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

TRADE MEASURES BRANCH CONSIDERATION REPORT NO. 171

APPLICATION FOR CONTINUATION OF ANTI-DUMPING MEASURES

**PINEAPPLE FRUIT (CONSUMER AND FOOD
SERVICE & INDUSTRIAL)**

**EXPORTED FROM
THE PHILLIPINES AND THAILAND**

31 January 2011

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1 Summary and recommendations

This consideration report is in response to an application by Golden Circle Limited (Golden Circle) for the continuation of anti-dumping measures that apply to pineapple fruit (consumer and food service & industrial (FSI)) exported to Australia from the Philippines and Thailand.

This report provides the results of the consideration by the Australian Customs and Border Protection Service (Customs and Border Protection) to the Chief Executive Officer of Customs and Border Protection (CEO) as to whether or not to reject the application.

1.1 Recommendations

Customs and Border Protection recommends that the CEO decide not to reject the application.

If the delegate accepts this recommendation, to give effect to that decision, the delegate must publish the attached notice at **Appendix A** indicating that Customs and Border Protection will inquire into whether the continuation of the anti-dumping measures is justified.

1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act¹) sets out among other things, the procedures to be followed by the CEO in dealing with an application for the continuation of measures.

The Division empowers the CEO to reject or not reject an application for continuation of anti-dumping measures.

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating a proposed inquiry into whether continuation of the measures is justified.

The CEO's powers have been delegated to certain officers of Customs and Border Protection.

1.3 Findings and conclusions

The application lodged by Golden Circle complies with the requirements of s.269ZHC.

Having regard to the applicant's claims and other relevant information, there appears to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent. It is possible that the expiry of the measures will lead to price undercutting, and that the undercutting will result in adverse effects on the Australian industry's sales volume, price and profitability.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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2 Background

On 12 November 2010, Customs and Border Protection published a notice in *The Australian* newspaper inviting certain persons to apply to the CEO of Customs and Border Protection for the continuation of anti-dumping measures on pineapple fruit (consumer and FSI) exported from The Philippines and Thailand².

On 11 January 2011, Golden Circle lodged an application for the continuation of the measures³.

2.1 Existing measures

2.1.1 Thailand

Anti-dumping measures were imposed on pineapple fruit prepared or preserved in containers and pineapple juice concentrate from Thailand on 18 October 2001 following Trade Measures Report No. 41. The report covered three products. Separate measures were imposed on:

- pineapple juice concentrate;
- pineapple fruit prepared or preserved in containers not exceeding one litre, hereafter described as 'consumer pineapple'; and
- pineapple fruit prepared or preserved in containers exceeding one litre, hereafter described as 'FSI pineapple' (food service & industrial pineapple).

All exporters of pineapple fruit and juice from Thailand, with the exception of Malee Sampran Public Co for exports of FSI pineapple, were subject to interim dumping duties.

On 28 September 2006 The Minister for Home Affairs (the Minister) accepted the recommendations contained within Trade Measures Reports 110 and 111 to continue the anti-dumping measures applying to both consumer and FSI pineapple for another 5 years and update the level of anti-dumping measures. Notification of the Minister's decision was given in Australian Customs Dumping Notice (ACDN) 2006/43.

On 4 April 2008 the Federal Court set aside the Minister's decision to continue measures in relation to exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC). Following this decision, measures applying to exports of consumer pineapple from TPC were revoked.

The current measures are due to expire on 17 October 2011.

² In accordance with s.269ZHB.

³ In accordance with s.269ZHC(2).

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2.1.2 The Philippines

Anti-dumping measures were imposed on consumer pineapple and FSI pineapple exported from the Philippines following Trade Measures Report No. 112. Notification of the Minister's decision was given in ACDN 2006/44 and ACDN 2006/51 and by notice published in *The Australian* newspaper and the *Gazette* on 10 October 2006 and 13 November 2006.

The current measures applicable to consumer pineapple exported from the Philippines expire on 10 October 2011. The current measures applicable to FSI pineapple expire on 13 November 2011.

2.2 The goods subject to the measures

The goods the 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 and industry (FSI pineapple)).

2.3 Tariff classification of the goods

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

The rate of duty for the goods exported from the Philippines is 5 percent. There is currently no general duty imposed on goods exported from Thailand in accordance with the Thailand-Australia free trade agreement (TAFTA).

