



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

PUBLIC RECORD

R E P O R T

CUSTOMS ACT 1901 - PART XVB

TRADE MEASURES BRANCH

REPORT NO. 173

**CONSIDERATION OF AN APPLICATION
FOR A DUMPING DUTY NOTICE**

PINEAPPLE FRUIT (CONSUMER AND FSI)

EXPORTED FROM

THE REPUBLIC OF INDONESIA

and

PINEAPPLE FRUIT (CONSUMER)

EXPORTED FROM

THE KINGDOM OF THAILAND

BY THAI PINEAPPLE CANNING INDUSTRY CORP LTD

13 April 2011

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ABBREVIATIONS

The Act	<i>Customs Act 1901</i>
CEO	Chief Executive Officer
CTMS	Cost To Make & Sell
Customs and Border Protection	Australian Customs and Border Protection Service
FOB	Free On Board
Golden Circle	Golden Circle Limited
Indonesia	Republic of Indonesia
NIP	Non-injurious Price
Tariff Act	<i>Customs Tariff Act 1995</i>
Thailand	Kingdom of Thailand
the goods	the goods the subject of the application
the Minister	the Minister for Home Affairs
TPC	Thai Pineapple Canning Industry Corp. Ltd
USP	Unsuppressed Selling Price

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1 SUMMARY AND RECOMMENDATIONS

This consideration is in response to an application by Golden Circle Limited (Golden Circle) for a dumping duty notice in respect of certain prepared or preserved pineapple in syrup or juice in containers (pineapple fruit) exported to Australia from the Republic of Indonesia (Indonesia) and the Kingdom of Thailand (Thailand).

The application asks for anti-dumping measures in respect of:

- Food service and industrial (FSI) pineapple exported from Indonesia; and
- Consumer pineapple exported from Indonesia and consumer pineapple exported from Thailand by the Thai Pineapple Canning Industry Corp Ltd (TPC).

FSI pineapple refers to pineapple prepared or preserved in containers exceeding one litre.

Consumer pineapple refers to pineapple prepared or preserved in containers not exceeding one litre.

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 (CEO) of Customs and Border Protection 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 CEO accepts this recommendation, to give effect to the decision, the CEO must sign and publish the notice at **Attachment A**.

1.2 Application of law to facts

1.2.1 Authority to make decisions

Division 2 of Part XVB of the *Customs Act 1901*¹ sets out among other matters, the procedures to be followed and the matters to be considered by the CEO in conducting investigations in relation to goods covered by the application for the purpose of making a report to the Minister for Home Affairs (the Minister).

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

1.2.2 Application

On 24 March 2011, Golden Circle, the sole producer of pineapple fruit in Australia, lodged an application for the publication of a dumping duty notice in respect of consumer pineapple fruit exported to Australia from Indonesia and Thailand by TPC and for FSI pineapple fruit exported to Australia from Indonesia.

Within 20 days of Customs and Border Protection receiving the application, or further information in support of the application without having been requested to do so², the delegate shall examine the application and decide whether or not to reject it.

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

² Section 269TC(2A)

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The delegate must make a decision on this application by 13 April 2011.

1.2.3 Consideration of application

The CEO shall reject the application if not satisfied, after having regard to the matters contained in the application and to any other information that the CEO considers relevant, that:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application.

1.2.4 Findings and conclusions

Compliance with subsection 269TB(4) (Section 3 of this report)

The application complies with subsection 269TB(4).

Australian industry (section 5 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appears to be an Australian industry in respect of like goods for consumer pineapple fruit and for FSI pineapple fruit.

Reasonable grounds - Dumping (Section 6 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that:

- Consumer pineapple fruit is being exported to Australia from Indonesia and from Thailand by TPC at dumped prices and the dumping margins are not negligible;
- FSI pineapple fruit is being exported to Australia from Indonesia at dumped prices and the dumping margins are not negligible;
- the total volume of consumer pineapple that have been dumped from Indonesia and from Thailand by TPC individually is greater than 3% of the total Australian import volume and therefore not negligible; and
- the total volume of FSI pineapple that has been dumped from Indonesia is greater than 3% of the total Australian import volume and therefore not negligible.

Reasonable grounds - Injury (Section 7 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in relation to consumer pineapple in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;

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- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in relation to FSI pineapple in the form of:

- lost sales volume;
- Price depression;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

Reasonable grounds - Causation (Section 8 of this report)

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that there is causal link between dumping and material injury.

Reasonable grounds – Publication of a dumping duty notice

In view of the above findings, there appear to be reasonable grounds for the publication of dumping duty notices in respect of the goods the subject of the application.

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2 INTRODUCTION

2.1 Application

On 24 March 2011, Golden Circle lodged an application³ for the publication of a dumping duty notice in respect of pineapple fruit exported to Australia from Indonesia and from Thailand (by TPC).

The decision whether to reject the application must be made within 20 days after the lodgement date⁴, or from the date that further information is received from the applicant⁵. Therefore, this decision must be made by 13 April 2011.

The application will not be rejected if:

- the application complies with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods the subject of the application (the goods).

For there to appear to be reasonable grounds for the publication of a dumping duty notice in respect of the goods, there must appear to be reasonable grounds to support the claim that:

- pineapple fruit is being exported to Australia from Indonesia and from Thailand (by TPC) at dumped prices;
- the Australian industry is suffering injury; and
- there is causal link between the dumping and material injury.

2.2 Company information

The application states that Golden Circle is 100% owned by H.J. Heinz Company Australia Limited (Heinz Aust). Heinz Aust is ultimately owned by H.J. Heinz Company, a United States company listed on the New York Stock Exchange.

Up to 2008 Golden Circle was an unlisted public company owned by 850 shareholders that included pineapple growers. In 2008 this arrangement changed when Golden Circle listed on the stock exchange as a public company. In December 2008 Heinz Aust acquired full control of Golden Circle after a court approved scheme of arrangement offer to Golden Circle and its shareholders.

The application includes a chart outlining the associations of Heinz Aust's related companies at Confidential Attachment A-2.6 to the application.

The application notes that Trade Measures Report 41 (REP 41), REP 110 and REP 111 have identified Golden Circle as the sole manufacturer of pineapple fruit in Australia. Golden Circle states that it does not consider that there has been a change in local manufacture since those reports. Golden Circle processes pineapple fruit at its sole processing facility at Northgate Queensland.

³ Section 269TB

⁴ Section 269TC(2)

⁵ Section 269TC(2A)

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2.3 Previous pineapple fruit cases

There are currently anti-dumping measures on pineapple fruit for:

- consumer and FSI pineapple exported from the Republic of the Philippines (Philippines);
- consumer and FSI pineapple exported from Thailand, except for exports by Malee Sampran Public Co (Malee) and except for exports of consumer pineapple by TPC; and
- FSI pineapple exported from the People's Republic of China (China).

There is a continuation inquiry and a review of the measures being conducted in regards to the measures for the Philippines and Thailand. Customs and Border Protection is due to report its findings to the Minister for the continuation inquiry and review by 9 July 2011.

Golden Circle did not apply for a continuation of the measures in regards to China and those measures will expire on 13 November 2011.

History of the measures in regards to pineapple.

On 8 January 2001 Golden Circle lodged an application for a dumping duty notice in respect of certain pineapple products from Indonesia and Thailand.

The goods under consideration were three separate products:

- pineapple juice typically concentrated to 60% - 65% brix, exported from Indonesia and Thailand;
- consumer pineapple exported from Thailand; and
- FSI pineapple, exported from Indonesia and Thailand.

The Minister accepted the recommendations in REP 41 and published dumping duty notices in October 2001 for pineapple exported to Australia from Thailand, excluding goods exported by Malee. Measures were not recommended against exports from Indonesia.

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. Golden Circle did not apply for a continuation of the measures in relation to pineapple juice and those measures lapsed in October 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 5 years and fix different variable factors in relation to the anti-dumping measures.

On 4 April 2008 the Federal Court set aside the Minister's decision to continue measures in relation to exports of consumer pineapple from Thailand by TPC. Following this decision, measures applying to exports of consumer pineapple from TPC lapsed.

On 21 March 2006 Golden Circle lodged an application with Customs and Border Protection requesting that the Minister publish dumping duty notices in respect of exports of consumer pineapple and FSI pineapple to Australia from China and the Philippines.

The Minister accepted the recommendations in REP 112 and published dumping duty notices for consumer pineapple exported to Australia from the Philippines and FSI

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pineapple exported from China and the Philippines. Measures were not recommended against exports of consumer pineapple from China.

Customs and Border Protection were directed to conduct a reinvestigation and in REP 125 made a new finding in relation to the determination of an unsuppressed selling price for consumer pineapple and affirmed the other findings subject to the reinvestigation.

The Minister considered and accepted the new finding in relation to the USP and affirmed the other findings subject to the reinvestigation in REP 125 and published a notice in December 2007.

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3 COMPLIANCE WITH SUBSECTION 269TB(4)

3.1 Finding

Customs and Border Protection is satisfied that the application complies with subsection 269TB(4).

3.2 Introduction

To comply with the legislation, the application must be in writing, be in an approved form, contain such information as the form requires, be signed in the manner indicated by the form and be supported by a sufficient part of the Australian industry⁶.

