



**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

**REPORT  
NO. 333**

**INQUIRIES CONCERNING THE CONTINUATION OF  
ANTI-DUMPING MEASURES APPLYING TO  
CONSUMER PINEAPPLE  
EXPORTED FROM THE REPUBLIC OF THE PHILIPPINES AND  
THE KINGDOM OF THAILAND**

**11 AUGUST 2016**

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**ABBREVIATIONS**

ABF	Australian Border Force
ACS	Australian Customs Service
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant or Golden Circle	Golden Circle Limited
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CTMS	Cost to make and sell
Dole Philippines	Dole Philippines Inc.
the Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	Electronic public record
FOB	Free on board
FSI	Food Service and Industrial
FTA	FTA Food Solutions Pty Ltd
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Manual	<i>Dumping and Subsidy Manual</i>
NIP	Non-Injurious Price
the Parliamentary Secretary	the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
Pave	Pave Brands Limited
the Philippines	the Republic of the Philippines
Prime Products	Prime Products Industry Co. Ltd
the Regulation	<i>Customs (International Obligations) Regulation 2015</i>
REP 41	<i>Trade Measures Report No. 41</i>
REP 110	<i>Trade Measures Report No. 110</i>
REP 111	<i>Trade Measures Report No. 111</i>
REP 112	<i>Trade Measures Report No. 112</i>
REP 171b	<i>Trade Measures Branch Report No. 171b</i>
REP 171d	<i>Trade Measures Branch Report No. 171d</i>
REP 172b	<i>Trade Measures Branch Report No. 172b</i>
REP 172d	<i>Trade Measures Branch Report No. 172d</i>
SEF	Statement of Essential Facts
SG&A	Selling, general and administrative
Thailand	the Kingdom of Thailand
TPC	Thai Pineapple Canning Industry Corp Ltd
USP	Unsuppressed selling price
Woolworths	Woolworths Ltd

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1 Introduction

This final report (REP 333) is in response to an application by Golden Circle Limited (Golden Circle) seeking the continuation of the anti-dumping measures, in the form of dumping duty notices, applying to consumer pineapple exported to Australia from the Republic of the Philippines (the Philippines) and the Kingdom of Thailand (Thailand).

This final report sets out the findings and conclusions on which the Commissioner of the Anti-Dumping Commission (the Commissioner) has based his recommendations to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)<sup>1</sup> concerning the inquiries conducted by the Anti-Dumping Commission (the Commission) into the continuation of the anti-dumping measures applying to consumer pineapple exported to Australia from the Philippines and Thailand.

A separate report, report 334, has been issued in relation to the continuation inquiries into Food Service and Industrial (FSI) pineapple from the Philippines and Thailand.

## 1.2 Recommendation to the Parliamentary Secretary

The Commissioner recommends to the Parliamentary Secretary that he take steps to secure the continuation of the anti-dumping measures applicable to consumer pineapple exported to Australia from the Philippines and Thailand.

The Commissioner recommends that the dumping duty notices have effect as if the Parliamentary Secretary had ascertained different variable factors for all exporters.

## 1.3 Application of law to facts

### 1.3.1 Authority to make decision

Division 6A of Part XVB of *Customs Act 1901* (the Act)<sup>2</sup> sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting inquiries into the continuation of measures that exist in relation to certain goods.

### 1.3.2 Application

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 pineapple exported to Australia from the Philippines and Thailand.

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<sup>1</sup> The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

<sup>2</sup> All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated

On 29 January 2016, Golden Circle, a member of the Australian industry producing consumer pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.

### **1.3.3 Initiation of the inquiries**

*Consideration Report No. 333* and ADN 2016/21, available on the Electronic Public Record (EPR)<sup>3</sup> sets out the Commissioner's reasons for initiating the continuation inquiries.

### **1.3.4 Statement of essential facts**

The Commissioner must, within 110 days after the initiation of an inquiry, or such longer period as the Parliamentary Secretary allows under subsection 269ZHI(3), place on the public record a Statement of Essential Facts (SEF) on which the Commissioner proposes to base his recommendation to the Parliamentary Secretary.

In formulating the SEF, the Commissioner must have regard to the application concerned, any submissions concerning publication of the notice that are received within 37 days after the date of initiation of the inquiry and may have regard to other matters that he considers relevant.

The Commissioner published the SEF on 27 June 2016.

## **1.4 Findings and conclusions**

The Commissioner has made the following findings and conclusions based on available evidence.

### **1.4.1 The goods and like goods (Chapter 3)**

Locally produced consumer pineapple is like to the goods under consideration from the Philippines and Thailand.

### **1.4.2 Australian industry (Chapter 4)**

There is an Australian industry producing like goods, comprising of Golden Circle.

### **1.4.3 Australian market (Chapter 5)**

The Australian market for consumer pineapple is supplied by the Australian industry and imports, predominately from the Philippines and Thailand.

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<sup>3</sup> The EPR is located at [www.adcommission.gov.au](http://www.adcommission.gov.au). Refer to nos. 2 and 3 of EPR 333.

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### 1.4.4 Economic condition of the Australian industry (Chapter 6)

The Australian industry has shown recent improvement in its economic performance, however it remains susceptible to injury from dumped imports from the Philippines and Thailand.

### 1.4.5 Likelihood of dumping and material injury recurring (Chapter 7)

The Commission has found that:

- Australian importers have maintained distribution links with exporters of consumer pineapple from the Philippines and Thailand;
- exports of consumer pineapple from the Philippines and Thailand were dumped during the inquiry period (1 January 2015 to 31 December 2015);
- imported consumer pineapple from the Philippines and Thailand has undercut the Australian industry's selling prices; and
- if the measures were to expire, consumer pineapple from the Philippines and/or Thailand would likely be exported at increased levels of price undercutting that would lead to the continuation or recurrence of material injury to the Australian industry.

Based on the above findings, the Commissioner concludes that the expiration of the measures from the Philippines and/or Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures were intended to prevent.

### 1.4.6 Review of variable factors (Chapter 8)

The Commission has found that the variable factors in relation to consumer pineapple from the Philippines and Thailand have changed. Revised dumping margins have been calculated as set out below.

Country	Exporter	Dumping margin
The Philippines	Dole Philippines Inc.	5.9%
	All Other Exporters	22.9%
Thailand	All Exporters (except TPC)	9.2%

**Table 1: dumping margins**

### 1.4.7 Non-injurious price (Chapter 9)

The non-injurious price (NIP) is based on an unsuppressed selling price (USP) calculated as Golden Circle's cost to make and sell (CTMS) and an amount for profit.

### 1.4.8 Form of measures (Chapter 10)

In relation to both the Philippines and Thailand, the Commissioner recommends to leave the form of measures unchanged.

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## 2 BACKGROUND

### 2.1 Background

On 2 December 2015, in accordance with subsection 269ZHB(1), a 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 pineapple exported to Australia from the Philippines and Thailand.

On 29 January 2016, Golden Circle, a member of the Australian industry producing consumer pineapple, lodged an application for the continuation of the measures, which was within the applicable legislative timeframes.

### 2.2 Legislative framework

Division 6A of Part XVB sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures and preparing a report to the Parliamentary Secretary.

Subsection 269ZHE(1) requires that the Commissioner publish a SEF on which he proposes to base his recommendations to the Parliamentary Secretary concerning the continuation of the anti-dumping measures. Subsection 269ZHE(2) requires that, in doing so, the Commissioner must have regard to the application, any submissions relating generally to the inquiry received within 37 days of the initiation of the inquiry and may have regard to any other matters that he considers relevant. The SEF was published on 27 June 2016.

Pursuant to subsection 269ZHF(2), in order to recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

### 2.3 History of the anti-dumping measures

#### 2.3.1 Consumer pineapple from Thailand

On 8 January 2001, Golden Circle lodged an application, requesting, among other things, that the then Minister for Justice and Customs publish a dumping duty notice in respect of consumer pineapple exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 41) and published a dumping duty notice for consumer pineapple exported to Australia from Thailand.

On 26 February 2006, following consideration of applications by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on consumer pineapple exported to Australia from Thailand. 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 consumer

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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).<sup>4</sup>

On 15 April 2011, following consideration of applications by Golden Circle, a continuation inquiry and review of measures were initiated in relation to the anti-dumping measures imposed on consumer pineapple exported to Australia from Thailand. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report No. 171d* (REP 171d) and *Trade Measures Branch Report No. 172d* (REP 172d) to continue the anti-dumping measures applying to consumer pineapple (except by TPC) for a further five years and fix different variable factors in relation to the anti-dumping measures from 18 October 2011.

