



CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NO. 333 and 334**

**APPLICATION FOR CONTINUATION OF
ANTI-DUMPING MEASURES**

**PINEAPPLE FRUIT - CONSUMER AND
PINEAPPLE FRUIT - FOOD SERVICE AND INDUSTRIAL
EXPORTED FROM THE REPUBLIC OF THE PHILIPPINES AND
THE KINGDOM OF THAILAND**

7 March 2016

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ABBREVIATIONS

\$	Australian dollars
ADN	Anti-Dumping Notice
the Act	<i>Customs Act 1901</i>
the applicant	GCL Limited (GCL)
ABS	Australian Bureau of Statistics
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
FOB	free on board
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
MSP	Malee Sampran Public Co
the Parliamentary Secretary	the Parliamentary Secretary to the Minister for Industry, Innovation and Science
the Philippines	the Republic of the Philippines
REP 41	<i>Trade Measures Branch Report No. 41</i>
REP 125	<i>Trade Measures Branch Report No. 125</i>
REP 171A	<i>Trade Measures Branch Report No. 171A</i>
REP 171B	<i>Trade Measures Branch Report No. 171B</i>
REP 171C	<i>Trade Measures Branch Report No. 171C</i>
REP 171D	<i>Trade Measures Branch Report No. 171D</i>
Thailand	the Kingdom of Thailand
TPC	Thai Pineapple Canning Industry Corp Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This report provides the results of the consideration of an application lodged by Golden Circle Limited (GCL) for the continuation of anti-dumping measures applying to pineapple fruit – consumer (consumer pineapple) and pineapple fruit - food service and industrial (FSI pineapple) (collectively, consumer and FSI pineapple) exported to Australia from the Republic of the Philippines (the Philippines) and the Kingdom of Thailand (Thailand).

1.2 Application of law to facts

Division 6A of Part XVB of the *Customs Act 1901* (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in dealing with an application for the continuation of anti-dumping measures.

Pursuant to subsections 269ZHD (1) and 269ZHD(2), the Commissioner must reject an application for the continuation of anti-dumping measures if he is not satisfied that:

- the application complies with section 269ZHC;² and/or
- there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.³

1.3 Findings and conclusions

The Anti-Dumping Commission (the Commission) considers that the application complies with the requirements of section 269ZHC, in that it is in writing, in a form approved by the Commissioner for the purposes of this section, contains the information that the form requires, is signed in the manner indicated by the form, and was lodged in the manner approved under section 269SMS.

Having regard to the applicant's claims and other relevant information, the Commission is satisfied that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

1.2 Recommendations

The Commission recommends that the Commissioner not reject the application for the continuation of anti-dumping measures applicable to consumer and FSI pineapple exported to Australia from the Philippines and Thailand.

If the Commissioner accepts this recommendation, to give effect to that decision, he must sign the instrument at **Attachment 1** and publish a notice on the Commission's website

¹ All legislative references are to the *Customs Act 1901*, unless otherwise specified.

² Subsection 269ZHD(2)(a)

³ Subsection 269ZHD(2)(b)

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indicating that it is proposed to inquire whether the continuation of the anti-dumping measures is justified.

2 BACKGROUND

On 2 December 2015, in accordance with subsection 269ZHB(1), a notice (Anti-Dumping Notice (ADN) No. 2015/136) was published on the Commission's website inviting certain persons to apply to the Commissioner for the continuation of anti-dumping measures on consumer and FSI pineapple exported to Australia from the Philippines and Thailand.

On 29 January 2016, GCL, a member of the Australian industry producing consumer and FSI pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.⁴ When examining the application the Commission found a number of inaccuracies in the source data, including Australian Bureau of Statistics (ABS) Imports Summary and the GCL Financial Data relied upon by GCL to state its claims. GCL subsequently provided revised information.

2.1 History of the anti-dumping measures

2.1.1 Consumer and FSI pineapple exported from Thailand

On 8 January 2001, GCL lodged an application requesting that the then Minister for Justice and Customs publish dumping duty notices in respect of certain pineapple products exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 41) and published dumping duty notices for consumer and FSI pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co (MSP).

