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

R E P O R T

TRADE MEASURES BRANCH
STATEMENT OF ESSENTIAL FACTS NO.171a

**INQUIRY INTO THE CONTINUATION OF
ANTI-DUMPING MEASURES**

**FSI PINEAPPLE
EXPORTED FROM
THE REPUBLIC OF THE PHILIPPINES**

25 May 2011

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1. SUMMARY AND RECOMMENDATIONS

This continuation inquiry is in response to an application by Golden Circle Limited (Golden Circle) seeking the continuation of the anti-dumping measures applying to food service and industrial (FSI) pineapple exported to Australia from the Republic of the Philippines (Philippines) and the Kingdom of Thailand (Thailand).

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

A separate SEF, SEF 171b, has been issued for the continuation inquiry for consumer pineapple from the Philippines.

Customs and Border Protection is also conducting reviews into the measures applicable to consumer pineapple and FSI pineapple exported from the Philippines.

SEF 172a has been issued for the review into FSI pineapple from the Philippines.

SEF 172b has been issued for the review into consumer pineapple from the Philippines.

Customs and Border Protection will issue separate SEFs on 3 August 2011 for measures applicable to FSI pineapple and consumer pineapple from Thailand.

1.1 Proposed recommendation

The delegate proposes to recommend that the Minister take steps to secure the continuation of anti-dumping measures applying to FSI pineapple exported from the Philippines from the expiry date of 13 November 2011.

1.2 Preliminary findings and conclusions

Customs and Border Protection's preliminary view is that the following factors support a finding that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping or countervailing measures were intended to prevent:

- Exports of FSI pineapple from the Philippines were dumped during the review period;
- imports of FSI pineapple from the Philippines have undercut industry prices;
- industry appear to have lost sales volumes and market share to imports from the Philippines;
- importers have maintained distribution links with exporters of FSI pineapple from the Philippines; and

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- exports of FSI pineapple from the Philippines would continue at dumped and injurious prices that would cause material injury to the industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF and SEF 172a¹, the delegate proposes to recommend that the Minister take steps to secure the continuation of anti-dumping measures applying to FSI pineapple exported from the Philippines from the expiry date of 13 November 2011.

1.3 Final report

The delegate's final report and recommendation in relation to measures applicable to FSI pineapple from the Philippines must be provided to the Minister by **9 July 2011**.

¹ SEF 172b relates to the review of the measures on consumer pineapple from the Philippines published on 25 May 2011.

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2. INTRODUCTION

2.1 Continuation inquiry process

Dumping duty notices (that have not been revoked) automatically expire five years after the date on which they were published, unless the Minister decides to continue them².

Not later than nine months before a dumping duty notice expires, Customs and Border Protection must publicly announce that the measures are due to expire and invite certain interested parties to apply within 60 days for continuation of measures³. If no application for continuation of the measures is received by Customs and Border Protection within the period allowed, the measures expire on the specified date.

If an application for continuation of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such a longer period as the Minister allows, to inquire and report to the Minister on whether continuation of the measures is justified. Within 110 days of the initiation notice, or such longer period as the Minister allows, Customs and Border Protection must place on the public record a statement of essential facts on which it proposes to base its recommendation to the Minister concerning the continuation of those measures.

Before recommending the continuation of the measures, Customs and Border Protection must be satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

Where the Minister decides to continue anti-dumping measures, the dumping duty notice will remain in force after the specified date for a further period of five years (unless the relevant notice is revoked before the end of that period).

In making recommendations in its final report to the Minister, Customs and Border Protection must have regard to:

- the application for continuation of the anti-dumping measures;
- any submission relating generally to the continuation of the measures to which the delegate has had regard for the purpose of formulating the statement of essential facts;
- this statement of essential facts; and
- any submission made in response to this statement of essential facts that is received by Customs and Border Protection within 20 days of being placed on the public record.

Customs and Border Protection may also have regard to any other matter that it considers to be relevant to the inquiry.

Following the Minister's decision, a notice will be published advising interested parties of the decision.

² Under section 269TM.

³ Under section 269ZHB.