On 19 December 2012, a review of measures was initiated for consumer pineapple from Thailand following an application by Siam Agro-Food Industry Public Co., Ltd. The then Minister for Home Affairs, accepted the recommendations contained in *International Trade Remedies Branch Report No. 195A* and fixed different variable factors in relation to the anti-dumping measures.

The anti-dumping measures for Thailand (except by TPC) are due to expire on 17 October 2016.

### 2.3.2 Consumer pineapple from the Philippines

On 21 March 2006, Golden Circle lodged an application with the Australian Customs Service requesting, among other things, that the then Minister publish a dumping duty notice in respect of consumer pineapple exported to Australia from the Philippines.

The then Minister accepted the recommendations in *Trade Measures Report No. 112* (REP 112) and published a dumping duty notice for consumer pineapple exported to Australia from the Philippines. Following reinvestigation of certain findings, *Trade Measures Report No. 125* made a new finding in relation to the determination of an USP 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 Golden Circle, the then Australian Customs and Border Protection Service commenced a continuation inquiry in relation to the anti-dumping measures imposed on consumer pineapple exported to Australia from the Philippines. The then Minister for Home Affairs accepted the recommendations in *Trade Measures Branch Report No. 171b* (REP 171b) and *Trade Measures Branch Report No. 172b* (REP 172b), to continue the measures for a further five years and fix different variable factors in relation to the anti-dumping measures from 11 October 2016.

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<sup>4</sup> *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice & Customs* [2008] FCA 443.

The anti-dumping measures applicable to consumer pineapple exported to Australia from the Philippines are due to expire on 10 October 2016.

## **2.4 Submission regarding legality of the notices and inquiries**

Following the SEF, Dole Philippines Inc. (Dole Philippines)<sup>5</sup> submitted that the Commissioner's decision to initiate the continuation inquiries is invalid and should be revoked, Golden Circle's application should be rejected and the continuation inquiries should be abandoned. In particular, Dole Philippines' submission raised issues relating to:

- the validity of the original dumping notice in relation to the Philippines;
- the validity of Golden Circle's application in relation to the 2011 continuation inquiries and the present continuation inquiries; and
- the Commissioner's initiation of the present inquiries.

### **2.4.1 Commissioner's response**

#### The original dumping duty notice

Dole Philippines submits that the then Minister's declarations under subsections 269TG(1) and 269TG(2) of the Act and section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) were based upon erroneous recommendations and therefore the anti-dumping measures applied to consumer pineapple exported from the Philippines are not valid.

The 2006 application from Australian industry, which led to the original dumping duty notice against consumer and FSI pineapple from the Philippines, covered two types of pineapple fruit - prepared or preserved pineapple in syrup or juice in containers greater than 1L (FSI pineapple) and prepared or preserved pineapple in syrup or juice in containers not exceeding 1L (consumer pineapple). The application explicitly acknowledged separate markets for these goods and made separate assessments and claims relating to dumping, material injury and causal link for each good.

In Investigation No. 41 (relating to consumer and FSI pineapple from Thailand) the then CEO of ACS found that FSI pineapple and consumer pineapple were not "like goods" to each other due to various differences, including differences in end use and limited substitutability. In REP 41, FSI pineapple and consumer pineapple were treated as separate goods and the investigation undertook a separate injury analysis for each product and their respective market. REP 41 ultimately recommended that measures be imposed on this differentiated basis. REP 125 indicates that ACS considered the separate findings made in REP 41 to be applicable to investigation No. 112 and on the basis of those findings and the contents of the application lodged by Golden Circle, the investigation and REP 112 went on to treat consumer and FSI pineapple as separate goods. In the Commission's view this was not a redefinition of the goods under consideration. Rather, it was an analysis of whether certain goods are "like goods" to each other (as defined in subsection 269T(1)) and whether the effect of those goods on the Australian industry should be assessed using the Australian market as a whole or separate segments of the market. There is nothing in the Act which prohibits subdividing

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<sup>5</sup> No 16 of EPR 333

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the goods to consider them separately for the purposes of the dumping and injury analysis, and, in the Commission's view, it was appropriate for ACS to do so in this case as consumer and FSI pineapple were found to be different goods. Moreover, the Commission notes that in all of the subsequent and related proceedings since the imposition of anti-dumping measures on goods from the Philippines in 2006, FSI and consumer pineapple have consistently been treated as separate goods sold into separate segments of the Australian market.

Dole Philippines also submits that what was done in investigation 112 involved the unlawful application of separate variable factors and was inconsistent with *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, which found that dumping cannot exist for only a type, model or category of a product.<sup>6</sup> The Commission is of the view that what was done in investigation 112 is distinguishable from the federal court's judgment in *Panasia*. In particular, *Panasia* addressed the Commission's practice of calculating different dumping margins for different subsets of the same good whereas in investigation 112 consumer pineapple and FSI pineapple were found to be different goods and the entire investigation was considered on that basis (i.e. separate dumping margins were calculated and separate injury and causation analyses were conducted for each separate good).

### The 2011 Inquiries

Dole Philippines submits that the 2011 continuation of the anti-dumping measures was invalid because Golden Circle lodged a single application relating to three dumping duty notices which resulted in four separate reports.

It is acknowledged by the Commission that there are currently three original dumping duty notices in place relating to pineapple – one dumping duty notice which covers consumer and FSI pineapple from Thailand, one which covers consumer pineapple from the Philippines and one which covers FSI pineapple from the Philippines.

The Commission notes that there was no explicit requirement in Division 6A that a separate application for a continuation inquiry must be lodged in respect of each set of anti-dumping measures that an applicant is seeking to have continued. Therefore, in the Commission's view, the fact that the 2011 application referred to more than one set of measures is not, in and of itself, a basis for rejecting an application that otherwise complies with section 269ZHC and appears to contain reasonable grounds for asserting that the expiration of the measures to which the application relates might lead, or might be likely to lead, to a continuation or recurrence of, the material injury that the measures are intended to prevent.

In addition, the then section 269ZHC did not expressly require that the application identify the original dumping duty notices. While it does require that the application contain the information required by the approved form, the approved form at that time did not expressly require that the original dumping duty notices be identified. The form only required details of the current anti-dumping measure(s) the subject of this continuation

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<sup>6</sup> [*Panasia*].

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application, including: tariff classification; the countries or companies specified; and the date of publication of the measures. Those details were included in the application.

Turning next to the initiation of the 2011 continuation inquiries, there was no explicit requirement in the then subsection 269ZHD(5) that an initiation notice must only relate to one set of anti-dumping measures. In fact, subsection 269ZHD(5) refers to goods and measures in the plural, which suggests that a notice may cover more than one good or more than one set of measures. Similarly, there was nothing in the then Division 6A which prescribes the number of reports that must be published following an inquiry. In 2011 the then CEO of Australian Customs and Border Protection decided to provide the then Minister with four separate reports and the Commission does not see that the CEO's decision to do so is contrary to the Act.

### The present continuation inquiries

Dole Philippines submits that ADN 2015/136 is not a valid notice for the purposes of section 269ZHB, that Golden Circle's application did not comply with subsections 269ZHB and 269ZHC and, as a result, the Commissioner's decisions not to reject the application and the public notice of his decision to initiate inquiries did not meet the requirements of the Act.

The Commission notes that ADN 2015/136 does refer to the anti-dumping measures that are due to expire, that is, certain pineapple fruit and consumer pineapple from Thailand and the Philippines. In addition, subsection 269ZHB(1)(a) does not expressly require separate notifications for each set of anti-dumping measures nor does it prohibit a notice under that section from providing notification in relation to more than one set of measures. Although the Commissioner's notice under section 269ZHB did not specifically reference the original dumping duty notices, the Commission is of the view that effective notice was given as ADN 2015/136 identified the relevant measures by providing details of the goods, the countries to which the notices apply, the continuation notices which continued the original measures and the expiry day of the measures. The effectiveness of the notice is confirmed by the fact that an application for the continuation of the measures was lodged by the Australian industry in response to this notice.

