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

R E P O R T

CUSTOMS ACT 1901 - PART XVB

**INTERNATIONAL TRADE REMEDIES BRANCH
STATEMENT OF ESSENTIAL FACTS NO.171c**

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

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

3 August 2011

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1. SUMMARY AND RECOMMENDATIONS

This continuation inquiry is in response to an application by Golden Circle Limited (Golden Circle) seeking the continuation of the anti-dumping measures applying to food service and industrial (FSI) pineapple exported to Australia from the Republic of the Philippines (Philippines) and the Kingdom of Thailand (Thailand).

This statement of essential facts (SEF) 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) proposes to base his recommendation to the Minister for Home Affairs (Minister) for measures applicable to FSI pineapple from Thailand.

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

Customs and Border Protection is also conducting reviews into the measures applicable to consumer pineapple and FSI pineapple exported from Thailand. SEF 172c has been issued for the review into FSI pineapple from Thailand. SEF 172d has been issued for the review into consumer pineapple from Thailand.

Customs and Border Protection issued separate SEFs on 25 May 2011 for measures applicable to FSI pineapple and consumer pineapple from the Philippines. The final reports for those inquiries and reviews have been provided to the Minister who is considering the recommendations contained within.

1.1 Proposed recommendation

The delegate proposes to recommend that the Minister take steps to secure the continuation of anti-dumping measures applying to FSI pineapple exported from Thailand by all exporters, except Kuiburi Fruit Canning Co Ltd (KFC), from the expiry date of 17 October 2011.

1.2 Preliminary findings and conclusions

Customs and Border Protection's preliminary view is that the following factors support a finding that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping or countervailing measures were intended to prevent:

- Exports of FSI pineapple, from Thailand except those by KFC, were dumped during the review period;
- importers have maintained distribution links with exporters of FSI pineapple from Thailand;
- imports of FSI pineapple from Thailand have undercut industry prices;
- the Australian industry has lost sales volumes to imports from Thailand; and

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- if the measures were to expire exports of FSI pineapple from Thailand, except those by KFC, would continue at dumped and injurious prices that would cause material injury to the industry.

Based on these preliminary findings, and subject to any submissions received in response to this SEF and SEF 172c¹, the delegate proposes to recommend that the Minister take steps to secure the continuation of anti-dumping measures applying to FSI pineapple exported from Thailand, except those by KFC, from the expiry date of 17 October 2011.

1.3 Final report

The delegate's final report and recommendation in relation to measures applicable to FSI pineapple from Thailand must be provided to the Minister by **17 September 2011**.

¹ SEF 172c relates to the review of the measures on FSI pineapple from Thailand published on 3 August 2011.

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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 them².

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 measures³. If no application for continuation of the measures is received by Customs and Border Protection within the period allowed, the measures expire on the specified date.

If an application for continuation of anti-dumping measures is received, and not rejected, Customs and Border Protection has up to 155 days, or such a longer period as the Minister allows, to inquire and report to the Minister on whether continuation of the measures is justified. Within 110 days of the initiation notice, or such longer period as the Minister allows, Customs and Border Protection must place on the public record a statement of essential facts on which it proposes to base its recommendation to the Minister concerning the continuation of those measures.

Before recommending the continuation of the measures, the delegate 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, the delegate 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.

The delegate may also have regard to any other matter that it considers to be relevant to the inquiry.

² Under section 269TM. A reference in this report to a provision of legislation, unless otherwise specified, is a reference to the *Customs Act 1901*.

³ Ss 269ZHB.

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Following the Minister's decision, a notice will be published advising interested parties of the decision.

2.2 Notification and participation

The current anti-dumping measures applying to FSI pineapple are due to expire on 17 October 2011.

On 12 November 2010, Customs and Border Protection published a notice in inviting certain persons to apply to Customs and Border Protection for the continuation of anti-dumping measures on pineapple (consumer and FSI) exported from the Philippines, Thailand and for FSI pineapple exported from the People's Republic of China (China)⁴.

On 11 January 2011, Golden Circle, the sole Australian manufacturer, lodged an application for the continuation of the measures⁵ applicable to pineapple, FSI and consumer, from Thailand and the Philippines.

