii) on a hypothetical sale of Group 4 goods on the Thai domestic market, the average level of profit achieved by DTL in domestic sales of Group 1,2 &3 products was the appropriate measure;

F Even if the Minister's acceptance of the finding referred to was correct the calculated amount of profit is wrong because of the incorrect identification of the 'exporter' for the purpose of Regulation 181A(2);

G The failure of the Minister to take account of the requirement that an ascertained normal value should be 'normal';

H The Minister's determinations that normal values for KFC, Natural, SAICO and TIPCO should be ascertained under s.269TAC(2)(c) when information on sales in the ordinary course of trade in Thailand by DTL (an 'other seller') was available for the ascertainment of those normal values under s.269TAC(1).

7. We specifically request that the Panel makes a recommendation on each of the elements of the Minister's decision identified in the previous paragraph. This is necessary to avoid the risk of the rights of review of an applicant being thwarted if the Review Panel, purporting to exercise the administrative equivalent of 'judicial economy', concludes that because of a proposed recommendation in relation to one or more findings it is unnecessary to address other issues included in the application. In the event that the Minister rejects the recommendation of the Panel there is in effect no review of those other issues. In our submission this outcome would compromise the rights of review intended by the legislation and constitute a failure to meet the reporting requirements of s.269ZZK of the Act.

EXPORTER

8. A necessary threshold observation in relation to the question of the identification of the exporter is that it does not affect the calculation of the amount of the export price of goods produced by DTL and exported to Australia. It is, however, a matter of importance in relation to a determination by the Minister of an amount of profit under Regulation 181A of the Customs Regulations 1926 (**Regulation**). Such a determination is necessary in certain circumstances for the determination of the normal value of goods and the significance in the context of the present matter is addressed in paragraphs 37-38 below.

9. DTL produces the goods in Thailand and sells the goods to an affiliated company [redacted], Dole Packaged Foods Asia (**DPFA**). The affiliate then sells the goods to customers in Australia.

First Error

10. In accordance with long standing practice[1] based partly on the *Celpav* case[2] the Commission concluded in its exporter visit report (**EVR**) relating to DTL that DPFA was a mere intermediary in the transaction and that DTL was the exporter of the goods. The Commissioner maintained this position in Statement of Essential Facts (**SEF**) 196 but then changed his finding in the final Report. The change is clearly a response to a submission lodged by Minter Ellison with the Commission on 28 May 2013 that relates in part to the determination of profit under Regulation 181A(2) and that, if accepted, would result in a reduction in normal value and the dumping margin set out in the SEF.

11. The revised finding, designed to prop up the dumping margin in the SEF, asserts that the exporter is the 'Dole Group'. The finding is expressed in the following terms[3]:

> After reviewing the matter raised in DTL's submission, ACBPS is satisfied that it is appropriate to 'collapse' the related parties under the heading of one corporate entity, Dole Group, and base export prices on the first arms length transaction outside of the single entity.

12. Dole Group is merely a convenient expression that refers to a large number of separate corporate entities. It is not itself a corporate entity.

13. A decision of a WTO Panel in *Korea – Certain Paper*[4] is cited in the report as supporting the Commissioner's finding that it was 'appropriate'[5] to collapse the related entities. That decision, however, is directed at different issues arising in a different context. The issue before the Panel was whether it was permissible under Article 6.10 of the WTO *Anti-Dumping Agreement* (**ADA**) to treat a group of separate legal entities as a single exporting entity *...in cases where the number of exporters, producers, importers or types of products involved is so large as to make* ...[determination of an individual dumping margin] *...impractical*[6]. An observation of a WTO panel in relation to a permissible interpretation of the term 'exporter' in circumstances where the objective is to resolve a potential conflict

[1] Dumping and Subsidy Manual: p.24-26
[2] *Companhia Votorantim de Celulose e Papael v the ADA* (1996) 71 FCR 80
[3] Report 196: p.17
[4] WT/DS312/R
[5] SEF 196: p.18
[6] *Anti- Dumping Agreement* – Article 6.10

between the application of literal meaning and administrative practicality provides no guide to, let alone precedent for, the meaning to be given to 'exporter' in the Act and Regulations.