As noted above, section 269ZHC does not expressly require that an application identify the original dumping duty notices. While it does require that the application contain the information required by the form approved by the Commissioner, the approved form does not expressly require that the original dumping duty notices be identified. Section 5 of the form requires that the applicant provide the 'specified date of publication of the measure'. Although the application does not identify the full date of publication of the original measures, it does identify the year that notice of the measures was published and the date of publication of the continuation notice. Therefore, and as noted in the consideration report,<sup>7</sup> the Commissioner is satisfied that the application provided sufficient detail to identify the original notices by providing details of the continuation of those notices, and the goods and countries the subject of those notices. Accordingly, the Commissioner did not reject the application for non-compliance with section 269ZHC.

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<sup>7</sup> No. 3 of EPR for 333.

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Sections 269ZHB and 269ZHC do not expressly require that applications for the continuation of multiple anti-dumping measures be lodged separately. Golden Circle's application complied with sections 269ZHB and 269ZHC.

### Conjoining of countries for which there are separate anti-dumping measures

Although Golden Circle have combined its applications in respect of consumer and FSI pineapple from Thailand and the Philippines into one application, they have clearly set out separate requests for the continuation of the measures relating to the goods from each country.

As noted above, and in the relevant consideration report, the Commissioner was satisfied that the application met the requirements of section 269ZHD(2)(a) and (b). In addition there is no explicit requirement in section 269ZHD(5) that separate initiation notices must be published in respect of each set of anti-dumping measures to which a continuation inquiry relates. The notice published on 9 March 2016 gave effective notice of these continuation inquiries. Also as noted above, section 269ZHD does not require that the application considered by the Commissioner be in relation to only one set of measures as the provision expressly allows more than one application (and dumping duty notice) to be considered. Therefore, the initiation of inquiries following the publication of one initiation notice under section 269ZHD in relation to these anti-dumping measures is not necessarily a conflation of the separate measures/notices relating to Thailand and the Philippines. In this case, the Commissioner's consideration of the continuation of the measures in relation to each country is distinct and separate in the SEFs and final reports. Although the Commission has combined certain elements of these inquiries for administrative convenience, the SEFs and final reports contain separate analyses, findings and recommendations for each country. The decision to subdivide each of the inquiries into consumer pineapple and FSI pineapple, as discussed above, is based on an analysis of whether consumer and FSI pineapple are "like goods" to each other.

## **2.5 Conduct of inquiries**

### **2.5.1 Cooperation from interested parties**

Following initiation of the continuation inquiries, the Commission requested sales and CTMS data from Golden Circle and sent importer questionnaires and exporter questionnaires to importers and exporters of consumer pineapple from the Philippines and Thailand.

### **2.5.2 Australian industry**

The Commission did not identify any company other than Golden Circle (the applicant) manufacturing like goods in Australia.

The Commission conducted a verification visit at Golden Circle's Northgate, Queensland production facility on 6-7 April 2016 and at its head company Kraft Heinz Melbourne offices on 14 and 20 April 2016. A report of the visits is available on the EPR.<sup>8</sup>

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<sup>8</sup> No. 8 of EPR 333

### **2.5.3 Importers**

A response to the importer questionnaire was received from seven importers:

- FTA Food Solutions Pty Ltd (FTA);
- Woolworths Ltd (Woolworths);
- Pave Brands Limited (Pave);
- Grocery Holdings Pty Ltd;
- Juremont Pty Ltd;
- MacEwen Falconer and Company Limited; and
- SPC Ardmona Operations Ltd.

The Commission conducted verification visits to FTA, Woolworths and Pave during April and May 2016. The reports of these visits are available on the EPR.<sup>9</sup>

### **2.5.4 Exporters**

#### Thailand

A response to the exporter questionnaire for consumer pineapple was received from one exporter from Thailand, Prime Products Industry Co. Ltd (Prime Products).

Whilst the Commissioner is satisfied that Prime Products cooperated with the inquiry for Thailand, sufficient data was not available to enable the Commission to determine export price and normal value for Prime Products and, therefore, the Commission was unable to determine a dumping margin. Refer to section 8.4 below for further details.

#### The Philippines

A response to the exporter questionnaire for consumer pineapple was received from one exporter from the Philippines, Dole Philippines. The Commission considers that Dole Philippines has cooperated with the inquiry for the Philippines.

In May 2016, the Commission conducted an on-site verification of the information provided by Dole Philippines.

The Commissioner considers the information supplied by Dole Philippines to be reasonably complete, relevant and accurate and can be used for calculating a dumping margin. Refer to section 8.3 for further details.

## **2.6 Submissions in response to the SEF**

On 27 June 2016 the Commissioner published a SEF, inviting interested parties to make submissions by 17 July 2016.

The Commissioner has received 6 submissions in response to the SEF. These submissions and the Commissioner's response, are addressed in this report. Non-

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<sup>9</sup> Nos. 10,12 and 13 of EPR 333

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confidential versions of all submissions received following the publication of the SEF are listed below and are available on the EPR.

<b>EPR No.</b>	<b>Interested Party</b>	<b>Date Received</b>
16	Dole Philippines	1 July 2016
17	Prime Products	17 July 2016
18	Golden Circle	18 July 2016
19	Prime Products	18 July 2016
20	Dole Philippines	18 July 2016
21	Republic of Philippines Depart of Agriculture	9 August 2016

**Table 1: Submission received in response to SEF 333**

### 3 THE GOODS AND LIKE GOODS

#### 3.1 Finding

The Commissioner considers that the Australian industry (Golden Circle) produces consumer pineapple that has characteristics closely resembling consumer pineapple manufactured in the Philippines and Thailand and exported to Australia. Therefore, the Commissioner is satisfied that consumer pineapple manufactured by the Australian industry are like goods.<sup>10</sup>

#### 3.2 The goods

The goods subject to measures (the goods) are:

*Pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple).*

#### 3.3 Tariff classification

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

2008.20.00	Pineapples
2008.20.00/26	Canned, in containers not exceeding one litre
2008.20.00/28	Other

Consumer pineapple imported from the Philippines and Thailand is not subject to Customs Duty.

#### 3.4 Like goods

As discussed above, the issue of like goods was considered during the original investigation into consumer pineapple exported from Thailand in REP 41 and the original investigation into consumer pineapple exported from the Philippines in REP 112.

In REP 41 and REP 112, for consumer pineapple, the then ACS was satisfied that there was an Australian industry producing like goods to the goods under consideration.

Subsection 269T(1) defines like goods as '*goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration*'.

As outlined in the *Dumping and Subsidy Manual*<sup>11</sup> (the Manual), in assessing like goods, the Commission uses an analytical framework, which identifies different ways of

<sup>10</sup> In terms of subsection 269T(1).

<sup>11</sup> <http://adcommission.gov.au/accessadsystem/Pages/Dumping-and-Subsidy-Manual.aspx>

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examining likeness, namely physical likeness, commercial likeness, functional likeness and production likeness.

Golden Circle describes the locally produced like goods as prepared or preserved pineapple fruit in container sizes not exceeding one litre, typically sold into retail stores for the consumer market.

### **3.4.1 Physical likeness**

Golden Circle produces a range of pineapple products in container sizes of less than 1 litre. The range includes (but is not limited to) pineapple pieces, pineapple thins, pineapple slices and crushed pineapple. The products can be sold in containers in either syrup or natural juice.

As part of the continuation inquiries, the Commission verified the sales of consumer pineapple made by the Australian industry and importers during the inquiry period and is satisfied that the products are physically alike.

### **3.4.2 Commercial likeness**

Golden Circle claims that prepared or processed pineapple fruit is a price-sensitive product that competes directly with imports of the goods in the consumer market segment.

The Commission collected information during the inquiries that confirmed this direct competition through sales data supplied by importers and retailers.

### **3.4.3 Functional likeness**

Golden Circle stated that its locally produced products are directly substitutable for the imported goods.

The Commission collected information during the inquiries that confirmed the locally produced consumer pineapple and imported consumer pineapple are directly substitutable.

### **3.4.4 Production likeness**

Verified information from the Australian industry and exporters during the inquiries shows that the locally produced goods and imported goods are manufactured from similar raw materials using a similar manufacturing process.

### **3.4.5 Commissioner's assessment – like goods**

Based on the above findings, the Commissioner remains satisfied that there is an Australian industry producing like goods to the goods under consideration.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

Consistent with previous investigations and continuation inquiries, the Commission concludes there is an Australian industry that is producing like goods, consisting of Golden Circle.

