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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: Statement of Essential Facts No. 195A, 195B and 196 – Review of Variable Factors applicable to consumer and FSI pineapple exported from Thailand, and Revocation of measures on consumer pineapple exported by TPC of Thailand

1. Introduction

I refer to the following Statement of Essential Facts ("SEF") published in respect of certain canned pineapple exported from Thailand:

- SEF No. 195A – Review of variable factors on consumer pineapple exported from Thailand;
- SEF No. 195B – Revocation review of consumer pineapple exported from Thailand by the Thai Pineapple Canning Industry Co., Ltd ("TPC"); and
- SEF No. 196 – Review of variable factors (i.e. dumping measures) on food service and industrial ("FSI") pineapple exported from Thailand.

Golden Circle Limited ("Golden Circle") is the sole Australian manufacturer of consumer and FSI canned pineapple. Golden Circle welcomes the preliminary findings detailed in each of the above-mentioned SEF's. Golden Circle offers the following comments in respect of each investigation and its findings.

2. SEF No. 195A – Review of variable factors – consumer pineapple

This review followed an application by Siam Agro-Food Industry Public Co., Ltd ("SAICO") that requested a review of the variable factors applicable to consumer pineapple exported to Australia by TPC.

Customs and Border Protection received exporter questionnaire responses from Kuiburi Fruit Canning Co Ltd ("KFC"), TPC and Tipco Foods Public Company Limited ("Tipco"). Exporter verification visits were conducted with each company. KFC and Tipco did not export consumer pineapple to Australia during the investigation period.

Normal values for each exporter were determined in accordance with s.269TAC(2)(c) of the *Customs Act 1901*, using quarterly production costs, an amount for selling and general administration expenses, and an amount for profit.

SEF No. 195A details the approach followed by Customs and Border Protection to arrive at a level of profit to apply to the exporter's costs in the construction of the respective normal values. TPC did not have domestic sales of consumer pineapple during the investigation period. It therefore was not possible to determine a level of profit based upon s.269TAC(1) domestic sales as required by *Customs Regulation 181A(2)*. Where the Minister cannot determine a level of profit in accordance with *Regulation 181A(2)*, regard must be given to the requirements of *Regulation 181A(3)* that outlines the options for the Minister to consider. These include:

- (a) by identifying the actual amounts realized by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
- (b) by identifying the weighted average of the actual amounts realized by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
- (c) by using any other reasonable method and having regard to all relevant information (subject to *Regulation 181(4)*).

Regulation 181A(3) reflects the requirements of the WTO's Article 2.2.2(i) of the *Agreement in implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement).

As TPC did not have any domestic sales of consumer or FSI pineapple in Thailand, Customs and Border Protection used the weighted average profit for FSI pineapple sold in Thailand by two other exporters, Dole Thailand Limited ("DTL") and KFC. The weighted average profit applied of 17 per cent did not exceed the highest amount of profit achieved by either DTL or KFC.

Using a constructed normal value methodology incorporating TPC's production costs, amounts for selling and general administration, and an amount for profit (based upon the weighted average calculation), Customs and Border Protection has calculated normal values for TPC that could be relied upon in the absence of s.269TAC(1) domestic sales information.

Customs and Border Protection used the same normal value methodology for constructing normal values for Tipco.

As KFC had domestic sales of FSI pineapple in Thailand throughout the investigation period, Customs and Border Protection applied a level of profit to KFC's constructed normal value for consumer pineapple based upon its FSI rate of profit.

Golden Circle considers it is entirely appropriate for a level of profit to be included in constructed normal values for Thai exporters of consumer (and FSI) pineapple. The Australian industry should not be required to compete with export prices that do not contain a margin for profit, as this would result in the likely demise of the Australian industry manufacturing like goods.

3. SEF No. 195B – Revocation review of measures - exports of consumer pineapple by TPC

TPC requested the revocation of anti-dumping measures applicable to its exports of consumer pineapple from Thailand. Following investigation, Customs and Border Protection proposes to recommend to the Minister that the measures applicable to TPC remain in place.

Customs and Border Protection's investigations into TPC's exports of consumer pineapple during the investigation period established that the goods were not at dumped prices. However, TPC's export prices during the investigation period were influenced by the dumping measures applied to TPC in 2010. Specifically, Customs and Border Protection concluded that it was satisfied that "*this increase in contractual export price is a reaction to the measures in force in relation to the GUC.*"

Customs and Border Protection was further satisfied *"that there are no other reasonable explanations or commercial influences for this marked price increase other than the imposition of the measures and that, but for the measures, this increased contractual price margin would not have occurred."*

The cost of the raw material pineapple in Thailand is *"inherently volatile and subject to significant fluctuation due to a number of factors including, but not limited to climatic changes and restrictions in export markets and currency"*. Customs and Border Protection assessed that on the basis of the available facts, it was satisfied that TPC's export prices did not adequately account for fluctuations in raw material prices and that contracted prices did not vary to reflect significant variations in TPC's costs.

