



**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.171d**

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

**CONSUMER PINEAPPLE**

**EXPORTED FROM**

**THAILAND**

17 September 2011

**PUBLIC RECORD**

# PUBLIC RECORD

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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 Kingdom of Thailand (Thailand). Exports of consumer pineapple by the Thai Pineapple Canning Industry Corp Ltd (TPC) 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 (Minister) for measures applicable to consumer pineapple from Thailand.

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

### 1.1 Applicable law

Division 6A of Part XVB of the Act<sup>1</sup> 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:

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

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- 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 from the expiry date of 17 October 2011; and
- 2 sign the requisite notice<sup>2</sup> (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 Thailand were dumped during the review period;
- imports of consumer pineapple from Thailand have undercut industry prices;
- importers have maintained distribution links with exporters of consumer pineapple from Thailand; and
- consumer pineapple from Thailand would likely be exported at dumped prices that would cause 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 Thailand from the expiry date of 17 October 2011.

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<sup>2</sup> Ss 269ZH(1) and (4).

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## 2. INTRODUCTION

### 2.1 Continuation inquiry process

Dumping duty notices (that have not been revoked) automatically expire five years after the date on which they were published, unless the Minister decides to continue them<sup>3</sup>.

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 measures<sup>4</sup>. 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.

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<sup>3</sup> S 269TM.

<sup>4</sup> S 269ZHB.

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## 2.2 Notification and participation

The current anti-dumping measures applying to consumer 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)<sup>5</sup>.

On 11 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for the continuation of the measures<sup>6</sup> applicable to pineapple, consumer and FSI, from Thailand and the Philippines.

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

Public notification of initiation of the 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 pineapple, consumer and FSI, exported from Thailand on the public record on 3 August 2011.

This final report to the Minister for consumer 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.

No exporter cooperated for the review or inquiry. Two importers provided information for 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.

## 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

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<sup>5</sup> S.269ZHB.

<sup>6</sup> S 269ZB

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to Australia from Thailand and FSI pineapple exported from Thailand with the exception of FSI exported by Malee Sampran Public Co.

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 Thailand by the 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.

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## 3 GOODS SUBJECT TO THE CONTINUATION INQUIRY

### 3.1 Findings

The Australian industry produces consumer pineapple that has characteristics closely resembling those of consumer pineapple manufactured in Thailand and exported to Australia therefore consumer pineapple manufactured by the Australian industry are like goods<sup>7</sup>.

### 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 consumer pineapple exported from Thailand in REP 41.

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<sup>7</sup> S.269T.

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In REP 41 for consumer 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 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 review.

## 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 review 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 review 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 review 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.

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## 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 Australia<sup>8</sup>.

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 review 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.

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<sup>8</sup> Ss 269T(2) and 269T(3).

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## 4 MARKET

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

Customs and Border Protection established the market for consumer pineapple for the review using information from its import database and information supplied by the industry, importers, and TPC, an exporter of consumer pineapple from Thailand that is exempt from anti-dumping duties.

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 Thailand 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.

Imports of consumer pineapple from Thailand in 2005 were largely generic product and held a significant share of the retail market at that time with the majority of consumer pineapple exported by TPC.

Exports of consumer pineapple from Thailand by exporters other than TPC appear to have been relatively stable in the last calendar three years apart from a significant increase in 2010.

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## 5. EXPORTER ACTIVITY

### 5.1 Findings

Customs and Border Protection has found that exports of consumer pineapple from Thailand to Australia have continued since the anti-dumping measures were first imposed in 2001.

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 172d refers).

Customs and Border Protection found in the review that consumer pineapple exported from Thailand to Australia during the review period was dumped, the dumping margin calculated was 56%.

### 5.2 Pattern of imports

Customs and Border Protection examined data from its import database and contacted importers of consumer pineapple from Thailand.

One importer provided documents and worksheets relating to the imports and sales but did not provide further requested information. Another importer provided requested information relating to imports and sales and was visited, a visit report was prepared but the company declined further participation.

Customs and Border Protection did not receive responses for information from the other identified importers.

Exports of consumer pineapple from Thailand by exporters other than TPC appear to have been relatively stable in the last calendar three years apart from a significant increase in 2010.

### 5.3 Price Trends

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

The analysis shows that export prices from Thailand appear to have been decreasing over the last three years.

### 5.4 Exporters

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

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

#### 5.4.1 Export price

Customs and Border Protection considered that sufficient information was not furnished to enable Customs and Border Protection to establish the export price using:

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- the price paid or payable for the goods by the importer<sup>9</sup>;
- the price paid at which the goods were sold by the importer less prescribed deductions<sup>10</sup>; or
- the price determined having regard to all the circumstances of the exportation<sup>11</sup>.