2.4 Australian industry producing like goods

Golden Circle is the sole producer and manufacturer of pineapple fruit (consumer and FSI) in Australia.

2.4.1 Like goods

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 foods service and industrial market; and
- in container sizes not exceeding one litre (typically 225g, 425-450g, and 825-850g, although other sizes are available) sold into retail stores.

GCL produces a range of pineapple products in the above container sizes. The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices, crushed pineapple and pizza cut pineapple. The products are sold in containers in either syrup or natural juice.

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2.5 Australian market

The Australian market is essentially supplied by Golden Circle and imports. Golden Circle indicated that the majority of imports of consumer pineapple are sourced from Thailand, the Philippines and Indonesia, whilst imported FSI pineapple is principally sourced from Thailand, with smaller volumes from the Philippines and Indonesia

Using information from Customs and Border Protection's import database, and information provided by Golden Circle in its application, we found the size of the Australian market for consumer pineapple increased in 2008 and 2009, before contracting in 2010 to levels still above that sold in 2007. A similar analysis of the Australian market for FSI pineapple shows that the market increased in 2008 before contracting in 2009 to levels similar to that produced in 2007.

The size of the market for FSI pineapple appears to have stabilised between 2009 and 2010. Information on the Australian market for pineapple fruit (consumer and FSI) is at **confidential attachment 1**.

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3 Compliance with section 269ZHC

3.1 Finding

The application lodged by Golden Circle complies with the requirements of s.269ZHC.

3.2 Legislative Framework

Section 269ZHC(1) specifies that an application under s 269ZHB must:

- (a) be in writing;
- (b) be in an approved form;
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

Sections 269ZHC(2) & (3) cover procedural matters in relation to lodgement of the application.

3.3 Assessment

The application lodged by Golden Circle was in writing, in the approved form, contained such information as the form required and was signed in the manner indicated in the form.

The applicant also provided non-confidential versions of the application for distribution to interested parties. The non-confidential version of the application adequately reflects the reasons for seeking a review of the anti-dumping measures.

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4 Consideration of reasonable grounds

4.1 Finding

Having regard to the applicant's claims and other relevant information, there appear to be reasonable grounds for asserting that the expiration of anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

4.2 Legislative framework

Section 269ZHD(2)(b) requires consideration of whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

For the purposes of considering s.269ZHD(2)(b), Golden Circle's claims have been examined and assessed according to whether it is reasonable to assert that, in the absence of anti-dumping measures, exports of the goods might:

- 1) continue;
- 2) be at dumped prices; and
- 3) lead to a continuation of, or recurrence of, material injury.

4.3 Is it reasonable to assert that exports of the goods might continue?

4.3.1 Applicant's claims

Golden Circle states that the export volumes of pineapple fruit from Thailand and the Philippines since the measures were imposed indicate that exporters from these countries have maintained distribution links in Australia.

The applicant considers that importers from Thailand and the Philippines have maintained a strong presence in the Australian market. This is supported by Australian Bureau of Statistics (ABS) import data which indicates that:

- Exports of consumer pineapple from the Philippines have increased by approximately 300% since the measures were imposed;
- Whilst exports of consumer pineapple from Thailand have decreased since the continuation of measures in 2006, Thai exports still make up 40% of the total import volume of consumer pineapple;
- Exports of FSI pineapple from Thailand have also increased by approximately 72% since the continuation of measures in 2006. Thai imports now make up approximately 75% of the total imports of FSI pineapple.

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Golden Circle stated that although FSI exports from the Philippines have declined since measures were imposed in 2006, it believes that, in the absence of anti-dumping measures, parties with an interest in pineapple processing facilities in both the Philippines and Thailand could redirect FSI pineapple exports such that they are supplied out of the Philippines, rather than Thailand.

The applicant also advises that:

- the Thai processing industry has significant capacity from which it can increase exports to Australia in the absence of measures;
- the significant production facilities of large scale manufacturers in the Philippines would enable these manufacturers to increase their supply of pineapples into the Australian market in the absence of measures; and
- in February 2007 the United States of America (USA) Department of Commerce finalised a 'sunset' review inquiry into canned pineapple fruit from Thailand and announced that anti-dumping measures should not be revoked as they would likely lead to a recommencement of dumping and material injury.

