



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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

**INTERNATIONAL TRADE REMEDIES BRANCH
REPORT TO THE MINISTER NO.171c**

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

**FOOD SERVICE AND INDUSTRIAL PINEAPPLE
EXPORTED FROM
THAILAND**

17 September 2011

PUBLIC RECORD

PUBLIC RECORD

TABLE OF CONTENTS

1.	SUMMARY AND RECOMMENDATIONS	3
1.1	Applicable law	3
1.2	Recommendation	4
1.3	Findings and conclusions	4
2.	INTRODUCTION.....	5
2.1	Continuation inquiry process.....	5
2.2	Notification and participation	6
2.3	Responses to the statement of essential facts.....	6
2.4	History of anti-dumping measures	7
3	GOODS SUBJECT TO THE CONTINUATION INQUIRY	8
3.1	Findings	8
3.2	The goods and like goods	8
3.2.1	Tariff classification	8
3.2.2	Like goods	8
3.3	Australian Industry	10
3.3.1	Preliminary findings.....	10
3.3.2	Manufacturing process.....	10
4.	MARKET	11
5.	EXPORTER ACTIVITY	12
5.1	Findings	12
5.2	Pattern of imports.....	12
5.3	Price Trends.....	12
5.4	Exporters.....	12
5.5	Export price.....	12
5.6	Normal value.....	13
5.6.1	Profit	13
5.6.2	All other exporters	15
5.7	Dumping margin.....	15
6.	LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING.....	16
6.1	Findings	16
6.2	Continuation test	16
6.3	Likelihood of dumping continuing or recurring.....	16
6.4	Likelihood of dumping causing material injury continuing or recurring.....	16
6.5	Conclusion	19
6	CONFIDENTIAL ATTACHMENTS	20

PUBLIC RECORD

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 Kingdom of Thailand (Thailand). Exports of FSI pineapple by Malee Sampran Public Co (Malee) are not covered by this inquiry as the measures do not apply to that company.

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 (the Minister) for measures applicable to FSI pineapple from the Philippines.

A separate report, REP 171d, has been issued for the continuation inquiry for consumer pineapple from Thailand.

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

PUBLIC RECORD

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 Thailand by all exporters from the expiry date of 17 October 2011; and
- 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 or countervailing measures were intended to prevent:

- Exports of FSI pineapple from Thailand were dumped during the review period;
- importers have maintained distribution links with exporters of FSI pineapple from Thailand;
- imports of FSI pineapple from Thailand have undercut industry prices;
- the Australian industry has lost sales volumes to imports from Thailand; and
- if the measures were to expire exports of FSI pineapple from Thailand would continue at dumped and injurious prices that would cause material injury to the industry.

Based on these findings the delegate recommends that the Minister takes steps to secure the continuation of anti-dumping measures applying to FSI pineapple exported from Thailand by all exporters from the expiry date of 17 October 2011.

² S 269ZHG(1) and (4).

PUBLIC RECORD

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 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 S 269TM.

⁴ S 269ZHB.

PUBLIC RECORD

2.2 Notification and participation

The current anti-dumping measures applying to FSI pineapple are due to expire on 17 October 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)⁵.

On 11 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for the continuation of the measures⁶ 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 continuation inquiry into 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 placed the statements of essential facts for measures relating to FSI pineapple and consumer pineapple exported from Thailand on the public record on or before 3 August 2011.

This final report to the Minister for FSI pineapple from Thailand which outlines Customs and Border Protection's findings and recommendations is due on or before 17 September 2011.

Customs and Border Protection visited Golden Circle and verified data relating to costs and sales for the reviews and inquiries. A non-confidential report of the visit was placed on the public record.

Only one exporter, Kuiburi Fruit Canning Co Ltd (KFC), co-operated with the review and inquiry. Most major importers, representing approximately 60% of the imports from Thailand, cooperated with the review and inquiry.

2.3 Responses to the statement of essential facts

Customs and Border Protection received responses to the SEF from Golden Circle and the Government of Thailand. Non-confidential versions of the submissions were placed on the public record.

⁵ S.269ZHB.

⁶ Ss.269ZHC(2).

PUBLIC RECORD

2.4 History of anti-dumping measures

On 8 January 2001 Golden Circle lodged an application requesting that the Minister publish a dumping duty notice in respect of certain pineapple products (the goods) from Thailand.

The Minister accepted the recommendations in Trade Measures Report No 41 (REP 41) and published dumping duty notices for consumer pineapple exported to Australia from Thailand and FSI pineapple exported from Thailand with the exception of pineapple exported by Malee.