3.3 The Application

The applicant has lodged an application for the publication of a dumping duty notice in writing and in an approved form. The form has been signed in the required manner.

The applicant has provided all information required by the form, two paper copies of the confidential and public record versions of the application were submitted, as well as copies of both versions and attachments and appendices in electronic form.

The non-confidential public record version of the application is considered to contain sufficient detail to allow a reasonable understanding of the substance of the information⁷.

3.4 Supported by Australian industry

The applicant has submitted that it is the only manufacturer of pineapple fruit in Australia and therefore accounts for⁸:

- more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
- not less than 25% of the total production or manufacture of like goods in Australia.

Customs and Border Protection is satisfied that the applicant has met the standing requirements and that the application complies with subsection 269TB(4).

⁶ Section 269TB(4)

⁷ Section 269ZJ

⁸ Section 269TB(6)

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4 THE GOODS THE SUBJECT OF THE APPLICATION

4.1 Description

The application describes the goods as:

- prepared or preserved pineapple in syrup or juice in container sizes more than 1 litre (described as fruit food service and industrial); and
- prepared or preserved pineapple in syrup or juice in container sizes not exceeding 1 litre (described as consumer).

The application seeks the publication of dumping duty notices in respect of:

- i) exports of consumer pineapple by the Thai Pineapple Canning Industry Corp Ltd of Thailand;
- ii) exports of consumer pineapple from Indonesia, and
- iii) exports of FSI pineapple from Indonesia.

4.1.1 Separate goods; consumer and FSI pineapple

The application notes that REP 41 identified two broad segments in the pineapple fruit market, namely consumer pineapple and FSI pineapple, and that REP 110, REP 111 and REP 112 affirmed the view that there were “two distinct segments” of the pineapple fruit market. These two market segments are consumer pineapple fruit and FSI pineapple.

The issue of whether the consumer pineapple and FSI pineapple were separate goods was also considered in REP 125.

REP 125 affirmed the methodology and findings in investigation REP 112, that consumer pineapple and FSI pineapple are separate goods for the purpose of analysis of the domestic market.

No information has been presented to detract from the previous findings that consumer pineapple and FSI pineapple are separate goods.

Having regard to the application and other available information Customs and Border Protection considers that consumer pineapple and FSI pineapple are separate goods.

4.2 Tariff classification

The application states that the tariff classification for the goods, pineapple fruit, prepared or preserved in containers, is as follows:

- in cans not exceeding 1 litre – 2008.20.00/26;
- in cans exceeding 1 litre – 2008.20.00/27; and
- in all other containers, regardless of size – 2008.20.00/28.

The general rate of duty for imports of pineapple fruit from Thailand is free whilst imports from Indonesia are subject to a 5% rate of duty.

The Tariff Services Branch of Customs and Border Protection confirmed the tariff classifications and rates of duty.

There are no Tariff Concession Orders applicable to pineapple fruit.

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5 IS THERE AN AUSTRALIAN INDUSTRY IN RESPECT OF LIKE GOODS?

5.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appears to be an Australian industry in respect of like goods.

5.2 Introduction

If there is a person or there are persons who produce like goods in Australia, then there is an Australian industry in respect of those like goods⁹.

5.3 Manufactured in Australia

For goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia¹⁰. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia¹¹.

The application states that Golden Circle's pineapple fruit consumer is made from 100 per cent Australian sourced fruit. The pineapples are sourced in Australia, processed at the company's Northgate factory, and canned (where applicable) in tin cans sourced from local suppliers.

Golden Circle further states that all of the value-add process from the fresh pineapple to the finished canned product sold in the not exceeding one litre range of Golden Circle goods, is conducted on-site at the Northgate cannery. Canned pineapple fruit FSI is also sourced from locally supplied pineapples. Golden Circle said it has not recently imported any canned pineapples for re-sale into the pineapple fruit FSI market.

Golden Circle said it undertakes a substantial process of manufacture through the processing of raw material pineapple fruit into preserved pineapple fruit (consumer and FSI) ready for immediate consumption. The processing of the pineapple fruit involves a substantial value-adding process via a capital intensive food-processing facility at Northgate.

The application also states that pineapple fruit processed by Golden Circle is considered to have been substantially transformed from its raw material state.

5.3.1 Imported materials

Golden Circle notes that imported tin plate is used by local manufacturers to manufacture the cans used for the pineapple.

5.3.2 Manufacturing process

The application describes the pineapple fruit manufacturing process as detailed below.

- On arrival at Golden Circle by road, freshly picked pineapples are tipped from bins, inspected, washed and graded;

⁹ Subsection 269T(4)

¹⁰ Subsection 269T(2)

¹¹ Subsection 269T(3)

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- The pineapples then pass through a machine called a Ginaca, named after its Hawaiian inventor, which sizes the pineapple and removes the outer skin;
- The peeled pineapples then move onto a conveyor to the pineapple processing line. On the line the fresh pineapples are inspected and then automatically sliced into the size required for canning. The slices are inspected again and if they do not meet the strict quality guidelines are removed from the processing lines.
- Good quality fruit that is not the right size for canning is automatically resized and used for other cuts of pineapple.
- The good quality sizes continue along the conveyor where they are put into a can loader and automatically canned. Here the canned pineapple is once again inspected by staff as part of the quality control procedure.
- The filled pineapple cans are rolled off into a conveyor and transferred to automatic syrup fillers where they are filled with syrup or fruit juice and where lids are sealed.
- The sealed cans are treated in a sterilising process for about 15 minutes and then passed through coolers to prevent over processing and to ensure the flavour of the pineapple is retained.
- The cans are dried as they emerge from the coolers and then labelled with the company's logo. In Golden Circle's laboratory, samples of processed fruit are continually tested to ensure the use of only the best quality fruit. Cans of Golden Circle's pineapple are packaged and sold throughout Australia, and signify Australian made quality.

5.3.3 Close processed agricultural good

Subsection 269T(4) provides that if, in relation to goods of a particular kind, there is a person, or there are persons who produce like goods in Australia:

- (a) there is an Australian industry in respect of those like goods; and
- (b) subject to subsection (4A), the industry consists of that person or those persons.

Subsection 269T(4A) states that where the like goods are close processed agricultural goods, then the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

Golden Circle said that the pineapple fruit growers are not a party to this application and that as pineapple fruit is a manufactured product the issue of close processed agricultural goods is not applicable.

Customs and Border Protection has previously considered the issue of close processed agricultural goods in relation to pineapple fruit in REP 112 and noted that "As well as being used in the manufacture of consumer pineapple and FSI pineapple, raw pineapple is sold fresh and also used in the manufacture of a variety of other products including juice and juice concentrate, cordial, fruit mixes and baby food."

Customs and Border Protection considered in REP 112 that the annual pineapple harvest in Australia is neither substantially nor completely devoted to the production of either consumer pineapple or FSI pineapple.

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Customs and Border Protection also considered the issue in REP 125 and found that whilst the majority of raw pineapple production is processed by Golden Circle, it is not true to say that the majority of the raw pineapple production is used to produce the pineapple preserved or prepared in containers.

Customs and Border Protection affirmed in REP 125 the original finding in REP 112 that pineapple prepared or preserved in containers is not a close processed agricultural good.

No information has been presented to detract from the previous findings.

Customs and Border Protection considers for this application that pineapple fruit prepared or preserved in containers is not a close processed agricultural good.

5.3.4 Assessment

Having regard to the application, it appears that pineapple fruit preserved or prepared in containers is wholly or partly manufactured in Australia and at least one substantial process in the manufacture of pineapple fruit is carried out in Australia.

5.4 Like goods

Like goods are defined 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”¹².

Golden Circle stated in the application that it produces ‘like goods’ to the imported prepared or preserved pineapple fruit and sells its products as follows:

- FSI pineapple fruit in container sizes exceeding one litre (typically 3.0-3.2kg) which are sold into the foods service and industrial market; and
- Consumer pineapple fruit in container sizes not exceeding one litre (typically 225g, 450g, and 850g, although other sizes are available) sold into retail stores.

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.

FSI pineapple fruit

Physical Likeness

Golden Circle stated that it 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 pineapple pizza cuts.

The products can be sold in containers in either syrup or natural juice.

Golden Circle provided details on its FSI product range at Confidential Attachment A-3.3.2 of the application.

Commercial Likeness

Golden Circle says that prepared or processed pineapple fruit is a price-sensitive product, Golden Circles products competes directly with imports in the FSI market segment.

¹² Subsection 269T(1)

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Functional Likeness

The application states that Golden Circles locally produced products are directly substitutable for the imported goods.

Production Likeness

The application does not refer to production likeness. However information from previous reports, including REP 41 and REP 111 shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

Consumer pineapple fruit

Physical Likeness

Golden Circle stated that it 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 and crushed pineapple.

The products can be sold in containers in either syrup or natural juice.

Golden Circle provided details on its product range at Non-Confidential Attachment A-3.3.1 of the application.

Commercial Likeness

Golden Circle says that prepared or processed pineapple fruit is a price-sensitive product, Golden Circles products competes directly with imports in the consumer market segment.