### 4.2 Legislative framework

The Commissioner must be satisfied that the like goods are produced in Australia. Subsection 269T(2) specifies that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. Subsection 269T(3) provides that in order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Production process

Golden Circle is the sole producer of consumer pineapple in Australia. No other interested party has claimed during the inquiries to be an Australian producer of consumer pineapple.

A verification visit was undertaken to Golden Circle during the inquiries where the production process was observed and data was verified. A report of the visit is available on the EPR.<sup>12</sup>

### 4.4 Commissioner's assessment

Based on the production processes observed by the Commission during the verification visit to Golden Circle, the Commissioner considers that at least one substantial process in the production of consumer pineapple is carried out in Australia and is satisfied that consumer pineapple is wholly produced in Australia.

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<sup>12</sup> No. 8 of EPR 333

## 5 AUSTRALIAN MARKET

### 5.1 Finding

The Australian market for consumer pineapple is supplied by the Australian industry and imports, predominately from the Philippines and Thailand.

### 5.2 Background

The Commission used information from past investigations and inquiries and information collected during these inquiries in its examination of the Australian market for consumer pineapple.

The Commission established the size of the Australian market for consumer pineapple by using information from the Australian Border Force's (ABF) import database and information supplied by the Australian industry, importers and cooperating exporters.

Consumer pineapple is primarily sold to large retailers or to wholesalers that on-sell to retail chains and independent stores. The goods include consumer pineapple in the form of thins, slices, pieces, tidbits and crushed pineapple. The fruit is packed in either syrup or natural juice, predominantly in steel cans but may also be packaged in plastic containers and pouches.

Consumer pineapple is generally labelled and marketed in Australia as either:

- manufacturer branded product (e.g. "Golden Circle", "Dole", etc.)
- private label retailer branded product (e.g. "Woolworths Select"); or
- generic/homebrand product (e.g. "Homebrand", "Black and Gold", etc.).

Each market segment generally has a distinct price point relative to the other in the market, with manufacturer branded product being the most expensive and generic/homebrand product being the least expensive. Consumers generally regard manufacturer branded products as being of a higher quality and as such a price premium is attached to these products.

Over the past two years, in line with their product strategies, retailers are moving away from the generic/homebrand products to manufacturer branded or retailer branded products which compete more directly with the Australian industry.<sup>13</sup>

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<sup>13</sup> Source:

<http://ausfoodnews.com.au/2016/03/29/woolworths-ditches-homebrand-for-new-private-label-range.html>

<http://www.smh.com.au/business/retail/sorry-coles-and-woolies-we-dont-want-those-home-brands-except-at-aldi-20150521-gh6e3c.html>

<http://www.smh.com.au/business/retail/supermarket-chains-woolworths-and-coles-struggle-with-private-label-brands-against-aldi-20160609-gpfv5b.html>

<http://www.businessinsider.com.au/woolworths-leaves-the-door-open-for-aldi-by-dropping-its-select-brand-2016-6>

## **5.3 Market structure**

The Australian market is predominately supplied by Golden Circle and imports from the Philippines, Thailand and Indonesia. A small portion of the Australian market is supplied by other countries.

### **5.3.1 Australian industry**

The Australian industry for consumer pineapple mainly services supermarkets and wholesale distributors who on-sell to smaller retail outlets. Golden Circle estimates that the four main supermarket chains account for as much as 95 per cent of the retail level consumer pineapple sales in Australia. The four main supermarkets are Coles, Woolworths, Aldi and Metcash.

These key buyers typically negotiate price, volumes and incentives over a six month period with an expectation that those prices remain firm for 12 months.

Like most primary industries, pineapple availability is subject to weather and other disruptions and in 2014 and 2015 supply was a significant issue for Golden Circle, leading to a shortfall in available fresh pineapple for processing. As a result, Golden Circle was required to restructure the planned volumes into each market segment (consumer and FSI), ration available product to customers, and import Golden Circle branded product.

### **5.3.2 Global supply**

The global market for pineapple is dominated by production from a few large countries. The major pineapple growing countries are Costa Rica, Brazil, the Philippines and Thailand. The main pineapple products are fresh and processed (usually canned) pineapple.

Costa Rica is the largest producer of fresh pineapple. At the end of 2014, the two largest canners of processed pineapples were Thailand, with an estimated global market share of 47 per cent and the Philippines, with an estimated global market share of 16 per cent.<sup>14</sup>

Weather and market forces can change the supply and demand balance quickly. Weather impacts can cause global shortages from key pineapple producing countries, leading to higher global prices.

When fresh pineapple supply is reduced, the price of fresh pineapple increases. The availability of pineapple for sale to processors is further restricted as pineapple growers who might have otherwise sold to processors, sell into the fresh pineapple markets.

Pineapple production was disrupted in 2014 and 2015 which led to challenging times for the pineapple processors, for example:

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<sup>14</sup> Source: <http://www.statista.com/statistics/502716/global-canned-pineapple-export-value-share-by-country/>

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- *Costa Rican pineapple exports dropped 12 per cent by volume between January and July year-on-year driven by an adverse business environment that prompted the departure of 500 farmers.<sup>15</sup>*
- *Due to weather conditions since beginning of 2015, the total Thai Pineapple crop from January through August 2015 was 11 per cent shorter than last year same time period. The shortage of pineapple has led to quality issues as pineapple farmers are harvesting immature fruit because demand is so strong.<sup>16</sup>*
- *Prices for fresh pineapple from Thailand (the major producer of canned pineapples) rose significantly, up 70 per cent year on year and up 6 per cent month on month in June 2014. The rise is due to tight supplies caused by adverse weather conditions. Heavy rains in Thailand at the end of 2013 destroyed around 50 per cent of the crop due to be harvested in 2014 and this led to a reduction in supply and resulted in an increase in prices. Fresh pineapple production in Thailand in 2015 is projected to increase reaching 1.6m tonnes, up 18 per cent year on year. However, due to increased export demand, prices might remain at high levels as demand outweighs production.<sup>17</sup>*
- *In addition, some Philippine producers suffered significant stock losses due to extreme weather events, including typhoons in 2013 and 2015 leaving some processors unable to acquire enough stock for canning.*

Some analysts are predicting improved 2016 yields, while others believe that global production growth will not recover significantly until 2017.

### 5.3.3 Supply in the Philippines and Thailand

As noted above, production from the Philippines has been impacted by a significant shortage of fresh pineapple in 2015 and pineapple processors have not been able to fill all domestic and export orders. The Commission was informed by Dole Philippines that, like the Australian industry, pineapple processors from the Philippines have been rationing to lower priority customers and markets as a means of managing supply. Production is expected to improve in 2016 and beyond as both independent growers and integrated producers increase planting to meet demand.

Thailand also experienced a shortage of fresh pineapple in 2015, with integrated producers buying fruit from other suppliers in order to maintain supply volumes.

## 5.4 Australian market size and market share

Figure 1 below shows that while the Australian industry maintains the largest Australian market share, both the Philippines and Thailand now hold significant Australian market share. Figure 2 also shows that the Philippines achieved significant growth over the past few years.

