



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.173b
INVESTIGATION
INTO THE ALLEGED DUMPING OF
CONSUMER PINEAPPLE
EXPORTED FROM
THAILAND
BY
THE THAI PINEAPPLE CANNING INDUSTRY
CORPORATION LTD

17 September 2011

PUBLIC RECORD

TABLE OF CONTENTS

1.	SUMMARY AND RECOMMENDATIONS	4
1.1	Recommendation	4
1.2	Application of law to facts.....	4
1.3	Findings.....	5
2.	BACKGROUND	8
2.1	Previous investigations.....	8
2.2	This investigation	8
2.3	Statement of essential facts	9
3	GOODS SUBJECT TO THE investigation.....	10
3.1	Findings.....	10
3.2	The goods and like goods	10
3.3	Australian Industry.....	12
4	AUSTRALIAN MARKET	13
4.1	Finding	13
4.2	Market supply.....	13
4.3	Market size.....	13
4.4	Market structure	14
5	DUMPING INVESTIGATION.....	15
5.1	Findings.....	15
5.2	Introduction	15
5.3	Exporters.....	15
5.4	Export price	15
5.5	Normal value	16
5.6	Dumping margin.....	18
5.7	Volume of dumped goods	18
6	ECONOMIC CONDITION OF THE INDUSTRY	19
6.1	Findings.....	19
6.2	Applicant's claims.....	19
6.3	Price effects	20
6.4	Volume effects	21
6.5	Other economic factors	22
6.6	Conclusion of the economic performance of the industry.....	23
7	HAS DUMPING CAUSED MATERIAL INJURY	24
7.1	Findings.....	24
7.2	Introduction	24
7.3	Approach to causal link assessment.....	24
7.4	Dumping.....	26
7.5	Volume effects	26
7.6	Price effects	26
	Profit effects.....	36
	Other economic factors.....	36
	Other possible causes of injury.....	38
	Is the injury caused by dumping material?.....	39
	Summary – Causal link.....	40
8	WILL DUMPING AND MATERIAL INJURY CONTINUE?	41
8.1	Findings.....	41
8.2	Introduction	41
8.3	Customs and Border Protection's assessment.....	41

PUBLIC RECORD

9 ANTI-DUMPING MEASURES..... 42

9.1 Findings..... 42

Introduction..... 42

Unsuppressed selling price..... 42

9.4 Australian industry’s claims..... 43

Customs and Border Protection’s assessment..... 43

Comparison of the NIP to the export prices..... 43

Interim dumping duties..... 43

11 RECOMMENDATIONS..... 45

11 CONFIDENTIAL ATTACHMENTS AND APPENDICES..... 46

PUBLIC RECORD

1. SUMMARY AND RECOMMENDATIONS

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

This final report (REP 173b) sets out the delegate of the Chief Executive Officer (the delegate) of the Australian Customs and Border Protection Service (Customs and Border Protection) recommendations to the Minister for Home Affairs (Minister) in relation to the application as far as it concerns exports by TPC.

A separate report, Termination Report No 173c (TER 173c), was issued on 7 September 2011 in regards to exports of consumer pineapple from Indonesia. In TER 173c the delegate terminated the investigation as it applied to exports of consumer pineapple from Indonesia as the delegate was satisfied that the dumping margins calculated for exports from Indonesia are less than 2%¹.

1.1 Recommendation

The delegate recommends to the Minister that a dumping duty notice be published in respect of consumer pineapple exported to Australia from Thailand by TPC.

The delegate recommends that the Minister sign the attached schedule (**confidential attachment 1**) and sign the relevant notices (**confidential attachment 2**), being notices under sections 269TG(2) of the *Customs Act 1901*², and section 8 of the *Customs Tariff (Anti Dumping) Act 1975* (the Dumping Duty Act).

1.2 Application of law to facts

1.2.1 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (the Act) sets out, among other matters, the procedures to be followed and the matters to be considered by the Chief Executive Officer (CEO) in conducting investigations in relation to the goods covered by an application. The CEO's powers under this Division have been delegated to certain officers of Customs and Border Protection.

1.2.2 Application

On 24 March 2011, Golden Circle, the sole producer of consumer and food service and industrial (FSI) pineapple in Australia, lodged an application for the publication of a dumping duty notice in respect of consumer pineapple exported

¹ Ss 269TDA(1)(i)

² A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

PUBLIC RECORD

to Australia from Indonesia and from Thailand by TPC and for FSI pineapple exported to Australia from Indonesia.

1.2.3 Initiation of investigation

After examining the application, the delegate was satisfied that:

- the application complied with subsection 269TB(4);
- there is an Australian industry in respect of like goods; and
- there appears to be reasonable grounds for the publication of a dumping duty notice in respect of goods the subject of the application.

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

1.2.4 Statement of essential facts

On 3 August 2011, Statement of Essential Facts No. 173b (SEF 173b) was placed on the public record. SEF 173b proposed that a dumping duty notice be published for consumer pineapple exported from Thailand by TPC.

Interested parties were invited to lodge submissions in response to SEF 173a by 23 August 2011. Submissions were received from Golden Circle, TPC, the Government of Thailand, Woolworths Limited (Woolworths) and the Coles Group Limited (Coles). Non-confidential versions of the submissions were placed on the public record.

1.2.5 Final report

Within 155 days after the initiation of an investigation, or such longer period as the Minister allows, the CEO must give the Minister a report in respect of the goods the subject of the application.

In formulating the final report the delegate must have regard to the application concerned, any submissions concerning publication of the notice to which the delegate has had regard for the purpose of formulating SEF 173b, SEF 173b, any submission in response to SEF 173b that is received by Customs and Border Protection within 20 days after the that statement was placed on the public record, and any other matters considered relevant³.

1.3 Findings

The following findings have been made based on all available information:

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

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

³ Subsection 269TEA(3)

1.3.2 Australian industry (chapter 3 of this report)

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

1.3.3 Market (chapter 4 of this report)

The size of Australian market for consumer pineapple was over 14,000 tonnes in 2010. Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to independent stores. Consumer pineapple is generally labelled and marketed as branded product, generic/housebrand or private label product.

1.3.4 Dumping (chapter 5 of this report)

- The export price for consumer pineapple exported by TPC has been established using the price paid for the goods by the importer to the exporter⁴;
- The normal value for consumer pineapple exported by TPC has been determined using the cost of production and amounts for selling, general and administrative expenses⁵;
- An amount for profit has been determined for the constructed normal value, this amount is zero⁶;
- Adjustments have been made to the normal value for TPC to properly compare it with the export price⁷;
- The dumping margin was 29%, which is not negligible; and
- The volume of dumped goods was not negligible.

1.3.5 Economic condition of the industry (chapter 6 of this report)

The Australian industry suffered injury in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and

⁴ Ss 269TAB(1)(a)

⁵ Ss 269TAC(2)(c)

⁶ Ss. 269 TAC(5B)

⁷ Ss 269TAC(9)

PUBLIC RECORD

- reduced capacity utilisation.

1.3.6 Has dumping caused material injury (chapter 7 of this report)

- Material injury to the industry has been caused by exports of consumer pineapple by TPC at prices that were dumped;
- Dumped exports of consumer pineapple by TPC during the investigation period allowed retailers to offer the standard generic products at discounted prices which led to price pressure on Golden Circle's branded product; and
- The Australian industry has been unable to increase prices in line with cost increases due to the dumped prices of the imported product and it has therefore suffered price suppression, loss of profits and profitability and loss of revenue which has led to the Australian industry experiencing material injury.

1.3.7 Will dumping and material injury continue (chapter 8 of this report)

- Exports of consumer pineapple from Thailand by TPC in the future may be at dumped prices; and
- continued dumping may cause further material injury to the Australian industry.

1.3.8 Non-injurious price

The non-injurious price (NIP) has been established for consumer pineapple by using industry's cost to make and sell during the review period plus the profit adjusted down it achieved on consumer pineapple in 2009.

Based on these findings the delegate recommends to the Minister that dumping duty notices be published in respect of consumer pineapple exported from Thailand by TPC to Australia.

If the Minister accepts this recommendation, to give effect to the decision the Minister must publish the attached notices and declare by public notice that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice⁸.

⁸ In terms of section 269TG(2)

2. BACKGROUND

2.1 Previous investigations

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, which included consumer pineapple exported by TPC, 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 TPC lapsed.

Review and continuation inquiries into the measures applicable to consumer and FSI pineapple from Thailand and the Philippines were commenced on 4 February 2011 following the consideration of applications by Golden Circle.

Reports on the reviews and inquiries applicable to Thailand are due to the Minister by 17 September 2011.

2.2 This investigation

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

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

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

Customs and Border Protection visited Golden Circle for the reviews and continuations⁹ into consumer and FSI pineapple applicable to exports from

⁹ Reports 171a to 171d and Reports 172a to 172d refer

PUBLIC RECORD

Thailand and the Philippines. The review period of 1 January 2010 to 31 December 2010 was the same as the investigation period for this investigation. At that visit data relating to costs and sales was verified covering the calendar years 2008 to 2010, a report of the visit was placed on the public record for the reviews and continuations.

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

2.3 Statement of essential facts

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

Submissions in response to SEF 173b in regards to consumer pineapple exported from Thailand by TPC were received on or before 23 August 2011 from:

- Golden Circle;
- The Department of Foreign Trade of the Thai Government;
- TPC; and
- Woolworths.

Submissions were received after 23 August 2011 from TPC and Coles.

Non-confidential versions of the submissions were placed on the public record.

3 GOODS SUBJECT TO THE INVESTIGATION

3.1 Findings

The Australian industry produces consumer pineapple that has characteristics closely resembling those of consumer pineapple manufactured in Thailand by TPC and exported to Australia therefore consumer pineapple manufactured by the Australian industry are like goods¹⁰.