Golden Circle advises that due to the above factors it is likely that in the absence of anti-dumping measures in Australia, exports of pineapple fruit (consumer and FSI) from Thailand and the Philippines would likely increase.

4.3.2 Assessment

Customs and Border Protection's import database shows imports of pineapple fruit (consumer and FSI) from Thailand and the Philippines have continued since measures were imposed demonstrating that exporters have maintained distribution links in Australia.

The information provided in this database is generally consistent with the claims made by the applicant in relation to the pattern of imports for both consumer and FSI pineapple. In particular this data identifies that:

- imports of FSI pineapple from Thailand have increased significantly since the measures were continued in 2006;
- imports of consumer pineapple from Thailand have decreased, although imports still make up over 40% of total imports into the Australian market;
- imports of FSI pineapple from the Philippines have decreased significantly since measures were imposed, although they still make up approximately 5% of total imports of FSI pineapple; and
- imports of consumer pineapple from the Philippines have increased substantially since measures were imposed.

A country by country breakdown of imports over the period 2006-2010 is provided at **confidential attachment 1**.

Given the current import trends, combined with the continuation of anti-dumping measures in the USA in relation to exports from Thailand, it is reasonable to expect that imports to Australia of consumer and FSI pineapple from the Philippines and Thailand may continue after the expiration of the anti-dumping measures.

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4.4 Is it reasonable to assert that exports of the goods might be at dumped prices?

4.4.1 Applicant's claims

Golden Circle considers that it is likely that exporters from Thailand and the Philippines will resume exporting to Australia at dumped prices should anti-dumping measures be allowed to expire.

Golden Circle noted that following the most recent investigations into exports of consumer and FSI pineapple from the countries the subject of this inquiry, Thai exporters were found to have non-negligible dumping margins, whilst exporters from the Philippines were found to have dumping margins between 2-90% percent for consumer pineapple and between 2-20% for FSI pineapple.

Thailand

Golden Circle calculated a current dumping margin, using the export prices from ABS import data and a normal value based on price quotations it received from a Thai domestic supplier.

Using these figures Golden Circle calculated that export prices of consumer pineapple to Australia were at dumped prices in the range of 13-14%, whilst export prices of FSI pineapple were at dumped prices between 14-18%.

Golden Circle also obtained a comparison of export prices of "pineapple in airtight containers" for Australia and the USA from the Thai Customs Department website. This comparison identified that the average Thai export price to Australia is approximately 25% below the average Thai export price to the USA.

The applicant was of the view that the price quotations obtained from the Thai supplier combined with the relative export prices of pineapples exported to Australia and the USA are indicators that Thai export prices to Australia are at dumped prices.

Philippines

Golden Circle also calculated a dumping margin for the Philippines, with normal values based on a market survey which set out the retail prices of locally produced consumer pineapple sold in varying can sizes.

Using these figures Golden Circle calculated that export prices of consumer pineapple to Australia were at dumped prices in the range of 32-37%, whilst export prices of FSI pineapple were at dumped prices of approximately 82%.

4.4.2 Assessment

Thailand

Golden Circle provided the import data and domestic quotations to support its dumping margin calculations. The normal value figure used by Golden Circle in calculating the dumping margin for consumer pineapple is based on the price quoted by the overseas supplier for sales of 850g cans of pineapple slices and 825g cans of pineapple tidbits.

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The applicant noted that these prices are likely the cheapest prices (on a per litre basis) in the consumer pineapple category and cannot be directly apportioned to cans in the 410-450g range.

Golden Circle suggested that the quoted prices may be 20-25% higher than the average prices of all cans of consumer pineapple. As the ABS import data did not differentiate values by can sizes, the company increased the prices quoted by 20-25% to enable a fair comparison with these export prices.

When the quoted prices, as provided by the applicant, are compared to the export price to Australia, as recorded in Customs and Border Protection's import database for 2010, the price quoted on the domestic market is below the average export price to Australia. If the quoted domestic selling price is increased by 20%, as Golden Circle suggested was appropriate for a fair comparison, then dumping margins around the levels indicated by the applicant are evident.