Functional Likeness

The application states that Golden Circles locally produced products are directly substitutable for the imported goods.

Production Likeness

The application does not refer to production likeness. However information from previous reports, including REP 41 and REP 111 shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

5.4.1 Assessment

Having regard to the application, it appears that:

- FSI pineapple fruit produced by the Australian industry are like goods to the goods - as prepared or preserved pineapple in syrup or juice in container sizes more than 1 litre (described as fruit food service and industrial – “fruit FSI”); and
- consumer pineapple produced by the Australian industry are like goods to the goods - prepared or preserved pineapple in syrup or juice in container sizes not exceeding 1 litre (described as “fruit consumer”).

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6 REASONABLE GROUNDS – DUMPING?

6.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that:

- Consumer pineapple fruit is being exported to Australia from Indonesia and from Thailand (by TPC) at dumped prices and the dumping margins are not negligible;
- FSI pineapple fruit is being exported to Australia from Indonesia at dumped prices and the dumping margins are not negligible;
- the total volume of consumer pineapple that have been dumped from Indonesia and from Thailand (by TPC) individually is greater than 3% of the total Australian import volume and therefore not negligible; and
- the total volume of FSI pineapple that has been dumped from Indonesia is greater than 3% of the total Australian import volume and therefore not negligible

6.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice¹³, there must appear to be reasonable grounds to support the claim that the export price of the goods is less than the normal value of the goods¹⁴ and the dumping margins are not negligible.¹⁵

If the total volume of the goods that have been dumped is negligible, Customs and Border Protection must terminate the investigation so far as it relates to that country¹⁶.

The total volume of the goods that have been dumped is taken to be a negligible volume if when expressed as a percentage of the total Australian import volume, it is less than 3%¹⁷ for a particular country and no more than 7% from all countries¹⁸.

6.3 Export prices

Consumer

The application referred to import clearance data published by the Australian Bureau of Statistics (ABS) to calculate export prices for consumer pineapple fruit from Indonesia and Thailand by TPC. The applicant provided a copy of source data from the ABS for the public file.

The ABS data does not identify exporters individually. The applicant has assumed that exports by TPC represent more than 50% of the exports of consumer pineapple from Thailand. The applicant considers that as TPC is not subject to anti-dumping measures its export price would be lower than the average export price from Thailand. However the applicant has calculated an export price for TPC that is equal to the average export price for all exports of consumer pineapple from Thailand.

¹³ Subsection 269TC(1)(c)

¹⁴ Subsection 269TG(2)(a)

¹⁵ Subsection 269TDA(1)

¹⁶ Subsection 269TDA(3)

¹⁷ Subsection 269TDA(4)

¹⁸ Subsection 269TDA(5)

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Export prices have been calculated at an average Australian dollar (\$A) per litre free on board (FOB) for the calendar year 2010 using the ABS data.

The applicant states that it is considered that the data obtained from ABS import clearances most likely reflects ex-factory, packed in container prices and that this level of sale therefore is suitable for comparison with domestic selling prices in the country of export, with appropriate adjustments.

FSI

The application referred to import clearance data published by the ABS to calculate export prices for FSI pineapple fruit from Indonesia. The applicant provided a copy of source data from the ABS for the public file.

Export prices have been calculated at an average Australian dollar (\$A) per litre free on board (FOB) for the calendar year 2010 using the ABS data.

The applicant states that it is considered that the data obtained from ABS import clearances most likely reflects ex-factory, packed in container prices and that this level of sale therefore is suitable for comparison with domestic selling prices in the country of export, with appropriate adjustments.

6.3.1 Assessment of export price

Customs and Border Protection relied on data from its import database to calculate export prices for the calendar year 2010 and compared those prices to the applicant's prices.

Customs and Border Protection considers that the export prices of consumer pineapple fruit exported from Indonesia and from Thailand by TPC and for FSI pineapple fruit exported from Indonesia provided in the application to be reasonable.

Export prices were calculated for consumer pineapple fruit exported from Indonesia and exported from Thailand by TPC and for FSI pineapple fruit exported from Indonesia. These calculations are at **Confidential appendix 1**.

6.4 Normal values

Consumer

The application based its normal values for consumer pineapple fruit exported by TPC on domestic prices provided by a local supplier in Thailand for ex-factory local delivery.

The quoted prices were for canned pineapple standard slices in light syrup, net weight 850 grams and canned pineapple standard tidbits in light syrup, net weight 825 grams.

The application based its normal values for consumer pineapple fruit exported from Indonesia on recent domestic retail selling prices for canned pineapple produced and sold in Indonesia.

The retail selling prices were for canned pineapple with net weights of 565grams, the type of pineapple (sliced, pieces crushed) was not specified. Three retail prices were obtained and provided for the three different brands priced.

FSI

The applicant advised that FSI pineapple is not readily sold on the Indonesia domestic market and based its normal value for FSI pineapple on the lowest priced retail brand of consumer pineapple obtained above plus a differential in pricing between the average export price for consumer and FSI pineapple from the Philippines in 2010.

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The applicants reasoning was that anti-dumping measures apply to all exports of consumer and FSI pineapple from the Philippines, export pricing for the Philippines was based on ABS data. The applicant identified a differential factor of 0.7777 to be applied, that is the price of the consumer pineapple should be adjusted by multiplying by 0.7777 to obtain a price for FSI.

6.4.1 Adjustments

Thailand (TPC) – consumer

The applicant considered that the domestic selling prices should be adjusted up by 20-25 per cent due to pricing differentials in smaller sized cans. The applicant contended that the smaller size cans, that is 440 gram cans, were more expensive on per kilogram basis than the larger size 850 gram it had obtained pricing for. The applicant said that as ABS data did not specify can size then this uplift should be applied to account for the higher priced smaller cans.

The applicant also considered a further adjustment is required to permit a conversion from a kg price to an equivalent price per litre and used the conversion rate identified in the Dumping Commodity Register for this purpose of 1.043174.

The applicant also said an adjustment may also be required for differing credit terms (export versus domestic).

Indonesia – consumer

The applicant said that adjustments were required for retail margin, domestic delivery and conversion to price per litre equivalent and that an adjustment for credit terms (export versus domestic) may be required.

The applicant considered that an adjustment of five percent was reasonable for the retail margin and distribution cost and also made an adjustment for the 10% value added tax (VAT) applicable to the retail price obtained.

The applicant also considered a further adjustment is required to permit a conversion from a kg price to an equivalent price per litre and used the conversion rate identified in the Dumping Commodity Register for this purpose of 1.043174.

The applicant also said an adjustment may also be required for differing credit terms (export versus domestic).

Indonesia – FSI

The applicant said that adjustments were required for retail margin and conversion to price per litre equivalent and that an adjustment for credit terms (export versus domestic) may be required.

The applicant considered that an adjustment of five percent was reasonable for the retail margin and distribution cost and also made an adjustment for the 10% value added tax (VAT) applicable to the retail price obtained.

The applicant also considered a further adjustment is required to permit a conversion from a kg price to an equivalent price per litre and used the conversion rate identified in the Dumping Commodity Register for this purpose of 1.043174.

The applicant also said an adjustment may also be required for differing credit terms (export versus domestic).

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6.4.2 Assessment of normal value

Thailand (TPC) – consumer

The application included quotations from a local supplier in Thailand for ex-factory local delivery for canned pineapple standard slices in light syrup, net weight 850 grams and canned pineapple standard tidbits in light syrup, net weight 825 grams.

The name of the supplier in the quotation appears to be a recognised producer of canned pineapple in Thailand.

Customs and Border Protection considers that the domestic price quotes provided in the application to be reasonable to establish the normal value of consumer pineapple fruit in Thailand.

Customs and Border Protection agrees there should be an adjustment for the smaller can sizes and calculated an adjustment based on the Golden Circle price lists for the different can sizes submitted in the application. The adjustment was in the range proposed by Golden Circle.

As mentioned in the export price section the information from Customs and Border Protection data base is more detailed than the information available to Golden Circle from the ABS statistics. This information enabled a more targeted adjustment to the domestic prices than the overall adjustment proposed by Golden Circle.

Customs and Border Protection also adjusted for VAT of 7% and for FOB charges, using other relevant information, as the export prices are calculated at FOB whilst the normal values have been calculated at an ex-works price.

Information was not available to adjust for any differences in credit terms.

Indonesia – consumer

The application included a copy of the quoted prices for three different brands of canned pineapple produced and sold in Indonesia. The manufacturer brand names in the quoted prices appear to be recognised producers of canned pineapple in Indonesia.

Customs and Border Protection considers that the domestic price quotes provided in the application to be reasonable to establish the normal value of consumer pineapple fruit in Indonesia.

Customs and Border Protection considered that an adjustment for retail margin should be made using the Golden Circle price lists and calculated a higher retail margin than that proposed in the application.

Customs and Border Protection also adjusted for VAT. No adjustment was made for FOB charges as it considered that delivery charges were in the retail price and that these charges may be similar to the FOB charges.

Information was not available to adjust for any differences in credit terms.