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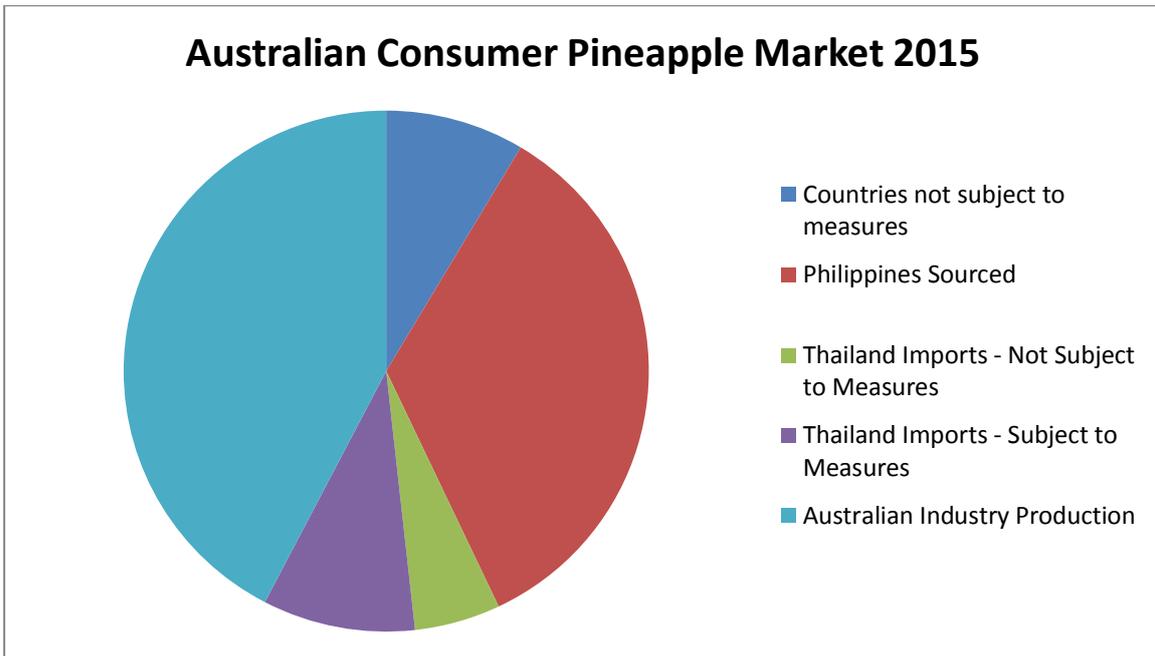
<sup>15</sup> Source: <https://www.agra-net.com/agra/foodnews/canned/canned-fruit/pineapple/costa-rican-pineapple-exports-slump-491354.htm>

<sup>16</sup> Source: <http://www.bwgroc.com/media/Market%20Report%202010-2-15.pdf>

<sup>17</sup> Source: <https://www.mintecglobal.com/2015/07/price-increase-fresh-thai-pineapples/>

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The vast majority of imports from countries not subject to anti-dumping measures in 2015 were imports by Golden Circle for use in its brand name product. When taken into account, the Australian market share in gross terms for Golden Circle is over 50 per cent.



**Figure 1 – Australian consumer pineapple market share 2015**

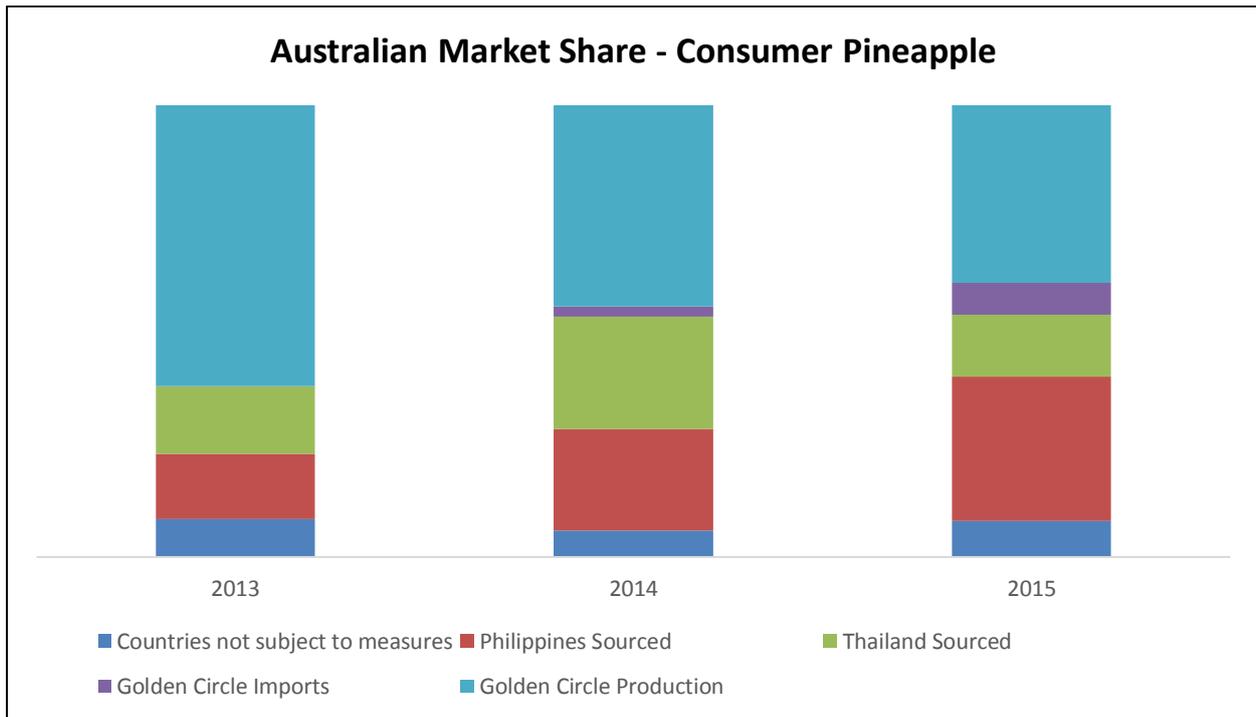
*Source: ABF import database combined with verified Golden Circle and exporter sales data*

As demonstrated in Figure 2 below, the Australian industry lost significant Australian market share in 2014 and although it lost further sales volumes and market share in 2015, its losses were restricted through the supplementation of local production with imported goods in 2014 and 2015.

Imports from the Philippines increased in 2014 and 2015 and appear to have displaced imports from Thailand exports (which fell significantly in 2015) and countries not subject to anti-dumping measures (which fell in 2014 and 2015 excluding Golden Circle’s imports<sup>18</sup>).

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<sup>18</sup> Had Golden Circle not supplemented its production with imported goods during 2015, imports from countries not subject to anti-dumping measures would be of insignificant volumes.



**Figure 2 - Australian consumer pineapple market share 2013 to 2015**  
 Source: ABF import database combined with verified Golden Circle and exporter sales data.

### 5.5 Pricing in Australia and importance of brand

‘Shelf pricing’ for consumer pineapple in Australia is related to brand value and quality (or perceived quality). Branded products such as the Golden Circle brand demand a higher retail price. Manufacturer branded and retailer branded product also seek a premium as a quality product; with “homebrand” style value products generally offered at the lowest prices.

Due to the ability of retailers to charge a higher shelf price, Golden Circle is able to negotiate a higher price from wholesalers and distributors.

In response to consumer sentiment, there has been increased price competition between major grocery chains over the seven years to 2014.<sup>19</sup> This trend has continued through 2015 and into 2016.

Over 90 per cent of the Australian market for consumer pineapple is controlled by the large supermarkets who have significant bargaining power. While quality and availability of supply is important to the large supermarkets, they are highly price competitive and are continually seeking cost advantages through the negotiation of lower prices from existing suppliers or switching of supply to lower cost alternatives.

<sup>19</sup> Source: <https://rirdc.infoservices.com.au/items/16-013>

## 5.6 Factors affecting supply and demand

### 5.6.1 Supply

The main factor affecting supply is the availability of raw pineapples. Golden Circle predominately contracts local growers to supply its production. Contracts operate for the year July to June. Pineapples take 18 months to grow and there are two harvest seasons, the main February to May season and a secondary season from September to October.

As mentioned previously, the Australian industry and exporters from the Philippines and Thailand were affected by supply shortages in 2013, 2014 and 2015 forcing canned pineapple producers to ration stock.