On 26 February 2006, following consideration of applications by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 111* (REP 110 and REP 111) to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

On 4 April 2008, the Federal Court set aside the then Minister for Justice and Customs' decision to continue measures in relation to exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC).

On 15 April 2011, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 171d* (REP 171c) and (REP 171d), to continue the anti-dumping measures for a further five years from 18 October 2011.

The anti-dumping measures imposed on consumer pineapple exported to Australia from Thailand (except by TPC) and FSI pineapple (except by MSP) are due to expire on 17 October 2016.

⁴ In accordance with subsection 269ZHB(1)(b).

⁵ *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs* [2008] FCA 443.

2.1.2 Consumer and FSI pineapple from the Philippines

On 21 March 2006, GCL lodged an application with the Australian Customs Service requesting that the then Minister publish dumping duty notices in respect of certain pineapple products exported to Australia from the Philippines.

The then Minister accepted the recommendations in *Trade Measures Report No. 112* (REP 112) and published dumping duty notices for consumer and FSI pineapple exported to Australia from the Philippines.

Following the reinvestigation of certain findings, *Trade Measures Report No. 125* (REP 125) made a new finding in relation to the determination of an unsuppressed selling price for consumer pineapple and affirmed the other findings subject to the reinvestigation.

On 4 February 2011, following an application for the continuation of measures by GCL, the then Australian Customs and Border Protection Service (ACBPS) commenced a continuation inquiry in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs accepted the recommendations in *Trade Measures Branch Report No. 171a* (REP 171a) and *Trade Measures Branch Report No. 171b* (REP 171b), to continue the measures for a further five years.

The anti-dumping measures applicable to consumer pineapple exported to Australia from the Philippines were continued for five years from 11 October 2011 and are due to expire on 10 October 2016.

The anti-dumping measures applicable to FSI pineapple from the Philippines were continued for five years from 14 November 2011 and are due to expire on 13 November 2016.

2.2 The goods

The goods, the subject of the current anti-dumping measures, 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.

2.3 Tariff classification of the goods

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

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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

Consumer and FSI pineapples imported from the Philippines and Thailand are not subject to Customs Duty.

2.4 Australian industry producing like goods

The application states that GCL is the sole Australian manufacturer of processed pineapple products in Australia. The Commission has researched the market and is satisfied that GCL's statement is correct. The requirements of subsection 269ZHB(1)(b)(ii) are therefore satisfied because the applicant represents the whole of the Australian industry producing like goods to the goods covered by the anti-dumping measures. In addition, the application satisfies the requirements under subsection 269ZHB(1)(b)(i) as GCL was the person whose application under section 269TB resulted in the existing measures.

The applicant has provided production and sales data for consumer and FSI pineapple and therefore the Commission remains satisfied that there is an Australian industry producing like goods.

3 COMPLIANCE WITH SECTION 269ZHC

3.1 Legislative framework

Subsection 269ZHC(1) specifies that an application under section 269ZHB must:

- (a) be in writing;
- (b) be in a form approved by the Commissioner for the purposes of this section;
- (c) contain such information as the form requires;
- (d) be signed in the manner indicated in the form; and
- (e) be lodged in the manner approved under section 269SMS.

Subsections 269ZHC(2) and (3) cover procedural matters in relation to lodgement of the application.

3.2 The Commission's assessment

GCL's application received was in writing, in the form approved by the Commissioner for the purposes of section 269ZHC, contained such information as the form requires, was signed in the manner indicated in the form and was lodged electronically to the Commission's nominated email address which is a manner approved under section 269SMS.

The applicant also provided a non-confidential version of the application for distribution to interested parties.

The non-confidential version of the application adequately reflects the reasons for seeking a continuation of the anti-dumping measures. The non-confidential application will be available on the Commission's public record (which can be accessed electronically at www.adcommission.gov.au).

4 CONSIDERATION OF REASONABLE GROUNDS

4.1 Legislative framework

Under subsection 269ZHD(2)(b), the Commissioner must consider whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

4.2 Continuation of exports

4.2.1 Applicant's claims

In the application, GCL states that imports of consumer and FSI pineapple from Thailand and the Philippines have continued since the measures were continued in 2011, and also represent large proportions of the total import volume of pineapple into Australia in 2015.