Customs and Border Protection used the lowest priced consumer product for Indonesia provided as its base point for calculating a normal value for consumer pineapple.

Indonesia – FSI

Customs and Border Protection considers that the method provided in the application to be reasonable to establish the normal value of FSI pineapple fruit in Indonesia.

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However Customs and Border Protection has calculated a lower differential factor to apply using the Golden Circle price lists.

Customs and Border Protection then applied this differential to its calculated normal value for consumer pineapple in Indonesia to calculate a normal value for FSI pineapple fruit in Indonesia.

Customs and Border Protections calculations of normal values for consumer pineapple fruit from Thailand and for consumer and FSI pineapple fruit from Indonesia are at **Confidential appendix 1.**

6.5 Dumping margins

Consumer

The applicant calculated a dumping margin for consumer pineapple fruit exported from Thailand by TPC by comparing its calculated export prices and normal values. The comparison of export prices and normal values shows a dumping margin in the range of 9 to 10%.

The applicant calculated a dumping margin for consumer pineapple fruit exported from Indonesia by comparing its calculated export prices and normal values. The comparison of export prices and normal values shows a dumping margin in the range of 66 to 126%.

FSI

The applicant calculated a dumping margin for FSI pineapple fruit exported from Indonesia by comparing its calculated export prices and normal values. The comparison of export prices and normal values shows a dumping margin in the range of 112%.

Customs and Border Protection is satisfied that, based on the information submitted in the application, the applicant has demonstrated that there appear to be reasonable grounds for concluding that the goods have been exported from Indonesia and by TPC from Thailand to Australia at dumped prices.

Customs and Border Protection dumping calculations are at **Confidential Appendix 1.**

6.6 Import volumes

Information from the import database for the calendar year 2010 shows that there have been exports to Australia of consumer pineapple fruit from Indonesia and of consumer pineapple fruit from Thailand by TPC and of FSI pineapple fruit from Indonesia with volumes in excess of 3 per cent of the total import volume for each of the goods.

Therefore, Customs and Border Protection considers that there appear to be reasonable grounds to support the claim that the total volume of each of the goods that have been dumped is not negligible.

This analysis is at **Confidential Attachment 1.**

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7 REASONABLE GROUNDS – HAS THE AUSTRALIAN INDUSTRY SUFFERED INJURY?

7.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in relation to consumer pineapple in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in relation to FSI pineapple in the form of:

- lost sales volume;
- Price depression;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

7.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice¹⁹, there must appear to be reasonable grounds to support the claim that there is injury to the Australian industry producing like goods²⁰.

¹⁹ Subsection 269TC(1)(c)

²⁰ Subsection 269TG(2)(b)

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7.3 Approach to injury analysis

Data in the application has been provided as annual data for the calendar year January to December. Data has been provided for the 2008, 2009 and 2010 calendar years for consumer and FSI pineapple fruit.

Golden Circle advised that the resource required to extract data relating to 2006 and 2007 was significant as it no longer had employees familiar with the previous accounting and computer system and thus the data was not readily available.

All cost to make and sell (CTMS) and revenues are presented in Australian dollars per kilogram (\$Akg).

Industry sales volumes are in kilograms, imports have been converted to kilograms from litres for market volumes and market shares.

Golden Circle advised that there have been no importations by it since Heinz Aust assumed control but there may have been importations made by Golden Circle before Heinz Aust assumed control of the company.

Customs and Border Protection import data base showed significant importations of FSI pineapple by Golden Circle in 2008 and early 2009. The importations by Golden Circle have been included in sales by Golden Circle and excluded from importations in the analysis of sales volumes and market shares.

The data and analysis for this section is at **Confidential Appendix 2**.

7.4 Background to the Australian market

Consumer pineapple

The application describes the market for consumer pineapple as being pineapple fruit supplied in various forms including thins, slices, pieces and crushed, packed in either syrup or natural juice and a range of sizes up to 850gm, primarily sold at the retail level. The retail sales are predominantly in cans, however, there have been sales in plastic containers and glass jars. The contents of the cans, plastic containers and glass jars are all comparable.

Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to independent stores. Consumer pineapple is generally labelled and marketed as branded product (e.g. Golden Circle, Dole, Heinz etc) and generic/ housebrand or private label product (e.g. Homebrand, Coles, Coles Smart Buy, Black and Gold, Woolworths Select, etc).

The application notes that each product generally has a distinct price point relative to the other in the market, with branded product being the most expensive and generic/ housebrand (generic) being the least expensive. Consumers generally regard branded products as being of better quality.

FSI pineapple

The application describes the market for FSI pineapple as being pineapple fruit supplied in various forms including thins, slices, pieces and crushed, packed in syrup or natural juice in 3.0 to 3.2 kg cans, although sometimes supplied in large aseptic plastic bags and drums, that are sold into the food service and industrial sectors.

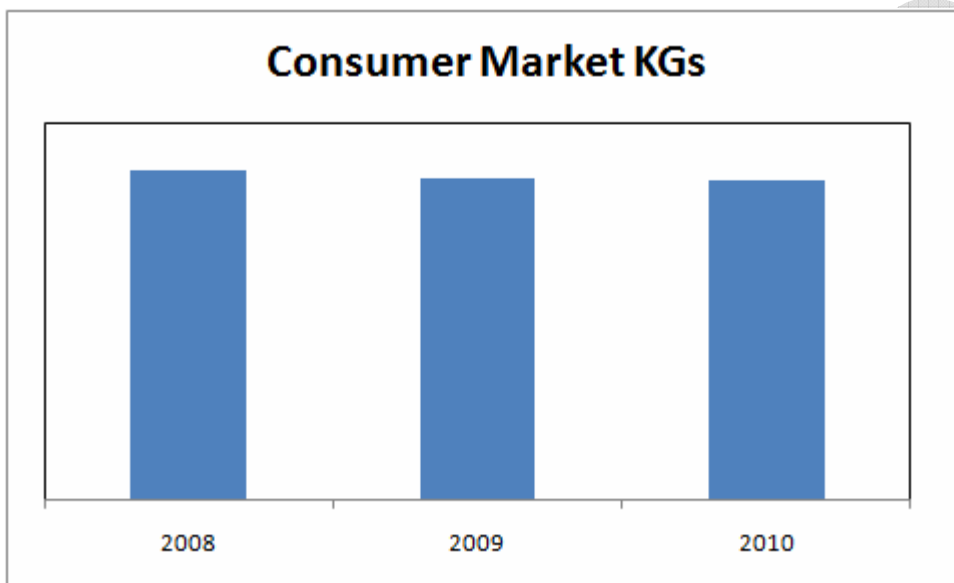
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The food service sector includes pizza outlets, takeaways, restaurants and institutions, which use the product as an ingredient for other processed foods such as fruit salads, frozen pizzas, sauces, packaged meals, etc.

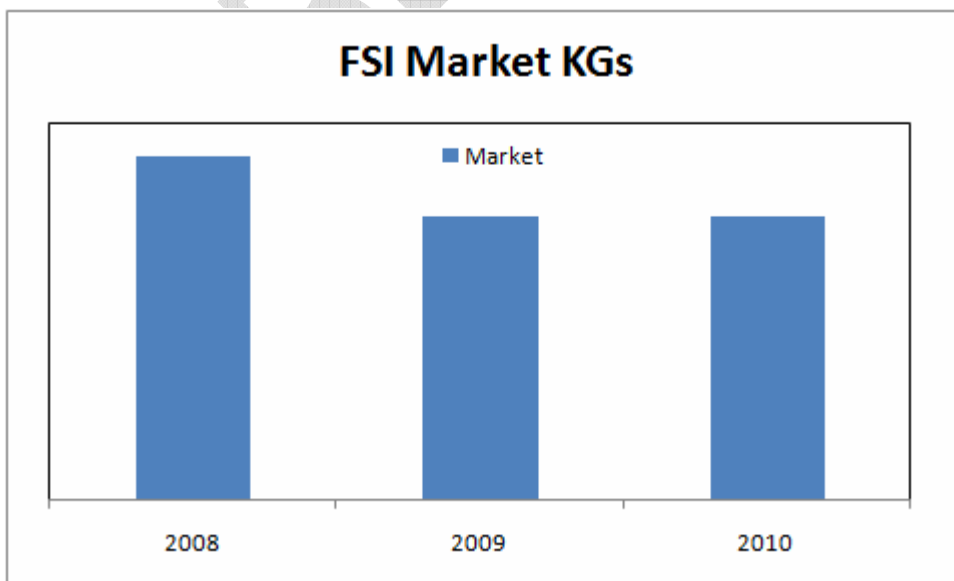
The application notes that FSI pineapple is primarily sold to wholesalers/distributors or end users which are generally less concerned with brand and the FSI sector tends to be more price-sensitive than the consumer market.

The application notes that the Australian market is supplied from local production by Golden Circle and imports. Major source countries for imports include Indonesia, the Philippines and Thailand. Pineapple fruit is a price-sensitive product and Golden Circles product competes directly with imports, whether in the consumer or FSI market segments.

Based on data contained in the application and the import database, the below graphs shows the preliminary analysis of the total market size of pineapple fruit for consumer and FSI in kilograms.