14. We submit that the correct and preferable decision in the current matter is that DTL is the exporter of the goods for the purposes of the Act and Regulations.

NORMAL VALUE – DTL

15. The Commission's approach to assessment of normal value was to match similar domestic and export products, identified by their Product Identification Number (**PID**), and to calculate a normal value for each matching product or group.

Group	Export PID	Domestic PID	Assessment	Basis
1	[redacted]	[redacted]	Sales in Thailand	s.269TAC(1)
2	[redacted]	[redacted]	Sales in Thailand	s.269TAC(1)
3	[redacted]	[redacted]	Sales in Thailand	s.269TAC(1)
4	[redacted]		PID 547 CTMS[7] + Profit	s.269TAC(2)(c)

16. After fixing the quarterly individual product normal values the Commission then compared those values with export prices of individual shipments to Australia and expressed the total difference over the investigation period as a single dumping margin. This practice is unexceptional but in circumstances where different normal value criteria are involved the Minister and the Commission are still bound by the statutory terms and processes applying to each criterion. As we will see below that obligation has not been met in this case.

17. As the Commission has acknowledged[8] there are two relevant distinct categories of goods produced by DTL in this matter. The first category covers Groups 1, 2 & 3 which are generally, on both domestic and export markets, low volume/ high cost/high margin premium products consisting of [redacted] sold in the ordinary course of trade in the very small Thai domestic market for canned pineapple. Consumer preference in Thailand is overwhelmingly for fresh pineapple which is grown in abundance. Our client does not contest the individual quarterly normal values assessed by the Commission for the three groups that are sold domestically.

[7] Cost to Make & Sell
[8] Report: p.20

18. The second category covers Group 4 products and one additional export only product that is nearly identical to [redacted] exported to Australia. The products in this category are uniformly high volume/low cost/low margin products described as [redacted]. [redacted] is sold only to Australia, [redacted] is only sold for export, including Australia and the other near identical product, [redacted], is only sold for export to third countries. In the absence of any sales in the ordinary course of trade in Thailand of Category 1 products, the Commission implicitly concludes[9], that a normal value for Group 4 could not be ascertained under s.269TAC(1).

Second Error

19. The implicit conclusion is clearly justified but the Commission has omitted from the Report any recommendation[10] that the Minister be satisfied that the normal value of Group 4 products cannot be ascertained under s.269TAC(1) and the Minister has not expressed any such satisfaction.

20. We submit that the result of this omission is that, in relation to DTL, the Minister has failed to ascertain a new valid normal value in Confidential Appendix 1 to the Report.

Third Error

21. If normal values for Group 4 products cannot be ascertained under s.269TAC(1) (and we agree that they cannot), the Trade Measures Review Officer (TMRO) has recently pointed out that determining normal value by reference to third country sales takes precedence over a production cost based determination unless the Minister directs that s269TAC(2)(d) does not apply[11]. Again there is no recommendation in the Report that the Minister should so determine and there is no evidence that he has engaged with the issue on his own initiative.

22. We submit that this omission invalidates any purported ascertainment under s,269(2)(c) of the normal value of Group 4 products

Fourth Error

23. If the Minister had entertained the matter we consider that all the available evidence supports the view that the Minister should direct that s.269TAC(2)(d) be used for ascertaining normal value. The Commission has received all relevant data in relation to the

[9] Ibid: p.9
[10] Ibid: p.35-36
[11] TMRO Report – Hollow Structural Sections: paragraphs 123-125

Group 4 products including detailed cost information, volumes and margins for sales to Australia and other export destinations. The Commission's investigation team concluded in the EVR that ...[B]*ased on the overall verification process, we are reasonably satisfied that third country sales data would be reliable if required*....In the final report the Commission ignored this reliable sales data in these terms:

> For these two products [Group 4] ACBPS is not satisfied that normal value can be determined pursuant to s.269TAC(2)(d). ACBPS is not satisfied that the exports of DTL to the country submitted for comparison is similar to that exported to Australia for the purposes of s.269TAC(5C)

24. No analysis or persuasive reasoning is advanced for a conclusion which is totally at odds with the reliable data available to the Commission. The appropriate comparison submitted to the Commission by DTL was sales to Germany at representative prices of an identical product, with an identical cost profile, in broadly comparable high overall volumes (Australia [redacted]) and similar consignment sizes. In addition there are no differences in the nature of the trade in the goods to the two countries. In both cases sales can be compared at the fob level and it is difficult to imagine any significant differences between sales to different countries of shipping containers full of canned pineapple. In any event if the Commission had questions about the appropriateness of the comparative export sales it had ample opportunities and time to ask those questions. It did not do so.