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2.2 Notification and participation

The current anti-dumping measures applying to FSI pineapple are due to expire on 13 November 2011.

On 12 November 2010, Customs and Border Protection published a notice in inviting certain persons to apply to Customs and Border Protection for the continuation of anti-dumping measures on pineapple (consumer and FSI) exported from the Philippines, Thailand and for FSI pineapple exported from the People's Republic of China (China)⁴.

On 11 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for the continuation of the measures⁵ applicable to pineapple, FSI and consumer, from Thailand and the Philippines.

Golden Circle did not apply for a continuation of the measures relating to FSI pineapple from China and those measures will expire on 13 November 2011.

Following consideration of the application the inquiry of the measures commenced on 4 February 2011.

Public notification of initiation of the continuation inquiry was made on 4 February 2011 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2011/34 was also published.

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

The final report to the Minister which outlines Customs and Border Protection's findings and recommendations is due on or before 9 July 2011.

2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this statement of essential facts. However Customs and Border Protection is not obliged to have regard to any submissions received after **14 June 2011** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

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

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

⁴ In accordance with s.269ZHB of the *Customs Act 1901* (the Act).

⁵ In accordance with s.269ZHC(2) of the Act.

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Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the public record⁶. Submissions provided in confidence must be clearly marked “**IN-CONFIDENCE**”.

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s initiation report, notices and other information. These documents should be read in conjunction with this statement of essential facts. The public record may be viewed at Customs House Canberra by contacting Trade Measures Branch administration on (02) 6275 6547.

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

2.4 History of anti-dumping measures

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 certain pineapple products from the Philippines.

The Minister accepted the recommendations in Trade Measures Report No 112 (REP 112) and published dumping duty notices for consumer pineapple exported to Australia from the Philippines and FSI pineapple exported from the Philippines.

REP125, the reinvestigation of certain findings, 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.

On 11 January 2011 the Australian industry lodged an application for a continuation of measures in regards to the Philippines. Following the consideration of this application, a continuation inquiry was initiated on 4 February 2011. On 14 January 2011 the Australian industry lodged an application for a review of measures in regards to the Philippines. Following the consideration of this application, a review was initiated on 4 February 2011.

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

The measures have not been reviewed since their imposition in 2006.

⁶ In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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3. GOODS SUBJECT TO THE CONTINUATION INQUIRY

3.1 Preliminary findings

The Australian industry produces FSI pineapple fruit that has characteristics closely resembling those of FSI pineapple fruit manufactured in the Philippines and exported to Australia therefore FSI pineapple fruit manufactured by the Australian industry are like goods⁷.

3.2 The goods and like goods

The goods subject to measures (the goods) are:

- Pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple): and
- Pineapple prepared or preserved in containers exceeding one litre (food service & industrial pineapple).

Consumer pineapple and FSI pineapple are two separate goods.

3.2.1 Tariff classification

The goods are classified to the following tariff classifications in Schedule 3 to the *Customs Tariff Act 1995*:

2008.20.00	Pineapples
2008.20.00/26	Canned, in containers not exceeding one litre
2008.20.00/27	Canned, in containers exceeding one litre
2008.20.00/28	Other

The rate of duty for the goods exported from the Philippines up to 31 December 2009 was 5 percent.

From 1 January 2010 goods falling within subheading 2008.20 of the Harmonized System that are imported from the Philippines and are Originating Goods under the ASEAN-Australia-New Zealand Free Trade Agreement are entitled to receive the FTA preferential rate of duty which is "Free".

3.2.2 Like goods

The issue of like goods was considered during the original investigation into FSI pineapple exported from the Philippines in REP 112.

In REP 112 for FSI pineapple Customs and Border Protection was satisfied that there was an Australian industry producing like goods to the goods under consideration.

Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all

⁷ In terms of s.269T.

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respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration’.

In assessing like goods, Customs and Border Protection uses an analytical framework, which identifies different ways of examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes exceeding one litre (typically 3.0-3.2kg) which are sold into the FSI market.

Physical Likeness

Golden Circle produces a range of pineapple products in the above container sizes for FSI pineapple.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices, crushed pineapple and pineapple pizza cuts. The products can be sold in containers in either syrup or natural juice.

