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Australian Government

**Australian Customs and
Border Protection Service**

R E P O R T

CUSTOMS ACT 1901 - PART XVB

INTERNATIONAL TRADE REMEDIES BRANCH

TERMINATION REPORT NO.173c

TERMINATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF CONSUMER PINEAPPLE EXPORTED FROM INDONESIA

7 September 2011

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1. SUMMARY AND RECOMMENDATIONS

This dumping investigation is in response to an application by Golden Circle Limited (Golden Circle) into the alleged dumping of consumer pineapple exported to Australia from the Republic of Indonesia (Indonesia) and by the Thai Pineapple Canning Industry Corporation Ltd (TPC) from Thailand.

This termination report (TER 173c) sets out recommendations to the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service (Customs and Border Protection) in relation to the application as it applies to exports of consumer pineapple from Indonesia.

1.1 Recommendation

It is recommended that the CEO be satisfied that exports of consumer pineapple from Indonesia were not dumped¹.

If the CEO accepts this recommendation, to give effect to the decision, the CEO must terminate the investigation into the alleged dumping of consumer pineapple exported to Australia from Indonesia by publishing the attached notice at **Appendix A**.

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*² (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Chief Executive Officer (CEO) in conducting investigations in relation to the goods covered by an application. 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 consumer and food service and industrial (FSI) pineapple in Australia, lodged an application for the publication of a dumping duty notice in respect of consumer pineapple exported to Australia from Indonesia and from Thailand by TPC and for FSI pineapple exported to Australia from Indonesia.

1.2.3 Initiation of investigation

After examining the application, the delegate was satisfied that:

- the application complied with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and

¹ Ss 269TDA(1)

² A reference to a division, section or subsection in this report is a reference to a provision of the Act, unless otherwise specified.

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- there appears to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

Following consideration of the application an investigation was initiated with public notification made on 15 April 2011 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2011/15 was also published.

1.2.4 Statement of essential facts

On 3 August 2011, Statement of Essential Facts No. 173b (SEF 173b) was placed on the public record. SEF 173b proposed to terminate the investigation into consumer pineapple exported from Indonesia.

Interested parties were invited to lodge submissions in response to SEF 173a by 23 August 2011.

1.2.5 Termination of an investigation

The CEO must terminate the dumping investigation so far as it relates to that exporter or country if satisfied³ that:

- dumping margins are negligible (exporter);
- negligible volumes of dumping are found (country); or
- dumping causes negligible injury (country).

If the CEO decides to terminate a dumping investigation, the CEO must give public notice of that decision⁴.

1.3 Findings and conclusions

Customs and Border Protection has made the following findings and conclusions based on available information for the investigation:

1.3.1 The goods and like goods (chapter 3 of this report)

Locally produced consumer pineapple is like goods to the goods the subject of the application.

1.3.2 Australian industry (chapter 3 of this report)

There is an Australian industry producing like goods, comprising one Australian producer, Golden Circle.

1.3.3 Market (chapter 4 of this report)

The size of Australian market for consumer pineapple was over 14,000 tonnes in 2010. Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to independent stores. Consumer pineapple is

³ S 269TDA

⁴ Ss 269TDA(15)

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generally labelled and marketed as branded product, generic/housebrand or private label product.

1.3.4 Dumping (chapter 5 of this report)

Customs and Border Protection has determined the following dumping margin for consumer pineapple exported to Australia from Indonesia.

PT Great Giant Pineapple (Great Giant)	-23.5%
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The available information shows that Great Giant is the only exporter of consumer pineapple from Indonesia during the investigation period.

As the dumping margin for the only known exporter is negligible the delegate has terminated the investigation into the alleged dumping of consumer pineapple exported to Australia from Indonesia.

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2. BACKGROUND

2.1 Previous investigations

There has not been any previous investigation in regards to consumer pineapple exported from Indonesia.