25. Furthermore the application of the third country sales criterion should be preferred when, as in this case, all relevant information is available. The presumption observed by the TMRO in favour of the primacy of the criterion over the constructed value methodology reflects the original target of trade measures legislation, namely discriminatory pricing between different markets. In the absence of a domestic market other export markets are the only available market comparison. A production cost approach is necessarily artificial as it always involves the application of an hypothesis and it can only be regarded as a secondary criterion when nothing better is available.

26. The Commission's long standing but unexplained preference for production cost methodology is not based on any apparent interpretation of the legislation and most probably reflects the observation of experts in the field that, when faced with a choice of

using either third country sales or constructed values, administering authorities will use ...*whichever one drives up the dumping margin*.[12]

27. We submit that all the evidence relevant to the matters to be taken into account by the Minister under s.269TAC(3) and (5C) supports the view that the correct and preferable decision is that the Minister should direct that s.269TAC(2)(d) applies to the ascertainment of the normal value of Group 4 products.

Fifth Error

28. In the event that the Minister does not direct that normal value for Group 4 goods should be ascertained under section 269TAC(2)(d) we now turn to a consideration of the proper principles to be applied in determining a normal value under section 269TAC(2)(c).

29. The paragraph requires the Minister to determine, and then sum, three amounts relating to [redacted] –production cost, selling and administration cost and profit. The paragraph stipulates that the actual production cost of [redacted] must be used and the Commission has determined that amount correctly. In relation to administrative, selling and general costs the paragraph requires the adoption of an hypothesis – namely what would have been the costs associated with a sale of [redacted] if it had been sold for home consumption in the ordinary course of trade in the country of export. We accept that the Commission determined these costs correctly in accordance with the hypothesis.

30. In relation to assessing the amount that would be the profit on a hypothetical sale, the paragraph requires that the determination of profit is made by reference to the same hypothetical sale as the Commission used correctly in determining administrative, selling and general costs. The correct process therefore was to ascertain the profit that Dole would seek on the same hypothetical sale of [redacted] on the Thai domestic market. Article 2.2 of the ADA requires that the ascertained amount must be 'reasonable'.

31. What the Commission did instead is clear, but its reasons for doing so are not. The Commission determined the hypothetical profit for an export only product belonging to the Group 4 category by reference to the actual level of profit achieved by DTL in domestic sales of Group1,2 and 3 products. The rationale for this approach is impenetrable:

[12] Durling & Nicely 2002, *Understanding the WTO Anti-Dumping Agreement*, Cameron & May, London, p.35

> ACBPS is satisfied that there are two categories of FSI pineapple products sold by Dole Group on the domestic market that are not directly comparable due to quality differences and alternative methodologies to costing the products. In this circumstance, it is not appropriate to apply the weighted average profit of all sales of FSI pineapple in the ordinary course of trade to the constructed normal values. Instead, the weighted average of sales of the relevant category of products has been applied. This ensures that the amount for profit applied to the constructed normal values represents an amount that can be achieved by Dole Group on the domestic market[13].

32. The statement does acknowledge the two separate product categories but then claims, perversely, that it is the domestic sales of the premium products that are relevant to the assessment of a hypothetical profit on sales of the budget product. Not only does the Commission's approach offend common sense and concepts of equity, reasonableness and fair comparisons but it finds no support in Regulation 181A(2) or the chapeau to Article 2.2.2 of the ADA. The Commission's only attempt at legal justification is to refer to the fact that s.269TAC(2)(c) requires assessment of the amount of profit on the basis of the hypothesis that, instead of only being exported, [redacted] had been sold on the Thai domestic market. The reference does not support the Commission's approach; it undermines it. To apply the statutory hypothesis the establishment of a Thai [redacted] producer has to be assumed as that is the only market for the lower quality category of products. The question then is at what price and at what margin DTL would be prepared to sell. The clear commercial answer is that for comparable quantities they would sell at similar prices to those achieved on the domestic markets and at similar margins.