Sales of FSI pineapple by the Australian industry and importers that met the description of the goods and like goods were verified by Customs and Border Protection during the inquiry.

Commercial Likeness

Prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the FSI market segment. This was confirmed by distributor catalogues displaying a mix of locally produced and imported goods.

Functional Likeness

Golden Circle stated that its locally produced products are directly substitutable for the imported goods.

Customs and Border Protection collected information during the inquiry that confirmed the locally produced product and imported product were substitutable for each other.

Production Likeness

Verified information from industry and exporter visits during the inquiry shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

Customs and Border Protection remains satisfied that there is an Australian industry producing like goods to the goods.

3.3 Australian Industry

3.3.1 Preliminary findings

There is an Australian industry that is producing like goods, consisting of Golden Circle.

3.3.2 Manufacturing process

For goods to be taken as produced in Australia:

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- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia⁸.

Golden Circle is the sole manufacturer of FSI pineapple in Australia, no other interested party has claimed during this review to be an Australian producer of FSI pineapple.

A verification visit was undertaken to Golden Circle during the inquiry where the manufacturing process was observed and data was verified. A non-confidential version of the industry visit report is available on the public record.

Customs and Border Protection considers that at least one substantial process in the manufacture of FSI pineapple is carried out in Australia, and therefore FSI pineapple is manufactured in Australia.

⁸ Subsections 269T(2) and 269T(3).

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4. MARKET

Customs and Border Protection used information from past investigations and information collected during the inquiry in its examination of the Australian market for FSI pineapple.

Customs and Border Protection established the market for FSI pineapple during the inquiry using information from its import database and information supplied by the industry, importers, and the sole cooperating exporter.

Customs and Border Protection identified that some imports of FSI pineapple had been incorrectly classified and took account of those errors in establishing the market.

The FSI market comprises the food service and industrial sectors and the goods are typically supplied in 3.0 to 3.2 kg cans, although sometimes supplied in large aseptic plastic bags and drums.

The food service sector includes pizza outlets, quick service restaurants and institutions. The industrial sector includes customers that use the product as an ingredient for other processed foods including fruit salads, frozen pizzas, sauces, packaged meals, confectionery etc.

FSI pineapple is primarily sold to wholesalers/distributors or end users, with customers being less concerned with brand and driven primarily by price.

The market conditions and determinants of demand for FSI pineapple are unchanged from the original investigation period with price being pivotal to customers purchasing decisions.

The majority of imports of FSI pineapple are principally sourced from Thailand, with smaller volumes from Indonesia and the Philippines. Import data shows that the volume of FSI pineapple imported from the Philippines has been declining.

Riviana, an importer of FSI pineapple, stated that the Australian market in the food services sectors was extremely competitive and was cost based driven. Riviana advised that the pineapple fruit market was relatively mature and stable, and it did not envisage much change in the total market size.

Juremont, an importer of FSI pineapple advised it has been supplying FSI pineapple fruit over a long period. Juremont stated that FSI pineapple it imports, like Golden Circle, has a strong brand position based on a consistent high quality product.

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5. EXPORTER ACTIVITY

5.1 Preliminary Findings

Customs and Border Protection has found that exports of FSI pineapple from the Philippines to Australia have continued since the anti-dumping measures were first imposed in 2006.

Customs and Border Protection gathered and assessed data for the 2010 calendar year (the review period) for the purpose of ascertaining variable factors for the review of the measures (SEF 172a refers).

Customs and Border Protection found in the review that FSI pineapple exported by exporters from the Philippines to Australia during the review period was dumped. Dumping margins ranged from 22% to 49%.

5.2 Pattern of imports

Exports of FSI pineapple from the Philippines to Australia appear to have been declining since the imposition of the measures.

5.3 Price Trends

Customs and Border Protection analysed export prices of FSI pineapple from the Philippines using its import database and verified information.

The analysis shows that export prices from the Philippines have increased since the measures were imposed.