The available information shows that the market for consumer pineapple fruit has been relatively steady from 2008 to 2010.



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The available information shows that the market for FSI fruit had a large decline from 2008 to 2009 and has remained relatively steady from 2009 to 2010.

7.5 The applicant's injury claims

Consumer Pineapple

The application claimed injury suffered by the Australian industry in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced attractiveness to reinvest; and
- reduction in employee numbers.

FSI Pineapple

The application claimed injury suffered by the Australian industry in the form of:

- Price depression;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced attractiveness to reinvest; and
- reduction in employee numbers.

7.6 Commencement of injury

Golden Circle claims that its domestic sales of consumer and FSI pineapple have declined since 2005 by 29 per cent whereas exports of consumer pineapple fruit from Thailand by TPC have increased.

Golden Circle states that material injury from the dumped exports of consumer pineapple exported by TPC of Thailand commenced immediately following the revocation of applicable anti-dumping measures in the third quarter of 2008.

Golden Circle also claims that Indonesian exports of consumer pineapple have emerged from minimal levels in 2009 to account for almost 10 per cent of total import volume in 2010.

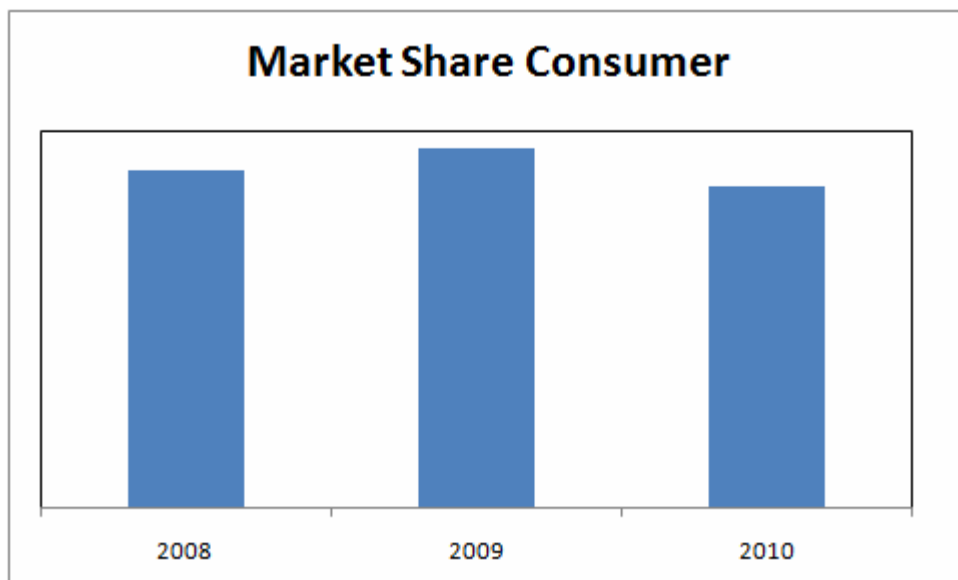
Golden Circle notes that the FOB export prices for FSI pineapple imported from Indonesia were the lowest of the three largest source countries (i.e. Thailand, Philippines and Indonesia) supplying the Australian market during 2010 and considers that material injury from dumped Indonesian FSI pineapple also commenced in 2010.

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7.7 Volume effects

7.7.1 Lost market share

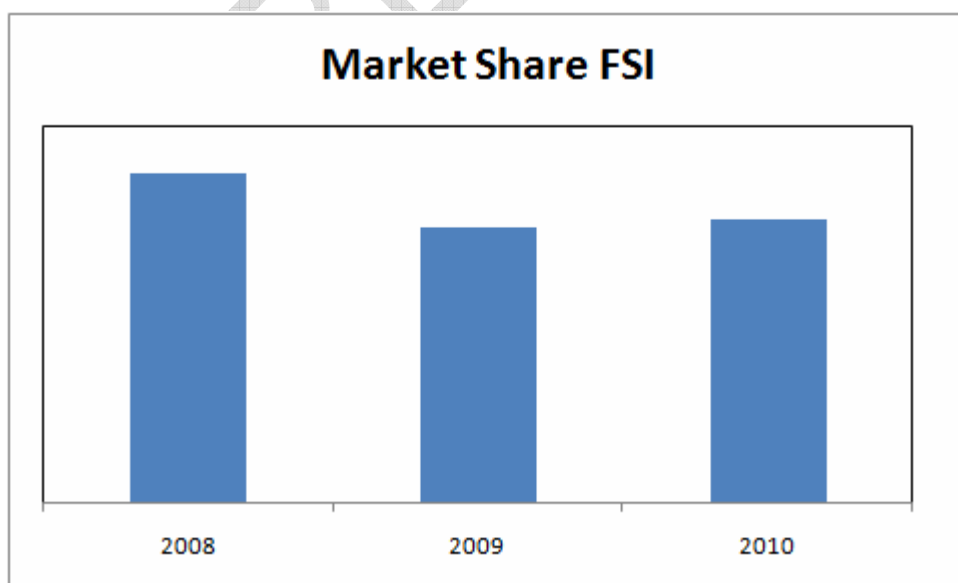
The following graph illustrates Golden Circles market share for consumer pineapple and shows that Golden Circle has lost market share since 2008 to 2010 with a noticeable decline from 2009 to 2010.



Based on the available information, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of lost market share for consumer pineapple fruit.

Golden Circle did not claim injury in the form of lost market share for FSI pineapple fruit, however the market for FSI has been examined as part of the process of assessing the application.

The following graph illustrates Golden Circles market share for FSI pineapple and shows that Golden Circle has lost market share since 2008. However a significant part of Golden Circles market share in 2008 was due to sales of imported FSI by Golden Circle.

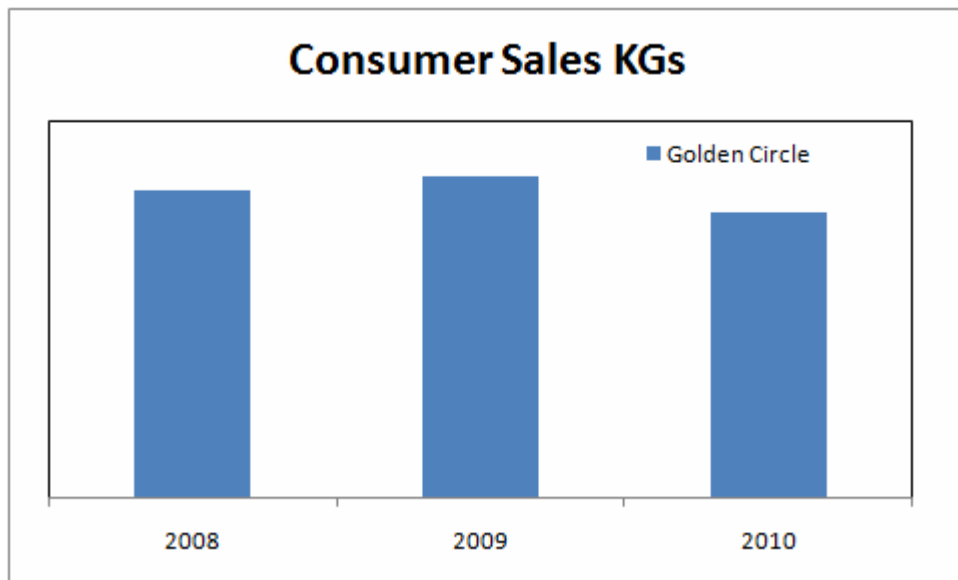


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Taking into account the importations by Golden Circle there does not appear to be reasonable grounds to show that the Australian industry has suffered injury in the form of lost market share for FSI pineapple fruit.

7.7.2 Lost sales volumes

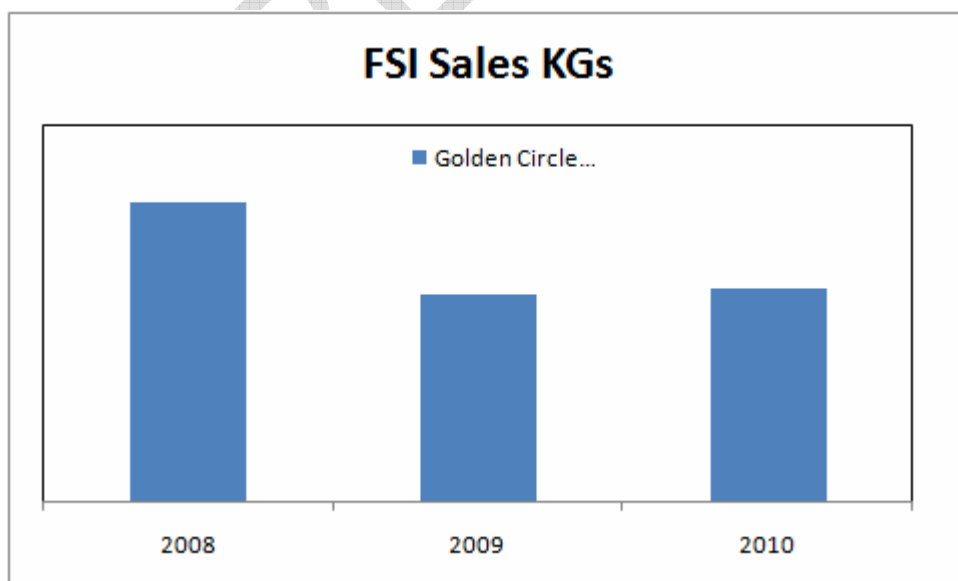
The following graph illustrates Golden Circles sales volumes for consumer pineapple and shows that Golden Circle has lost sales volumes since 2008 to 2010 with a noticeable decline from 2009 to 2010.