Golden Circle did not apply for a continuation of the measures relating to FSI pineapple from China and those measures will expire on 13 November 2011.

Following consideration of the application the continuation inquiry into the measures commenced on 4 February 2011. The period of 1 January 2010 to 31 December 2010 was set as the inquiry period.

Public notification of initiation of the continuation inquiry was made on 4 February 2011 in *The Australian* newspaper. Australian Customs Dumping Notice (ACDN) No. 2011/05 was also published.

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

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

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

Only one exporter, KFC, co-operated with the review and inquiry. Most major importers cooperated with the review and inquiry.

2.3 Responding to the statement of essential facts

Interested parties may wish to make submissions in response to this statement of essential facts. However Customs and Border Protection is not obliged to have regard to any submissions received after **23 August 2011** if to do so would prevent the timely preparation of the report to the Minister.

Submissions should be sent to:

⁴ In accordance with s.269ZHB.

⁵ In accordance with s.269ZHC(2).

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The Director
International Trade Remedies Branch Operations 1
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2601
AUSTRALIA

Submissions can also be faxed to (02) 6275 6990 or emailed to tmops1@customs.gov.au.

Interested parties intending to respond to the statement of essential facts must include a non-confidential version of their submission for placement on the public record⁶. Submissions provided in confidence must be clearly marked **“IN-CONFIDENCE”**.

The public record contains non-confidential submissions already received from interested parties, this statement of essential facts, non-confidential versions of Customs and Border Protection’s visit reports and other publicly available documents such as Customs and Border Protection’s initiation report, notices and other information. These documents should be read in conjunction with this statement of essential facts. The public record may be viewed at Customs House Canberra by contacting International Trade Remedies administration on (02) 6275 6547.

All documents on the public record are available on Customs and Border Protection’s electronic public record which may be accessed on the internet at www.customs.gov.au by following the prompts for “anti-dumping”.

2.4 History of anti-dumping measures

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

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

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

⁶ In preparing a non-confidential version interested parties should take account of the requirements set out in ACDN 2006/54.

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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 Preliminary findings

The Australian industry produces FSI pineapple that has characteristics closely resembling those of FSI pineapple manufactured in Thailand and exported to Australia therefore FSI pineapple manufactured by the Australian industry are like goods⁷.

3.2 The goods and like goods

The goods subject to measures (the goods) are:

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

Consumer pineapple and FSI pineapple are two separate goods.

3.2.1 Tariff classification

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

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

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

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

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

3.2.2 Like goods

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

⁷ In terms of s.269T.

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In REP 41 for FSI pineapple Customs and Border Protection was satisfied that there was an Australian industry producing like goods to the goods under consideration.

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

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

Golden Circle describes the locally produced (like) goods as prepared or preserved pineapple fruit in container sizes exceeding one litre (typically 3.0-3.2kg) which are sold into the FSI market.

Physical Likeness

Golden Circle produces a range of pineapple products in the above container sizes for FSI pineapple.

The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices, crushed pineapple and pineapple pizza cuts. The products can be sold in containers in either syrup or natural juice.

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

Commercial Likeness

Prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports in the FSI market segment. This was confirmed by distributor catalogues displaying a mix of locally produced and imported goods.

Functional Likeness

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

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

Production Likeness

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

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

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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 Australia⁸.

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

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

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

⁸ Ss 269T(2) and 269T(3).

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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 FSI pineapple.

Customs and Border Protection established the market for FSI pineapple during the review period using information from its import database and information supplied by the industry, importers, and the sole cooperating exporter.

Customs and Border Protection identified that some imports of FSI pineapple had been incorrectly classified and took account of those errors in establishing the market.

The FSI market comprises the food service and industrial sectors and the goods are typically supplied in 3.0 to 3.2 kg cans, although sometimes supplied in large aseptic plastic bags and drums.

The food service sector includes pizza outlets, quick service restaurants and institutions. The industrial sector includes customers that use the product as an ingredient for other processed foods including fruit salads, frozen pizzas, sauces, packaged meals, confectionery etc.

FSI pineapple is primarily sold to wholesalers/distributors or end users, with customers being less concerned with brand and driven primarily by price.

