

MinterEllison

FOR PUBLIC RECORD

17 July 2016

BY EMAIL

The Director
Operations 3
Anti Dumping Commission
GPO Box 1632
Melbourne VIC 3001

Dear Director

Continuation Inquiry - SEF 333 (in part) – Pineapple prepared or preserved in containers not exceeding 1 litre (consumer pineapple) exported to Australia from the Philippines

Introduction

We act for Dole Philippines Inc (**DPI**) in relation to the above matter. This submission focuses on the consequences of the incorrect calculation by the Commission of the current preliminary dumping margin for DPI and is in addition to our earlier submissions of 1 July 2016 setting out the reasons why the Commissioner must abandon continuation Inquiries 333 and 334.

We submit that the Commissioner under s.269ZHF(1)(a)(ii) of the *Customs Act 1901* (Cth) must recommend to the Assistant Minister that the dumping duty notice published in *Gazette No. S185* of 10 October 2006 relating to the above goods cease to apply to Dole Philippines Inc (DPI). Our submission is based on the following points:

- there is no evidence of any dumping, calculated according to law, by DPI since calendar year 2010 and at that time the margin was close to *de minimis* (2.6%) and consequently there is no possibility of a 'continuation' of dumping;
- there is no evidence to support any contention by the Commissioner that the expiration of measures would lead or be likely to lead to a recurrence of the dumping attributed to DPI in 2010;
- absent the likelihood of any recurrence of dumping by DPI, the continued application of a dumping duty notice to DPI cannot be maintained as no likelihood of causation of material injury can be attributed to dumped exports by DPI;
- even if there was a likelihood of recurrence of dumping by DPI there is no evidence that any continuation or recurrence of material injury to Golden Circle Limited (GCL) could be attributed to exports by DPI.
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Evidence of Dumping

Report 172b of 9 July 2011 found dumping of 2.6% by DPI in 2010 and resulted in the imposition of an ad valorem dumping duty of that amount and the introduction of a floor price equal to the Company's ascertained export price in 2010. The fob export price of exports by DPI of consumer pineapple in each year since 2010 has been greater than the sum of the floor price plus the dumping duty. Bearing in mind that DPI accounts for the major proportion of consumer pineapple exports from the Philippines, the absence of any dumping is confirmed by trade statistics that show that from 2011-2015 the fob price for exports of consumer pineapple from the Philippines increased by over 60%.

The Commissioner's recommendation that the Assistant Minister should publish a continuation notice applying to consumer pineapple from the Philippines is based in large measure on his preliminary finding that in 2015 DPI's export price was 6.2% less than the normal value of the goods. That preliminary finding is incorrect in that it substantially overstates the normal value of the goods by failing to make adjustments for a number of matters that impact on a fair comparison of domestic and export prices. When those adjustments are made it will be clear that in 2015 there was no dumping by DPI.

Recurrence of Dumping

In the absence of any dumping by DPI over the past five years, there are no reasonable grounds on which the Commissioner could be satisfied that, if the dumping duty notice ceased to apply to DPI, there would be a recurrence of dumping by the company. In fact the evidence is all to the contrary. Over a five year period of supplying undumped exports to Australia, DPI has increased market share primarily at the expense of imports from Thailand and countries not subject to the anti-dumping notice¹. Put simply, in maintaining its market position in Australia, DPI has no need to reduce export prices below properly comparable normal values in the Philippines.

Recurrence of Material Injury

Although unnecessary to the decision to cease to apply the dumping duty notice to DPI, we turn now to the purely hypothetical situation of a recurrence of dumping by DPI. Again the relevant evidence supports the view that any recurrence of dumping would not cause material injury. In Report 172b² the ACBPS accepted DPI's argument that its dumped exports in 2010 did not cause material injury to GCL. The authority also observed that an undumped price tendered by DPI would have been lower than a GCL tendered price³. A few weeks earlier in SEF 172b the

¹ SEF 333: p.18

² *ibid.* p.23.

³ *id.*

ACBPS had observed that an undumped tender price from DPI was significantly below the Australian industry's cost of production.

The magnitude of GCL's lack of competitiveness is revealed by the Commission's preliminary findings in the current inquiry that ...*the NIP is higher than the normal values for all exports of the goods from the Philippines*⁴ ... and the dumping margin for 'other exporters' is 25%⁵. Clearly, DPI's undumped prices remain significantly below GCL's production costs.

The Commission's confused approach to this issue is revealed in the statement that:

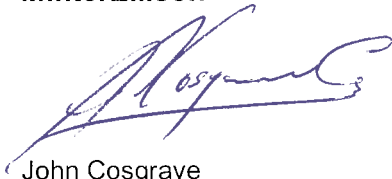
*It is acknowledged that the Australian industry's CTMS is higher than the CTMS in the Philippines and Thailand, however Golden Circle's consumer pineapple business is competitive...*⁶

In addition to concealing the magnitude of the competitive disadvantage, the two assertions in the statement are obviously incompatible and fail to acknowledge, in the words of the Commission, the degree to which this disadvantage completely outweighs any future injury which may be caused by the removal of measures.

In conclusion, we again submit that on the basis of the available evidence and a valid assessment of DPI's normal value in 2015, the Commissioner must recommend to the Assistant Minister that the dumping duty notice cease to apply to DPI.

Yours faithfully

MinterEllison



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⁴ *ibid.* p. 39

⁵ *ibid.* p. 34

⁶ *ibid.* p. 32