Based on the available information, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of lost sales volumes.

Golden Circle did not claim injury in the form of lost sales volumes for FSI pineapple fruit, however sales volumes for FSI has been examined as part of the process of assessing the application.

The following graph illustrates Golden Circles sales volumes for FSI pineapple and shows that Golden Circle has lost sales volumes.



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A significant part of Golden Circles of 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.

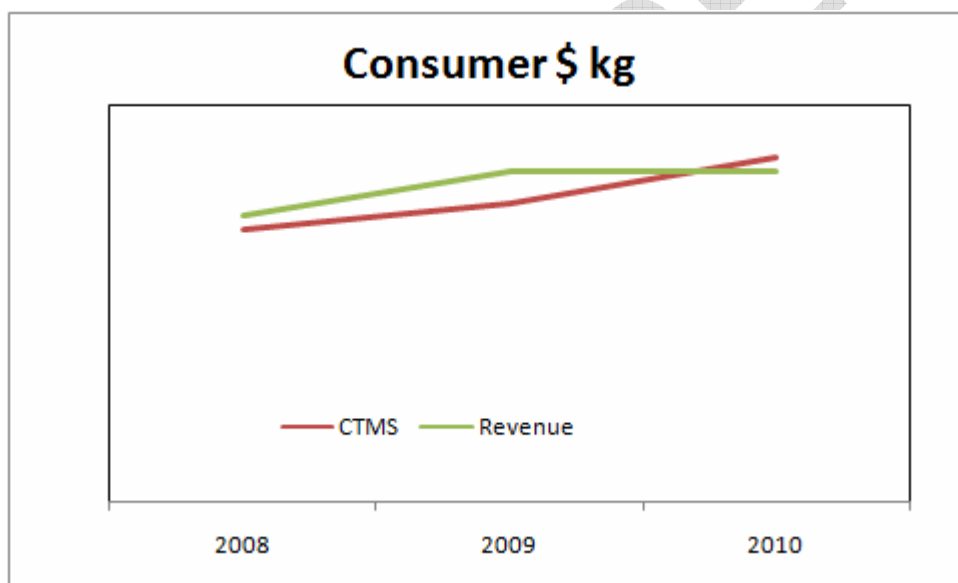
Based on the available information, there appears to be reasonable grounds to assert that the Australian industry has suffered injury in the form of lost sales volumes for FSI pineapple fruit.

7.8 Price effects

Price effects may be in the form of:

- price depression, which occurs when a company, for some reason, lowers its prices; and/or
- price suppression, which occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented.

The following graphs illustrate the Australian industry's unit selling price and unit cost to make and sell for consumer and FSI pineapple fruit based on data contained in the application.

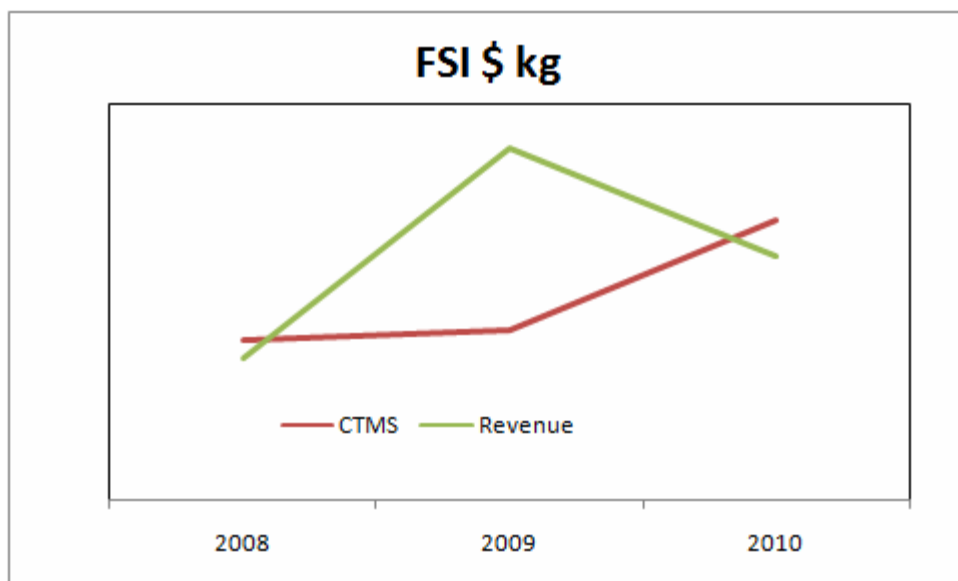


The graph for consumer pineapple shows that unit prices increased from 2008 to 2009 and were steady from 2009 to 2010, whilst costs have increased above prices in 2010.

The application did not claim injury in the form of price depression in relation to consumer pineapple fruit and based on the available information, there does not appear to be reasonable grounds to assert that the Australian industry has suffered injury in the form of price depression.

Based on the available information, there appears to be reasonable grounds to assert that the Australian industry has suffered injury in the form of price suppression in regards to consumer pineapple fruit.

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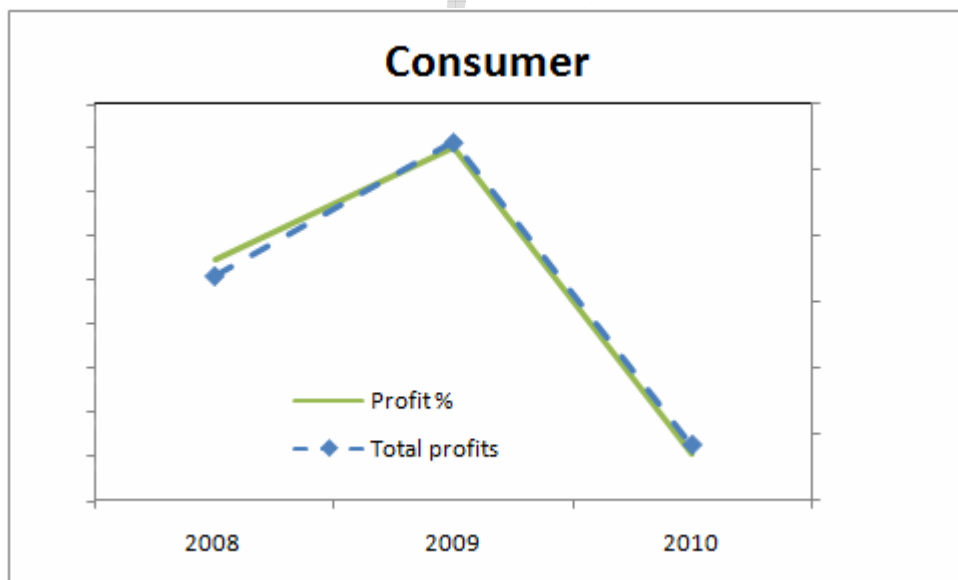


The graph for FSI pineapple shows that unit prices increased from 2008 to 2009 and declined from 2009 to 2010, whilst costs were steady from 2008 to 2009 before increasing above prices in 2010.

Based on the available information, there appears to be reasonable grounds to support the claims that the Australian industry has suffered injury in the form of price depression and price suppression in regards to FSI pineapple fruit.

7.9 Profit effects

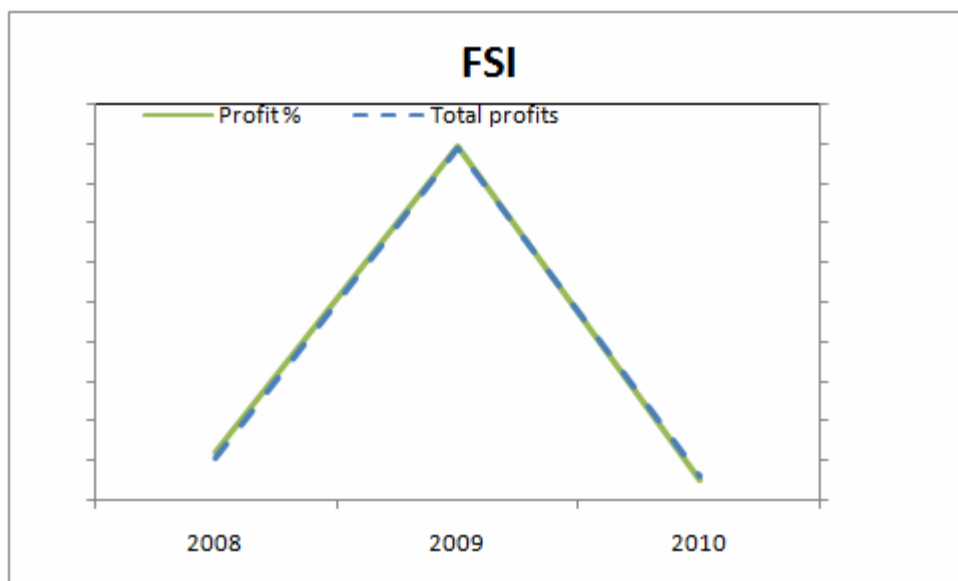
The following graphs illustrate the Australian industry's total profit and profitability for consumer and FSI pineapple fruit based on the data contained in the application.