Whilst it is conceivable that the price of cans in the range 825-850g would be less expensive than the average price of all goods within the consumer pineapple category, Golden Circle has not provided any evidence to support their claim that the price would be 20-25% higher than the average.

We analysed information relating to Golden Circle's sales of consumer pineapple obtained during the 2006 continuation inquiry and found that the average price of a 450g can of pineapples was approximately 15% higher than the average price of an 850g can. When we increased the quoted domestic selling prices provided by the applicant by 15%, in accordance with the average price differences found in 2006, we found a non-negligible dumping margin existed.

The normal value figure used in calculating the dumping margin for FSI pineapple is based on the prices quoted for sales of 3.035kg cans of pineapple slices and pineapple tidbits. When these prices were compared to the import database referred above, it shows that the prices quoted on the domestic market were above the average export prices to Australia.

Whilst some doubts arise as to whether consumer pineapple from Thailand is currently at dumped levels, given the fact that Thailand is amongst the cheapest sources of both consumer and FSI pineapple within the Australian market, there appear to be reasonable grounds for asserting that the expiration of measures may lead, or might be likely to lead, to dumping into Australia by some Thai exporters.

Philippines

The normal value figures used by Golden Circle in calculating the dumping margin for consumer pineapple were based on the selling prices domestic retailers of cans in a variety of sizes. When these prices as provided by the applicant are compared to the export prices to Australia, as recorded in Customs and Border Protection's import database for 2010, it appears that both the prices of consumer and FSI pineapple are at substantially dumped levels.

It would, therefore, appear reasonably likely that, in the absence of further measures, imports of both consumer and FSI pineapple from the Philippines will continue to be at dumped prices in the foreseeable future.

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All comparisons between the quoted prices and the export prices obtained from the import database are contained at confidential attachment 2.

4.5 Is it reasonable to assert that exports of the goods might lead to a continuation of, or recurrence of material injury?

4.5.1 Applicant's claims

Golden Circle considers that it is already facing price undercutting from imports of both consumer and FSI pineapple from Thailand and the Philippines and expects this to increase in the future. It claims that this price undercutting has resulted in the decrease of sales volume in both the consumer and FSI segments of the processed pineapple market in 2009 and 2010.

The applicant compared the average FIS prices from Thailand and the Philippines, obtained from the ABS import data, with its average sales prices of both consumer and FSI pineapple in 2010, and noted that the imported products were sold at prices below Golden Circle's variable costs of production. Golden Circle noted that this price undercutting places significant pricing pressures on the company, and has already resulted in significant losses of sales to important customers. In support of these claims, Golden Circle identified one major customer from whom it has lost a significant amount of sales to suppliers of the imported products and another customer where importer pricing pressure has forced the applicant to supply the goods at a substantial loss on the variable costs of production.

Given the current levels of imports from the Philippines and Thailand and their current pricing levels within the Australian market, Golden Circle considers that if measures are allowed to expire the Australian industry will likely experience further losses of sales volume and market share. Further, the applicant also contends that the Australian injury will also experience price depression, due to the decline in export prices caused by the removal of the floor price imposed by the current measures.

4.5.2 Assessment

The sales data provided by Golden Circle provides sufficient evidence to conclude that the Australian industry is already experiencing injury. The increase of imported goods at allegedly dumped levels has coincided with a decrease in Golden Circle's sales and a significant reduction in the profitability of sales of both consumer and FSI pineapples.

Based on these trends, and the evidence provided by the applicant in relation to the loss of major customers and the identification of specific unprofitable sales, it appears reasonable to claim that the current prices of imported products on the Australian market are injurious, and that the current anti-dumping measures have not been successful in removing the effects of dumping.

Given that the imports of both categories of pineapple appear to be already causing injury to the Australian industry, it is reasonable to conclude that, in the absence of effective anti-dumping measures on imports of consumer and FSI pineapple, the injury suffered by the applicant will continue in the future.

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It should be noted, however, in relation to exports of consumer pineapple from Thailand, that a significant portion of the total volume of consumer pineapple imported in 2010 was supplied by an exempt exporter (TPC). As the measures do not currently apply to this exporter, exports of consumer pineapple from this exporter are not subject to this application. In evaluating the extent to which exports of consumer pineapple from Thailand would be likely to cause injury to the Australian industry, the current and future prices of consumer pineapple sold by TPC on the Australian market are assumed to be non-injurious.