3.2 The goods and like goods

The goods subject of the investigations (the goods) are:

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

3.2.1 Tariff classification

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

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

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 percent.

3.2.2 Like goods

The issue of like goods was considered during the original investigation into consumer pineapple exported from Thailand, which included consumer pineapple exported by TPC, in REP 41. In REP 41 for consumer pineapple fruit Customs and Border Protection was satisfied that there was an Australian industry producing like goods to the goods under consideration.

¹⁰ In terms of s.269T.

PUBLIC RECORD

Subsection 269T(1) defines like goods as 'goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration'.

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

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes not exceeding one litre (typically 225g, 425-450g, and 825-850g, although other sizes are available) sold into retail stores for the consumer market.

Physical Likeness

Golden Circle stated that it produces a range of pineapple products in the above container sizes.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices and crushed pineapple.

The products can be sold in containers in either syrup or natural juice.

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

Commercial Likeness

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

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

Functional Likeness

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

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

Production Likeness

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

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

3.3 Australian Industry

3.3.1 Findings

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

3.3.2 Manufacturing process

For goods to be taken as produced in Australia:

- they must be wholly or partly manufactured in Australia; and
- for the goods to be partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia¹¹.

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

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

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

¹¹ Ss 269T(2) and 269T(3).

4 AUSTRALIAN MARKET

4.1 Finding

The size of Australian market for consumer pineapple was over 14,000 tonnes in 2010. Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to independent stores. Consumer pineapple is generally labelled and marketed as either branded product, or generic/housebrand or private label product.

4.2 Market supply

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

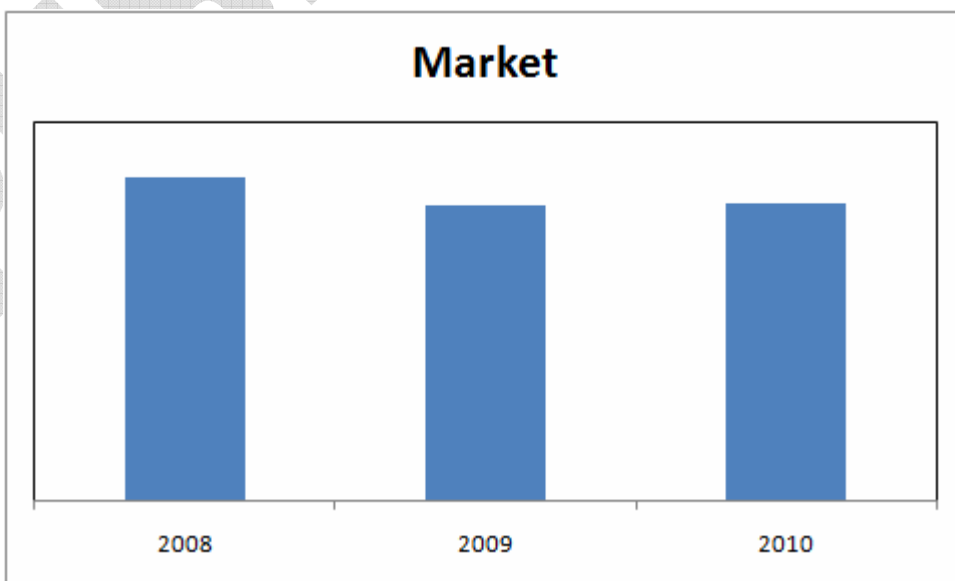
4.3 Market size

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

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

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

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



PUBLIC RECORD

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

Details on the Australian market for consumer pineapple are at **Confidential Appendix 1**.

4.4 Market structure

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

Consumer pineapple is generally labelled and marketed as either:

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

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

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

5 DUMPING INVESTIGATION

5.1 Findings

- The export price for consumer pineapple exported by TPC has been established using the price paid for the goods by the importer to the exporter¹²;
- The normal value for consumer pineapple exported by TPC has been determined using the cost of production and amounts for selling, general and administrative expenses¹³;
- An amount for profit has been determined for the constructed normal value, this amount is zero¹⁴;
- Adjustments have been made to the normal value for TPC to properly compare it with the export price¹⁵;
- Consumer pineapple exported by TPC during the investigation period was dumped with a dumping margin dumping margin of 29%; and
- The volume of dumped goods was not negligible.

5.2 Introduction

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

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

5.3 Exporters

An exporter questionnaire was sent to TPC, the information provided in the response from TPC was verified at a visit to the company.

5.4 Export price

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

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

¹² Ss 269TAB(1)(a)

¹³ Ss 269TAC(2)(c)

¹⁴ Ss. 269 TAC(5B)

¹⁵ Ss 269TAC(9)

PUBLIC RECORD

Export prices for TPC have been calculated at a free on board (FOB) price and are at **Confidential Appendix 2**.

5.5 Normal value

TPC did not sell consumer pineapple on the Thai domestic market in the investigation period. Customs and Border Protection did not receive information from any other exporter in regards to domestic selling prices for consumer pineapple in Thailand.

Customs and Border Protection considers that there is insufficient information to establish normal values under s.269TAC(1) and considers normal values can be determined under s.269TAC(2)(c). Normal values have been calculated using TPC's cost to make and sell information for the exported goods in accordance with s.269TAC(2)(c).

In considering an appropriate amount of profit to be added to the constructed normal value, Customs and Border Protection notes that the nature of the domestic market for consumer canned pineapple is limited to insignificant retail sales aimed at the expatriate community in Bangkok. Given the number of domestic producers and the competition from fresh pineapple at significantly reduced prices on a per kilo basis when compared to canned pineapple, Customs and Border Protection considers that TPC would be unable to make profitable sales on the domestic market.

Customs and Border Protection therefore considers that an amount for profit should not be added to the constructed normal value.

Customs and Border Protection considers adjustments can be made to the normal value to account for bank charges, inland transport, handling and FOB related charges and shipping charges, in accordance with s.269TAC(9).

TPC identified a number of issues in relation to the construction of the normal value. Firstly, the exporter requested that Customs and Border Protection revisit the treatment of TPC's net foreign exchange position, especially in light of these being identified administration expenses that would equally be allocated to the cost of the domestic goods, if they had any.

TPC's claim is dismissed. Customs and Border Protection's view is that the key consideration in determining whether any cost should be allocated to the exported goods, domestic goods or both is understanding what drives the particular cost. In this instance, TPC has no domestic sales and has no purchases of imported inputs that would be relevant to the issue of foreign exchange. It is apparent that the foreign exchange gains and losses incurred by TPC are as a direct result of their exports to third countries. Therefore these expenses are not considered relevant to the construction of a domestic selling price as they would not typically be incurred in the production or sale of domestic goods.

Lastly, TPC requested that Customs and Border Protection reassess its approach to determining the relevant costs for construction in those periods where an export sale took place but no production costs existed for that corresponding period. The verification visit team recommended that the weighted average cost over the whole of the investigation period (or

PUBLIC RECORD

recoverable cost) be used, whilst TPC considered that it was more appropriate to use the costs from the previous quarter.

After further examination, Customs and Border Protection agrees with TPC that the most appropriate costs for constructing a normal value in any given quarter were in the first instance the actual cost in that period, or where no such costs existed, from the prior quarter.

5.5.1 Submissions

Golden Circle submitted that:

- Export prices for TPC exports to the USA would be a relevant consideration for determining a normal value;
- It is unreasonable and unacceptable to exclude a profit, a normal value should reflect commercial reality and including a level of profit from another seller in 2005 is reasonable;

Golden Circle further submitted to the SEF that:

- Relevant considerations for application of a profit are profit in a related domestic business activity, profit achieved by other sellers, by reference to TPCs earnings before interest, tax and amortisation, or by reference to the Bank of Thailand 's interest rate;
- Competition from fresh pineapples and the number of domestic producers are irrelevant considerations as to whether to apply a level of profit; and
- Whilst TPC's domestic sales may not be of sufficient volume Customs and Border Protection is not prevented from using the level of profit achieved on the claimed "expat" sales.

TPC said in its late submission to the SEF that:

- It did not make any domestic sales of like goods or in the same general category in the investigation period;
- Its return on sales for 2010 was negative; and
- The Bank of Thailand interest rate has no relevance to the amount of profit normally realised on domestic sales in Thailand.

5.5.2 Customs and Border Protections assessment

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

PUBLIC RECORD

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

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

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

5.6 Dumping margin

A dumping margin has been calculated for consumer pineapple exported by TPC over the investigation period. A weighted average unit normal value was calculated using the quarterly constructed unit normal values and weighting those normal values by the volume from the corresponding individual export transactions. A comparison of the weighted average normal value with the weighted average export price for the entire investigation period¹⁶ resulted in a product dumping margin that was not negligible¹⁷.

The margin calculated was 29%, dumping margin calculations are at **Confidential Appendix 2**.

5.7 Volume of dumped goods

The volume of dumped goods exported by TPC during the investigation period is not negligible¹⁸.

Assessment of TPC volume of exports is at **Confidential Appendix 1**.

¹⁶ Ss. 269TACB(2)(a).

¹⁷ As defined in ss 269TDA(1)

¹⁸ As defined in ss 269TDA(4)

6 ECONOMIC CONDITION OF THE INDUSTRY

6.1 Findings

Customs and Border Protection has made the following finding that Golden Circle has experienced injury in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

6.2 Applicant's claims

Golden Circle claimed that material injury from the allegedly dumped exports of consumer pineapple exported by TPC of Thailand commenced immediately following the revocation of applicable anti-dumping measures in the third quarter of 2008.