5.4 Exporters

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

Dole Philippines Inc (DPI) provided a completed response to the questionnaire and the information was verified during a visit to DPI. A non-confidential copy of the verification report is available on the public record. DPI exports represented a minority of exports of FSI pineapple from the Philippines.

Del Monte Philippines Inc (Del Monte) advised it would respond but did not provide any requested information.

Customs and Border Protection did not receive responses from other identified exporters.

5.4.1 Export price

The export price for FSI pineapple exported by DPI via its affiliate Dole Packaged Foods Asia (DPFA) has been determined under s.269TAB(1)(c), having regard to all the circumstances of the exportation.

Export prices have been calculated for each export transaction using the price between DPFA and the Australian customers. The individual transactions have been used to determine a weighted average export price for all shipments exported during the investigation period.

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For all other exporters Customs and Border Protection considered that sufficient information was not furnished or was not available to enable Customs and Border Protection to establish the export price using:

- the price paid or payable for the goods by the importer⁹;
- the price paid at which the goods were sold by the importer less prescribed deductions¹⁰; or
- the price determined having regard to all the circumstances of the exportation¹¹.

Customs and Border Protection therefore established export prices for all other exporters having regard to all relevant information¹², by reference to the export price determined for DPI.

5.4.2 Normal value

Customs and Border Protection found that DPI's domestic sales of FSI pineapple were representative, arms length and in the ordinary course of trade.

Customs and Border Protection considers that the normal value for FSI pineapple exported by DPI can be determined using domestic sales by DPI in the Philippines¹³ adjusted for comparison with the export price¹⁴.

Adjustments were made for; specification (where applicable), timing (where applicable), selling expenses, domestic administration expenses, domestic merchandising and promotion expenses, import duties paid on raw materials, export selling expenses, export general and administration expenses, domestic inland freight and credit terms.

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

Customs and Border Protection considers that the normal value for FSI pineapple exported by all other exporters cannot be determined under any of the preceding sections to s.269TAC(6), therefore normal values have been determined having regard to all relevant information¹⁵.

Customs and Border Protection has relied on the normal value determined for DPI adjusted for comparison with the export price. Customs and Border Protection did not adjust the normal value for any favourable claims specific to DPI. These included adjustments for credit terms, import duties paid on raw materials, specification adjustments where applicable and domestic merchandising and promotion expenses.

⁹ s. 269TAB(1)(a) of the Act

¹⁰ s. 269TAB(1)(b) of the Act

¹¹ s. 269TAB(1)(c) of the Act

¹² s. 269TAB(3) of the Act

¹³ Subsection 269TAC(1)

¹⁴ Subsection 269TAC(8)

¹⁵ Subsection 269TAC(6)

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5.4.3 Dumping margin

A dumping margin has been calculated for FSI pineapple exported by DPI over the review period based upon a comparison of the quarterly normal values and the export prices¹⁶. The dumping margin calculated for DPI was 22%.

A dumping margin has been calculated for FSI pineapple exported by all other exporters over the review period by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period¹⁷.

The dumping margin calculated for all other exporters was 47%.

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¹⁶ Subsection 269TACB(2)(aa).

¹⁷ Subsection 269TACB(2)(a).

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6. LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING

7.1 Preliminary findings

The expiration of measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

7.2 Continuation test

Customs and Border Protection must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

7.3 Likelihood of dumping continuing or recurring

Customs and Border Protection has calculated dumping margins for FSI pineapple exported during the review period ranging from 22% to 49%. Even with anti-dumping measures in place, albeit that they have not been reviewed since their original imposition, FSI pineapple from the Philippines continue to be imported at significantly dumped prices.

Customs and Border Protection considers that it is reasonable then to expect that FSI pineapple would continue to be exported at dumped prices in the absence of measures. Therefore Customs and Border Protection preliminarily finds that the expiration of anti-dumping measures on consumer pineapple from the Philippines would lead or would be likely to lead to a continuation of the goods being exported at dumped prices.