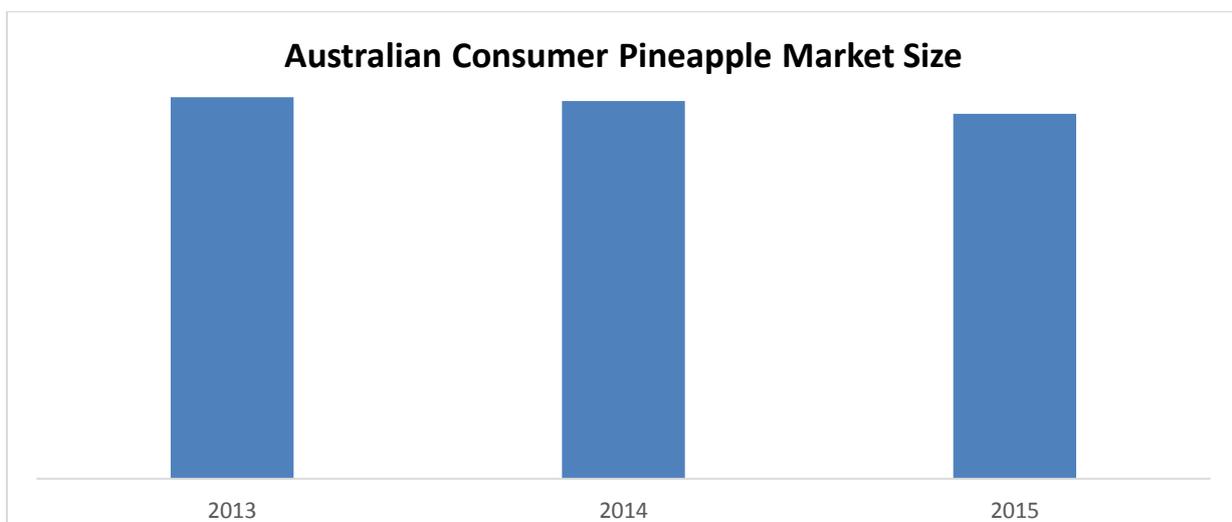
Both locally and internationally, including the Philippines and Thailand, consumer pineapple processors have the capacity to produce much higher volumes.

### 5.6.2 Demand

As mentioned in section 3.4, locally produced consumer pineapple and imported consumer pineapple are directly substitutable with each other. While there are some perceived quality differences, pricing is an important determinant in consumer's purchasing decisions, as evidenced by the volumes of lower priced product being purchased by consumers.

Initially, the "homebrand" value offerings obtained a significant share of the Australian market on the back of lower prices, however more recently, the "manufacturer" branded products hold a large and increasing proportion of the Australian market.

Demand for consumer pineapple is reasonably stable but has fallen slightly in recent years. Based on import statistics and the Australian industry sales data, the Australian market has reduced by 1 per cent in 2014 and a further 3 per cent in 2015. However, both the Australian industry and importers expect the Australian market to be generally stable year on year, typically moving with population growth. The Australian market is not expected to experience significant change in demand for the foreseeable future.



**Figure 3 – Australian market size 2011 to 2013**

*Source: ABF import database combined with verified Golden Circle and exporter sales data.*

## 6 ECONOMIC CONDITION OF THE AUSTRALIAN INDUSTRY

### 6.1 Finding

Australian market prices rose marginally in 2014 and to a greater extent in 2015 for both locally produced and imported consumer pineapple from the Philippines and Thailand. These price increases appear to reflect the tight supply conditions experienced in 2014 and 2015.

Based on analysis of verified Australian industry and importer data, sales of consumer pineapple by the Australian industry and traders were overall profitable in 2015.

Despite this recent improvement in profitability, the profitability has not been sustained for a significant period and the Commissioner is of the view that the Australian industry is currently experiencing injury from dumping and the expiration of the measures from either the Philippines or Thailand, would lead or be likely to lead to a continuation of, or a recurrence of the material injury that the anti-dumping measures are intended to prevent.

### 6.2 Australian industry claims

In its application, Golden Circled claimed that:

- import volumes of consumer pineapple from the Philippines and Thailand have continued in substantial volumes since the measures were last continued in 2011;
- imports from the Philippines and Thailand hold large proportions of the total import volumes into Australia in 2015;
- the Australian industry's sales volumes in the consumer pineapple market have deteriorated in 2014 and 2015; and
- the Australian industry is experiencing price undercutting from imported consumer pineapple from the Philippines and Thailand. This price undercutting has caused the selling prices for locally produced consumer pineapple to be lower than it otherwise would have been.

### 6.3 Approach to injury analysis

The Commission has analysed verified Golden Circle data to assess the economic performance of the Australian industry. The following analysis examines trends in respect of sales of local production and imports where noted, on a calendar year basis.

### 6.4 Volume effects

#### 6.4.1 Australian industry sales volumes

Trends in Golden Circle's sales volumes are illustrated in Figure 4 below. Figure 4 shows that Golden Circle's sales declined substantially in 2014 and stabilised in 2015.

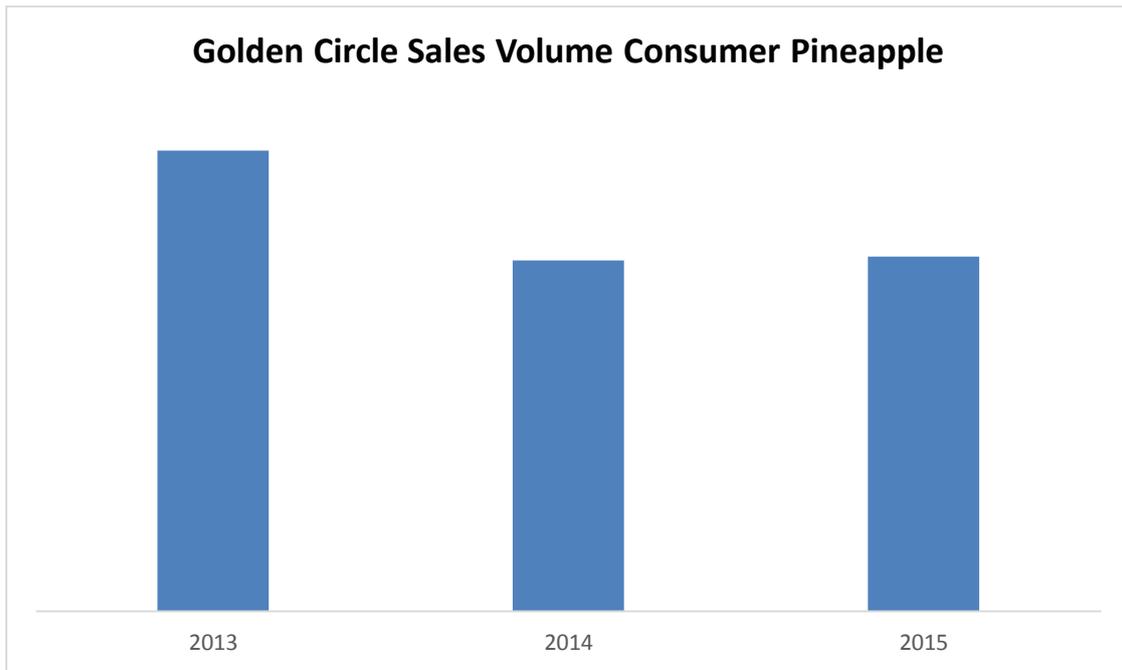


Figure 4 – Golden Circle’s Consumer Pineapple Sales Volumes 2013 to 2015  
 Source: Golden Circle

6.4.2 Import volumes

As shown in Figure 5, after initially declining following the 2011 continuation inquiries, import volumes of consumer pineapple from the Philippines and Thailand rose significantly in 2014. While import volumes from Thailand reduced in 2015, import volumes from the Philippines continued their rapid growth capturing significant market share.