The market conditions and determinants of demand for FSI pineapple are unchanged from the original investigation period with price being pivotal to customers purchasing decisions.

The majority of imports of FSI pineapple are principally sourced from Thailand, with smaller volumes from Indonesia and the Philippines. Import data shows that the volume of FSI pineapple imported from Thailand has increased in 2010.

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

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

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

Juremont Pty Ltd (Juremont), an importer of FSI pineapple, advised it has been supplying FSI pineapple fruit over a long period. Juremont stated that FSI pineapple it imports has a strong brand position (like the Golden Circle product) based on a consistent high quality product.

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5. EXPORTER ACTIVITY

5.1 Preliminary Findings

Customs and Border Protection has found that exports of FSI pineapple from Thailand to Australia have continued since the anti-dumping measures were first imposed in 2006.

Customs and Border Protection gathered and assessed data for the 2010 calendar year (the review period) for the purpose of ascertaining variable factors for the review of the measures (SEF 172c refers).

Customs and Border Protection found in the review that FSI pineapple exported by exporters from Thailand, except exports by KFC, to Australia during the review period was dumped. A negative dumping margin of -8.2% was calculated for KFC whilst a dumping margin of 58.9% was calculated for all other exporters.

5.2 Pattern of imports

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

5.3 Price Trends

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

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

5.4 Exporters

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

Kuiburi Fruit Canning Co Ltd (KFC) provided a completed response to the questionnaire and the information was verified during a visit to KFC. A non-confidential copy of the verification report is available on the public record. KFC exports represented more than 10% of the total export volume of FSI pineapple from Thailand.

Customs and Border Protection received nil or deficient responses from other identified exporters.

5.4.1 Export price

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

⁹ Ss. 269TAB(1)(a) of the Act

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Export prices have been calculated for each export transaction using the price between KFC and the Australian customers. The individual transactions have been used to determine a weighted average export price for all shipments exported during the investigation period.

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

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

Customs and Border Protection therefore established export prices for all other exporters having regard to all relevant information¹³, using information from importers and the Customs and Border Protection import database.

5.4.2 Normal value

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

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

Customs and Border Protection used verified quarterly production costs from KFC for each pineapple product exported to Australia in the review period. Information from KFC's audited financial statements on its total selling general and administration (SG&A) expenses was used to estimate SG&A expenses it would expect to incur if selling on the domestic market of Thailand.

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

Customs and Border Protection considered the amount of profit that should be determined for the constructed normal values.

KFC's claim

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

KFC found a 567 gram can of Dole brand sliced pineapple in a supermarket that KFC stated caters for the expatriate market in Thailand. Following adjustments to the retail can price, KFC estimated that its selling price of an A10 size can

¹⁰ Ss. 269TAB(1)(a) of the Act

¹¹ Ss. 269TAB(1)(b) of the Act

¹² Ss. 269TAB(1)(c) of the Act

¹³ Ss. 269TAB(3) of the Act

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would be below the cost to make and sell the product. KFC did not provide evidence to support its estimate of the supermarket or distributor margins in Thailand.

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

Customs and Border Protection consideration of profit

The amount determined to be the profit for constructed normal values must be worked out as set out in regulation 181A.¹⁴

Customs and Border Protection notes the KFC submission lacks verified information in regards to the margins and costs of pineapple and examined other available information.

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

Customs and Border Protection considered a profit using the weighted average of the amounts established in the last review by other exporters or producers from the sale of like goods in the domestic market of the country of export¹⁵.

Customs and Border Protection has the verified profit on domestic sales of FSI pineapple from two cooperating exporters from the review of the measures in 2006¹⁶, Siam Agro Industry Pineapple and Others Public Company Limited (SAICO) and Dole Thailand Limited (DTL). SAICO and DTL were identified as exporters for the current review. SAICO and DTL declined to provide any information for this review.

However, given that this information is now five years out of date, Customs and Border Protection has concerns about whether the profits achieved on the Thai domestic market in 2005 are reflective of the profits that could be achieved on the domestic market in 2010. This is primarily due to the pineapple supply shortage being experienced in Thailand during the review period and the impact that this has had on exporter's costs.