33. The only other defence mounted by the Commission for its untenable position is that export sales of PID 547 cannot be relied on. The defence is without merit. The Commission received, checked and verified all data relevant to the cost of the product. It also received all relevant information in relation to export sales including those to the country nominated by DTL as the appropriate third country. The Commission's on the spot investigation team concluded that the data was 'reliable'. No doubt the investigation team's opinion and their decision not to undertake further verification of the data was informed by their overall assessment of the reliability of the responses of DTL that they had verified.

34. None of the relevant provisions in Australian legislation or the ADA limit the identification of the appropriate amount of profit to a consideration of the actual profit achieved on domestic sales of relevant goods. The absence of any such limitation is of

[13] Report: p.20

course an essential part of the statutory scheme because, in part, the provisions are designed to deal with situations in which there are simply no domestic sales in the ordinary course of trade. In such cases consideration of profits achieved by the producer on export sales is the first available option. The same option applies in circumstances such as the present where the only domestic sales are of products that demonstrate an entirely different volume/cost/margin profile and are directed at a different market.

35. The correctness of that approach is confirmed by careful analysis of the interaction between relevant statutory provisions and Regulation 181A. The transition from adopting the statutory hypothesis to identifying a principle to underpin the ascertainment of a reasonable profit is provided for in the Regulation which sets out a primary calculation method and three secondary non-hierarchical methods. Significantly, the primary method set out in Regulation 181A(2) does not specify that the sales to be used must be domestic sales. The transition also covers the identification of the sale(s) to be considered in applying the terms of the regulation. Section 269TAC(2)(c)(ii) concludes with the phrase *...the profit on that sale.* 'That sale', correctly identified by the Commission as a sale of [redacted], is the hypothetical sale that must be assessed according to the terms of the Regulation as provided for in section 269TAC(5B). As there are no domestic sales of PID 547 in the ordinary course of trade the primary method in the regulation requires the Minister to work out the amount of profit by reference to export sales of [redacted] in the ordinary course of trade. DTL's calculation of margins for that product, derived from material presented to and accepted by the Commission, was forwarded to the Commission by email of 7 May 2013.

36. *We submit that it is those profit margins that should added to the cost to make and sell* [redacted]

Sixth Error

37. Even if the deeply flawed approach by the Commission involving consideration of average profits achieved on all domestic sales is adopted the resulting amount of profit is not that applied by the Minister. The primary method in the Regulation involves using... *data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.* [Emphasis added]. As we have pointed out above, when faced with identifying the exporter in this context the Commission abandoned its earlier conclusion and traditional practice and ignored the plain meaning of the relevant

words in the Regulation and invented an 'entity' – the Dole Group – to support its preliminary conclusion in the SEF on profit. Details of all relevant domestic sales by DTL together with details of overall profitability were provided to the Commission as an email attachment on 7 May 2013.

38. We submit that even on this flawed approach of applying domestic sales of products not properly comparable with Group 4 products, that it is 'reasonably possible' to work out the amount of profit by using the production and sales data provided to and verified by the Commission and that the Minister must use DTL's level of profit in calculating a constructed normal value.

NORMAL VALUES MUST BE 'NORMAL'

Seventh Error

39. The Appellate Body of the WTO has emphasised that a normal value must not be based on abnormally low or abnormally high prices.[14] Obviously the same principle applies to any consideration of appropriate levels of profit as an element of a constructed normal value. This principle is ignored by the Commission implicitly asserting that the normal profit on a sale of [redacted] for the purpose of a constructed normal value should be about [redacted] greater than the actual average profit realised on all sales in the ordinary course of trade of that product during the investigation period.

40. The concept of normalcy and the related goal of normal value assessments that are 'reasonable' are also undermined by the overall normal value findings of the Commission in the Report. There are a range of factors that will justify modest differences in determined normal values attributable to producers/exporters in competition with one another. However in circumstances where claimed dumping margins for co-operating exporters range from -12% to +18% and average profit margins from zero to [redacted] any informed observer can only conclude that the Commission has got things seriously wrong.