Golden Circle also claimed that Indonesian exports of consumer pineapple have emerged from minimal levels in 2009 to account for almost 10 per cent of total import volume in 2010.

Golden Circle claimed that the allegedly dumped exports of consumer pineapple from Indonesia and from Thailand by TPC caused injury in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced attractiveness to reinvest; and
- reduction in employee numbers.

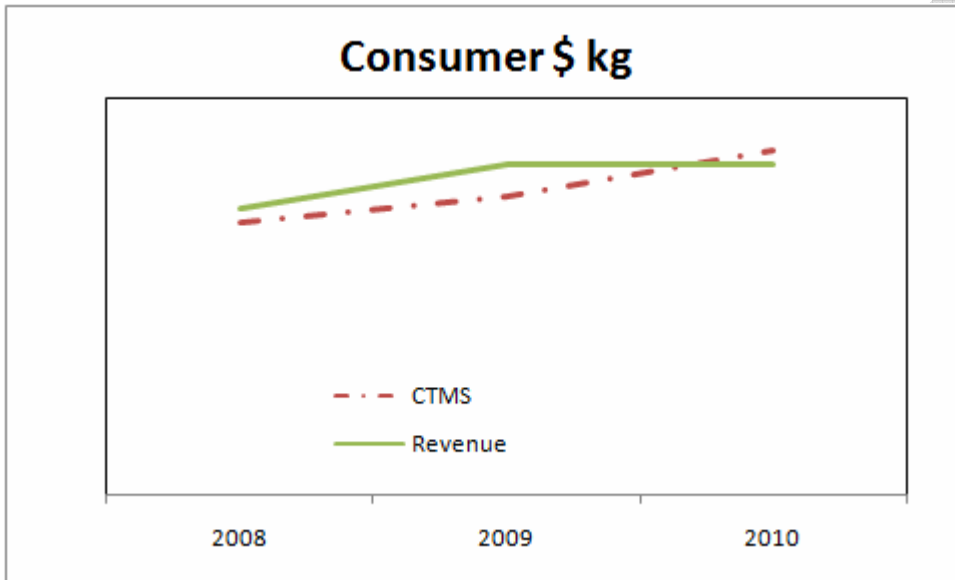
Customs and Border Protection examined data for the period 1 January 2008 to 31 December 2010 in order to assess the industry's injury claims and has examined Golden Circle's performance on a calendar year basis.

6.3 Price effects

6.3.1 Price depression and suppression

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases for the applicant's product, which otherwise would have occurred, have been prevented.

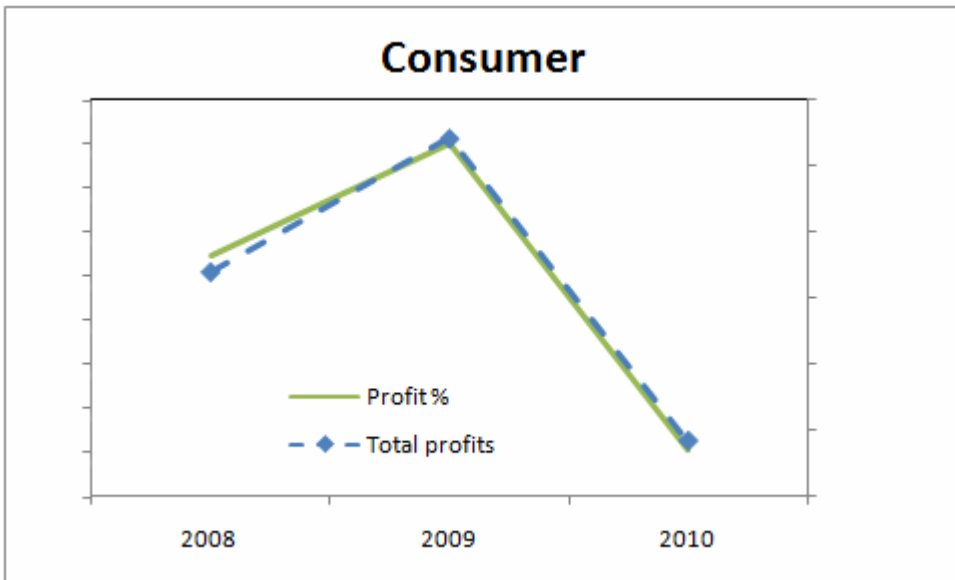
Golden Circle's selling prices for consumer pineapple increased from 2008 to 2009 and were steady from 2009 to 2010. Costs increased from 2008 to 2009 and increased above prices in 2010.



Customs and Border Protection considers that Golden Circle has not suffered injury in the form of price depression but has suffered injury in the form of price suppression in regards to consumer pineapple.

6.3.2 Profit and profitability

Golden Circle's total profits and profitability for consumer pineapple fruit increased from 2008 to 2009 and declined from 2009 to 2010 below the level of 2008.



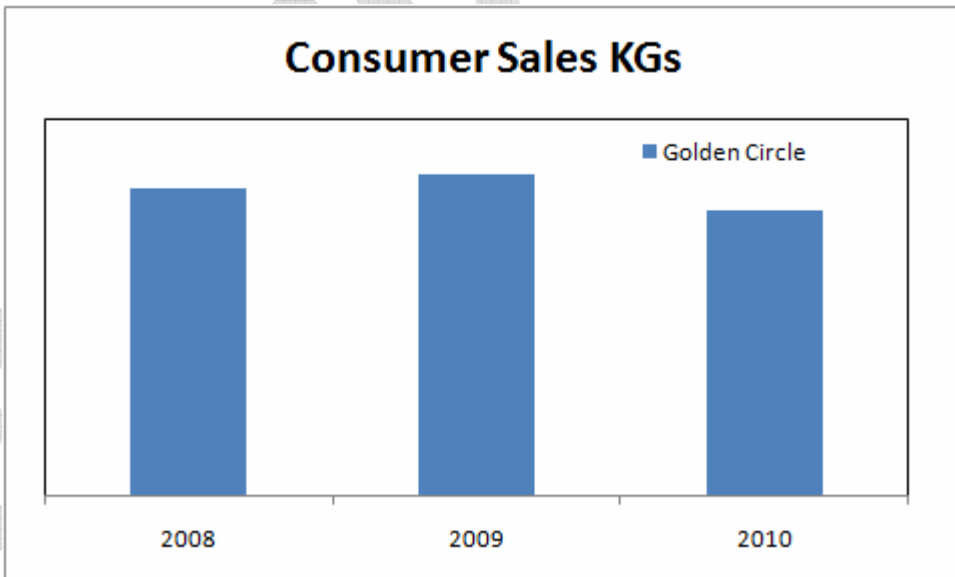
Customs and Border Protection considers that Golden Circle has suffered injury in the form of reduced profits and profitability in regards to consumer pineapple.

6.4 Volume effects

Customs and Border Protection has examined volume factors in its overall assessment of injury to the industry.

6.4.1 Sales volumes

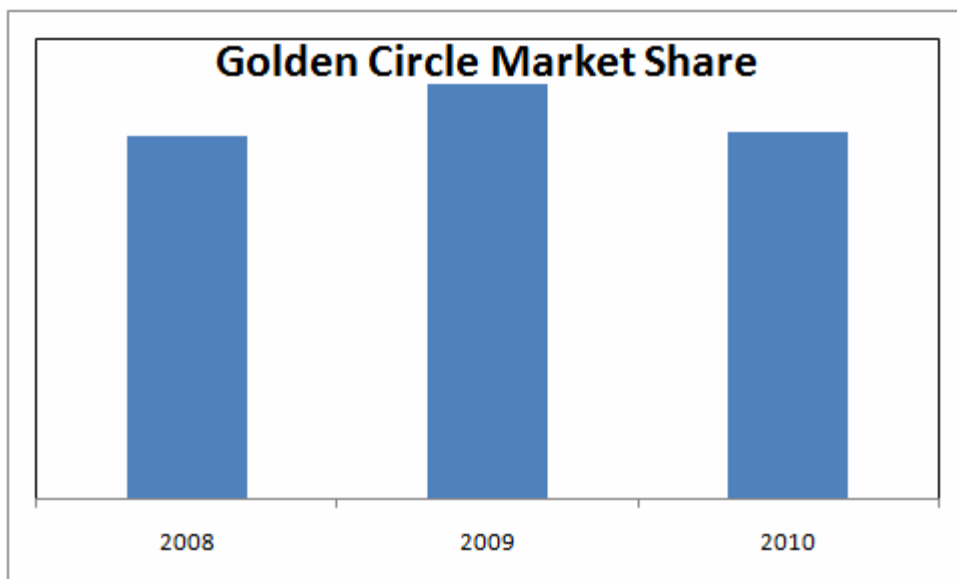
Golden Circle has lost sales volumes since 2008 to 2010 with a noticeable decline from 2009 to 2010.



Customs and Border Protection considers that Golden Circle has suffered injury in the form of lost sales volumes

6.4.2 Market share

Golden Circle gained market share from 2008 to 2009 and lost market share from 2009 to 2010.



Customs and Border Protection considers that Golden Circle has suffered injury in the form of lost market share for consumer pineapple.

6.5 Other economic factors

Section 269TAE(3) of the Act provides a reference to the other relevant economic factors to have regard to in determining whether material injury to an Australian industry has been caused.

Reduced return on investment

Golden Circle provided data for return on investment (ROI) for 2009 and 2010 which shows a reduced ROI. The data also shows that Golden Circle incurred losses in relation to the FSI and consumer pineapple produced.

Customs and Border Protection considers that Golden Circle has suffered injury in the form of reduced return on investment.