2.2 This investigation

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

Following consideration of the application an investigation was initiated with public notification made on 15 April 2011 in *The Australian* newspaper. ACDN No. 2011/15 was also published.

An investigation period of 1 January 2010 to 31 December 2010 was advised for the investigation. Customs and Border Protection examined exports to Australia of the goods during that period to determine whether dumping has occurred. Customs and Border Protection examined details of the Australian market from 1 January 2008 for injury analysis.

Customs and Border Protection visited Golden Circle for the reviews and continuations⁵ into consumer and FSI pineapple applicable to exports from Thailand and the Philippines. At that visit data relating to costs and sales was verified covering the calendar years 2008 to 2010, a report of the visit was placed on the public record for the reviews and continuations.

Customs and Border Protection used the data verified from that visit to Golden Circle for this investigation.

2.3 Statement of essential facts

A statement of the facts on which the delegate proposed to base his recommendation to the Minister regarding the publication of a dumping duty notice, was placed on the public record on 3 August 2011. Interested parties were invited to make submissions to SEF 173b within 20 days, by 23 August 2011.

Submissions in response to SEF 173b in regards to consumer pineapple from Indonesia were received from Golden Circle on or before 23 August 2011. A submission was received after 23 August 2011 from Great Giant. Non-confidential versions of the submissions were placed on the public record.

⁵ Reports 171a to 171d and Reports 172a to 172d refer

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3 GOODS SUBJECT TO THE INVESTIGATION

3.1 Findings

The Australian industry produces consumer pineapple that has characteristics closely resembling those of consumer pineapple manufactured in Indonesia and exported to Australia therefore consumer pineapple manufactured by the Australian industry are like goods⁶.

3.2 The goods and like goods

The goods subject to the investigations (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).

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 Indonesia is 5 percent.

3.2.2 The goods

Great Giant exported both consumer and FSI canned pineapple to Australia. It claimed that both of these products were covered by the goods description subject of the application. It considered that they should be treated separately for the purpose of examining the Australian market as they were exported to two separate market segments. However, any dumping margin should be calculated for the goods in total, and not separately calculated for two product categories within the definition of the goods.

Great Giant stated that Customs and Border Protection had adopted this approach in other investigations, such as hollow steel structural sections, clear float glass and aluminium extrusions. In these cases there was one initiation notice, but the investigation examined the different market segments. At the conclusion of the investigation, Customs and Border Protection calculated a product dumping margin for the goods. Great Giant claimed that this principle should also be applied to the canned pineapple investigation and that a product dumping margin should be calculated for canned pineapple.

⁶ In terms of s.269T.

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Customs and Border Protection disagrees with Great Giant's view that the application lodged by Golden Circle defines the goods subject of the application as all canned pineapple (including both consumer and FSI). The application clearly draws a separate distinction between consumer and FSI pineapple exported from Indonesia. Accordingly, Customs and Border Protection clearly outlined in its public notice that separate investigations had been initiated into consumer and FSI pineapple.

3.2.3 Like goods

The issue of like goods was considered during the original investigation into consumer pineapple exported from Thailand in Trade Measures Report 41 (REP 41). In REP 41 for consumer pineapple fruit 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 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 not exceeding one litre (typically 225g, 425-450g, and 825-850g, although other sizes are available) sold into retail stores for the consumer market.

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.

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

Commercial Likeness

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

Customs and Border Protection collected information during the investigation that confirmed this direct competition.

Functional Likeness

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

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

Production Likeness

Verified information from industry and exporter visits 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 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:

- 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 Australia⁷.

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

A verification visit was undertaken to Golden Circle for the review of measures and continuation inquires 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 consumer pineapple is carried out in Australia, and therefore consumer pineapple is manufactured in Australia.

⁷ Ss 269T(2) and 269T(3).

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4 AUSTRALIAN MARKET

4.1 Finding

The size of Australian market for consumer pineapple was over 14,000 tonnes in 2010. 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 either branded product, or generic/housebrand or private label product.