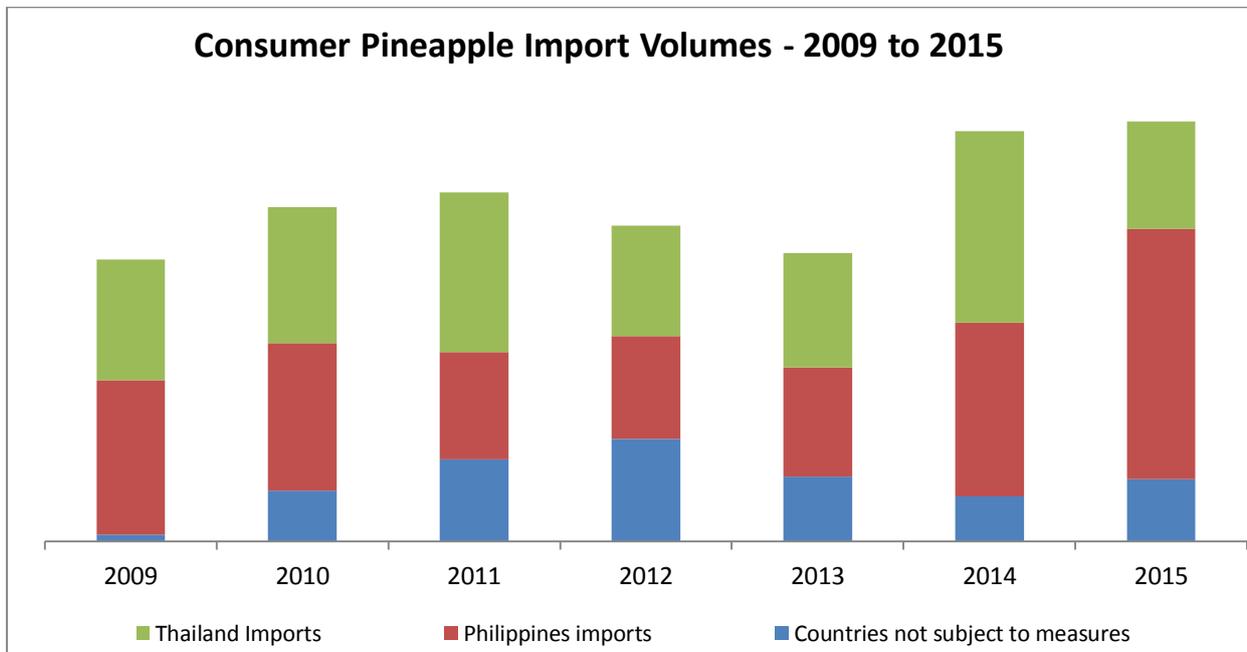
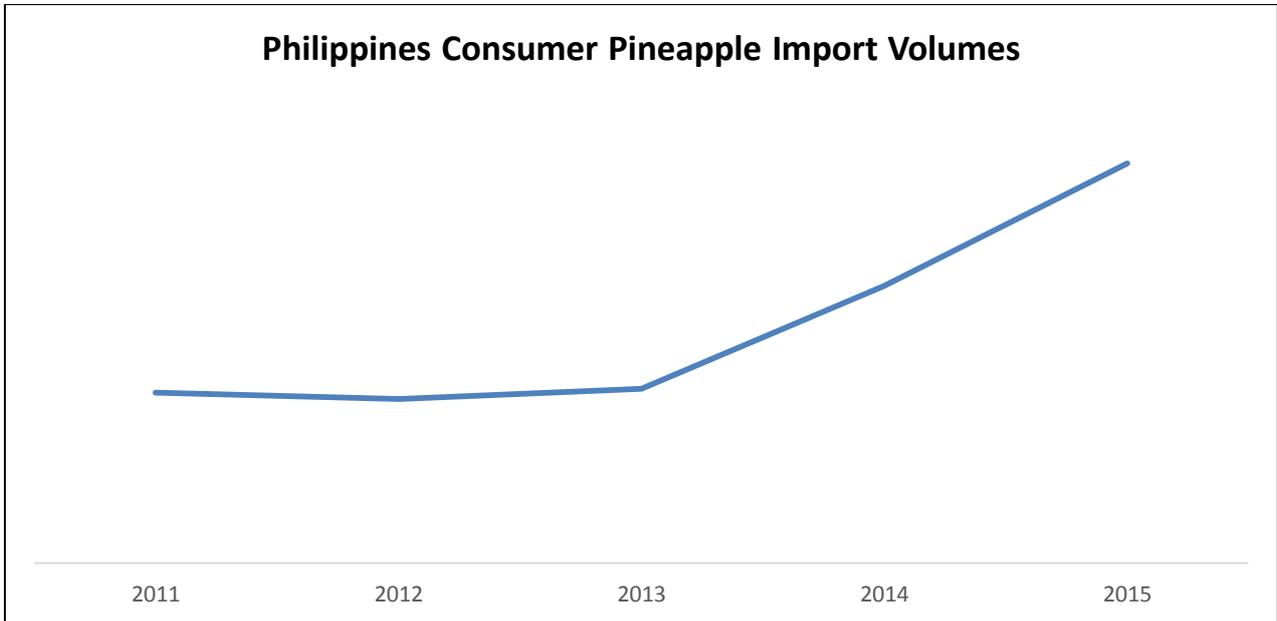


Figure 5 – Consumer pineapple import volumes by country 2009-2015  
 Source: ABF import database.

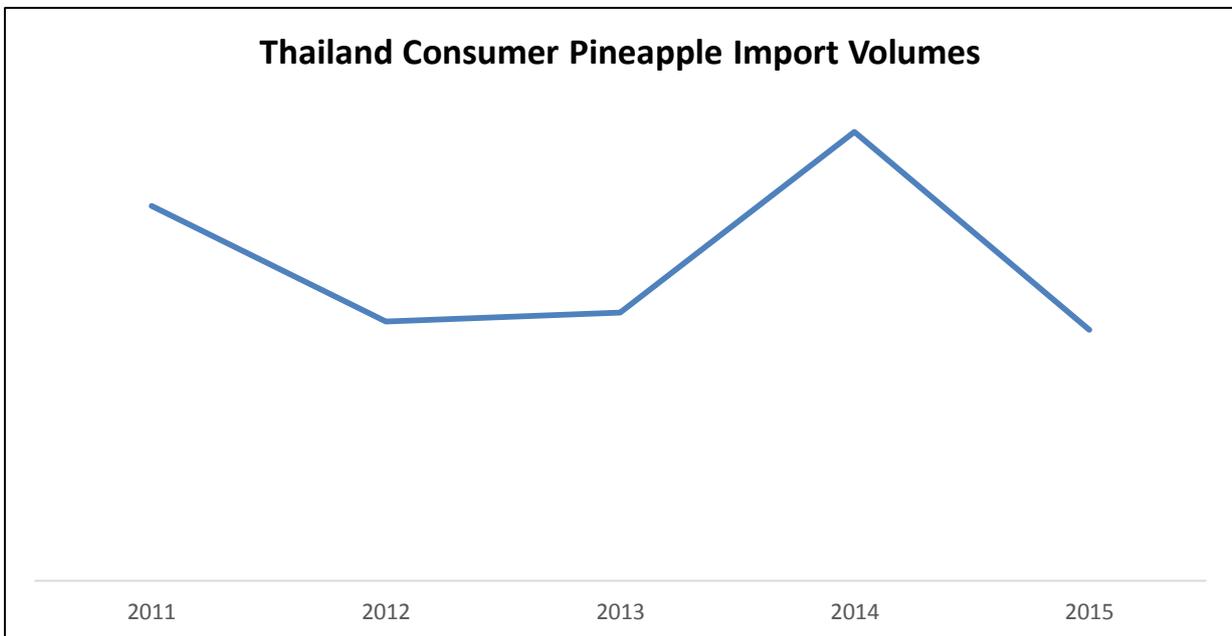
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Figure 6 shows that imports of consumer pineapple from the Philippines grew at a rapid rate between 2013 and 2015 (off an already substantial base) to become the country with the largest consumer pineapple imports to Australia following the 2011 continuation inquiries.



**Figure 6 – Philippines consumer pineapple exports to Australia 2011 to 2015**  
*Source: ABF import database.*

Figure 7a shows that Thailand imports fell in 2012, remained steady in 2013, increased strongly in 2014 before falling away in 2015.



