



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

R E P O R T

INTERNATIONAL TRADE REMEDIES BRANCH
REPORT TO THE MINISTER NO.171b

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

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

9 July 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 consumer pineapple and food service and industrial (FSI) pineapple exported to Australia from the Republic of the Philippines (Philippines) and the Kingdom of Thailand (Thailand).

This report 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) is basing his recommendation to the Minister for Home Affairs (Minister) for measures applicable to consumer pineapple from the Philippines.

A separate report, REP 171a, has been issued for the continuation inquiry for FSI pineapple from the Philippines.

1.1 Applicable law

Division 6A of Part XVB of the Act¹ provides for the Chief Executive Officer of Customs and Border Protection (CEO) to alert interested parties to the impending expiry of measures and provide them with an opportunity, before those measures expire, to apply for a continuation of those measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the CEO in dealing with an application and preparing a report for the Minister;
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of measures.

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

The delegate must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the delegate is 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.

1.2 Recommendation

The delegate recommends that the Minister:

- 1 declare that he has decided to take steps to secure the continuation of anti-dumping measures in respect of the goods exported from the Philippines from 10 October 2011; and

¹ A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901 (Cth)*.

2 sign the requisite notice² (**confidential attachment 1**).

1.3 Findings and conclusions

Customs and Border Protection has found 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 measures were intended to prevent:

- exports of consumer pineapple from the Philippines were dumped during the review period;
- imports of consumer pineapple from the Philippines have undercut industry prices;
- industry have lost sales volumes to imports from the Philippines;
- importers have maintained distribution links with exporters of consumer pineapple from the Philippines; and
- consumer pineapple from the Philippines would likely be exported at increased margins of dumping that would lead to the recurrence of material injury to the Australian industry.

Based on these findings the delegate recommends that the Minister takes steps to secure the continuation of anti-dumping measures applying to consumer pineapple exported from the Philippines from the expiry date of 10 October 2011.

² Section 269ZHG(1) and (4).

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 them³.

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 measures⁴. 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 (SEF) 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.

³ Under section 269TM.

⁴ Under section 269ZHB.

2.2 Notification and participation

The current anti-dumping measures applying to consumer pineapple are due to expire on 10 October 2011.

On 12 November 2010, Customs and Border Protection published a notice inviting certain persons to apply to Customs and Border Protection for the continuation of anti-dumping measures on pineapple fruit (consumer and FSI) exported from the Philippines, Thailand and for FSI pineapple exported from the People's Republic of China (China)⁵.

On 11 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for the continuation of the measures⁶ applicable to pineapple, consumer and FSI, 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. 2011/05 was also published.

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

Customs and Border Protection placed the SEF for this inquiry on the public record on 25 May 2011. Interested parties were invited to lodge submissions in response to the SEF not later than 14 June 2011.

This 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 Responds to the statement of essential facts

Customs and Border Protection received responses to the SEF from Golden Circle and Dole Philippines Incorporated (DPI). Non-confidential versions of the submissions were placed on the public record.

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 China and 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 China and the Philippines.

⁵ In accordance with s.269ZHB of the *Customs Act 1901* (the Act).

⁶ In accordance with s.269ZHC(2) of the Act.

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.

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.

3 GOODS SUBJECT TO THE CONTINUATION INQUIRY

3.1 Findings

The Australian industry produces consumer pineapple fruit that has characteristics closely resembling those of consumer pineapple fruit manufactured in the Philippines and exported to Australia therefore consumer 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 consumer pineapple exported from the Philippines in REP 112.

In REP 112 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

⁷ In terms of s.269T.

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 inquiry.

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 inquiry that confirmed this direct competition.

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 under consideration.

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 Australia⁸.

Golden Circle is the sole manufacturer of consumer pineapple in Australia, no other interested party has claimed during this review to be an Australian producer of consumer 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 consumer pineapple is carried out in Australia, and therefore consumer pineapple is manufactured in Australia.

⁸ Subsections 269T(2) and 269T(3).

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 consumer pineapple.

Customs and Border Protection established the market for consumer pineapple for 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 consumer pineapple and FSI pineapple had been incorrectly classified and these errors have been taken into account in establishing the market.

