

# John O'Connor and Associates Pty Ltd

(ABN 39098650241)

PO Box 329

Coorparoo QLD 4151

Telephone: 07 33421921

Facsimile: 07 33421931

Mobile: 0411252451

Email: [jmoconnor@optusnet.com.au](mailto:jmoconnor@optusnet.com.au)

---

25 January 2013

Ms Pamela Garabed  
International Trade Remedies Branch  
Australian Customs and Border Protection Service  
Customs House  
5 Constitution Avenue  
CANBERRA ACT 2601

## Public File

Dear Ms Garabed

**Re: Investigations No. 195 and 196 – Review of Variable Factors applicable to certain canned pineapple exported from Thailand**

### 1. Introduction

I refer to the following Australian Customs Dumping Notices ("ACDN") published on 19 December 2012:

- ACDN No. 2012/64 – Initiation of a review of anti-dumping measures on consumer pineapple exported to Australia from Thailand by the Thai Pineapple Canning Industry Corp Limited ("TPC"). The applicant company – Siam Agro-Food Industry Public Company Limited ("SAICO"), a subsidiary of TPC – also requested that the measures be revoked; and
- ACDN No. 2012/65 – Initiation of a review of anti-dumping measures on food service and industrial ("FSI") pineapple exported to Australia by TIPCO Foods Public Company Ltd ("Tipco").

By advice received 25 January 2013, H. J. Heinz Company Australia Limited was informed that the Minister for Home Affairs had directed the Chief Executive Officer of Customs and Border Protection to extend the above-mentioned reviews to all exporters of consumer and FSI pineapple exported to Australia.

The extended reviews will investigate changes in the variable factors applicable to consumer and FSI pineapple exported to Australia during the period 1 October 2011 to 30 September 2012. The revocation investigation is limited to exports of consumer pineapple by TPC.

### 2. Australian industry

Golden Circle Limited ("Golden Circle") is the sole Australian manufacturer of canned pineapple, including consumer and FSI pineapple. Golden Circle is wholly owned by H. J. Heinz Company Australia Limited and was the applicant company for anti-dumping measures on consumer and FSI pineapple exported from Thailand.

Golden Circle considers that anti-dumping measures against exports of consumer pineapple exported to Australia by TPC are required to ensure material injury does not re-occur.

### 3. Golden Circle financial data

Golden Circle will provide Customs and Border Protection updated financial data for the review period. Golden Circle will also accommodate a verification visit by Customs and Border protection of the submitted financial data.

### 4. Reviews of measures

The applications for the review of anti-dumping measures on exports of consumer and FSI canned pineapple coincides with a substantial decline in demand for canned pineapple product in Europe. The selling prices for Thai pineapple juice – a co-product of canned pineapple production – has fallen by approximately 50 per cent since mid 2010 (refer Food News extract, 14 September 2012, P.5 at Confidential Attachment 1).

Food News stated "*The retail fruit juice market in Europe this summer is believed to be appalling with double-digit falls reported in Germany, Italy and Spain.*"

Food News also confirms that if pineapple juice concentrate prices do not increase "*some factories will have to close*".

The reported decline in selling prices for fruit juice concentrate impacts the returns on Thai canneries and the production of canned pineapple. Golden Circle highlights with Customs and Border Protection that the 50 per cent decline in the selling price of the co-product pineapple juice concentrate will materially impact the cost of production of canned pineapple (both consumer and FSI products). Lower credits that flow from the pineapple juice concentrate sales will result in a higher cost of production for canned pineapple.

It will therefore be critical for Customs and Border Protection to verify the selling prices for pineapple juice concentrate with TPC and Tipco (and other co-operating exporters) during the review verification process.

### 5. Absence of domestic sales

In the 2011 investigation (refer Trade Measures Report No. 173 (b)) Customs and Border Protection understood that "TPC did not sell consumer pineapple on the Thai domestic market"<sup>1</sup>. Customs and Border Protection further stated that the Thai market "*is limited to insignificant retail sales aimed at the expatriate community in Bangkok*".

Customs and Border Protection also determined in its review investigation in 2011 on FSI pineapple exported from Thailand, that the cooperating exporter Kuiburi Fruit Canning Co Ltd ("KFC") did not sell FSI canned pineapple domestically<sup>2</sup>.