4.2 Market supply

Customs and Border Protection established that the Australian consumer pineapple market is supplied by the Australian industry, as well as imports from a number of countries. The greater majority of imports of consumer pineapple are principally sourced from Thailand and the Philippines and Indonesia. Imports from Indonesia commenced in 2010 to rank third in size behind Thailand and the Philippines.

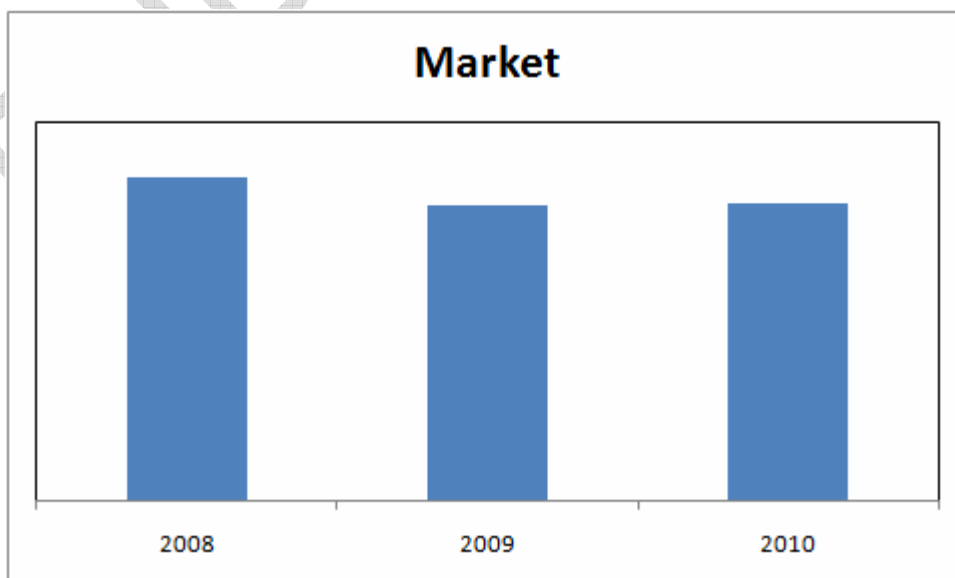
4.3 Market size

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

Customs and Border Protection established the market for consumer pineapple for the investigation using information from its import database and information supplied by the industry, importers and exporters.

Customs and Border Protection identified that some imports of consumer pineapple and FSI pineapple had been incorrectly classified and these errors have been taken into account in establishing the market.

The Australian market for consumer pineapple over the calendar years 2008 to 2010 is shown in the following chart.



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The available data shows that the consumer pineapple market in Australia experienced a decline from 2008 to 2009 and was relatively stable from 2009 to 2010.

4.4 Market structure

Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to independent stores. The goods exported contain pineapple in the form of thins, slices, pieces and crushed. The fruit is packed in either syrup or natural juice. Sales are predominantly in steel cans in sizes of 225g, 410-450g and 810-850g but may also be packaged in plastic containers.

Consumer pineapple is generally labelled and marketed as either:

- branded product (eg Golden Circle, Dole, Del Monte etc); or
- generic/housebrand or private label product (eg Homebrand, Coles Savings, Black and Gold ,Coles Choice, Aldi etc).

Each market segment generally has a distinct price point relative to the other in the market, with branded product being the most expensive and generic/housebrand (generic) product being the least expensive. Consumers generally regard branded products as being of better quality and as such a price premium is attached to the branded goods.

Therefore, whilst the pineapple fruit on the retailer's shelves competed against each other, the price points for each product varied. Branded pineapple product such as Golden Circle and Dole would always be priced above generic product such as Homebrand. Woolworths has previously stated that price points were set according to consumer demand.

