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**Australian Government**

**Australian Customs and  
Border Protection Service**

## **TRADE MEASURES BRANCH CONSIDERATION REPORT NO. 172**

### **APPLICATION FOR THE REVIEW OF ANTI-DUMPING MEASURES**

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

**EXPORTED FROM  
THE PHILIPPINES 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 review of anti-dumping measures that apply to pineapple fruit (consumer and food service industry) exported to Australia from the Philippines and Thailand. The applicant has applied for a review of all the variable factors, the non-injurious price, export price and normal value.

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

We recommend that the delegate of the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) 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 it is proposed to review the measures covered by the application.

### 1.2 Application of law to facts

Division 5 of Part XVB of the *Customs Act 1901* (the Act<sup>1</sup>) sets out, among other things, the procedures to be followed by the CEO in dealing with an application for the review of measures.

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

Depending on the CEO's decision, it may be necessary for the CEO to publish a notice indicating that it is proposed to review the measures covered by the application.

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

### 1.3 Findings and conclusions

We have examined Golden Circle's application for review of anti-dumping measures applying to pineapple fruit exported to Australia from the Philippines and Thailand.

We are satisfied that the application lodged by Golden Circle complies with the requirements of s. 269ZB.

We are also satisfied, having regard to the applicant's claims and other relevant information, that there appears to be reasonable grounds for asserting that one

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<sup>1</sup> 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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or more of the variable factors relevant to the taking of anti-dumping measures have changed.

Our reasons for being satisfied are based on the applicant's demonstration of changes in variable factors - the non-injurious price, export price and normal value - since the measures were last revised in 2006.

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## 2 Background

On 14 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application requesting a review of anti-dumping measures<sup>2</sup> applying to pineapple fruit exported to Australia from the Philippines and Thailand. This meets the requirements under s. 269ZA(2) because more than 12 months has lapsed since the publication of the last notice.

### 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.

#### 2.1.2 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

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<sup>2</sup> In accordance with s.269ZA.

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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 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. Reference to 'pineapple fruit' in this report refers to both consumer pineapple and FSI pineapple.

### 2.2.1 Imports

Since the last revision of measures, Thailand exporters have continued to supply the Australian market with pineapple fruit. The Philippines have not been subject to a review since the initial measures were imposed. Exporters from the Philippines have also continued to supply the Australian market with pineapple fruit since measures were imposed. Customs and Border Protection's import database details imports of pineapple fruit from the Philippines and Thailand. Details of the imports for the period 1 January 2010 to 31 December 2010 are at **confidential attachment 1**.

Golden Circle has provided names and addresses of exporters and manufacturers from the Philippines and Thailand and key importers and sellers of like goods who are likely to have an interest in the current review.

## 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

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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 manufacturer/processor of Australian sourced pineapple fruit 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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## 3 Compliance with Section 269ZB

### 3.1 Finding

We are satisfied that the application lodged by Golden Circle complies with the requirements of s. 269ZB.

### 3.2 Legislative framework

Subsection 269ZB(1) requires that the application be in writing, be in an approved form, contain such information as the form requires and be signed in the manner indicated by the form.

Section 269ZB(2) requires an applicant to provide:

- a description of the kind of goods to which the measures the subject of the application relate; and
- a description of the measures the subject of the application; and
- a statement of the opinion of the applicant concerning:
  - the variable factors relevant to the taking of the measures that have changed; and
  - the amount by which each such factor has changed; and
  - the information that establishes that amount.

Section 269ZB(3) and (4) cover procedural matters in relation to lodgement of the application.

### 3.3 Our 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

We are satisfied, having regard to the applicant's claims and other relevant information, that there appear to be reasonable grounds for asserting that one or more of the variable factors relevant to the taking of anti-dumping measures have changed.<sup>3</sup>

### 4.2 Legislative framework

Section 269ZC(2)(b) requires consideration of whether there are reasonable grounds for asserting either:

- that the variable factors relevant to the taking of anti-dumping measures have changed; or
- that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.

The applicant has asserted that the non-injurious price, export price and normal value has increased since measures were imposed.

### 4.3 Grounds for asserting variable factors have changed

#### 4.3.1 Non-Injurious price

##### Applicant's Claims

In REP 110, REP 111 and REP 112, Customs and Border Protection determined the non-injurious price using unsuppressed selling prices that were based upon the industry's cost to make and sell (CTMS) in 2005.

Golden Circle states that its CTMS has increased by 26.02% for pineapple fruit (FSI) and 50.01% for pineapple fruit (consumer) since 2005. Golden Circle provided selling price information in its CTMS spreadsheet to support this claim (**confidential attachment 2**).

##### Our assessment

Golden Circle provided its CTMS data for the period 2008 to 2010. We observed that the CTMS has increased each year for both consumer and FSI pineapple fruit.