Reduced attractiveness to reinvest

Golden Circle claimed that the returns from consumer and FSI pineapple fruit impact on its parent company's ability to reinvest in the industry thereby diverting investment to more attractive elements of the portfolio that is/are capable of returns above the company's target weighted average cost of capital.

Assets

Golden Circle's data shows that assets have declined from 2009 to 2010.

Capital investment

Golden Circle's data shows that capital investment has declined from 2009 to 2010.

Research and development

Golden Circle's data shows that research and development expenses have declined from 2009 to 2010.

Sales revenue

Golden Circle's data shows sales revenue for consumer pineapple has shown an increase in revenue from 2008 to 2009 and a decline from 2009 to 2010.

Capacity utilisation

Golden Circle's data shows that the capacity utilisation in regards to FSI and consumer pineapple has decreased from 2008 to 2010.

Employment

Golden Circle's data shows that the number of workers associated with the production of FSI and consumer pineapple has decreased from 2008 to 2010.

6.6 Conclusion of the economic performance of the industry

Based on the data submitted by Golden Circle and verified by Customs and Border Protection, Customs and Border Protection considers that Golden Circle has experienced injury in the form of:

- lost market share;
- lost sales volume;
- price suppression;
- reduced profit and profitability;
- reduced revenues;
- reduced return on investment;
- reduced investment in the industry;
- reduction in employee numbers; and
- reduced capacity utilisation.

7 HAS DUMPING CAUSED MATERIAL INJURY

7.1 Findings

Customs and Border Protection finds that there is a causal link between the material injury experienced by Golden Circle and the export of dumped goods from Thailand by TPC.

7.2 Introduction

This section examines whether dumped imports of consumer pineapple have caused material injury to the Australian industry.

The Minister may publish a dumping duty notice, and impose anti-dumping measures on future exports of like goods, where the Minister is satisfied that:

- the amount of the export price of the goods is less than the amount of the normal value of those goods; and
- the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
- because of that, material injury to the Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered¹⁹.

Customs and Border Protection sent questionnaires to importers of consumer pineapple from Thailand by TPC.

Coles provided all requested information as well as submissions to the investigation, Coles was not visited but a non-confidential summary of responses to questions and information provided was placed on the public file.

Woolworths did not respond to requests for information for this investigation. Woolworths had been visited for the reviews and continuations and had provided requested information. Whilst a non-confidential version of the visit report to Woolworths has not been placed on the public file, Customs and Border Protection considers the information provided by Woolworths to be relevant and has had regard to it in assessing the issue of causation.

Woolworths did provide a submission to the SEF which is addressed in this chapter.

7.3 Approach to causal link assessment

In response to the SEF, a number of interested parties expressed concern that the preliminary findings did not adequately address the impact of other factors on Golden Circle's economic performance. In particular, Woolworths referenced a WTO Appellate Body ruling in which the Appellate Body stated that to ensure that other known factors are not attributed to dumped imports, 'an assessment

¹⁹ S 269TG

PUBLIC RECORD

must involve separating and distinguishing the injurious effects of the other factors from the injurious effect of the dumped imports’.

Also on the approach to causation, Woolworths claimed that in making its findings on causation, Customs and Border Protection is ‘only permitted to have regard to information from the investigation period’. This stems from the determination that the goods were only exported at dumped prices over the investigation period and no such determination has been made in respect of exports prior to the investigation period.

Disentangling the effects that a range of factors have had on an industry is not an exact science. Nevertheless, Customs and Border Protection agrees that other known factors need to be isolated from the dumped imports to ensure that injury caused by these other factors aren’t attributed to the dumped imports. However, the Appellate Body did emphasize that ‘the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effect of the other known causal factors are not prescribed by the Anti-Dumping Agreement.’

To that extent, Customs and Border Protection’s usual practice is to firstly examine whether the volume and prices of dumped imports could have resulted in the injury experienced by the Australian industry. Following this, the examination is broadened to include the other known factors that are affecting the economic condition of the industry to arrive at an overall conclusion on causation. It is important to bear in mind that dumped imports need not be the sole or even the principal cause of injury. What must be established is that the injury that can be attributed to dumping is material. It is also worth highlighting that volume and price injury effects need not both exist before causation is established.

On the issue of material injury assessment during the investigation period, it is Customs and Border Protection’s view that the Act allows the examination of material injury indicators before the investigation period but it cannot support a presumption that material injury identified as occurring before the investigation period can be attributed to dumped imports. A causal link between dumped imports and material injury may be established only in circumstances where indicators of material injury are identified as being present during an investigation period in which dumped goods are found to have been exported to Australia. There can be no presumption that goods exported to Australia before the commencement of the investigation period are dumped goods.

The establishment of an injury examination period provided by the Act²⁰ does however enable Customs and Border Protection to examine the alleged indicators of injury over a period of time so that benchmarks can be established to assess the materiality of any injury occurring in the investigation period. In this case, Customs and Border Protection considered it relevant to have regard to information prior to the investigation period to also better understand whether linkages exist between export prices and retail selling prices and to assess the market dynamics of the various canned pineapple segments of the retail sector.

²⁰ s.269T(2AD)

7.4 Dumping

In determining whether material injury to the Australian industry was caused by dumped imports, regard may be had to the size of the dumping margin. Customs and Border Protection has found that consumer pineapple exported to Australia from Thailand by TPC during the investigation period was dumped by a margin of 29%.

7.5 Volume effects

7.5.1 Loss of sales volume and market share

In its application, Golden Circle claimed that the decrease in its sales volumes were attributable to dumped exports from Indonesia and TPC. However it is clear that the main focus of those injury claims centred on a lost contract to supply a mid-range generic product to Woolworths. Prior to the investigation period, those products were produced and supplied by Golden Circle following a successful tender.

During the investigation period, Golden Circle unsuccessfully tendered for renewal of the supply contract. The contract was eventually awarded to the exporter from Indonesia.

With regards to the supply of standard generic product to the retail sector, Customs and Border Protection understands that Golden Circle has never participated in the tendering process of either the Woolworths or Coles own brands. Woolworths advised in its submission to the SEF that its records showed that Golden Circle has tendered only one time (in 2006) for the supply of Homebrand (generic) pineapple and was unsuccessful.

Analysis of sales volumes from 2009 to 2010 shows that Golden Circle's volumes fell, TPC's volumes remained relatively constant whilst Great Giant's volumes increased significantly after no exports in 2009.

Customs and Border Protection finds that the actual and potential volume of lost sales and reduced market share experienced by Golden Circle during the investigation period was primarily caused by undumped imports from Indonesia. Therefore volume injury to the Australian industry is unable to be attributed to the dumped imports exported by TPC during the investigation period.

7.6 Price effects

7.6.1 Linkages between export prices and retail prices

Golden Circle experienced cost increases in 2009 and 2010. Golden Circle submitted that it expected that other foreign producers would have been subject to similar cost pressures that should have been reflected in increased export prices.

Interested parties confirmed that cost increases of fresh pineapple were being experienced in Thailand due to the prolonged drought. Customs and Border Protection has calculated a dumping margin of 29% for TPC using a constructed normal value based on the costs of the exported goods with no

PUBLIC RECORD

profit added. This indicates that TPC has exported the goods to Australia during the investigation period at prices significantly below their production cost.

Customs and Border Protection notes that the supply of consumer pineapple by TPC is subject to contracts established through a tender process. It is reasonable to expect that in agreeing to fix prices for a period of time, both the buyer and seller are accepting some amount of risk. For the exporting producer, one would expect them to have factored into their tendered price an amount to take account of future potential cost increases. It is noted that the terms of the contracts also referred to costs and price changes.

The degree to which TPC's exports were priced below the cost of the goods suggests that TPC did not factor in a sufficient premium for such risks. The consequence being that the goods were exported at a significant dumping margin below their normal value.

To determine whether a correlation exists between free on board import prices and retail shelf prices, retail scan data has been assessed for a major retailer over the period from mid-2008 to December 2010 using 440 gram canned pineapple. The 440 gram range represents approximately 50% of the total market for consumer pineapple. Data for another retailer was also examined but was inconclusive due insufficient detail regarding the various can sizes.

The chart below shows that a sharp increase in import prices in the early part of the analysis period saw retail prices follow a similar trend before steadily falling in line with steady decreases in import prices. Over the investigation period, minor changes in import prices are less reflected in movements of corresponding retail prices. This may demonstrate the ability of retailers to absorb minor increases in the cost of goods.



In its submission to the SEF, Coles disagreed that the chart above supported the conclusions made in the SEF. It pointed to flattening import prices and corresponding increases in retail prices in the earlier period of analysis as an example.

PUBLIC RECORD

Customs and Border Protection notes that retail prices do not exactly follow the import prices. Customs and Border Protection considers this to be due to the timing of volumes purchased and a lag between the effect of the changed import prices and the change in retail prices as stock from inventory is rundown.

In its response, Woolworths stated that retail prices are not set by reference to a fixed margin, so that movements in the purchase price of goods may not be reflected in the retail sale price. In reference to the chart above, Woolworths questioned Customs and Border Protection's reliance on information from a period prior to the investigation period to establish a causal link. It went on to add that the chart shows no direct relationship between FOB prices and retail prices as in the latter part of the analysis period, retail price is decreasing whilst FOB prices are exhibiting an upward trend.

Customs and Border Protection has not relied on the charted data to establish a causal link between dumped imports and injury to the Australian industry. The information is used solely for the purpose of better understanding whether a correlation exists between retailer's purchase costs and corresponding retail prices for consumer pineapple.

On the issue of whether a relationship is evident during the investigation period, as noted above Customs and Border Protection accepts that variations in import prices in the latter part of the analysis period are not evident in corresponding retail prices. This simply confirms that retailers have the capacity to absorb minor variations in the purchase price of the goods without necessarily impacting on retail shelf prices. However during the investigation period, import prices were found to be 29% below their normal value.