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5 DUMPING INVESTIGATION

5.1 Findings

- The export price for consumer pineapple exported by PT Great Giant Pineapple (Great Giant) have been established using the price paid for the goods by the importer to the exporter⁸;
- The normal value for consumer pineapple exported by Great Giant has been determined using the cost of production and amounts for selling, general and administrative expenses⁹;
- An amount for profit has been determined for the constructed normal value, this amount is zero¹⁰; and
- Consumer pineapple exported by Great Giant during the investigation period was not dumped, with a dumping margin that was – 23.5%.

5.2 Introduction

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

This chapter explains the preliminary results of investigations by Customs and Border Protection into whether consumer pineapple was exported from Indonesia at dumped prices during the investigation period.

5.3 Exporters

An exporter questionnaire was sent to Great Giant of Indonesia. Customs and Border Protection did not identify and is not aware of any other exporter of consumer pineapple from Indonesia during the investigation period.

5.4 Export price

The export price for consumer pineapple exported by Great Giant has been established under s.269TAB(1)(a), using the price paid for the goods by the importer less any post exportation expenses.

Export prices have been calculated for each export transaction using the price between Great Giant 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.

Export prices for Great Giant have been calculated at an ex-factory price.

⁸ Ss 269TAB(1)(b)

⁹ Ss 269TAC(1)

¹⁰ Ss. 269 TAC(5B)

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5.5 Normal value

Great Giant did not have any domestic sales in 2010, either of like goods or a similar category of goods. No other Indonesian producer cooperated with the investigation and Customs and Border Protection did not receive information from any other exporter in regards to domestic selling prices for consumer pineapple in Indonesia.

Customs and Border Protection is satisfied that it is unable to establish normal values under subsection 269TAC(1) of the Act and considers that 'constructed' normal values should be determined under paragraph 269TAC(2)(c) of the Act.

Customs and Border Protection used verified quarterly production costs from Great Giant for each pineapple product exported to Australia in the investigation period. Customs and Border Protection used verified sales, general and administration (SG&A) costs for export sales and added these costs to the constructed normal value.

Customs and Border Protection considered the issue of what profit should be added to the constructed costs to calculate normal values.

The amount of profit to be added to a constructed normal value must be worked out in accordance with regulation 181A of the Act.¹¹

Great Giant did not have any domestic sales of like goods or sales in the same general category of goods and Customs and Border Protection did not receive information from any other exporter in regards to domestic selling prices for consumer pineapple in Indonesia to allow a profit to be determined under regulation 181A(3)(a) and (b).

Regulation 181A(3)(c) allows for a profit to be determined using any other reasonable method and having regard to all relevant information.

Customs and Border Protection has recently completed an inquiry into whether measures applying to the Philippines should be continued. A Philippines producer was visited during that inquiry and it had domestic sales of both consumer and FSI pineapple.

Customs and Border Protection considered using the profit achieved by the producer on its sales of consumer pineapple in the Philippines, however there is little evidence to confirm that the Philippines consumer pineapple domestic market is an appropriate market to compare with the domestic market in Indonesia. In fact, the volume and nature of the domestic sales in Philippines indicates that the market differs substantially. Therefore, profits achieved by Philippine exporters of domestic sales of consumer pineapple are not considered suitable.

Customs and Border Protection next considered using a profit achieved in the same general category of goods using available information from the internet. The same general category was for fruit and vegetable processors in Indonesia. However that information was unverified and did not disclose whether the amounts were for domestic sales only.

Customs and Border Protection considers that there is no other reliable information to demonstrate that domestic sales of consumer pineapple would be

¹¹ Ss 269 TAC(5B)

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profitable. Therefore Customs and Border Protection's preliminary view in the SEF was that no profit should be added to the constructed normal value.

Customs and Border Protection considers that a normal value can be determined at the ex-factory price using the information verified at the visit to Great Giant. Adjustments to the normal value are not required as the export price and normal value can be established and determined at the ex-factory price.