On 22 February 2006 following consideration of applications from Golden Circle, continuation inquiries and reviews were initiated into the measures applying to consumer and FSI pineapple.

On 28 September 2006 the Minister accepted the recommendations contained within REP 110 and REP 111 to continue the anti-dumping measures applying to both consumer and FSI pineapple for another five years and fix different variable factors in relation to the anti-dumping measures.

Following a decision of the Federal Court in April 2008 measures applying to exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC) lapsed.

The measures have not been reviewed since the reviews in 2006.

The current measures for Thailand are due to expire on 17 October 2011.

On 15 April 2011 following consideration of an application by Golden Circle an investigation was initiated into the alleged dumping of:

- consumer pineapple exported from the Republic of Indonesia (Indonesia), and exported from Thailand by TPC; and
- FSI pineapple exported from Indonesia.

SEF 173a for the investigation into FSI pineapple from Indonesia and SEF 173b for the investigation into consumer pineapple from Indonesia and from Thailand by TPC were issued on 3 August 2011. The final reports to the Minister for the investigations are due by 17 September 2011.

PUBLIC RECORD

3 GOODS SUBJECT TO THE CONTINUATION INQUIRY

3.1 Findings

The Australian industry produces FSI pineapple that has characteristics closely resembling those of FSI pineapple manufactured in Thailand and exported to Australia therefore FSI pineapple 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

There is currently no general duty imposed on goods exported from Thailand in accordance with the Thailand-Australia free trade agreement.

Special safeguard measures on canned pineapple were imposed from the date of entry into force of the Thailand-Australia Free Trade Agreement, until 31 December 2008.

Section 16A of the Tariff Act specified the quantities of Thai safeguard goods that could be imported into Australia in a particular calendar year (between 2005 through to 2008) with a 'Free' rate of customs duty, provided that other requirements of the Thailand-Australia Free Trade Agreement were met. Any safeguard goods imported in excess of these quantities during that calendar year were dutiable at the full rate of customs duty, being 5%.

3.2.2 Like goods

The issue of like goods was considered during the original investigation into FSI pineapple exported from Thailand in REP 41.

⁷ In terms of s.269T.

PUBLIC RECORD

In REP 41 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 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.

PUBLIC RECORD

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:

- 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 Ss 269T(2) and 269T(3).

PUBLIC RECORD

4. MARKET

Customs and Border Protection used information from past investigations and information collected during the review 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 Thailand has increased in 2010.

FTA Food Solutions Pty Ltd (FTA Food) an importer of FSI pineapple from Thailand advised that it supplies to numerous customers in FSI sector. FTA Food stated that the Australian market in the FSI sector was extremely competitive and was cost based driven.

FTA Food stated that it does not believe that prepared pineapple fruit is being dumped in the Australian market from Thailand. FTA Food believes that the Australian industry is unable to supply the Australian FSI market and concentrates on the consumer market. FTA Food only supplies to the FSI market.

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

Juremont Pty Ltd (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 has a strong brand position (like the Golden Circle product) based on a consistent high quality product.

PUBLIC RECORD

5. EXPORTER ACTIVITY

5.1 Findings

Customs and Border Protection has found that exports of FSI pineapple from Thailand 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 172c refers).

Customs and Border Protection found in the review that FSI pineapple exported from Thailand during the review period was dumped. A dumping margin of 2% to 7% was calculated for KFC whilst a dumping margin of 75% to 80% was calculated for all other exporters.

5.2 Pattern of imports

Exports of FSI pineapple from Thailand to Australia appear to have been increasing since the imposition of the measures.

5.3 Price Trends

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

The analysis shows that export prices from Thailand have increased for some exporters and declined for others since the measures were imposed.

5.4 Exporters

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

KFC provided a completed response to the questionnaire and the information was verified during a visit to KFC. A non-confidential copy of the verification report is available on the public record. KFC was one of the major exporters of FSI pineapple by volume from Thailand to Australia.

Customs and Border Protection received either no or deficient responses from other identified exporters.

5.5 Export price

The export price for FSI pineapple exported by KFC was established using the invoice price paid by the Australian importers to KFC, less ocean freight (where appropriate)⁹.

Export prices have been calculated for each export transaction using the price between KFC and the Australian customers. The individual transactions have

⁹ Ss. 269TAB(1)(a)

PUBLIC RECORD

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 to enable Customs and Border Protection to establish the export price using:

- the price paid or payable for the goods by the importer¹⁰;
- the price paid at which the goods were sold by the importer less prescribed deductions¹¹; or
- the price determined having regard to all the circumstances of the exportation¹².

Export prices for all other exporters have been determined having regard to all relevant information¹³, using information from importers and the Customs and Border Protection import database.