Undumped import prices have been charted for the investigation period, which are represented by the dotted line. The data shows a substantial increase in import prices. Given the trend for retail prices to move in accordance with import prices, it is reasonable to expect that retail prices in the investigation period are lower than what they would have otherwise been had TPC not exports at dumped prices.



PUBLIC RECORD

In its confidential submissions of 22 July 2011 and 5 September 2011, Coles identified a range of factors that it considered were relevant to the determination of retail prices. In the latter submission, Coles further outlined the factors that it would take into account in reviewing pricing. Customs and Border Protection considers that these statements support a finding that for canned pineapple, the cost inputs of retailers are a key part in setting the retail shelf price.

But for TPC's decision to export at dumped prices, import prices over the investigation period would have been expected to increase significantly. Taking into account the relevant factors identified by Coles that determine retail prices, Customs and Border Protection considers it reasonable to expect that retailers would have passed on the additional purchase costs, either in part or in full, by way of increased retail shelf prices.

Using data provided by Woolworths and Coles, Customs and Border Protection has assessed the impact of a 29% cost increase in the FOB purchase price on the retailers profit performance in the scenario where they elect to absorb those costs and leave retail price unchanged. In those circumstances, retailers would see their profit margins significantly reduced by over 70%.

Therefore, given the cost pressures being experienced by all producers of canned pineapple, particularly in relation to the cost of fresh pineapple and tinfoil, Customs and Border Protection considers that had TPC's exports of consumer pineapple been sold at or above the cost of the goods (ie. at undumped prices), retailers would have passed some of the additional purchase costs by way of increased retail shelf prices. Therefore 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 dumped prices.

7.6.2 Linkages between the canned pineapple segments

On 10 June 2011, Customs and Border Protection issued a discussion paper outlining its understanding of the consumer pineapple market and seeking views from interested parties on the dynamics of the retail sector in relation to consumer pineapple.

The paper was primarily directed towards the retailers, Coles and Woolworths, as it was felt that they would be best placed, both in terms of access to relevant data and knowledge of market conditions, to address the particular issues covered in the paper. Responding submissions were received from Coles, Golden Circle and TPC. Woolworths did not provide a response.

The paper outlined Customs and Border Protection's understanding of the marketing of various types of products which generally fell into one of the following product segments:

1. Premium – primarily branded product such Golden Circle, Dole, Del Monte; or
2. Mid-range generic – typically private label product such as Woolworths Select; or
3. Standard generic – typically private label product such as Woolworths Homebrand, Coles Smart Buy, Aldi.

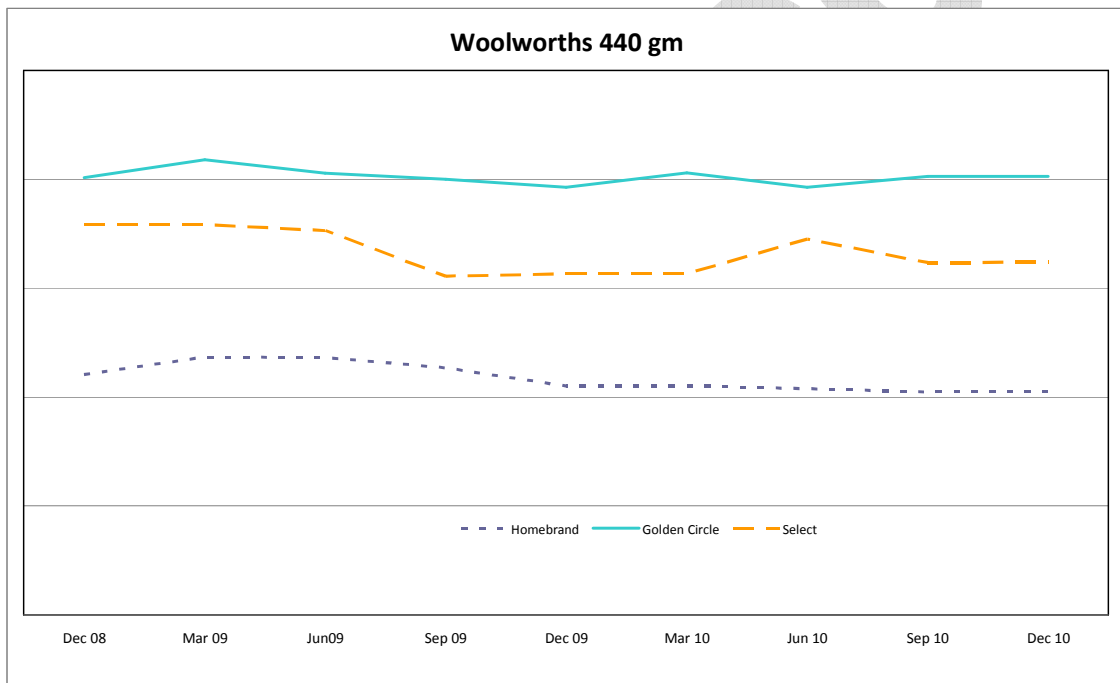
PUBLIC RECORD

Each product segment appeared to have a distinct price point relative to the others in the market, with branded product being the most expensive and standard generic product being the least expensive.

Previous comments on the public record from Coles noted that prices for standard generic were set in competition at a considerable discount to premium branded product and that there was limited competition between these segments.

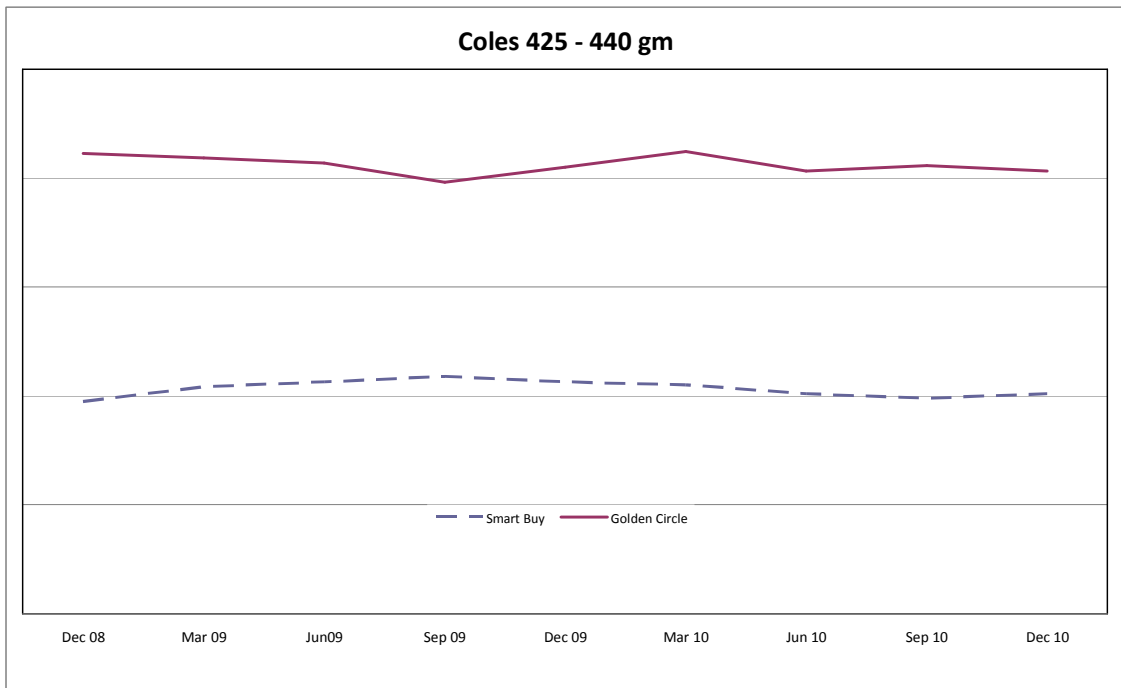
Customs and Border Protection used available retail scan data to chart price movements of the various canned pineapple products sold at Woolworths, Coles and Metcash (IGA stores). These charts and Customs and Border Protection's comments are reproduced below.

The chart below shows price trends for 440 gram canned pineapple products sold at Woolworths. Customs and Border Protection observes that the price differential between Golden Circle and Homebrand are consistent, with the Woolworths Select product displaying more variation within that range.

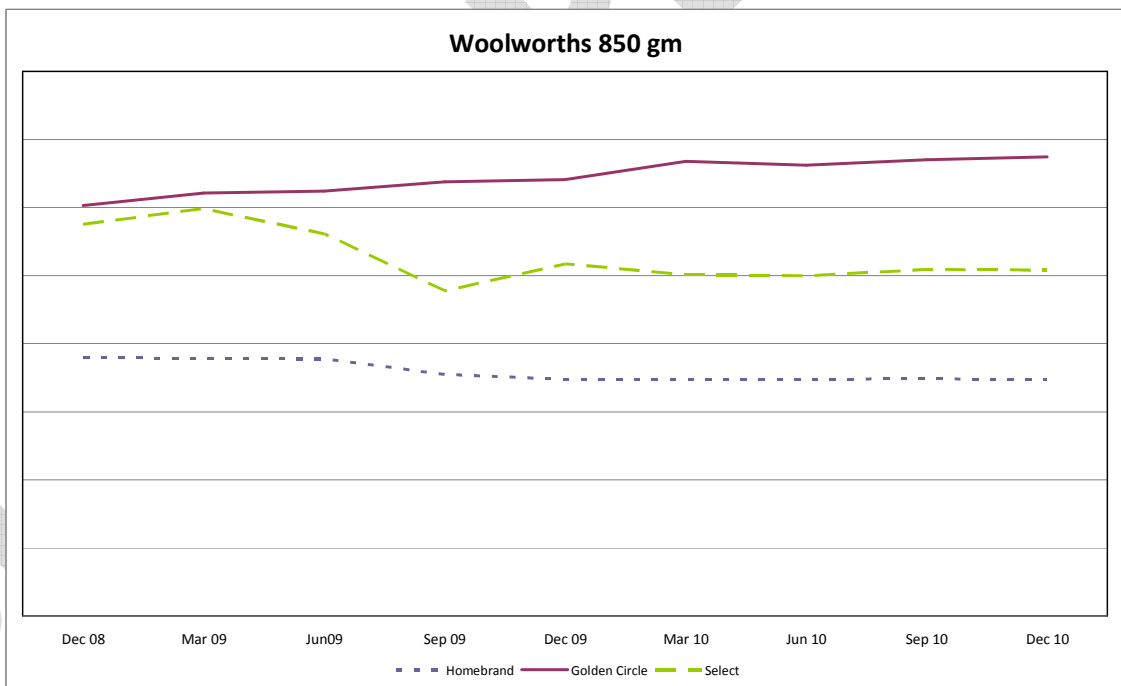


Likewise, a comparison of Golden Circle prices to Coles Smart Buy prices shows a similar and consistent price differential over the analysis period.