7.4 Likelihood of injury continuing or recurring

Golden Circle claimed in its application that material injury will continue and/or recur on the grounds that:

- Golden Circle's processed pineapple operation is vulnerable to dumped exports of pineapple fruit from the Philippines;
- Golden Circle's sales volumes in the FSI segments of the processed pineapple market have deteriorated in 2009 and 2010;
- FSI pineapple from the Philippines is undercutting Golden Circle's prices by up to 50%;
- Should the anti-dumping measures applicable to exports of FSI pineapple from the Philippines be allowed to expire, the Australian industry will suffer an escalation in the level of material injury already sustained in 2009 and 2010;

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- Should the measures be allowed to expire, the Australian industry will likely experience further lost sales volumes and loss of market share caused by price undercutting. Material injury will also likely be experienced through price depression (as export prices decline in the absence of the floor price imposed by the current measures) and price suppression, resulting in a deterioration of profits and profitability.
- exporters of FSI pineapple in the Philippines have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping measures; and
- the Philippines is also a major pineapple processing producer and exporter involving multi-national corporations (e.g. Dole Philippines and Del Monte) with significant production facilities able to supply the Australian market in the absence of measures

Golden Circle also submitted that:

- pricing in the FSI market operates differently to that in consumer in that there is no brand visibility;
- that whilst it estimated that it held its market share in 2010 this was due to it reducing its net sale price; and
- the measures are out of date, not having been reviewed since 2006 and that exports are at dumped levels.

Customs and Border Protection's Assessment

It is widely accepted that demand in the FSI pineapple market is primarily driven by price. Brand is not a critical factor as the final consumer is generally not aware of the product brand used. The FSI market is also highly competitive with the main importations being from the Philippines, Thailand, Indonesia and to a lesser extent from Vietnam, China and Taiwan.

Sales in the FSI segment are primarily to wholesalers/ distributors and large end users. The wholesalers/ distributors on-sell to customers either through warehouses or delivered. Prices in this sector are generally transparent via advertising catalogues showing the different product brands and pricing. Pricing in the catalogues shows the imported product at 20% - 50% below the Golden Circle product. Information available to Customs and Border Protection from importers and the import database suggests that prices in the market for imported products are at similar levels regardless of the importation source.

Pricing to the larger end users may not be as transparent as it can involve closed tenders with the unsuccessful parties unaware of the final results. Large end users can include customers in the industrial sector that use the product as an ingredient for other processed foods and also quick service restaurant chains that tender supply for their outlets.

Golden Circle's sales in the FSI market are mainly to the wholesale and distributor sector where prices are more transparent. Customs and Border Protection considers that the size of the dumping margins for FSI pineapple from the Philippines has enabled importers to undercut Golden Circle's prices and compete with other imports prices in the market.

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Prices for FSI pineapple from the Philippines sold in the Australian market are significantly lower than Golden Circle's prices and significantly lower than what they would have otherwise been had they been imported at normal value prices.

During the review period of 2010, Golden Circle has lost sales volume and market share whilst importations of FSI pineapple from the Philippines have increased. Golden Circle's prices for FSI pineapple were lower in 2010 as it responded to dumped imports and attempted to regain lost sales. This ultimately led to Golden Circle experiencing reduced revenues and profits.

Customs and Border Protection also notes that importers have maintained distribution links with exporters of the goods from the Philippines.

Customs and Border Protection's preliminary finding is that the expiration of anti-dumping measures on FSI pineapple from the Philippines would lead or would be likely to lead to a continuation or recurrence of the material injury that the anti-dumping measure is intended to prevent.

7.4.3 Conclusion

Customs and Border Protection's preliminary view is that the following factors support a finding that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping or countervailing measures were intended to prevent:

- Exports of FSI pineapple from the Philippines were dumped during the review period and would likely continue to be dumped in the absence of measures;
- importers have maintained distribution links with exporters of FSI pineapple from the Philippines;
- imports of FSI pineapple from the Philippines have significantly undercut industry prices contributing to lost sales volumes and market share; and
- exports of FSI pineapple from the Philippines would continue at dumped prices that would continue to cause material injury to the industry.

Therefore, subject to responses to this statement of essential facts and SEF 172a, Customs and Border Protection intends to recommend that the Minister takes steps to secure the continuation of the anti-dumping measures on FSI pineapple exported from the Philippines.