5.6 Normal value

KFC does not sell like goods for home consumption in Thailand. Customs and Border Protection did not receive cooperation from other Thai exporters and does not have verified information on other sellers of like goods in Thailand.

Because of the absence of sales of like goods normal values for KFC cannot be established under subsection 269TAC(1). 'Constructed' normal values for KFC have been determined under paragraph 269TAC(2)(c).

Verified quarterly production costs from KFC for each pineapple product exported to Australia in the review period have been used to determine the cost of production. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses has been used to determine SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

Adjustments were made for inland transport, handling and other expenses and commission¹⁴.

5.6.1 Profit

KFC submitted that no profit should be included if a construction of domestic selling prices was to be used to establish normal values. It claimed that packaged pineapple could not be sold profitably in Thailand and it sought to demonstrate this in two ways.

KFC found a 567 gram can of Dole brand sliced pineapple in a supermarket that KFC stated caters for the expatriate market in Thailand. Following adjustments to the retail can price, KFC estimated that its selling price of an A10 size can would be below the cost to make and sell the product. KFC did not provide

¹⁰ Ss. 269TAB(1)(a)

¹¹ Ss. 269TAB(1)(b)

¹² Ss. 269TAB(1)(c)

¹³ Ss. 269TAB(3)

¹⁴ Ss TAC(9)

PUBLIC RECORD

evidence to support its estimate of the supermarket or distributor margins in Thailand.

KFC calculated the weighted average price of the pineapple 'meat' in an A10 size can of pineapple using the drained weight drained. It then compared this with the price of fresh pineapple meat and said that this demonstrated that canned pineapple could not be sold at a profit in Thailand when fresh fruit was available at significantly lower prices. KFC did not provide evidence of the cost of pineapple.

KFC submitted that sufficient information does not exist of the existence of a domestic market in Thailand for FSI pineapple and that profits from 2005 have no relevance for the 2010 situation.

In responding to the SEF, Golden Circle raised the following points:

- information is available of a domestic market for consumer and FSI pineapple in Thailand as evidenced by the previous review of measures in 2006;
- normal values should reflect sales of canned pineapple at profitable levels, based on profit levels in earlier continuation and review inquiries of 2006;
- inclusion of a profit in KFCs normal value would result in KFC exports being dumped; and
- to exclude a level of profit require Golden Circle to compete with export prices that are injurious and will contribute to further price undercutting resulting in price suppression.

Customs and Border Protection's assessment

The amount determined to be the profit for constructed normal values must be worked out as set out in regulation 181A.¹⁵ In SEF 171c, Customs and Border Protection made a preliminary finding that no profit should be added to KFC's constructed normal value.

Following submissions to the SEF Customs and Border Protection has re-examined information gathered during the 2006 review of measures. In particular, the profit achieved on domestic sales of FSI pineapple by the two cooperating exporters during that review¹⁶, Siam Agro Industry Pineapple and Others Public Company Limited (SAICO) and Dole Thailand Limited (DTL). SAICO and DTL were identified as exporters for the current review but declined to cooperate with this review.

Domestic profits from sales of FSI pineapple by these other exporters were not insignificant and were achieved on sales that were in sufficient volume to be considered representative sales. Whilst there were initial concerns around the use of profits from 2005 given the short supply of pineapple fruit in 2010, Customs and Border Protection now considers that it is reasonable to expect that the price of fresh pineapple in 2005 was considerably lower than prices in 2010. That is, the supply of fresh pineapple, whether in excess or shortage, would have similar impacts on the purchasing costs of processors and

¹⁵ Ss 269TAC(5B)

¹⁶ REP 111 & REP 112

PUBLIC RECORD

consumers.

It is reasonable then to expect that profits that were achieved on domestic sales by other exporters in 2005, were done so in competition with lower prices of fresh pineapple fruit. Therefore, it is reasonable to expect that producers of FSI pineapple in 2010 would continue to sell like goods on the domestic market profitably.

A profit has been calculated using domestic sales information from SAICO and DTL during 2005. Customs and Border Protection considers this to be a reasonable amount of profit that could be achieved on domestic sales of like goods in Thailand.

5.6.2 All other exporters

Sufficient information was not available to enable the normal value for FSI pineapple exported by all other exporters to be determined under any of the preceding sections to s.269TAC(6).

Normal values have been determined for all other exporters having regard to all relevant information¹⁷, using the adjusted normal value determined for KFC.

5.7 Dumping margin

A dumping margin has been calculated for FSI pineapple exported by KFC over the review period based upon a comparison of the quarterly normal values and the export prices¹⁸. The dumping margin calculated for KFC was in the range of 2% to 7%.