41. We submit that the substantial diversity of normal values, profit margins and dumping margins applying to a group of competitive exporters from one country that are recommended in the Report and adopted by the Minister, are incompatible with the concept of a 'normal' normal value.

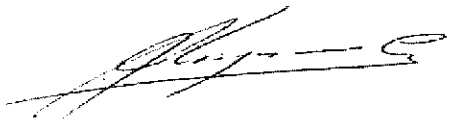
[14] US – Hot Rolled Steel, paras. 140-158

NORMAL VALUES OF OTHER EXPORTERS

Eighth Error

42. The primary basis for ascertaining normal value is set out in s.269TAC(1). It provides that if an exporter does not sell the relevant goods on the domestic market the secondary method of ascertaining normal values must be applied if available. That method involves identifying and applying information relating to relevant domestic sales by 'other sellers' of like goods. The Commission possesses all relevant information in relation to DTL's relevant domestic sales.

43. We submit that it is this information that should be applied by the Minister to determine normal values for KFC, Natural, SAICO and TIPCO under s.269TAC(1)



MINTER ELLISON

Contact: John Cosgrave Direct phone: +61 2 6225 3781 Direct fax: +61 2 6225 1781
Email: john.cosgrave@minterellison.com
Partner responsible: Russell Miller Direct phone: +61 2 6225 3244
Our reference: 26-7715595

SUITOR Luke

From: ADRP_Support
Sent: Friday, 30 August 2013 4:21 PM
To: 'John Cosgrave'
Subject: RE: Application to ADRP - FSI Pineapple from Thailand [ME-ME.FID2190944] [SEC=UNCLASSIFIED]

Importance: High

Good Afternoon Mr Cosgrave,

Please be advised that we confirm the email containing these details and that they will form part of your application. should there be any issue please let me know.

Thank you, &

Kind Regards,

Luke Suitor
Supervisor – Anti-Dumping Review Panel Support
Legal Services Branch
Australian Customs and Border Protection Service
Phone : 02 6275 5868
E-Mail : luke.suitor@customs.gov.au

From: John Cosgrave [mailto:John.Cosgrave@minterellison.com]
Sent: Friday, 30 August 2013 2:46 PM
To: ADRP_Support
Subject: RE: Application to ADRP - FSI Pineapple from Thailand [ME-ME.FID2190944] [SEC=UNCLASSIFIED]

Dear Mr Suitor

Thank you for your email and we apologise for the accidental omission that you have identified. The required information is as follows:

Full Description of the Goods

Pineapple prepared or preserved in containers exceeding one litre known as Food Service and Industrial (FSI) Pineapple.

Tariff Classification/Statistical Code of the subject goods

2008.20.00/27
2008.20.00/28

Please advise if you require an amended application form.

Kind regards,

John Cosgrave Director Trade Measures
t +61 2 6225 3781 **f** +61 2 6225 1781 **m** +61 419 254 974
Minter Ellison Lawyers Minter Ellison Building • 25 National Circuit • Forrest • ACT 2603
john.cosgrave@minterellison.com **www.minterellison.com**

From: ADRP_Support [mailto:ADRP_support@customs.gov.au]
Sent: Friday 30 August 2013 01:28 pm
To: John Cosgrave
Subject: RE: Application to ADRP - FSI Pineapple from Thailand [SEC=UNCLASSIFIED]
Importance: High

Good Afternoon Mr Cosgrave,

I am writing with regard to the application submitted on 26 August 2013 seeking review of a decision by the Minister as it relates to Food Service and Industrial Pineapple exported from the Kingdom of Thailand. Please note subsection 269ZZE(2) of the Customs Act 1901 which states, inter alia, that an application must contain a full description of the goods to which the application relates. The application fails to provide a full description of goods and tariff classification/statistical code of the subject goods as provided for in the approved form.

Can you please as a matter of urgency provide a full description of the goods as requested and submit this to ADRP_support@customs.gov.au.

Thank you, &

Kind Regards,

Luke Suitor
Supervisor – Anti-Dumping Review Panel Support
Legal Services Branch
Australian Customs and Border Protection Service
Phone : 02 6275 5868