PUBLIC RECORD



An examination of 850 gram canned pineapple sold by Woolworths shows some price volatility in the 12 months to December quarter 2009. However, over the investigation period of 2010, the price differential between the three products appears to be more consistent.



The paper sought the views of relevant interested parties and requested that they address the following questions and where appropriate, provide supporting evidence.

1. Is there a correlation between prices of the three product segments for canned pineapple?

PUBLIC RECORD

2. For each product segment (premium, mid-range generic and standard generic), outline the factors that impact on retail shelf prices and retail sales volumes.
3. Does the change in price of one product affect consumer behaviour and lead to volume and price changes in other products?

In the SEF, Customs and Border Protection presented further analysis of the retail scan data and interaction between the price of Golden Circle branded product and the corresponding impact on sales volume for the Golden Circle product and standard generic product. The prices and volumes were analysed on a weekly basis over a period of 120 weeks through to January 2011. The analysis focused on 425 – 450 gram cans of pineapple pieces and slices. Significant price and volume changes were defined as a change where the difference on the previous week was greater than 3%.

As a general observation, the data showed that the price of standard and mid-range generic products remained relatively constant over the period of analysis. This is consistent with statements by interested parties that the major retailers do not engage in the regular discounting of their own in-house brands. Conversely, the shelf price of Golden Circle products fluctuated from week to week, with significant changes being evident in 67 weeks or 57% of the analysis period.

The analysis showed a strong positive correlation between the price of the Golden Circle brand and the volume of the standard generic product. Over the 120 week period, Golden Circle's prices for its 440g pineapple pieces experienced a significant change on 67 (57%) weekly occasions. In those 67 weeks, the volume of Woolworths' Homebrand product also experienced a significant change in 57 of those weeks or 85% of the time.

This strong correlation was evident in the 440g pineapple slices with 67 weeks of significant price change of the Golden Circle product and a change in the Homebrand volumes in 50 of those weeks or 75%.

Therefore the data shows that where Woolworths discounted the price of the Golden Circle branded product there was an increase in the branded volumes and decrease in the volumes of the generic Homebrand product. Conversely an increase in the price of the branded product resulted in a decrease in volumes of the branded product and an increase in the volumes of the Homebrand product.

Prices and volumes were also compared for mid-range generic (supplied by Indonesia) and Golden Circle's brand, with the analysis showing a weaker link between changes in volumes and prices. Importantly, mid-range generic accounts for approximately 5% of the volume of consumer pineapple, with standard generic and Golden Circle branded products having greater volumes and dominating the market.

In its submission to the investigation Coles submitted that there is no necessary correlation between the prices of the three product segments and depending on promotional offers branded products may be cheaper than mid-range (Coles brand) and even standard generic (Coles Smart Buy) from time to time. Coles provided no evidence to substantiate this view and a review of all available scan data shows that on no occasion was the price of Golden Circle's branded product cheaper than either Coles' standard or mid-range generic product.

PUBLIC RECORD

Neither did Coles refer to the graphs of the retail scan data presented in the issues paper to highlight how Customs and Border Protection's assessment was unsupported.

Coles further submitted that the Golden Circle brand has a non-price and non-quality attribute with which imported product cannot compete, or for some, can only compete by a compelling price.

Given the substantial price differences across the segments, Coles is of the view that it is unlikely that minor changes to one or more products will influence consumer behaviour across other products. Coles rejected that the imposition of a dumping duty would result in an increase in price for the Golden Circle branded product or maintain any price differentials between the segments.

Customs and Border Protection has had regard to statements made by Coles in its confidential submission of 18 July 2011 which were in response to questions from Customs and Border Protection. In that submission, it acknowledged that there may be some circumstances in which an increase in the cost and price of generic product would necessitate an increase in the price of branded product. Whilst details of the particular circumstances referred to by Coles are unable to be made public, Customs and Border Protection notes that it supports a view that a link exists between the purchase price of the goods and the retail prices of generic and branded canned pineapple products.

Golden Circle submitted that generic and branded products competed to some degree and there exists price elasticity between all three segments that are profit driven. As the price gap between branded and private label increases, the branded product loses sales volume.

Pricing of the three segments should not be considered in isolation, reductions in prices in one category impact sales volumes in the other categories.

TPC submitted that changes in prices and volumes between product segments are solely a retail market phenomenon. Retail prices will be influenced by many factors other than purchase prices. It cannot reasonably be assumed that if the export prices of TPC's economy private label products to retailers were higher because of the removal of a dumping margin, Golden Circle would have achieved higher prices for its branded products.

Woolworths disputed that there was a consistent price differential between generic and branded prices and that the scan data does not establish that there is a direct correlation between the retail prices in the different segments. Woolworths submitted that retail prices within each particular category are set according to competition policy and there is not necessarily any relationship between the price of the branded and generic product in a given category.

Woolworths did not disagree that discounting of the Golden Circle brand product impacted sales volumes of both the brand product and generic Homebrand product. However Woolworths submitted the analysis does not consider the impact price movement in one category has on price in another in that discounting of the Golden Circle product did not result in discounting of the Homebrand product.

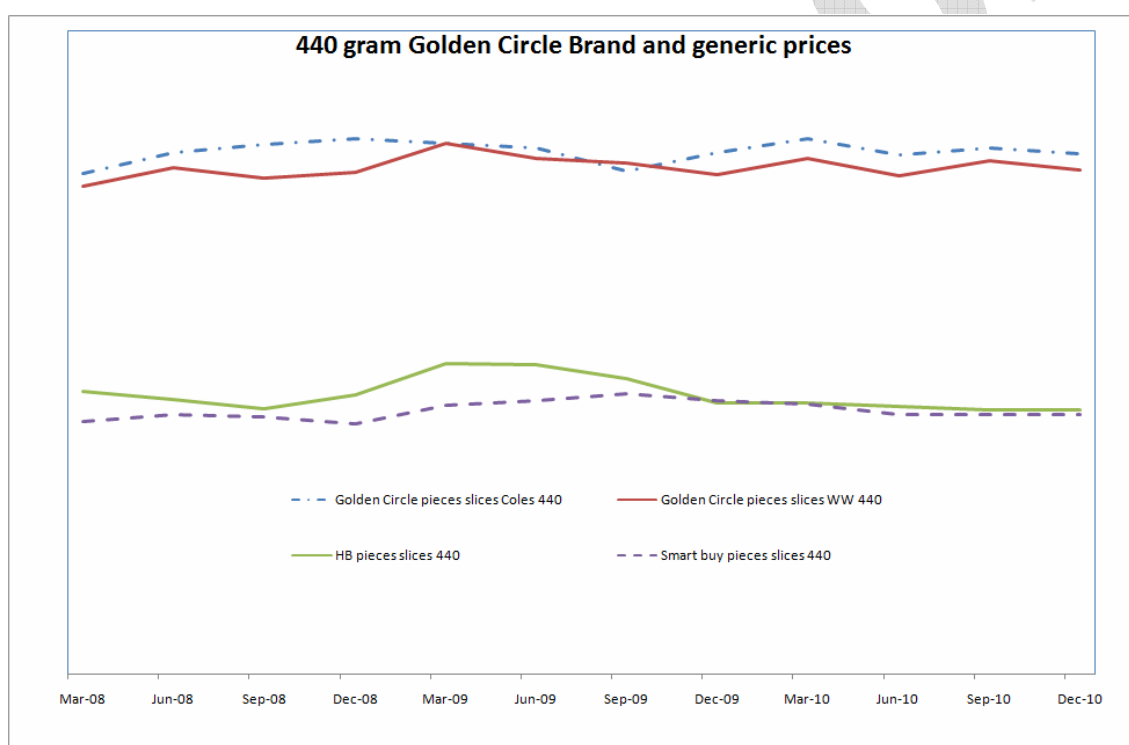
Woolworths noted the statement in the SEF that prices of standard and mid range products remained relatively constant whilst the Golden Circle product fluctuated greatly from week to week. Woolworths considered the data shows a

PUBLIC RECORD

relationship between price and volume but not between prices in the two categories. Woolworths considered this was important as the finding on price suppression is based on the direct relationship between the prices of the branded and generic products.

As stated earlier, Customs and Border Protection considers that retailers would have access to information which would address the relevant factors that would impact prices of the various segments of the consumer canned pineapple market. However, we note that Woolworths has provided no such information or evidence to support claims made in its only submission to the investigation.