GCL presented ABS import data that states that Thailand and the Philippines remain the two largest supply sources for imported consumer and FSI pineapple, accounting in total for the vast majority of total imports in 2015. The ABS data presented by GCL is contained at **Confidential Attachment 1**.

GCL asserted that, as the world's largest suppliers of pineapple, Thailand and the Philippines have available capacity to increase exports of pineapple to Australia should the current measures be allowed to expire.

4.2.2 The Commission's assessment

The Commission has reconciled the ABS import data submitted by GCL to the Australian Border Force (ABF) import database. The ABF import database confirmed that imports of consumer and FSI pineapple from the Philippines and Thailand have continued since measures were imposed, demonstrating that exporters have maintained distribution links in Australia. The data shows that import volumes of consumer and FSI pineapple from Thailand and the Philippines have increased in 2014 and 2015 and account for the vast majority of the volume of all imports.

4.3 Continuation of dumping

4.3.1 Applicant's claims

GCL considers that it is likely that exporters from Thailand and the Philippines will resume exporting to Australia at dumped prices should anti-dumping measures be allowed to expire. GCL provided news articles from Asian Correspondent (www.asian.correspondent.com) and Food News (www.agra-net.com) to underpin its claims. The articles state that total exports of canned pineapple have increased from the Philippines in 2015 while volumes of exported canned pineapple from Thailand have decreased slightly. The articles are attached at **Confidential Attachment 5**.

In its application, GCL advised that it has obtained domestic retail selling prices for consumer and FSI pineapple sold in Thailand and the Philippines for the purpose of determining a normal value under subsection 269TAC(1). GCL stated it had been advised by [REDACTED] that the ex-works price can be

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calculated from the retail price by deducting from the price a [REDACTED] per cent retail margin and a further [REDACTED] per cent trade discount. The [REDACTED] stated that these amounts are standard commercial practice used by local retailers. [REDACTED]. GCL has included the following retail selling prices in its application:

- Domestic selling for consumer pineapple in Philippines for 'Chunks', 'Tidbits' and 'Slices' in various pack sizes; and
- Domestic Selling prices for consumer pineapple in Thailand for 'Pineapple in light syrup' and 'Pineapple slices in heavy syrup'.

In regards to the Thailand domestic market, GCL advised that domestic sales of pineapple fruit in cans (consumer and FSI pineapple) are limited in Thailand due to the local preference for fresh pineapple, and that there may not be sufficient volumes of domestic sales by an exporter for normal values to be determined. It further stated that domestic selling prices for FSI pineapple could not be obtained for the Thai market. It therefore utilised the retail price for the largest can size in the consumer pineapple market 836g to calculate the normal value for FSI pineapple.

As for the Philippines domestic market, GCL likewise stated that it had not been able to obtain domestic selling prices for FSI pineapple. GCL therefore utilised the retail price for the largest can size in the consumer segment of the market 567g to calculate the normal value for FSI pineapple.

GCL calculated the normal value for each can size based on the domestic retail price less [REDACTED] per cent to adjust for retail and distributor margins. GCL contrasted these normal values with the weighted average export price for all imported pineapple under the relevant tariff classifications, regardless of can size. According to its calculations, consumer and FSI pineapple continues to be exported to Australia at dumped prices.

4.3.2 The Commission's assessment

GCL provided the Commission with retail prices sourced in Thailand and the Philippines for canned pineapple varieties in the exporters' domestic markets to support its normal value determination as well as the ABS data relied upon to determine weighted average export prices.

It was found that GCL has calculated the normal value and dumping margins based on sample retail prices sourced in Thailand and the Philippines.

The Commission acknowledges that the volumes of the domestic sales of this product would be relatively low due to local preferences for fresh pineapple and therefore it may be a low volume of sales of like goods that would be relevant for the purposes of determining a price under subsection 269TAC(1).