Total profits and profitability for consumer pineapple fruit increased from 2008 to 2009 and declined from 2009 to 2010 below the level of 2008.

Based on the available information, there appears to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of reduced profits and profitability in regards to consumer pineapple fruit.

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Total profits and profitability for FSI pineapple fruit increased from 2008 to 2009 and declined from 2009 to 2010 below the level of 2008.

Based on the available information, there appears to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of reduced profits and profitability in regards to FSI pineapple fruit.

7.10 Conclusion of primary injury indicators

Consumer pineapple fruit

Based on the primary economic indicators above it appears that the Australian industry suffered injury in the form of lost market share, lost sales volumes, price suppression, reduced profits and reduced profitability in regards to consumer pineapple fruit.

FSI pineapple fruit

Based on the primary economic indicators above it appears that the Australian industry suffered injury in the form of lost sales volumes, price suppression, price depression, reduced profits and reduced profitability in regards to FSI pineapple fruit.

7.11 Other economic factors

Section 269TAE(3) of the Act provides a reference to the other relevant economic factors to have regard to in determining material injury to an Australian industry has been caused.

Reduced return on investment

Golden Circle provided data for return on investment (ROI) for 2009 and 2010 which shows a reduced ROI. The available data also shows that Golden Circle incurred losses in relation to pineapple fruit, there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of reduced return on investment.

Reduced attractiveness to reinvest

Golden Circle claimed that the returns from consumer and FSI pineapple fruit impact on Heinz Aust's ability to reinvest in the industry thereby diverting investment to more attractive elements of the Heinz Aust portfolio that is/are capable of returns above the company's target weighted average cost of capital.

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Assets

Data provided in the application shows that assets have declined form 2009 to 2010.

Capital investment

Data provided in the application shows that capital investment has declined form 2009 to 2010.

Research and development

Data provided in the application shows that research and development expenses have declined form 2009 to 2010.

Investment in the Australian industry is a relevant economic factor. Based on the available information there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the regards to investment in the industry.

Sales revenue

The data in the application indicates that sales revenue for consumer pineapple fruit increased from 2008 to 2009 before declining from 2009 to 2010.

Sales revenue for FSI pineapple fruit has shown a decline from 2008 to 2010.

Based on the available information there appear to be reasonable grounds to support the claim that the Australian industry has suffered injury in the form of decreased sales revenue.

Capacity utilisation

The data in the application indicates that the capacity utilisation in regards to pineapple fruit has decreased from 2008 to 2010.

Based on the available information there appear to be reasonable grounds to assert that the Australian industry has suffered injury in the form of reduced capacity utilisation.

Employment

The data in the application indicates that the number of workers associated with the production of pineapple fruit employed by the Australian industry has decreased from 2008 to 2010.

Based on the available information there appear to be reasonable grounds to assert that the Australian industry has suffered injury in the regards to the number of persons employed.

Conclusion

It appears that the Australian industry has suffered injury in the form of reduced return on investment, reduced investment in the industry, reduced revenues, reduced capacity utilisation and reduced employment.

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8 REASONABLE GROUNDS – IS THERE A LINK BETWEEN DUMPING AND MATERIAL INJURY?

8.1 Finding

Having regard to the matters contained in the application and to any other information considered relevant, there appear to be reasonable grounds to support the claim that there is a causal link between dumping and material injury.

8.2 Introduction

For there to be reasonable grounds for the publication of a dumping duty notice²¹, there must appear to be reasonable grounds to support the claim that because of dumping, material injury to the Australian industry producing like goods has been caused²².

The data and analysis for this section is at **Confidential Appendix 3**.

8.3 Cumulation of injury

In determining the effect of the exportation of goods to Australia from different countries of export, Customs and Border Protection will consider the cumulative effect of those exportations only if it is satisfied that it is appropriate to consider the cumulative effect of those exportations having regard to:

- the conditions of competition between the exported goods; and
- the conditions of competition between the exported goods and the like goods that are domestically produced²³.

As pineapple fruit can be considered a homogenous commodity, it is reasonable to consider that consumer pineapple fruit exported from Indonesia and from Thailand by TPC compete with each other.

Customs and Border Protection also considers that the imported consumer pineapple fruit and the Australian produced consumer pineapple fruit compete with each other and have similar end uses.

Therefore, it is appropriate to consider the cumulative effect of the allegedly dumped imports in regards to consumer pineapple fruit.

8.4 The applicants claims

Consumer pineapple

- The Australian market in 2010 was only 3 percentage points smaller than 2008, however, Golden Circles sales volumes were 7.5 per cent below 2008 levels.
- The level of dumped consumer pineapple imports from Indonesia has increased dramatically in 2010 and these imports hold a significant proportion of total import volume into Australia.

²¹ Subsection 269TC(1)(c)

²² Subsection 269TG(2)(b)

²³ Subsection 269TAE(2C)

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- The dumped imports of consumer pineapple from TPC have held a significant volume of the Australian market in 2010.
- Golden Circle's profit and profitability for consumer pineapple deteriorated in 2010, as it lost a number of private label contracts to imported consumer pineapple. Golden Circle has observed private label pineapple retailing in 2010 at prices well below Golden Circle's selling (and CTM&S) price.
- Private label sales account for more than one-third of total consumer pineapple sales in Australia. Indonesian canned pineapple is now entrenched in the large supermarket outlets.
- Golden Circle has lost certain sales of private label product to imports from Indonesia and TPC.
- Golden Circle understands that the Thai pineapple industry has been impacted by a recent drought, thereby influencing the purchasing decisions of retailers in Australia to source pineapple fruit from other suppliers (i.e. Indonesia).
- During 2010, however, retailers sourced Indonesian consumer pineapple to replace Thai volumes due to the impact of a pro-longed drought on Thai supply. Golden Circle was unable to secure the supply contracts at certain retailers during 2010 that moved to Indonesian supply
- The combined effects of dumped imports at prices that undercut Golden Circle's prices, declining sales volumes and increases in import volumes have caused a reduction in Golden Circle's profits and profitability in 2010.
- FOB export prices published by ABS demonstrate that imported canned pineapple from Indonesia and Thailand sells at prices in Australia that significantly undercut Golden Circle's selling prices in both the consumer and FSI market segments.
- The impact of dumped imports on Golden Circle's operation has resulted in otherwise profitable operations in 2009 turning to losses in 2010. This turnaround is material and is well in excess of 10 per cent of Golden Circle's revenues year-on-year.

FSI pineapple

- Golden Circle's sales declined further than the contraction in the Australian market in 2009 and have not recovered by the same extent as the total Australian market in 2010.
- In 2010, imports from Indonesia of FSI pineapple increased by 16 per cent – well in excess of Golden Circle's relatively stable level of sales from 2009.
- In 2010, Golden Circle's sales volumes held at comparable levels to 2009. Over the same period Golden Circle's costs increased, accompanied by declines in unit sales revenues. As a consequence, Golden Circle's margin eroded and was negative throughout 2010.
- Import prices for FSI pineapple from Indonesia (the lowest of all import source countries) are at levels significantly below Golden Circle's variable cost of production.

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- It is apparent that the reduced profits and profitability experienced in the Golden Circle FSI pineapple business is due to the pricing of imports from non-dumped and dumped sources, with the latter being addressed via the review of measures.
- Golden Circle was notified in August 2009 that it has lost the supply of FSI pineapple to a customer that switched to imported FSI pineapple. Golden Circle was notified that it was not competitive even though the price offered by it was an almost 50 per cent reduction from its list price.
- Indonesian FSI imports are the lowest-priced imports in the FSI market with the dumped prices significantly undercutting Golden Circle prices (even though Golden Circle has reduced certain price offers by almost 50 per cent).

8.5 Assessment

8.5.1 Consumer pineapple fruit

As explained in the application and found in previous investigations of consumer pineapple, the Australian consumer pineapple market comprises a combination of branded product (eg Golden Circle, Dole, Del Monte etc) and generic/housebrand or private label product (eg Woolworths Homebrand, Woolworths Select, Coles' Savings, Black and Gold, Coles Choice etc).

Each product generally has a distinct price point relative to the other in the market, with branded product being the most expensive and private label (generic) being the least expensive.

Volume

Golden Circle submits that volume related injury experienced in 2010 can be linked to dumping as some of its retail customers had advised that they had switched to import sources for various private label canned pineapple products. Supporting evidence was provided showing a sharp reduction in Golden Circle's private label sales. Further support for the applicant's claim is evident from the import data which shows a significant increase in consumer pineapple volumes from Indonesia and a slight increase in consumer pineapple volumes by TPC in 2010.