Prices of the branded, private label and generic products have been analysed over a period of time from 2008 to 2010 and weighted average quarterly prices graphed. The graph shows the consistent band of prices for branded and generic products sold by Woolworths and Coles. Whilst prices can move independently of each other at times there is also a degree of correlation between the products that reinforces a link between the prices of branded and generic products.



Coles commented that minor changes to one or more products are likely to influence consumer behaviour across other products. In assessing the retail data available the analysis shows price changes in the range of 8 – 14% and at times higher than 20%. The analysis also shows generic prices have risen by up to 27% in a short period of less than one month and also fallen by up to 15% in less than one month. Customs and Border Protection considers the sizes of the price changes are not minor.

7.6.3 Price undercutting

Price undercutting occurs when the imported product is sold at a price below that of the Australian manufactured product. Customs and Border Protection compared the selling prices of Golden Circle to the selling prices of imports of consumer pineapple to similar customers in Australia (on similar terms), during

PUBLIC RECORD

the investigation period. Prices were compared at an into store price and at the retail selling price.

Customs and Border Protection found consistent undercutting at both the into store price and at retail selling prices where the imported product was compared to the Golden Circle brand and generic product.

However Customs and Border Protection has given little weight to this evidence of undercutting in its causal link assessment, as there are a number of factors, other than dumping, that can explain the disparity in prices between these products. These include:

- quality differences – the Homebrand product has broader specification tolerances such as colour, sweetness, uniformity of cut, toughness, to that of the Golden Circle product;
- brand recognition of 'Golden Circle' is strong which allows for a substantial premium to be attached to the products, whereas Homebrand is recognised by consumers as being a budget or lesser quality product; and
- the comparative cost advantage of Thai producers compared to Golden Circle.

7.6.4 Price suppression

Customs and Border Protection has found that the purchase price of canned pineapple is one factor that is relevant to retailer's setting their shelf prices. The data analysis showed that the greater the changes in the purchase cost of the goods, the more likely that retail selling prices are affected. Conversely, minor variations in the purchase cost of the goods appeared to be largely absorbed by retailers, resulting in unchanged retail selling prices.

In its submission of 22 July 2011, Coles stated that:

'Coles brand pineapple was price reduced on the Down Down program as part of a broader strategy which offers customers especially competitive, everyday (not high-low catalogue promotional) prices across a range of popular products. Coles is committed to maintaining competitive pineapple prices.'

Given that scenario, the size of the dumping margin is an important consideration in understanding the impact that the purchase of dumped imports from TPC had on retailer's selling prices. It is reasonable to expect that retailers are only able to maintain their competitive canned pineapple prices because of their decision to purchase dumped imports at 29% below the corresponding fair price.

Customs and Border Protection has also found that a correlation exists between the retail selling prices of the three canned pineapple segments. The available retail scan data showed a consistent spread or differential between prices of standard generic products and branded products.

The spread between the prices of mid-range products and the other two segments were less consistent. Whilst none of the retailers provided evidence or views to explain the greater price volatility of the mid-range products, Customs and Border Protection notes that the sales volume of mid-range

PUBLIC RECORD

products is considerably less, ranging from one fifth to one tenth of the volume, than either of the other two segments.

Customs and Border Protection has continued to give greater weight to statements made by Coles in its confidential submission of 18 July 2011 in which it identified a particular circumstance where retail prices of branded product could be expected to increase. The circumstance identified by Coles is directly relevant to the circumstances found to exist in the Australian market during the investigation period. A copy of the confidential Coles submission is at **Confidential Attachment 3**.

Therefore Customs and Border Protection is satisfied that price increases of Golden Circle's branded products (which otherwise would have occurred), have been prevented. Customs and Border Protection is also satisfied that one of the contributing factors preventing those prices from increasing is the competitive prices being offered for standard generic canned pineapple products. A strong link can be established to TPC's dumped exports as retailers are able to offer competitive prices by purchasing the imports goods at significantly dumped prices.

Customs and Border Protection is satisfied that dumping has contributed to Golden Circle experiencing price suppression during the investigation period.

Profit effects

Golden Circle's reduced profit and profitability in 2010 is mainly due to cost increases from 2009 to 2010 whilst selling prices remained relatively flat from 2009 to 2010.

As outlined in the previous section of this report, dumped exports by TPC contributed to suppressing Golden Circle's prices during the investigation period. Customs and Border Protection also found that the loss of sales volumes to undumped exports from Indonesia contributed to the industry's increased unit costs due to the reduced production volume.

As profits and profitability are a function of a company's revenue and costs, Customs and Border Protection considers that the price suppressing effect of the dumped goods contributed to a loss of potential profits.

Customs and Border Protection has taken into account the loss of sales volumes to imports other than TPC in the affect on Golden Circles costs. Customs and Border Protection therefore finds that Golden Circle's loss of profits and profitability can be linked to the dumped exports by TPC.

Other economic factors

Section 269TAE(3) of the Act provides a reference to the other relevant economic factors to have regard to in determining whether injury to an Australian industry has been caused.

Reduced return on investment (ROI)

Golden Circle's data shows that it incurred losses in relation to the FSI and consumer pineapple produced.

PUBLIC RECORD

Customs and Border Protection considers that a major part of the losses were an effect of the price suppression and loss of profits and profitability caused by the dumped exports by TPC. Consumer pineapple comprises the bulk of production by Golden Circle and would thus bear the bulk of any changes on ROI.

Customs and Border Protection considers that dumped exports by TPC have caused injury in the form of reduced return on investment in relation to consumer pineapple.

Reduced attractiveness to reinvest

Golden Circle claimed that the returns from consumer and FSI pineapple fruit impact on its parent company's ability to reinvest in the industry thereby diverting investment to more attractive elements of the portfolio that is/are capable of returns above the company's target weighted average cost of capital.

Customs and Border Protection considers that this claim is part of the overall factor of investment in the industry, including ROI, and that where there is reduced ROI it would follow that there would be less incentive to reinvest.

Assets

Golden Circle's data shows that assets have declined from 2009 to 2010. This claim would appear to be linked to investment in the industry noted above.

Capital investment

Golden Circle's data shows that capital investment has declined from 2009 to 2010. This claim would appear to be linked to investment in the industry noted above.

Research and development

Golden Circle's data shows that research and development expenses have declined from 2009 to 2010. There was no evidence to show this was caused by dumped exports

Sales revenue

Golden Circle's data shows sales revenue for consumer pineapple declined from 2009 to 2010. A cause of this reduced revenue was the loss of sales volumes to un-dumped exports from Indonesia and to exports from the Philippines and Thailand.

However, Customs and Border Protection has found that dumped exports by TPC suppressed Golden Circle's prices, the effects have this price suppression have been isolated from the loss of revenue caused by the other factors noted above. The price suppression led to reduced revenues that Customs and Border Protection considers are caused by the dumped exports by TPC.

Capacity utilisation

Golden Circle's data shows that the capacity utilisation in regards to FSI and consumer pineapple has decreased from 2008 to 2010.

The major cause of this decrease appears due to the loss of sales volumes to un-dumped exports from Indonesia.

Employment

PUBLIC RECORD

Golden Circle's data shows that the number of workers associated with the production of FSI and consumer pineapple has decreased from 2008 to 2010.

The decrease in sales volumes and capacity utilisation caused by the un-dumped exports from Indonesia would appear to be the cause of reduction in employee numbers.

Other possible causes of injury

Customs and Border Protection is required to consider whether injury to an industry is being caused or threatened by a factor other than the dumped imports²¹.

The Thai government, TPC and Woolworths submitted that the injurious effect of other known factors such as the undumped exports from Indonesia, the private label products and exports from Thailand (excluding TPCs) and the Philippines needed to be separated from the injurious effects of the TPC exported products.

Customs and Border Protection assessed the effect of undumped exports from Indonesia as noted at section 7.5.1 where it considers that lost sales volume and reduced market share experienced by Golden Circle during the investigation period was primarily caused by undumped imports from Indonesia.

Retail prices and volumes of imports from Indonesia were analysed in the same way as the goods exported by TPC. The analysis did not show a link between prices and volumes that would indicate the Indonesian products were having a price effect on the Golden Circle branded product. A comparison of prices and volumes for mid-range generic (or private label) and Golden Circle's brand showed a weaker link between changes in volumes and prices. Further analysis shows a link between the two products on only two periods out of the 104 periods examined. This could be due to the significantly lower sales volume of mid-range generic.

In the review of the measures on consumer pineapple exported from the Philippines (REP 172b) Customs and Border Protection was satisfied that imports of consumer pineapple at dumped prices from the Philippines caused injury to the Australian industry during the 2010 review period but that injury was not material.

In the review of the measures on consumer pineapple exported from Thailand (REP 172d) Customs and Border Protection considered that retailers shelf prices of consumer pineapple were lower than they would have otherwise been had the goods not been dumped. The 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.

²¹ Subsection 269TAE(2A)

PUBLIC RECORD

Customs and Border Protection has taken into account exports of consumer pineapple from Indonesia, the Philippines and Thailand (except by TPC) and considers that it has not attributed the injurious effects of those exports to TPC.

Is the injury caused by dumping material?

When examining whether dumped imports have caused an industry's prices to be suppressed, Customs and Border Protection will typically undertake a price undercutting analysis to ascertain and compare relative prices of the goods in the Australian market from the various sources (including the nominated countries and imports from countries not under investigation). This undercutting analysis is useful for determining whether the Australian industry is hindered from increasing its prices as a consequence of price pressure in the market by imports.

As noted earlier, Customs and Border Protection has given little weight to the undercutting analysis given identified factors other than dumping that may explain the differences in prices.