Golden Circle submits that the Thai domestic market does include sales of canned pineapple (both consumer and FSI), particularly for consumption in restaurants and large-scale commercial hospitality end-uses (including hospitals and hotels), and extends beyond "expatriate" sales. TPC is the largest canned pineapple producer in Thailand and is expected to have domestic sales of canned pineapple on the Thai domestic market, including to institutional organizations. Golden Circle also contends that Tipco would similarly have domestic sales of canned pineapple in Thailand.

Customs and Border Protection is requested to rigorously investigate the extent of domestic sales in the consumer and/or FSI industries by the applicant companies on the Thai domestic market.

---

<sup>1</sup> Refer Trade Measures Report No. 173 b, P. 16.

<sup>2</sup> Refer Trade Measures Report No. 172 c, P.13.

6. Profit on s.269TAC(2)(c) normal values

In determining normal values for TPC in Report No. 173 (b), Customs and Border Protection did not apply a level of profit on TPC's constructed costs on the basis of the following comments:

*"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".*

Golden Circle considers that the above comments represent an untested presumption and cannot be relied upon. TPC is the largest canned pineapple manufacturer in Thailand and it is therefore reasonable to conclude that TPC would be operating profitably (when contrasted with other Thai canneries).

Golden Circle notes that Customs Amendment (Anti-Dumping Improvements) Bill (No. 2) 2012 repealed sub-section 269TAC(13) of the Customs Act to remove the limitation of determining profit when constructing a normal value (i.e. when there is an absence of domestic sales).

It is understood that the legislation removing s.269TAC(13) has passed both Houses of Parliament and is awaiting Royal Assent.

Golden Circle contends therefore that Customs and Border Protection is required to include a level of profit in any s.269TAC(2)(c) normal value (whether for TPC, or other exporter) in the absence of any domestic sales finding that does not permit normal values to be determined under s.269TAC(1).

7. Threat of Material Injury

TPC has requested the revocation of anti-dumping measures on its exports of consumer canned pineapple to Australia. Golden Circle is firmly of the view that the anti-dumping measures are necessary and required to prevent a recurrence of the material injury that the measures were intended to prevent.

It is understood that the decline in demand in Europe for pineapple juice concentrate and canned pineapple has contributed to high inventories and increased supply of product. Golden Circle submits that the removal of measures applicable to TPC would likely impact the Australian consumer market for canned pineapple as:

- TPC is a major supplier to the Australian market;
- TPC has well established distribution links into the Australian market;
- the exporter can readily divert product (including from inventories) to Australia for supply;
- TPC has been the subject of anti-dumping measures in other jurisdictions (i.e. USA);
- Anti-dumping measures were applied to TPC for a five-year period and it is considered that TPC's application only twelve months following the imposition of the measures and this limited timeframe does not permit a reasonable assessment of a likelihood of future intention regarding export prices to Australia (i.e. whether future exports will be at dumped prices).

In addition, Golden Circle would highlight that it has recently [*commercially sensitive sales information*] for the supply of [*certain*] canned pineapple as follows:

[*Commercially sensitive sales information*]

In the event the measures on TPC were revoked it is likely that the [*commercially sensitive sales information*] (highlighted above) would be threatened through reduced price offers from TPC.

8. Summary

Golden Circle is the sole Australian manufacturer of consumer and FSI pineapple. Golden Circle will provide Customs and Border Protection with updated financial data reflecting the period of review for the announced review inquiries on consumer and FSI pineapple exported from Thailand.

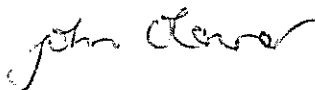
Golden Circle contends that the anti-dumping measures applicable to TPC on consumer canned pineapple exported to Australia should not be revoked as it is likely that the revocation of the measures would result in the recurrence of material injury that the measures were intended to prevent.

In reviewing the measures applicable to consumer and FSI canned pineapple exported from Thailand, Golden Circle submits:

- Customs and Border Protection should vigorously examine the extent of domestic sales of consumer and FSI canned pineapple in Thailand; and
- in the absence of an adequate level of domestic sales on the Thai domestic market, normal values constructed under s.269TAC(2)(c) require the inclusion of a level of profit.

If you have any questions concerning this submission, please do not hesitate to contact Golden Circle's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



John O'Connor  
Director

Cc: **Ms Leh Tan**  
**Legal Counsel – Heinz Asia Pacific**