On this basis Customs and Border Protection concluded that there exist reasonable grounds to believe that *"these perpetuating factors may result in a recurrence of TPC selling to Australia at dumped prices and the material injury that measures were intended to prevent."*

Golden Circle agrees with Customs and Border Protection's assessment. The volatility in raw material prices (both raw material pineapple fruit and tin steel) can result in significant shifts in production costs that are not reflected in contractual arrangements. Golden Circle supports the finding that in the absence of measures any sharp and significant increase in costs would not likely be reflected in TPC's export prices to Australia, thus resulting a recurrence of dumping and material injury to the Australian industry that the measures were intended to prevent.

Golden Circle endorses the proposed recommendation for dumping measures to be retained in respect of TPC's exports of consumer pineapple to Australia.

4. SEF No. 196 – Review of variable factors – FSI pineapple

Golden Circle notes that following an investigation into each of the variable factors applicable to FSI pineapple exported from Thailand, it has determined that export prices to Australia have increased and that normal values have 'generally' increased.

Customs and Border Protection received exporter questionnaire responses from the following companies:

- Dole Thailand Limited ("DTL");
- Kuiburi Fruit Canning Co., Limited ("KFC");
- Natural Fruit Co., Ltd ("Natural");
- Prime products Industry Co., Ltd ("Prime Products");
- Siam Agro-Food Industry Public Company Limited ("SAICO");
- Takerng Pineapple Industrial Co., Ltd ("Takerng");
- Tipco Foods Public Company Limited ("TIPCO"); and
- V&K Pineapple Canning Co., Ltd ("V&K").

DTL, KFC, Natural, SAICO and Tipco provided completed questionnaire responses and were visited by Customs and Border Protection. DTL's normal values for FSI pineapple were determined under s.269TAC(1) based upon domestic sales of FSI pineapple in Thailand. KFC, Natural, SAICO and Tipco's normal values were determined under s.269TAC(2)(c) based upon production costs, plus amounts for selling and general administration and an amount for profit.

A level of profit was determined as per the methodology adopted for applying profit to constructed costs for consumer pineapple (i.e. the weighted average profit applicable to FSI sales by DTL and KFC).

Golden Circle welcomes the inclusion of a level of profit in the constructed normal values for KFC, Natural, SAICO and Tipco. For the reasons outlined above, Golden Circle does not consider that it

should be required to compete with imports that do not have a profit component included in the export price. The inclusion of a level of profit is necessary to ensure that the Australian industry can compete efficiently and re-invest over the medium to long term.

5. Forms of anti-dumping duty to apply to future exports of consumer and FSI pineapple

Golden Circle understands that recent amendments to the *Customs Act 1901* ("the Act") and the *Customs Tariff (Anti-Dumping) Act 1975* (the "Dumping Duty Act"), will take effect from 11 June 2013.

The changes will impact the "form" anti-dumping measures may take following imposition by the Minister.

The new forms of duty to be prescribed will include:

- a combination of fixed and variable duty method (as currently applied);
- a floor price duty method;
- the fixed duty method; or
- *ad valorem* duty method (i.e. a percentage of the Free-On-Board export price).

Golden Circle considers that the appropriate duties to apply to future exports of consumer and FIS pineapple should reflect either:

- a combination of fixed and variable duties (as has applied historically); or
- a floor price set at the lower of the normal value and the non-injurious price.

The above review investigations have indicated that raw material pricing for the goods under consideration are 'inherently volatile', hence it is likely that price volatility would flow through to export prices. In the event an *ad valorem* measure were applied, it is likely that the Australian industry would be exposed to injurious prices where export prices have declined sharply.

Golden Circle, therefore, does not support the application of a fixed duty or an *ad valorem* duty due to the likely volatility associated with export price movements (influenced by raw material costs).

6. Conclusions

Golden Circle welcomes Customs and Border Protection's preliminary findings that will result in:

- changes to the variable factors for consumer pineapple exported to Australia from Thailand;
- the retention of dumping measures on consumer pineapple exported to Australia from Thailand by TPC (i.e. no revocation of measures); and
- changes to the variable factors for FSI pineapple exported to Australia from Thailand.

Specifically, Golden Circle welcomes the inclusion of a level of profit in constructed normal values for Thai exporters of consumer and/or FSI pineapple as determined under s.269TAC(2)(c) that is in accordance with Regulation 181A(3).

Golden Circle also considers that the form of dumping measures to be applied to future exports of consumer and FSI pineapple should be based upon either the combination (i.e. fixed and variable components as currently apply), or a floor-price methodology.

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