The Commission has reviewed and adjusted the calculations submitted by GCL. It was found that the calculations contain some inconsistencies; i.e. GCL's calculated normal values were at ex-works terms, while the export prices were at free-on-board (FOB) terms. The Commission compared normal values and export prices by adjusting the ex-works normal values upward for inland transport as determined in the previous continuation inquiry. GCL also assumed a 1:1 ratio of A\$/litre to A\$/kilogram while the

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Commission's Dumping Commodity Register states that kilograms should be converted to litres by dividing the number of kilograms by 1.043174. The Commission also found no evidence to verify the ■ per cent retail and distributor margin on the domestic retail prices in Thailand and the Philippines assumed by GCL for the purposes of calculating normal values. The assumed ■ per cent margin appears reasonable however when compared with data from the previous continuation inquiry. The Commission notes that the dumping margins calculated would decrease if a higher retailer and distributor margin was assumed, however the Commission was satisfied that the margins of dumping calculated were of sufficient magnitude to absorb higher retail and distributor margins.

The Commission is satisfied that import volumes to Australia from Thailand and the Philippines as a total have increased. Consumer pineapple imports from the Philippines more than doubled, while the imports from Thailand had a decrease. In the FSI segment there were large volume increases in imports from Thailand while the imports from the Philippines decreased. The Commission considers that exporters in both Thailand and the Philippines may lower export prices to secure more sales if anti-dumping measures are allowed to expire, and that there are reasonable grounds for asserting that exports of the goods might be at dumped prices.

4.4 Continuation or recurrence of material injury caused by dumping

4.4.1 Applicant's claims

GCL noted in its application it is the sole manufacturer of processed pineapple fruit in Australia. GCL processes pineapple fruit at its Northgate facility. GCL stated that it sources raw pineapple from local growers. GCL sells most of its products in Australia, particularly to the consumer segment of the market. The company claims it faces strong competition from imports in both the consumer and FSI pineapple market segment

GCL provided, in support of its application, financial data as per the Appendix A6.1 format for consumer and FSI pineapple manufactured at its processing facility located at Northgate for the years 2013 to 2015. This data is contained at **Confidential Attachment 2**.

GCL contended that the on-going import volumes from Thailand and the Philippines have adversely affected the sales volume and profit margins of the Australian industry.

GCL submitted evidence of events where the company had been unsuccessful tenderers for supply contracts in the FSI segment to underpin its claim that low priced imports are undercutting GCL's prices in this market. This data is contained at **Confidential Attachments 3 and 4**.

GCL submitted that in the event that anti-dumping measures are not continued, there is a high probability that exporters in Thailand and the Philippines would seek to further increase sales volumes. In this event, GCL contends that the Australian industry manufacturing consumer and FSI pineapple will be exposed to a recurrence of material injury from the dumped exports.

4.4.2 The Commission's assessment

Based on the financial data provided by GCL, there are reasonable grounds to assert that, if the anti-dumping measures expire, future exports of pineapple fruit from Thailand and the Philippines at dumped prices may cause material injury to the Australian industry.

The ongoing import volumes from Thailand and the Philippines confirm that customers in both the consumer and FSI pineapple segment are continuing to source pineapple fruit from these two countries, and the import pricing indicates that they are doing so at prices that undercut the Australian industry. GCL's unsuccessful tender outcomes in supplying the FSI segment in Australia also indicate that there may be price undercutting by importers of pineapple fruit in this market.

The applicant has provided sufficient evidence that an expiry of the measures might lead to reduced export prices. This in turn may lead to further price undercutting, price depression and price suppression of the Australian industry's prices for pineapple fruit.

As a consequence of the adverse volume and price effects, there appears to be reasonable grounds for asserting that the Australian industry may experience reduced profits and profitability.

4.5 The Commission's conclusion

The Commission considers that there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.

Accordingly, it is recommended that the Commissioner not reject the application. If the Commissioner accepts this recommendation, in accordance with subsection 269ZHD(4), a notice will be published, indicating that the Commissioner will inquire into whether the continuation of the anti-dumping measures is justified.

For the purposes of this inquiry, the Commission recommends that the Commissioner set the inquiry period as 1 January 2015 to 31 December 2015.

5 LIST OF APPENDICES AND ATTACHMENTS

Attachment 1	Delegate's instrument
Confidential Attachment 1	[REDACTED]
Confidential Attachment 2	[REDACTED]
Confidential Attachment 3	[REDACTED]
Confidential Attachment 4	[REDACTED]
Confidential Attachment 5	[REDACTED]
Confidential Appendix 1	[REDACTED]
Non-Confidential Appendix 1	GCL amended application (public)