Customs and Border Protection therefore considers that export prices for all exporters subject to measures can be determined having regard to all relevant information<sup>12</sup>, using relevant information supplied by importers and information from the Customs and Border Protection import database.

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

## 5.4.2 Normal value

Customs and Border Protection did not receive information from exporters subject to the inquiry in regards to domestic selling prices for consumer pineapple in Thailand.

Customs and Border Protection considers that the normal value for consumer pineapple exported by all other exporters can be determined having regard to all relevant information<sup>13</sup>.

Customs and Border Protection has had regard to the normal value calculated for TPC in the current investigation into the alleged dumping of consumer pineapple exported from Thailand by TPC, REP 173b refers.

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

## 5.4.3 Dumping margin

A dumping margin has been calculated for consumer pineapple exported by all exporters over the review period based upon a comparison of the quarterly normal values and the export prices<sup>14</sup>. The dumping margin calculated was 56%.

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

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<sup>9</sup> Ss. 269TAB(1)(a)

<sup>10</sup> Ss. 269TAB(1)(b)

<sup>11</sup> Ss. 269TAB(1)(c)

<sup>12</sup> Ss. 269TAB(3)

<sup>13</sup> Ss 269TAC(6)

<sup>14</sup> Ss 269TACB(2)(a).

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## 6 LIKELIHOOD OF DUMPING AND MATERIAL 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 in 2001 determined that exports of consumer pineapple from Thailand were dumped in the range 32% to 74%. The review in 2006 found that exports of consumer pineapple from Thailand were dumped and the margins were not negligible.

Customs and Border Protection has calculated a dumping margin for consumer pineapple exported from Thailand during the review period of 56%.

Customs and Border Protection's preliminary finding is 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

During the original dumping investigation against Thailand in 2001 (REP 41) Customs and Border Protection found that dumped consumer pineapple exports from Thailand had of itself caused material injury to the Australian Industry producing like goods.

In the review and continuation of the measures in 2006 (REP 110 and 111) Customs and Border Protection found that Thai generic brand consumer pineapple products were purchased at dumped prices that significantly undercut the Australian industry's 'Golden Circle' brand. The inquiry found that consumers tended to buy the 'Golden Circle' brand for a number of reasons including perceptions of quality, preference for 'Australian made' and brand loyalty. This enabled a premium to be included in the prices of Golden Circle's branded products. On the other hand, retail customers of generic product tended to be driven by price rather than other factors such as quality. However

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Customs and Border Protection also found that generic brand product did compete with Golden Circle's branded product to some degree.

In the absence of cooperation from relevant exporters and importers of consumer pineapple from Thailand subject to measures, there is little information to establish the types or quality of consumer pineapple being imported or the degree to which those dumped goods are competing against Golden Circle's branded product. However, Customs and Border Protection has been able to confirm that a substantial proportion of imports comprised goods that were the subject of a successful tender with one of the large retailers.

After having regard to all relevant information and in particular previous findings that dumped exports subject to measures continued to cause material injury to the Australian industry, Customs and Border Protection considers that retailers shelf prices of consumer pineapple were lower than they would have otherwise been had the goods not been dumped by 56% of the export price.

These discounted prices continued to contribute to the material injury being experienced by the Australian industry through either lost volume as consumers purchased the cheaper dumped imported goods or price depression and/or suppression as Golden Circle responded by discounting its own branded product. Ultimately the dumped imports contributed to the losses experienced by Golden Circle during the 2010 review period.

Customs and Border Protection has also had regard to information available for the investigation into the alleged dumping of consumer pineapple from Indonesia and from Thailand by TPC. In SEF 173b Customs and Border Protection has concluded that a relationship existed between the prices of standard generic and brand products and that price is a key factor in the purchasing decisions of consumers.

Customs and Border Protection also found a strong relationship between the purchase price of imported consumer pineapple and the retail prices of generic and branded pineapple and considered there is sufficient evidence to consider that retail selling prices for standard generic consumer pineapple were lower than what they would have otherwise been had the goods not been exported at significantly dumped prices.

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 consumer 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 were intended to prevent as:

- exports of consumer pineapple from Thailand were dumped during the review period;

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- imports of consumer pineapple from Thailand have undercut the Australian industry's prices;
- importers have maintained distribution links with exporters of consumer pineapple from Thailand; and
- Golden Circle has continued to suffer material injury in the form of lost sales, price suppression and depression and reduced profits as a result of the continued dumping.

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

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## 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 and price undercutting.

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