The non-injurious price is generally derived from the Australian industry's selling prices at a time unaffected by dumping, or from a constructed price. Deductions for post-exportation costs are made from this price to arrive at a non-injurious price. Golden Circle did not provide details of relevant deductions, however, we consider the change in sales price and costs sufficient to demonstrate that the non-injurious price has changed.

<sup>3</sup> In accordance with s.269ZC(2)

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## 4.3.2 Export Price

### Applicant's claims

Golden Circle claims that the prices of consumer and FSI pineapple exported from the Philippines and Thailand during 2010 were on average greater than the export prices to Australia in 2005 (with the exception of consumer pineapple exported from the Philippines, that has remained stable). Golden Circle claimed the following price changes.

Category	Av. Export price 2005 A\$/litre	Av. Export price 2010 A\$/litre	Change
Philippines < 1 litre	1.1166	1.1078	↓ 0.008%
Philippines > 1 litre	0.7872	0.8615	↑9.4%
Thailand < 1 litre	0.9264	1.1505	↑24.19%
Thailand > 1 litre	0.6654	0.8228	↑23.65%

**Notes:** 1. Export prices for 2005 sourced from Golden Circle's application for anti-dumping measures against China and the Philippines, March 2006.  
2. 2010 export prices sourced from ABS – refer **Non-Confidential Attachment 1**.

### Our assessment

We were able to reconcile the export prices in the application with the ABS import data provided and noted the increased unit values. We then referred to Customs and Border Protection's import database to ascertain the average export price for the 2010 calendar year. We have excluded the exempt exporters from the export price calculations. We found that the export price had increased from the figures established in the last review in 2006. An analysis of export price changes based on Customs and Border Protection's import database is at **confidential attachment 3**. We are satisfied that there has been a change in the export price of pineapple fruit (consumer and FSI) from the Philippines and Thailand.

## 4.3.3 Normal value

### Applicant's claims

Golden Circle claims that the normal value for pineapple fruit (consumer and FSI) from both the Philippines and Thailand is higher than the levels determined by Customs and Border Protection in the last review.

Golden Circle obtained domestic pricing information for the Philippines via a market survey for locally produced and sold consumer pineapple in varying can sizes. Golden Circle compared the domestic price of canned tidbits in 2006 with 2010 prices. The domestic price had increased by between 32.98% and 38.14% depending upon the can size.

Golden Circle obtained domestic pricing information for Thailand from a domestic Thai supplier. A quotation was obtained from this supplier for sliced pineapple and tidbits pineapple in consumer and FSI size cans. Golden Circle

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compared these prices with the pricing quoted in the 2006 review. Domestic pricing has increased by 24% for consumer pineapple and 11.6% for FSI pineapple.

The domestic pricing obtained by Golden Circle shows that the normal value for pineapple fruit (consumer and FSI) from the Philippines and Thailand has increased from the last review. Domestic pricing calculations are at **confidential attachment 4**.

## **Our assessment**

We have assessed the information provided by Golden Circle regarding the domestic selling price of pineapple fruit in the Philippines and Thailand.

The Philippines market survey data supplied with the application supports Golden Circle's claim that domestic prices for canned pineapple tidbits has increased since the last review.

The quotation from the Thai supplier for pineapple sliced and pineapple tidbits supports Golden Circle's claim that the domestic price for consumer and FSI pineapple has increased since the last review.

## **4.4 Conclusion on "reasonable grounds"**

We are satisfied that there appears to be reasonable grounds for asserting the non-injurious price, export price and normal value have changed.

Accordingly we recommend that you as delegate of the CEO decide not to reject the application.

You will need to publish a notice indicating that it is proposed to review the measures covered by the application<sup>4</sup>.

## **4.5 Review Period**

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

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<sup>4</sup> s. 269ZC(4)

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## 5 List of Attachments

<b>Appendix A</b>	Public notice under s. 269ZC(4)
<b>Non-Confidential Attachment 1</b>	ABS import data
<b>Confidential Attachment 1</b>	Details of imports from Customs and Border Protection database (1 Jan 2010 to 31 Dec 2010)
<b>Confidential Attachment 2</b>	Golden Circle's Cost to Make and Sell (CTMS) data
<b>Confidential Attachment 3</b>	Analysis of export prices
<b>Confidential Attachment 4</b>	Domestic Pricing calculations the Philippines and Thailand.

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## Appendix A

### Customs Act 1901 – Part XVB

#### Pineapple Fruit

#### (Consumer and FSI)

#### exported from the Philippines and Thailand

#### Initiation of continuation inquiry

#### 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](mailto: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

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with a copy of all relevant correspondence between Customs and Border Protection and other persons.

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](http://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](http://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](mailto:tmops1@customs.gov.au).

John Bracic  
Delegate of the Chief Executive Officer

4 February 2011