4.6 Conclusion on “reasonable grounds”

There appear to be reasonable grounds for asserting that the expiration of anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

4.7 Review Period

For the purposes of this investigation, the investigation period to determine whether the measures should be continued is from 1 January 2010 to 31 December 2010.

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5 List of Attachments

Appendix A	Public notice under s. 269ZHD(4)
Confidential Attachment 1	Import Volume By Country 2006-2010
Confidential Attachment 2	Export Price Comparison

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Appendix A

Customs Act 1901 – Part XVB

Pineapple fruit (consumer and food service and industrial)

exported from the Philippines and Thailand

Initiation of review of measures

Notice under s. 269ZHD(4) and 269ZC(4)

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) will inquire into whether the continuation of anti-dumping measures in respect of pineapple fruit (consumer and Food Service and Industrial (FSI)) exported from the Philippines and Thailand is justified. The CEO will also undertake a review of these measures. The inquiry and review will commence on 4 February 2011.

The goods subject to anti-dumping measures (the goods) are:

- Pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple) exported to Australia from the Philippines and Thailand; and
- pineapple prepared or preserved in containers exceeding one litre (food service and industrial (FSI) pineapple) exported from the Philippines and Thailand.

Pineapple fruit (consumer and FSI), is classified within sub-heading 2008.20.00, statistical codes 26, 27 and 28, in Schedule 3 to the *Customs Tariff Act 1995*. The applicable duty rate for the goods is 'free' from Thailand and five percent from the Philippines.

A dumping duty notice applies to all exporters of consumer pineapple from Thailand except for the Thai Pineapple Canning Industry Corp Ltd, all exporters of FSI pineapple from Thailand except for Malee Sampran Public Co. and all exporters of consumer and FSI pineapple from the Philippines.

Interested parties are invited to lodge written submissions concerning the continuation and/or review of the measures not later than **16 March 2011** with:

The Director
Operations 1
Customs and Border Protection
Trade Measures Branch
Customs House
5 Constitution Avenue
Canberra ACT 2601

or by email tmops1@customs.gov.au , or by facsimile number 02 6275 6990.

Confidential submissions must be clearly marked "in-confidence" and be accompanied by two non-confidential versions suitable for placement on the public record. All non-confidential submissions will be placed on the public record for this inquiry together with a copy of all relevant correspondence between Customs and Border Protection and other persons.

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Statements of the essential facts (SEF's) on which the CEO proposes to base the recommendations to the Minister for Home Affairs (the Minister) will be placed on the public record by 25 May 2011, or such longer period as the Minister allows under s. 269ZHI of the *Customs Act 1901* (the Act). Interested parties are invited to lodge submissions in response to the SEF within 20 days of those statements being placed on the public record. Submissions to the SEF's should also be lodged with Customs and Border Protection at the above mail, fax or email addresses.

Reports and recommendations to the Minister will be made on or before 9 July 2011 (or such longer period as the Minister allows under s. 269ZHI of the Act).

Unless the Minister, after considering the report in relation to the continuation inquiry, decides to take steps to secure the continuation of the anti-dumping measures, they will expire on:

- Pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple) exported to Australia from:
 - the Philippines – 10 October 2011; and
 - Thailand – 17 October 2011
- Pineapple prepared or preserved in containers exceeding one litre (FSI) pineapple exported to Australia from:
 - the Philippines – 13 November 2011
 - Thailand – 17 October 2011

Therefore, on the day after their expiry date the anti-dumping measures would no longer apply.

Particulars of the reasons for the decision to initiate this inquiry and review are shown in Consideration Reports No. 171 and 172 (CON 171 and 172) held on the public record. Interested parties wishing to examine the public record may do so on the internet at adpr.customs.gov.au/Customs or at Customs House, 5 Constitution Avenue, Canberra ACT during business hours by contacting Trade Measures office management on telephone number 02 6275 6547. CON 171 and 172 and all Australian Customs Dumping Notices are also available on the Customs and Border Protection website at www.customs.gov.au.

Enquiries about this notice may be directed to the case team on telephone number 02 6245 5453 or email tmops1@customs.gov.au.

John Bracic
Delegate of the Chief Executive Officer

4 February 2011