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17 April 2013

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

## For Public File

Dear Ms Garabed

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

### TPC Exporter Visit Report

As you are aware I represent Golden Circle Limited ("Golden Circle") in the Consumer pineapple and Food Service Industry ("FSI") and Industrial pineapple reviews.

The exporter visit report (the "Report") for Thai Pineapple Canning Industry Corp Ltd ("TPC") was recently published in respect of consumer pineapple and FSI and industrial pineapple exported from Thailand. Golden Circle would like to highlight certain matters arising from the Report.

### SAICO/TPC

The Report indicates that in December 2005, TPC purchased 90.69 per cent of Siam Agro Industry Pineapple and Others Public Company. The Report indicates that In 2010 *"TPC was restructured so that it became a holding company in SAICO and the operation of TPC was transferred under the official corporate purview of SAICO"*. Following the restructure, the organization became known as the Siam Agro-Food Industry public Company Limited ("SAICO").

Customs and Border Protection has characterized TPC as a corporate limb of SAICO (the principle commercial entity) despite TPC having the majority ownership in SAICO. Customs and Border Protection considers SAICO and TPC to be the "same corporate entity".

Golden Circle anticipates that in light of the discussions concerning ownership and restructuring of TPC and SAICO it could be expected that there are certain administrative overheads associated with each of the corporate entities.

TPC has indicated that all consumer pineapple exports to Australia have been undertaken under the TPC trading name. Prospective exports of FSI and industrial pineapple will be by SAICO.

It is further understood that SAICO operates two production facilities in Thailand located at Pranburi and Rayong. The Pranburi facility is referred to as the "TPC factory" whilst the Rayong facility is referred to as the "SAICO factory".

### Consumer pineapple exported by TPC

It is noted that some consumer pineapple exported by TPC is negotiated via an intermediary customer agent. Whilst it is asserted that the role of the sales agent is purely as an intermediary, it cannot be assumed that this role is conducted on a 'no cost' basis.

Golden Circle considers that an upward adjustment to TPC's normal value for consumer pineapple is required to account for the cost of the intermediary sales agent.

### Domestic sales by TPC

Customs and Border Protection was advised by SAICO that it sold domestically "a very small volume of consumer pineapple to traders registered in Thailand". SAICO understood that these sales were subsequently exported by the identified traders. As such, TPC does not have any domestic sales of consumer pineapple upon which normal values under s.269TAC(1) can be determined.

It was also claimed that TPC sold only a small volume of FSI and industrial pineapple domestically in Thailand and that SAICO no longer sells FSI and industrial pineapple on the domestic market. Similarly, normal values for SAICO for FSI and industrial pineapple cannot be assessed under s.269TAC(1).

### TPC/SAICO Cost to Make and Sell

Customs and Border Protection verified TPC/SAICO's costs for the production and sale of consumer and FSI and industrial pineapple for the investigation period. The key raw material costs included pineapples, canning materials, and sugar.

The Report details Customs and Border Protection's verification of the pineapple fruit and canning costs. Thereafter, however, the Report is silent as to the verification of production overheads, selling and general administration expenses (including corporate overheads). The reference to depreciation at Section 7.2.2 is unclear.

The Report does not evidence the extent to which Customs and Border Protection has fully verified TPC/SAICO's fully absorbed costs associated with the manufacture and sale of the goods the subject of the reviews.

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

SAICO contended that the only market for canned pineapple in Thailand was for sales by supermarkets in expat areas in Bangkok. It further indicated that it has profitable domestic sales in 2005, however, subsequent to then the domestic sales were unprofitable and the company had withdrawn supply from the market.

Golden Circle indicated in its submission of 25 January 2013 that it was aware of domestic sales in Thailand of the goods under consideration. Golden Circle also understands that Customs and Border Protection has conducted verification visits with other Thai canned pineapple exporters of consumer pineapple to Australia. One of the Thai exporters – Dole Thailand Limited – sells canned pineapple in Thailand through its subsidiary company, Thai American Food Co. ("TAF") – See Dole Thailand Exporter Questionnaire response.

In the absence of a level of profit on TPC/SAICO's selling prices in Thailand (for both consumer and FSI and Industrial pineapple), Customs and Border Protection can readily utilize the profit achieved by another producer/seller on the Thai domestic market (including from Dole Thailand Limited's related company TAF).

Golden Circle therefore does not consider it reasonable for Customs and Border Protection to not include a level of profit in TPC/SAICO's normal values.

Golden Circle requests Customs and Border Protection to revise preliminary normal values for TPC and SAICO and include a level of profit in the constructed s.269TAC(2)(c) normal values for TPC/SAICO's consumer and FSI and industrial pineapple.

### Third country sales

The Report indicates that TPC considers *"characteristics of its exports to third country markets differ considerably to its exports to Australia in relation to different products exported, differences in the commercial relationships with customers including typical trends of volume of export and the terms of sale prevailing market conditions"* (sic).

The United States has previously applied anti-dumping measures on canned pineapple exported from Thailand. Golden Circle does not consider that there are considerable differences between goods sold by TPC/SAICO for export to other countries when compared with its exports to Australia. The canned pineapple produced and sold by TPC/SAICO across the various export markets (including the EU, USA, New Zealand) are alike to the goods exported to Australia and are not so different to be considered unsuitable for comparison purposes.

### Revocation

Golden Circle has previously detailed reasons as to why the anti-dumping measures on consumer pineapple exported by TPC should not be revoked (refer to 25 January 2013 submission).

In Section 11 of the Report, TPC argued that the dumping margins determined in the 2010 investigation were due to "unforeseen increases in production costs" experienced by TPC.

Golden Circle submits that the reduction in pineapple raw material costs in this review investigation period will likely translate to reduced normal values for TPC's exports of consumer pineapple. There can be no assurance, however, that production cost increases that occurred in 2010 will not again arise in the future, and TPC will again export at dumped prices that cause material injury to the Australian industry.

Golden Circle restates earlier representations that grounds do not exist for the revocation of anti-dumping measures on consumer pineapple exported to Australia by TPC as it is likely, in the absence of anti-dumping measures, material injury to the Australian industry will reoccur.

### Conclusions

Golden Circle understands that TPC/SAICO has sought to be treated as a single entity for the purposes of the current review inquiries. The discussion of the restructure of TPC/SAICO's ownership arrangements indicates that there exist corporate charges (that would require allocation for the purposes of normal values. The Report does not indicate to what extent Customs and Border Protection has undertaken a verification of TPC/SAICO's overhead, and selling and general administration expenses.

Golden Circle considers that TPC/SAICO's normal value requires an upward adjustment to reflect the role of an agent on certain sales to Australia.

Golden Circle also submits that the available information contained in the exporter questionnaire response of another Thai exporter of canned pineapple indicates that it has domestic sales of like goods. Golden Circle requests Customs and Border Protection to amend TPC/SAICO's constructed normal values to include an appropriate level of profit.

The reasons put forward by TPC that export sales to third countries differ considerably to the goods exported to Australia cannot be accepted, particularly in respect of canned pineapple exported to markets including the EU, Canada and New Zealand.

Finally, Golden Circle does not consider that the anti-dumping measures on consumer pineapple exported by TPC to Australia should 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.

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

A handwritten signature in black ink, appearing to read 'John O'Connor', written in a cursive style.

John O'Connor  
Director

Cc: Ms Leh Tan  
Legal Counsel – Heinz Asia Pacific