Price

In the case of price effects, Golden Circle submitted that the importation of consumer pineapple from Indonesia and TPC at dumped prices, resulted in increased price competition of private label products amongst the retailers. This price competition of generic products has flowed through to pressure on manufacturers of branded products to remain competitive on price.

This claim is supported by findings contained in REP 110 and 111, which concluded that generic brand product does compete with branded products to some degree. Therefore, a fall in the price of generic products would ultimately lead to an increase in sales volumes of the generic product at the expense of branded products, placing pressure on the branded products to remain competitive on price.

Golden Circle provided evidence of price reductions for its consumer pineapple and evidence of retail pricing by the imported goods below its cost to make and sell.

Customs and Border Protection calculated into store prices for consumer pineapple from Indonesia and TPC using information from its import database and other relevant

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information. These prices were compared to Golden Circle's equivalent private label selling prices and showed prima facie evidence of price undercutting.

The price summaries, together with the price undercutting analysis contained in the application is sufficient to demonstrate that the Australian industry has suffered suppressed and depressed prices as a result of allegedly dumped imports during 2010.

8.5.2 FSI pineapple fruit

The food service market 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.

Volume

Golden Circle submitted that in 2009 it had lost a contract for the supply of FSI pineapple to a particular customer, and that the contract is now supplied by imports. In 2010, Golden Circle was not invited to tender for the business.

The applicant claims that the increased import volume of FSI pineapple from Indonesia in 2010 suggests that Indonesian imports may have replaced industry sales to the particular customer. Imports of FSI pineapple from Indonesia reveal that the volume increased sharply in 2009 and remained steady into 2010. This is consistent with the lost contract by Golden Circle in 2009 and ongoing supply of that contract in 2010.

8.6 Factors other than dumping

In making a determination in relation to causal link, Customs and Border Protection must consider whether any injury to the Australian industry is being caused by a factor other than the exportation of the goods and any such injury must not be attributed to the exportation of the goods²⁴.

Golden Circle said in the application that it is aware that the recent floods in Queensland will have some limited short-term impacts on pineapple fruit supply. However it said that the performance of Golden Circle's canned pineapple operation preceded the Queensland floods of 2011.

Golden Circle also said that it exported significant volumes of both consumer and FSI pineapple in 2010. This product could readily have been supplied to the Australian market and it is therefore unreasonable to assert that Golden Circle has experienced any shortage of supply (for raw material or finished goods) during 2010.

Golden Circle concluded that it is not aware of any remaining material factor that may have contributed to recent injury experienced by Golden Circle.

The applicant provided data for export sales in the application for the 2008 to 2010 years.

Customs and Border Protection examined the data in relation to the exports and note that exports are not a major part of the business.

Customs and Border Protection has been careful to isolate the effects of export performance from injury the applicant attributes to alleged dumping and based on the available information does not consider that the export performance and productivity of Golden Circle has had an effect on its domestic performance.

²⁴ Subsection 269TAE(2A)

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8.7 Review and Continuation Philippines and Thailand

The application notes that Golden Circle has requested a continuation and review of anti-dumping measures applicable to consumer pineapple exported from the Philippines and Thailand (excluding those exports by TPC). In its application for review Golden Circle had indicated that exports of consumer pineapple fruit from the Philippines and Thailand were at dumped prices.

Customs and Border Protection will be examining exports of consumer and FSI pineapple fruit from the Philippines and of consumer (except those exported by TPC) and FSI pineapple fruit from Thailand as part of the review and continuation.

8.8 Comparison of export price and non injurious price

Unsuppressed Selling Price (USP) and Non-Injurious Price (NIP) issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice²⁵.

The NIP is the minimum price necessary to prevent injury to the Australian industry producing like goods²⁶.

Customs and Border Protection generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in a market unaffected by dumping. This price is referred to as the USP.

Customs and Border Protection's preferred approach to establishing USPs observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP 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. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The applicant has not provided USP or NIP estimates as this is not required by the application form. However it is considered appropriate to compare the alleged dumped export prices to NIP estimates. If the export prices are greater than the NIP, it would suggest that dumping may not be causing material injury. If, on the other hand, the export prices are lower than the NIP, this would support a finding that dumped imports have caused material injury to the applicant producing like goods.

Customs and Border Protection has undertaken a preliminary calculation of USPs and NIPs for consumer and FSI pineapple fruit.

²⁵ Subsection 269TC(1)(c)

²⁶ Subsection 269TACA(a)

PUBLIC RECORD

Customs and Border Protection considers that USPs based on the industry's CTMS with no allowance for profit to be a conservative calculation of USPs for the purpose of the consideration of the application.

To derive the NIPs, an estimate of an importer's gross margin and selling, general and administration expenses, and an allocation for port charges, ocean freight, insurance and duty have been deducted from the USPs.

The analysis found that the export prices for Indonesia and Thailand by TPC (based on those calculated above) were all lower than the NIPs. This finding supports the claim that dumping has caused injury to the Australian industry.

The analysis is in **Confidential Appendix 3**.

8.9 Conclusion

Customs and Border Protection considers the price and volume effects from price undercutting and the consequent reduced revenues, profits and profitability amount to injury caused by the alleged dumping.

Customs and Border Protection concludes that there are reasonable grounds to conclude that the alleged dumping, of itself, has caused material injury.

PUBLIC RECORD

9 SUPPLEMENTARY ITEMS

9.1 Countervailing

The application notes it is for anti-dumping measures only, hence the question in relation to subsidies is not applicable.

9.2 Threat of material injury

Golden Circle notes its application is not solely based upon a threat of material injury, but on material injury already sustained and what injury is threatened in the absence of anti-dumping measures.

PUBLIC RECORD

PUBLIC RECORD

10 INVESTIGATION

For the purposes of the investigation it is suggested that:

- the investigation period²⁷, for the basis of the examination of exportations to Australia of the goods²⁸, be from 1 January 2010 to 31 December 2010; and
- the injury analysis period, for the purpose of determining whether material injury has been caused to the Australian industry²⁹, be examined from 1 January 2008.

PUBLIC RECORD

²⁷ Section 269T(1)

²⁸ Subsection 269TC(4)(bf)

²⁹ Section 269(T)(2AD)

PUBLIC RECORD

11 CONFIDENTIAL APPENDICES

Confidential Appendix 1	Dumping margin analysis
Confidential Appendix 2	Injury analysis
Confidential Appendix 3	Causal link analysis

Confidential appendixes are not included in the version for the public file.

PUBLIC RECORD

PUBLIC RECORD

12 ATTACHMENT A



Australian Government

**Australian Customs and
Border Protection Service**

Customs Act 1901 – Part XVB

Pineapple Fruit (Consumer and FSI)

Exported from Indonesia

Pineapple Fruit (Consumer)

Exported from Thailand by the Thai Pineapple Canning Industry Corp Ltd

Initiation of an investigation into alleged dumping

Notice under section 269TC

The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) has initiated an investigation following applications lodged by Golden Circle Limited, the sole manufacturer of pineapple fruit in Australia, for the publication of dumping duty notices in respect of pineapple fruit (consumer) exported from Indonesia, pineapple fruit (food, service and industrial) exported from Indonesia and pineapple fruit (consumer) exported from Thailand by the Thai Pineapple Canning Industry Corp Ltd.

The application describes the goods as:

- prepared or preserved pineapple in syrup or juice in container sizes more than 1 litre (described as food, service and industrial); and
- prepared or preserved pineapple in syrup or juice in container sizes not exceeding 1 litre (described as “consumer”).

The application alleges that the goods have been exported to Australia at prices less than their normal value and that the dumping has caused material injury to the Australian industry through lost sales volume,

lost market share, price undercutting, price suppression, price depression, reduced profits and profitability, reduced return on investment, reduced attractiveness to reinvest and reduction in employee numbers.

The CEO specifies that goods exported to Australia during the period 1 January 2010 to 31 December 2010 will be examined to determine whether dumping has occurred. The Australian market will be examined from 1 January 2008 for injury analysis.

PUBLIC RECORD

The date of initiation of this investigation is the date of publication of this notice.

Interested parties, as defined by subsection 269T(1) of the *Customs Act 1901*, are invited to lodge submissions concerning the publication of the dumping duty notice sought in the application, no later than the close of business on 25 May 2011, addressed to:

Director Operations 1
Trade Measures Branch
Australian Customs and Border Protection Service
Customs House 5 Constitution Avenue
CANBERRA ACT 2601

Or by email: tmops1@customs.gov.au

Australian Customs Dumping Notice (ACDN) No. 2011/15, containing important procedural details, and Consideration Report 173 (CON 173) are available at www.customs.gov.au. Both documents should be read in conjunction with this notice.

ACDN 2011/15 and CON 173 are also available on the public record. Documents included in the public record are available at <http://adpr.customs.gov.au/Customs/>. Alternatively, the public record may be examined at the above office address during business hours by contacting Trade Measures Branch on (02) 6275 6547.

Enquiries concerning this notice may be directed to the case manager on telephone number (02) 6245 5434, fax number (02) 6275 6990 or email tmops1@customs.gov.au.

Justin Wickes
A/g National Manager
Trade Measures Branch

15 April 2011