Customs and Border Protection also considered publicly available information from another exporter of pineapple from Thailand, TIPCO Foods (Thailand) Public Company Limited. TIPCO was identified as an exporter for the current review but declined to provide any information for this review.

The TIPCO website identifies the company as a manufacturer and exporter of pineapple products and a manufacturer and seller of ready to drink fruit juice products on the Thai domestic market. TIPCO's annual report for 2010 is available on its website.

Customs and Border Protection considered using the profit on sales of goods in the same general category in the domestic market of Thailand¹⁷ using

¹⁴ Ss 269TAC(5B)

¹⁵ Regulation 181A(3)(b)

¹⁶ REP 111 & REP 112

¹⁷ Regulation 181A(3)(c)

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information from the TIPCO 2010 annual report. The goods in the same general category were fruit and vegetable juices and other beverages and the profit calculated on domestic sales was 7.5%.

However, the information in regards to TIPCO has not been verified by Customs and Border Protection and TIPCO may have a different cost structure to KFC that would enable it to sell profitably on the domestic market. Customs and Border Protection therefore considers that applying the profit of TIPCO to the costs of KFC may not be reasonable.

Customs and Border Protection considers that there is no reliable information to demonstrate that domestic sales of FSI pineapple would be profitable. Therefore Customs and Border Protection's preliminary view is that no profit should be added to the constructed normal value.

All other exporters

Customs and Border Protection considers that the normal value for FSI pineapple exported by all other exporters cannot be determined under any of the preceding sections to s.269TAC(6), therefore normal values have been determined having regard to all relevant information¹⁸.

Customs and Border Protection considers that the adjusted normal value for KFC can be used to determine a normal value for all other exporters.

5.4.3 Dumping margin

A dumping margin has been calculated for FSI pineapple exported by KFC over the review period based upon a comparison of the quarterly normal values and the export prices¹⁹. The dumping margin calculated for KFC was negative at - 8.3%.

A dumping margin has been calculated for FSI pineapple exported by all other exporters over the review period by comparing the weighted average of export prices over the whole of the review period with the weighted average of corresponding normal values over the whole of that period²⁰. The dumping margin calculated for all other exporters was 58.9%.

¹⁸ Ss 269TAC(6)

¹⁹ Ss 269TACB(2)(a).

²⁰ Ss 269TACB(2)(a).

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6 LIKELIHOOD OF DUMPING AND MATERIAL INJURY CONTINUING OR RECURRING

6.1 Preliminary findings

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, except for those exports by KFC.

In the review of the measures in SEF 172c Customs and Border Protection has made a preliminary finding that the dumping duty notice as it applies to KFC should be revoked. Subject to responses received to SEF 172c and this SEF, Customs and Border Protection intends to recommend to the Minister that the dumping duty notice be revoked as it applies to KFC.

6.2 Continuation test

Customs and Border Protection must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

6.3 Likelihood of dumping continuing or recurring

Customs and Border Protection has calculated dumping margins for FSI pineapple exported during the review period ranging from undumped exports by KFC at -8.2% to 58.9% for all other exporters.

The size of the dumping margin for exporters other than KFC suggests that exports by all other exporters continue to be exported at significantly dumped prices even with anti-dumping measures in place, albeit that they have not been reviewed since the review in 2006. In addition, information available to Customs and Border Protection shows that the majority of exports of FSI pineapple from Thailand were considerably below the export prices verified for KFC and a large share of those exports were at prices lower than established in the review in 2006.

Customs and Border Protection considers that it is reasonable then to expect that FSI pineapple would continue to be exported at dumped prices, except exports by KFC, in the absence of measures. Therefore Customs and Border Protection preliminarily finds that the expiration of anti-dumping measures on consumer pineapple from Thailand would lead or would be likely to lead to a continuation of the goods being exported at dumped prices, except for those exports by KFC.