To understand the materiality of the price suppression that can be attributed to dumped imports, a minimum unsuppressed selling price (USP) for a 440 gram Golden Circle can of consumer pineapple has been constructed by adjusting relevant shelf prices to reflect a market unaffected by dumped goods exported by TPC. In calculating this USP, Customs and Border Protection has ensured that no identified other factors have been adjusted for.

Customs and Border Protection has taken note of statements by Coles and Woolworths that retail prices are set in competition with other retailers in the market. Neither of the retailers provided information on other competitors in the market, though Woolworths said that prices were set in competition with Coles and Aldi.

In its analysis of retail scan data, Customs and Border Protection notes that generic prices have at times been priced higher than the equivalent Aldi product by more than 10%. This demonstrates that Aldi prices do not necessarily act as a ceiling on the generic prices in the market.

Information on the price of Aldi's products in the market is limited. However, Golden Circle provided information on Aldi's pineapple product and estimated that prices were steady for the last three years at approximately \$1.09 per can. Aldi was contacted for the reviews and continuations but declined to cooperate or provide information.

Notwithstanding that Woolworths and Coles have priced their generic products significantly higher than Aldi in the past, Customs and Border Protection has assessed the impact that retail shelf prices for generic product would have if set at the same \$1.09 price as the Aldi product.

After adjusting this price by the average price differential between generic and branded products during the investigation period, an estimate of a minimum USP has been calculated. A comparison of the USP and Golden Circle's actual net average selling price over the investigation period shows a 4% improvement in the company's profit margin which translates to approximately \$800,000 in additional revenue.

PUBLIC RECORD

This demonstrates that a 6 cent per can increase in Woolworth's retail selling price would have a material effect on Golden Circle's revenue, profits and profitability.

Therefore it is found that dumped exports by TPC during the investigation period caused material injury to the Australian industry producing like goods.

Customs and Border Protection's assessment of the materiality of the injury caused by the dumped exports by TPC is at **Confidential Appendix 3**.

Summary – Causal link

Customs and Border Protection considers that the evidence set out in this section provides sufficient grounds to conclude that the Australian industry has been unable to increase prices in line with cost increases due to the dumped prices of the imported product and it has therefore suffered price suppression, loss of profits and profitability and loss of revenue which have led to the Australian industry experiencing material injury.

Customs and Border Protection finds that dumped imports of consumer pineapple exported to Australia from Thailand by TPC can be linked to the material injury experienced by the Australian industry during the investigation period.

8 WILL DUMPING AND MATERIAL INJURY CONTINUE?

8.1 Findings

Customs and Border Protection finds that exports of consumer pineapple from Thailand by TPC in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

8.2 Introduction

When the Minister is satisfied that material injury to an Australian industry has been caused by dumping, anti-dumping measures may be imposed on future exports of like goods if the Minister is satisfied that the dumping and material injury may continue.

8.3 Customs and Border Protection's assessment

8.3.1 Will dumping continue?

Customs and Border Protection's dumping analysis found that consumer pineapple exported from Thailand by TPC during the investigation period was found to be at dumped prices, with a dumping margin of 29%.

Customs and Border Protection notes that that forward orders exist for future exports by TPC and that the products exported by TPC have a significant share and influence in the Australian market.

Analysis of import data shows that exports by TPC have continued since the end of the investigation period (31 December 2010) to 20 days past the SEF date (23 August 2011).

Customs and Border Protection considers that dumping will continue if anti-dumping measures are not imposed.

Will material injury continue?

Customs and Border Protection has reviewed the Australian industry's performance over the injury analysis period and has made a finding that consumer pineapple exported at dumped prices from Thailand by TPC has caused material injury to the Australian industry.

Customs and Border Protection considers that a continuation of price competition from dumped imports from Thailand by TPC is likely to have a continuing adverse impact on the Australian industry. Customs and Border Protection considers that this impact may be particularly evident in price suppression, reduced profits and profitability, and reduced revenues.

Based on the available evidence, Customs and Border Protection finds that exports of consumer pineapple from Thailand by TPC in the future may be at dumped prices and that continued dumping may cause further material injury to the Australian industry.

9 ANTI-DUMPING MEASURES

9.1 Findings

The delegate is satisfied that the non-injurious price (NIP) can be established for consumer pineapple by using industry's cost to make and sell during the review period plus the profit adjusted down it achieved on consumer pineapple in 2009.

Introduction

Dumping duties may be applied where it is established that dumped imports have caused or threaten to cause injury to the Australian industry producing like goods. The level of dumping duty cannot exceed the margin of dumping, but a lesser duty may be applied if it is sufficient to remove the injury. This lesser duty provision is contained in the World Trade Organisation Anti-Dumping Agreement and the Tariff Act²².

The calculation of the NIP provides the mechanism whereby this lesser duty provision is given effect. The NIP is the minimum price necessary to prevent the injury, or a recurrence of the injury, caused to the Australian industry by the dumping²³.

Anti-dumping duties are based on FOB prices in the country of export. Therefore a NIP is calculated in FOB terms for the country of export.

Unsuppressed selling price

Customs and Border Protection generally derives the NIP by first establishing a price at which the local industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

Customs and Border Protection's preferred approach to establishing a USP observes the following hierarchy:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the USP, Customs and Border Protection then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into store costs and amounts for importer expenses and profit.

²² Subsection 8(5A) of the Tariff Act

²³ The NIP is defined in section 269TACA

9.4 Australian industry's claims

Golden Circle submitted for the reviews of measures that the most appropriate method for determining the unsuppressed selling price for consumer pineapple was to use its cost to make and sell (CTMS) during the review period plus the profit it achieved on consumer pineapple in 2009. Golden Circle acknowledged that the profit for 2009 should be adjusted down to account for certain costs that were not accounted for in Golden Circle's accounts in 2009.

Customs and Border Protection's assessment

Customs and Border Protection did not receive any submissions in regards to the proposed USP.

Customs and Border Protection has used Golden Circle's CTMS for 2010 for consumer pineapple plus a profit. The profit has been calculated by deducting the certain costs from the 2009 profit achieved on consumer pineapple.

To determine the non-injurious price at the FOB level, deductions have been made from the unsuppressed selling price for:

- overseas freight and marine insurance;
- Australian landing and port charges;
- Customs and quarantine clearances;
- delivery charges from the port to the warehouse and to the customer; and
- sales and administration expenses and profit.

Customs and Border Protection's calculation of the USP and NIP is at **Confidential Appendix 4**.

Comparison of the NIP to the export prices

The non-injurious price was compared with the weighted average export prices of consumer pineapple exported from Thailand by TPC during the investigation period.

The non-injurious price was higher than the weighted average export prices of consumer pineapple exported from Thailand by TPC. This analysis supports the conclusion that dumped consumer pineapple exported to Australia from Thailand by TPC caused material injury to Golden Circle.

Interim dumping duties

An interim dumping duty may be ascertained:

- as a proportion of the export price; or
- by reference to a measure of the quantity; or
- by a combination of these methods.

PUBLIC RECORD

The delegate recommends that the interim dumping duty be expressed as an amount per kilogram.

In determining the amount of interim dumping duty payable, the Minister must ascertain an export price, a normal value and a non-injurious price for the goods. The interim duty is based on the difference between the ascertained export price and the lower of the ascertained normal value and the ascertained non-injurious price.

The calculation of the export price for TPC is at **confidential appendix 2**.

The calculation of the normal value for TPC is at **confidential appendix 2**.

The calculation of the non-injurious price is at **confidential appendix 4**.

PUBLIC RECORD

11 RECOMMENDATIONS

The delegate is satisfied that the dumping of imports of consumer pineapple exported to Australia from Thailand by TPC caused material injury to the Australian industry producing like goods. The delegate recommends that the Minister impose anti-dumping measures on consumer pineapple exported to Australia from Thailand by TPC.

The delegate recommends the Minister be satisfied:

- the weighted average of export prices of consumer pineapple over the investigation period is less than the weighted average of corresponding normal values over the investigation period in respect of consumer pineapple exported to Australia from Thailand by TPC²⁴; and
- the amount of the export price of consumer pineapple exported to Australia from Thailand by TPC, is less than the amount of the normal value of those goods and the export price of the goods that may be exported to Australia from Thailand by TPC in the future may be less than the normal value of the goods and because of that, material injury to the Australian industry producing like goods has been, or is being caused or is threatened²⁵.

The delegate recommends the Minister determine:

- by comparison of the weighted average of export prices during the investigation period and the weighted average of normal values during that period, that exports of consumer pineapple from Thailand by TPC were dumped²⁶.

The delegate recommends the Minister direct:

- that the element of interim dumping duty payable on consumer pineapple the subject of a notice²⁷ be ascertained by reference to a measure of quantity (in kilograms) of those particular goods²⁸.

The delegate recommends the Minister compare:

- the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period²⁹.

The delegate recommends the Minister declare:

- by public notice, that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia by TPC from Thailand after the date of publication of the notice³⁰.

²⁴ Ss TACB(4)

²⁵ SsTG(2)

²⁶ Ss 269TACB(1)

²⁷ Ss 269TG(1) or (2)

²⁸ S 8(5) of the Dumping Duty Act

²⁹ Ss 269TACB(2)(a)

11 CONFIDENTIAL ATTACHMENTS AND APPENDICES

Confidential attachment 1	Schedule – determine
Confidential attachment 2	Notices
Confidential attachment 3	Coles submission (confidential version) 18 July 2011
Confidential appendix 1	Consumer pineapple market
Confidential appendix 2	Export price, normal value, dumping margin.
Confidential appendix 3	Price suppression materiality of injury
Confidential appendix 4	USP and NIP

³⁰ Ss 269TG(2)