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 period¹⁹. The dumping margin calculated for all other exporters was in the range of 75% to 80%.

Export prices, normal values and dumping margins are at **Confidential Attachment 2**.

¹⁷ Ss 269TAC(6)

¹⁸ Ss 269TACB(2)(a).

¹⁹ Ss 269TACB(2)(a).

PUBLIC RECORD

6. LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING

6.1 Findings

The delegate is satisfied 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

Customs and Border Protection has calculated dumping margins for FSI pineapple exported during the review period ranging from 2% to 7% by KFC and 75% to 80% for all other exporters.

Exports continue to be exported at significantly dumped prices even with anti-dumping measures in place, albeit that they have not been reviewed since the review in 2006. A large share of the exports in 2010 were at prices lower than established in the review in 2006.

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 finds that the expiration of anti-dumping measures on consumer pineapple from Thailand would lead or would be likely to lead to a continuation of the goods being exported at dumped prices.

6.4 Likelihood of dumping causing material 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 Thailand;
- Golden Circle's sales volumes in the FSI segments of the processed pineapple market have deteriorated in 2009 and 2010;
- FSI pineapple from Thailand is undercutting Golden Circle's prices by up to 50%;

PUBLIC RECORD

- Should the anti-dumping measures applicable to exports of FSI pineapple from Thailand be allowed to expire, the Australian industry will suffer an escalation in the level of material injury already sustained in 2009 and 2010;
- 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; and
- exporters of FSI pineapple in Thailand have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping 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;
- the measures are out of date, not having being reviewed since 2006 and that exports are at dumped levels;
- Thailand is expected to increase its production of processed by pineapple by an additional 300,000 tonnes in 2011; and
- The exclusion of a level of profit in normal values for KFC exacerbates pricing pressures on Golden Circles selling prices.

The Food & Beverage Importers Association (FBIA), an industry association that represents importers of food and beverages, both retail ready and ingredients for further processing, into Australia submitted that:

- If the application is successful then anti-dumping measures will be in place against pineapple imports for 15 years and this would then surely be a case of long-term industry protection, which is not the purpose of anti-dumping measures;
- Golden Circle is not able to supply the total Australian demand in the food service industry markets and so there must be imports of canned pineapple if the local demand is to be satisfied; and
- Imports will introduce an element of competition into the market; competition that a monopoly producer would not otherwise have to face. Claims by monopoly producers that they are being injured by dumped imports should be very carefully assessed.

KFC submitted that as its exports were not dumped, they cannot contribute to the continuation/recurrence of material injury through the effects of dumping and there were no grounds to continue the measures on FSI as they relate to KFC.

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

PUBLIC RECORD

aware of the product brand used. The FSI market is also highly competitive with the main imports being from the Philippines, Thailand, Indonesia and to a lesser extent 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% - 60% below the Golden Circle product.

Customs and Border Protection also compared pricing from importers and Golden Circle at the wholesale/distributor level and found imported FSI pineapple significantly undercut the industry prices. The undercutting was to individual customers and in the market generally.

Information available to Customs and Border Protection from importers and its 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 sales 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 dumping margins for FSI pineapple from Thailand have enabled importers to undercut Golden Circle's prices and compete with other import prices in the market.

Prices for FSI pineapple from Thailand 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 prices equal to the normal value.

Golden Circle has lost sales volume from 2008 to 2010. A significant part of Golden Circle's sales volumes in 2008 was due to sales of imported FSI by Golden Circle. However the information shows that Golden Circle lost volumes of its sales of its own production of FSI from 2008 to 2010.

Golden Circle increased sales volumes of its own production from 2009 to 2010 but volumes were not at the levels it had in 2008. 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.

The market for FSI decreased from 2008 to 2009, the market was relatively stable in 2010 whilst imports from Thailand increased in volume from 2008 to 2009 and 2009 to 2010.

Customs and Border Protection also notes that importers have maintained distribution links with exporters of the goods from Thailand, that there are forward orders for FSI pineapple from Thailand and that exports of FSI pineapple from Thailand have continued into the first half of 2011.

PUBLIC RECORD

The market analysis and the price under cutting analysis are at **Confidential Attachment 3**.

Customs and Border Protection's finding is that the expiration of anti-dumping measures on FSI pineapple from Thailand 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 FSI pineapple from Thailand 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 Thailand;
- imports of FSI pineapple from Thailand have significantly undercut industry prices contributing to lost sales volumes; and
- exports of FSI pineapple from Thailand would continue at dumped prices that would continue to 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 FSI pineapple exported from Thailand.

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6 CONFIDENTIAL ATTACHMENTS

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

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