Consumer pineapple from the Philippines 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, Heinz, 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.

Imports of consumer pineapple from the Philippines in 2005 were largely branded product and held a significant share of the retail market at that time. Since then, whilst there has been an increase in consumer pineapple exported from the Philippines, this is reflected in increased exports of generic brand consumer pineapple, with a decrease in branded product. Exports of branded product ceased in 2009 before reappearing in 2010.

Customs and Border Protection has also established that little has changed in the retail segment in respect of reimbursements for promotional and marketing expenses incurred by the retailers. It is these reimbursements that contributed to export prices being found to have been dumped during the original investigation period.

Likewise the reimbursements enabled the retailers to offer competitive shelf prices for the goods which resulted in the material injury experienced by the Australian industry.

Golden Circle advised that it continues to incur selling expenses relating to promotional and marketing activities undertaken by the retailers.

5. EXPORTER ACTIVITY

5.1 Findings

Customs and Border Protection has found that exports of consumer 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 (REP 172b refers).

Customs and Border Protection found in the review that consumer pineapple exported by exporters from the Philippines to Australia during the review period was dumped. Dumping margins ranged from 2.6% to 15.0%.

5.2 Pattern of imports

Customs and Border Protection has found that exports of consumer pineapple from the Philippines to Australia have increased since the imposition of the measures. Available evidence indicates that imports of generic brand consumer pineapple from the Philippines have increased whilst there has been a decrease in branded product.

5.3 Price Trends

Customs and Border Protection analysed export prices of consumer 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 consumer 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 the majority of exports of consumer 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 consumer 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.

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.

Export prices for all other exporters have been determined having regard to all relevant information¹², by reference to the export price determined for DPI.

Export price calculations are at **Confidential Attachment 2**.

5.4.2 Normal value

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

The normal value for consumer pineapple exported by DPI has been established using domestic sales by DPI in the Philippines¹³ adjusted for comparison with the export price¹⁴;

Adjustments have been 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.

Following publication of the SEF, a review of DPI's normal value calculation identified some minor errors relating to the ordinary course of trade test which had the effect of overstating the normal value for the review period. These errors have been corrected and a revised normal value calculated.

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

The normal value for consumer pineapple exported by all other exporters has been determined having regard to all relevant information¹⁵.

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)

Customs and Border Protection used the normal value established for DPI adjusted for comparison with the export price. Customs and Border Protection considers that the normal value should not be adjusted 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.

Normal value calculations are at **Confidential Attachment 2**.

5.4.3 Dumping margin

Customs and Border Protection calculated a revised dumping margin for consumer pineapple exported by DPI of 2.6%.

A revised dumping margin for all other exporters of consumer pineapple of 15.0% was calculated.

Dumping margin calculations are at **Confidential Attachment 2**.

6 LIKELIHOOD OF DUMPING OR INJURY RECURRING OR CONTINUING

6.1 Findings

The delegate is satisfied that 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.

6.2 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.

6.3 Likelihood of dumping continuing or recurring

The original investigation determined that exports of consumer pineapple from the Philippines were dumped in the range of 2% to 90%.

Customs and Border Protection has calculated dumping margins for consumer pineapple exported from Philippines during the review period ranging from 2.6% to 15.0%.

Exporters of consumer pineapple in the Philippines have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping measures. There are agreements in place for the continued supply of consumer pineapple from the Philippines.

Customs and Border Protection 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.

6.3.1 Submissions to the SEF

Golden Circle agreed that exports of consumer pineapple would increase at dumped prices in the absence of measures.

DPI submitted that:

- the requested amendments to dumping margin calculations would result in the elimination of any margin for consumer pineapple; and
- this means that that there can be no finding that dumping by DPI is likely to continue or recur.

6.3.2 Customs and Border Protection's assessment

As noted above Customs and Border Protection reviewed the information by DPI and calculated a revised dumping margin for consumer pineapple exported by DPI of 2.6%.

As noted in the following sections the imposition of measures in 2006 appears to have influenced the type of consumer pineapple being exported to Australia, being away from the branded products and to the generic products.