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6.4 Likelihood of dumping causing material injury continuing or recurring

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

- Golden Circle's processed pineapple operation is vulnerable to dumped exports of pineapple fruit from Thailand;
- Golden Circle's sales volumes in the FSI segments of the processed pineapple market have deteriorated in 2009 and 2010;
- FSI pineapple from Thailand is undercutting Golden Circle's prices by up to 50%;
- Should the anti-dumping measures applicable to exports of FSI pineapple from Thailand be allowed to expire, the Australian industry will suffer an escalation in the level of material injury already sustained in 2009 and 2010;
- Should the measures be allowed to expire, the Australian industry will likely experience further lost sales volumes and loss of market share caused by price undercutting. Material injury will also likely be experienced through price depression (as export prices decline in the absence of the floor price imposed by the current measures) and price suppression, resulting in a deterioration of profits and profitability; and
- exporters of FSI pineapple in Thailand have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping measures.

Golden Circle also submitted that:

- pricing in the FSI market operates differently to that in consumer in that there is no brand visibility;
- that whilst it estimated that it held its market share in 2010 this was due to it reducing its net sale price; and
- the measures are out of date, not having being reviewed since 2006 and that exports are at dumped levels.

Customs and Border Protection's Assessment

It is widely accepted that demand in the FSI pineapple market is primarily driven by price. Brand is not a critical factor as the final consumer is generally not aware of the product brand used. The FSI market is also highly competitive with the main imports being from the Philippines, Thailand, Indonesia and to a lesser extent Vietnam, China and Taiwan.

Sales in the FSI segment are primarily to wholesalers/ distributors and large end users. The wholesalers/ distributors on-sell to customers either through warehouses or delivered. Prices in this sector are generally transparent via advertising catalogues showing the different product brands and pricing. Pricing in the catalogues shows the imported product at 20% - 60% below the Golden Circle product.

Customs and Border Protection also compared pricing from importers and Golden Circle at the wholesale/distributor level and found imported FSI

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pineapple significantly undercut the industry prices. The undercutting was to individual customers and in the market generally.

Information available to Customs and Border Protection from importers and its import database suggests that prices in the market for imported products are at similar levels regardless of the importation source.

Pricing to the larger end users may not be as transparent as sales can involve closed tenders with the unsuccessful parties unaware of the final results. Large end users can include customers in the industrial sector that use the product as an ingredient for other processed foods and also quick service restaurant chains that tender supply for their outlets.

Golden Circle's sales in the FSI market are mainly to the wholesale and distributor sector where prices are more transparent. Customs and Border Protection considers that the size of the dumping margins for FSI pineapple from Thailand has enabled importers to undercut Golden Circle's prices and compete with other import prices in the market.

Prices for FSI pineapple from Thailand sold in the Australian market are significantly lower than Golden Circle's prices and significantly lower than what they would have otherwise been had they been imported at prices equal to the normal value.

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

Golden Circle increased sales volumes of its own production from 2009 to 2010 but volumes were not at the levels it had in 2008. Golden Circle's prices for FSI pineapple were lower in 2010 as it responded to dumped imports and attempted to regain lost sales. This ultimately led to Golden Circle experiencing reduced revenues and profits.

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

Customs and Border Protection also notes that importers have maintained distribution links with exporters of the goods from the Philippines.

Customs and Border Protection's preliminary finding is that the expiration of anti-dumping measures on FSI pineapple from Thailand would lead or would be likely to lead to a continuation or recurrence of the material injury that the anti-dumping measure is intended to prevent.

6.5 Conclusion

Customs and Border Protection's preliminary view is 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, except for those exports by KFC, and the material injury that the anti-dumping or countervailing measures were intended to prevent:

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- Exports of FSI pineapple from Thailand, except for those exports by KFC, were dumped during the review period and would likely continue to be dumped in the absence of measures;
- importers have maintained distribution links with exporters of FSI pineapple from Thailand;
- imports of FSI pineapple from Thailand have significantly undercut industry prices contributing to lost sales volumes; and
- exports of FSI pineapple from Thailand would continue at dumped prices, except those exports by KFC, that would continue to cause material injury to the industry.

Therefore, subject to responses to this statement of essential facts and SEF 172c, Customs and Border Protection intends to recommend that the Minister takes steps to secure the continuation of the anti-dumping measures on FSI pineapple exported from Thailand, except for those exports by KFC.

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