5.5.1 Submissions

Great Giant submitted that the negative dumping margin of – 23.5% meant that a huge unrealistic amount for profit would need to be added for there to be an actionable dumping margin (greater than 2%). Great Giant restated in its late submission to the SEF that its exports had not caused injury and also disagreed with Golden Circle's submissions for an amount for profit in the normal value.

Golden Circle submitted that:

- the two Indonesian companies it identified as producers and sellers of consumer pineapple in its application should have been contacted by Customs and Border Protection for information on their domestic selling prices;
- the exclusion of an amount for profit in the normal values is inconsistent with the intent of the legislative provisions to determine a normal value that is representative of a selling price in the country of export;
- exclusion of a profit would generally only occur in circumstance that are unusual or irregular, which is not the case in these circumstances; and information should have been sought from other identified sellers of canned pineapple in Indonesia; and
- in the absence of contact with those identified companies it is not possible for Customs and Border Protection to conclusively assume that a domestic market does not exist, is small, minimal or anything else.

Golden Circle further submitted to the SEF that:

- Great Giant is owned by an investment management company that would have strict profit objectives to achieve, Great Giant would be trading profitably across its processing operations and it is reasonable that a level of profit be included in the normal value;
- a level of profit can be obtained based on Great Giants earnings before interest, taxation and amortisation (EBITA) and sales for 2010;
- alternatively the bank of Indonesia interest rate of 6.75% could be used as the investment group would seek at return at this minimum level; and
- exclusion of a level of profit is commercially unrealistic, Golden Circle should not be penalised by having to compete at an artificially low and unreasonably low level that reflects only production and selling costs and specifically excludes an exporters profit.

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5.5.2 Customs and Border Protections assessment

Customs and Border Protection notes a significant level of profit would be required to be added before the exported goods can be considered to be dumped. Based on a negative margin of -23.5% a minimum level of profit of 25.5% would be required to be added for the dumping margin to be above negligible of 2%. None of the information available to Customs and Border Protection including information from the Philippines, information on the internet or information on Great Giant's total sales shows profit at a level approaching 25.5%.

Customs and Border Protection had contacted and sought relevant information from at least one of the Indonesian producers nominated by Golden Circle, however no information was submitted. Therefore Customs and Border Protection had regard to all relevant information in determining the appropriate level of profit in constructing a domestic selling price.

Golden Circle's view that the exclusion of a profit in a constructed normal value is inconsistent with the intent of Australia's legislation is not accepted. The ordinary course of trade provisions clearly recognise that selling below cost may be a 'normal' business practice so long as such sales are not in substantial quantities or the losses accruing at the time of such sales are recovered over the long run. In either of those scenarios, the normal value would include selling prices that were below the cost of the goods. This is further supported by s.269TAC(13) of the Act which requires that where normal value is being constructed because of the operation of the ordinary course of trade provision, profit shall not be included the calculation of normal value.

In response to Golden Circle's statements about strict profit targets being set by Great Giant's controlling parent, Customs and Border Protection considers that if such targets were expected of Great Giant's pineapple operations then the decision by the company to not sell like goods on the domestic market suggests that reasonable profits aren't achievable.

Customs and Border Protection also considered using the exporter's EBITA and sales information, however given that the company's revenue is almost entirely driven by export sales, this information is not considered relevant to determining a reasonable domestic profit.

In the absence of reliable information on domestic sales of like goods or goods in the same general category Customs and Border Protection affirms its preliminary view expressed in the SEF that no profit should be added to the constructed normal value.

5.6 Dumping margin

A dumping margin has been calculated for consumer pineapple exported by Great Giant over the investigation period. The calculations showed that the goods were not dumped. The margin calculated was negative at - 23.5%.

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The delegate is satisfied that the dumping margins calculated are less than 2% and therefore terminates the investigation into consumer pineapple from Indonesia¹².

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¹²Ss 269TDA(1)