Branded products sold to the retail sector continue to incur reimbursement of promotional and marketing expenses and it is these reimbursements/rebates that were contributing factors to the magnitude of the dumping margins found during the original investigation in 2006.

6.4 Likelihood of injury continuing or recurring

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

- increasing import volumes from the Philippines in the consumer pineapple segment present ongoing material injury;
- the Australian industry's sales volumes in the consumer pineapple market have deteriorated in 2009 and 2010;
- the level of price undercutting in the consumer pineapple segment from Philippine imports is significant and has been the major contributing factor to the lost sales;
- it is unable to compete with the imported selling prices for private label business as landed duty into store prices are below Golden Circle's variable costs of production.

Golden Circle also submitted that:

- private label (generic) sales are a significant portion of total consumer pineapple sales in Australia;
- one customer has influenced the level of selling prices in the consumer pineapple segment and for the past three years two other customers have matched the prices of this customer;
- it had made price offers of generic consumer pineapple to the customer which are below Golden Circle's cost of goods. The customer advised that it was sourcing substantially cheaper product from the Philippines.

6.4.1 Submissions to the SEF

DPI submitted that expiration of the anti-dumping measures relating to DPI would not lead or would not be likely to lead to a continuation or recurrence of the material injury that the anti-dumping measure is intended to prevent as the SEF noted:

- that at un-dumped prices the Dole product would significantly undercut Golden Circle's prices;
- an un-dumped tendered price from Dole is significantly below industry's cost of production; and
- imports of consumer pineapple at dumped prices from the Philippines caused negligible injury to the Australian industry during the 2010 review period.

DPI considered that the analysis in the SEF of the generic and branded product mix that would have prevailed had the measures not been in place was based on speculation unsupported by evidence or logic which is not consistent with the requirements of the *Customs Act 1901*.

Golden Circle agreed with the preliminary findings in the SEF that had the measures not been in place imports of branded consumer pineapple would have likely have increased and been exported at dumped prices.

Golden Circle noted DPI comments in the exporter visit report that DPI operates in the premium sector of the Australian export market and that its product does not compete with 'cheaper' imports

Golden Circle also noted that an increase in dumped branded consumer pineapple would likely lead to a recurrence of the material injury previously experienced.

Golden Circle submitted that:

- it cannot be assumed that as the dumping margins were small they were not injurious, the dumped export prices were responsible for significant lost sales volumes of generic pineapple;
- the dumped exports influence industry's position to re-tender for lost volumes as the incumbent supplier usually receives the last opportunity to price the tender;
- the dumping margin, even if relatively small continues to be injurious as it prevents industry from at least matching the final tender price and therefore minimising the extent of the material injury experienced by increasing sales volumes and production; and
- the lost sales volumes were material and caused a significant reduction in production, thereby reducing the base over which costs are allocated.

6.4.2 Customs and Border Protection's Assessment

During the original dumping investigation against Philippines in 2006 (REP 112) Customs and Border Protection found that the Australian industry suffered material injury due to the emergence of significant volumes of branded products at dumped prices. These branded products included Dole, Del Monte and Heinz.

An examination of available import information since the imposition of anti-dumping measures shows that the volume of branded consumer pineapple product from the Philippines has declined sharply. Alternatively, imports of generic consumer pineapple product from the Philippines have increased significantly since the introduction of the anti-dumping measures in 2006.

Golden Circle provided data and evidence to the review of a continuing link in pricing between generic and branded products in the form of historical data for sales of generic and brand consumer pineapple.

Golden Circle provided evidence which it claims shows that it lost sales to a customer after being undercut by generic consumer pineapple exported from the Philippines.

Customs and Border Protection has examined the available information in relation to the supply of consumer pineapple to the relevant customer. It found

that the previously supplied price and the new tendered price by Golden Circle were significantly undercut by the tendered price for consumer pineapple from Philippines. However those goods have been determined to have been exported at a low dumping margin. The equivalent un-dumped tendered price for consumer pineapple from Philippines would have also undercut Golden Circle's tendered price.

Customs and Border Protection agrees with the industry submission that the lost sales volumes were material in the effect on sales and production volumes, and that a relatively small margin may be injurious due to its effects on those volumes. However as noted the evidence supports the view that the volumes would have been lost at an un-dumped price and dumping was not a factor in the injury caused.

Customs and Border Protection is satisfied that imports of consumer pineapple at dumped prices from the Philippines caused negligible injury to the Australian industry during the 2010 review period.

Given the above it is correct to say that dumped imports from the Philippines had not caused material injury during the review period.

As noted earlier, the imposition of measures in 2006 appears to have influenced the type of consumer pineapple being exported to Australia, being away from the branded products to the generic or private label cans. In assessing whether material injury attributable to dumping would likely have occurred had the measures not been taken, Customs and Border Protection has examined the likelihood of Philippine exporters resuming their supply of the Australian market with branded products, and if so, whether that would lead to the re-emergence of the material injury that the measures were intended to prevent.

Firstly, given that the introduction of measures resulted in a decline in branded consumer pineapple being exported, it is reasonable to conclude that had the measures not been imposed the volume of branded product would have been greater during the review period and more likely at the levels found in the Australian market during 2005. That is because over time there would likely have been strong brand recognition attached to their respective products.

This is further supported by:

- Dole's 2010 annual report which states:
'We utilize product quality, brand recognition, competitive pricing, food safety, nutrition education, customer service and consumer marketing programs to enhance our position within the food industry.
Consumer and institutional recognition of the DOLE trademarks and related brands and the association of these brands with high quality food products contribute significantly to our leading positions in the markets that we serve.'
- Del Monte's website also notes that 'the Del Monte brand is positioned globally and has been long associated with high quality products', and
- on the website of the Australian distributor of Dole products, it states:

'At Pavé Consumer Brands we understand how important brands are to building a long-term and sustainable business. Without brand equity, products become tradable commodities bought and sold on price.'

Therefore Customs and Border Protection is satisfied that the imposition of measures has had a limiting effect on exports of branded product from the Philippines.

In considering whether the branded products from the Philippines would be exported at dumped prices that would cause material injury, the review has established that little has changed in the way in which branded products are promoted and marketed in the retail sector. Branded products sold to the retail sector continue to incur the reimbursement of promotional and marketing expenses.

It is these reimbursements/rebates that were contributing factors to the magnitude of the dumping margins found during the original investigation in 2006. It was also these reimbursements that enabled the retailers to offer discounted shelf prices which ultimately resulted in Golden Circle experiencing price and volume related injury.

Customs and Border Protection also notes that there are forward orders for consumer pineapple from the Philippines and that exports of consumer pineapple from the Philippines have continued into the first half of 2011.

The market analysis, price under cutting analysis and information on reimbursements and rebates are at **Confidential Attachment 3**.

Therefore, Customs and Border Protection is satisfied that:

- imports of consumer pineapple from the Philippines did not cause material injury to the Australian industry during the review period;
- had the measures not been taken, imports of branded consumer pineapple from the Philippines would likely have increased and been exported at dumped levels greater than verified during the review period, and
- the dumped branded consumer pineapple would likely have led to the material injury previously experienced by the Australian industry in the form of price suppression and depression, loss of sales and market share, and reduced profits.

Customs and Border Protection's finding is that the expiration of anti-dumping measures on consumer 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.

6.5 Conclusion

Customs and Border Protection's finding is 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 as:

- Exports of consumer pineapple from the Philippines were dumped during the review period;

- imports of consumer pineapple from the Philippines have undercut industry prices;
- industry have lost sales volumes to imports from the Philippines;
- importers have maintained distribution links with exporters of consumer pineapple from the Philippines; and
- exports of consumer pineapple from the Philippines would increase at dumped prices that would cause material injury to the industry.

Customs and Border Protection recommends that the Minister takes steps to secure the continuation of the anti-dumping measures on consumer pineapple exported from the Philippines.

7 CONFIDENTIAL ATTACHMENTS

Confidential attachment 1	Section 269ZHG(1) and (4) notice
Confidential attachment 2	Export prices, normal values and dumping margins
Confidential attachment 3	Consumer market, price undercutting, reimbursements and rebates