**Figure 7a – Thailand consumer pineapple exports to Australia 2011 to 2015**  
*Source: ABF import database.*

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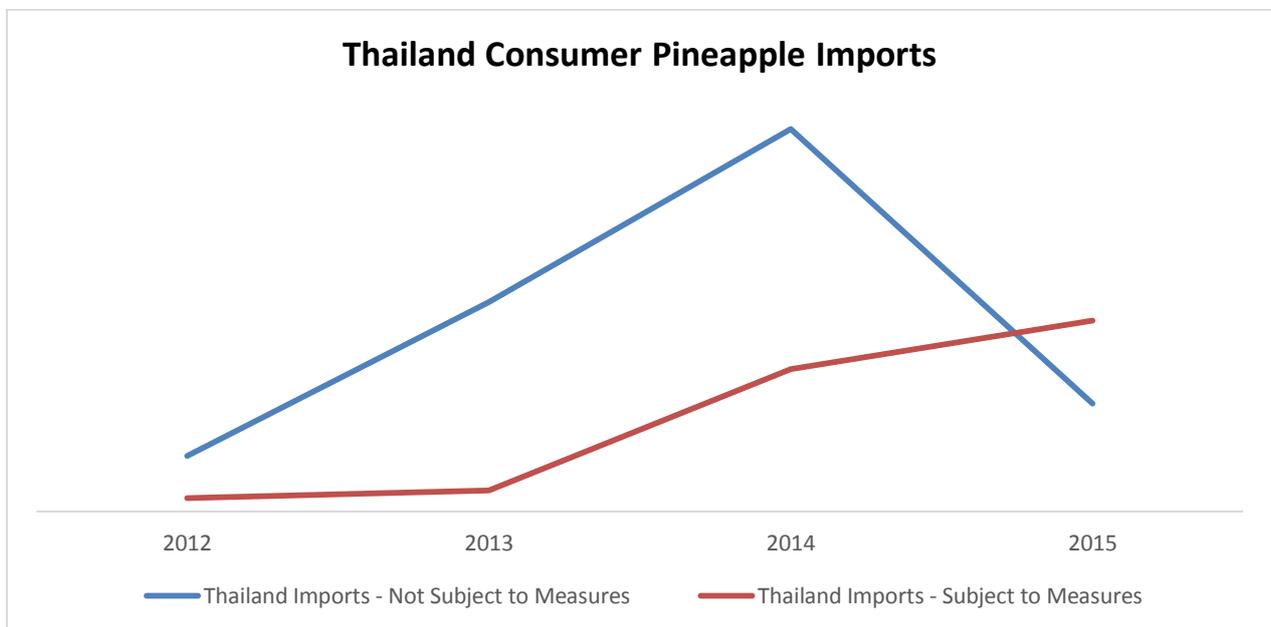
Following the SEF, Prime Products<sup>20</sup> requested that the Commission isolate and distinguish the effects of un-dumped imports (sourced from TPC) from Thailand on the Australian market.

Figure 7b (below) separates Thailand imports between exporters subject to measures (dumped imports) and exporters not subject to measures (un-dumped imports).

Figure 7b shows that the volume of un-dumped imports from Thailand increased in 2013 and 2014, before reducing dramatically in 2015 (the inquiry period). In contrast, dumped imports from Thailand increased dramatically in 2014 and 2015. In 2015, the volume of dumped imports was approximately 80 per cent greater than un-dumped imports, demonstrating a shift towards consumer pineapple from dumped sources from Thailand. The Commission confirms that this trend has continued into the first half of 2016.

This trend reflects comments made by Woolworths Ltd, the importer of the un-dumped imports from Thailand, in its importer visit report<sup>21</sup> which indicates that “*Woolworths intend on exiting the Thailand market and will continue to source consumer pineapples from Philippines.*”

The Commission also analysed the prices of imports from dumped and un-dumped sources from Thailand and found pricing to be within a tight range from 2012 to 2016. As a result, the Commission does not consider that un-dumped imports from Thailand are a significant influence on the current Australian market for consumer pineapple. The Commission confirms this was taken into consideration in the SEF. Figures 6, 7a and 7b show the high degree of substitutability of consumer pineapple between sources from the Philippines and Thailand.

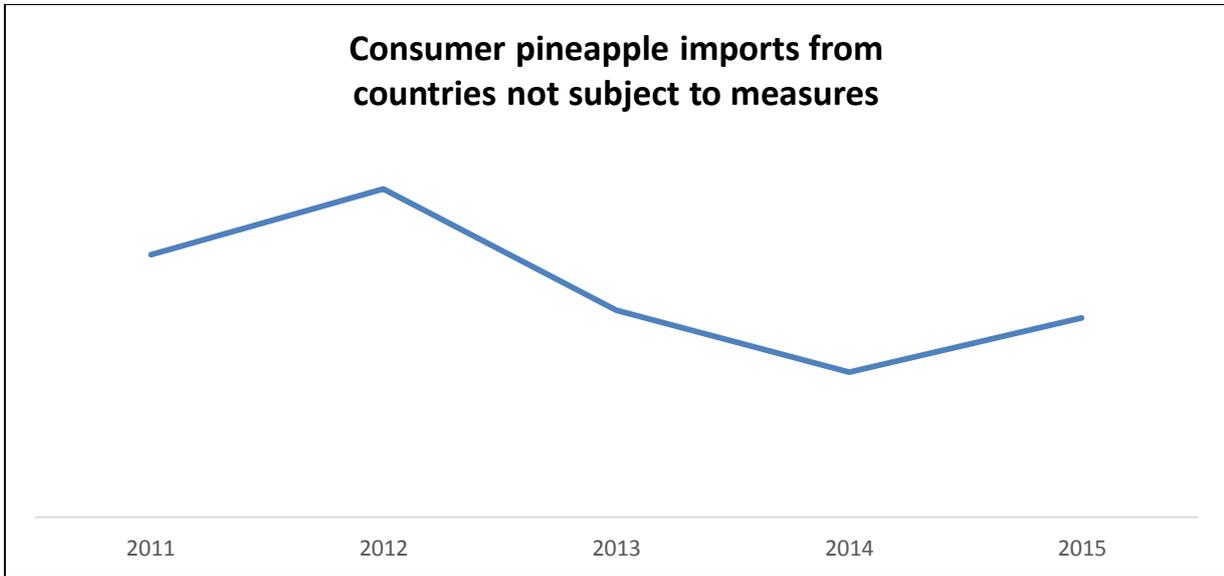


**Figure 7b – Thailand consumer pineapple exports to Australia 2012 to 2015 by exporter status**  
*Source: ABF import database.*

<sup>20</sup> No 19 of EPR 333

<sup>21</sup> No 13 of EPR 333

Figure 8 shows that imports from countries not subject to anti-dumping measures rose in 2012, however subsequently declined. After excluding Golden Circle’s imports, import volumes from countries not subject to anti-dumping measures were insignificant.



**Figure 8 – Imports of consumer pineapple from countries not subject to measures - 2011 to 2015**  
*Source: ABF import database.*

## **6.5 Price effects**

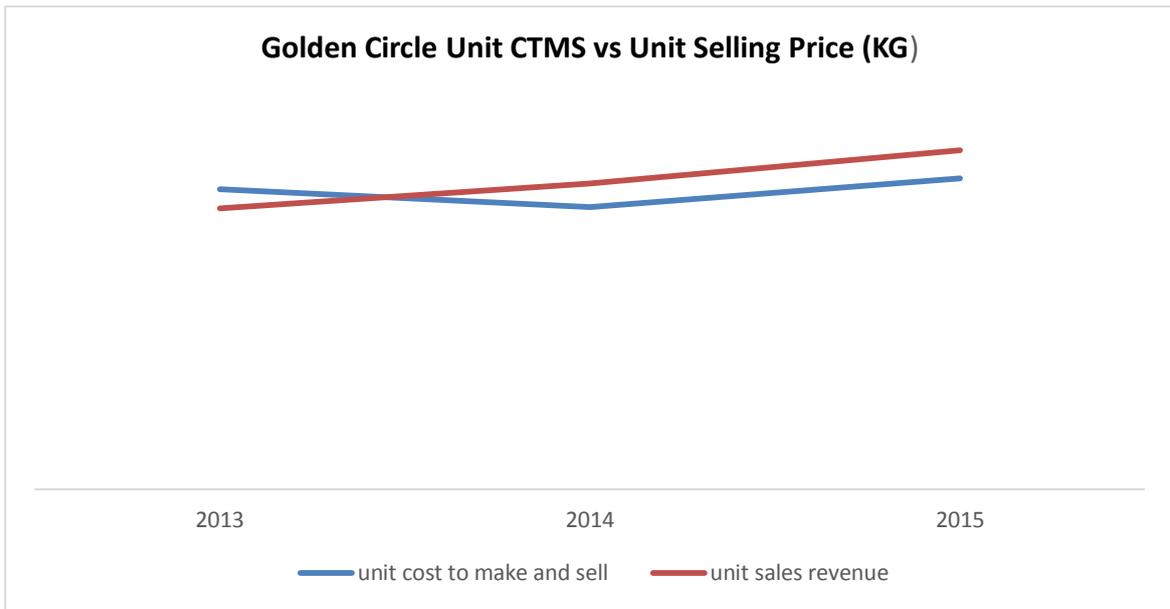
Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which would otherwise have occurred, have been prevented.

In assessing price effects, the Commission analysed the Australian selling prices for consumer pineapple using verified information of the Australian industry and importers. In addition, the Commission used the ABF import database to measure weighted average export prices movements for imported goods.

### **6.5.1 Australian industry**

Figure 9 below shows that the Australian industry’s selling prices have increased in 2014 and 2015. Unit CTMS dropped in 2014 before increasing in 2015. In 2014 and 2015, unit selling prices exceeded unit CTMS.

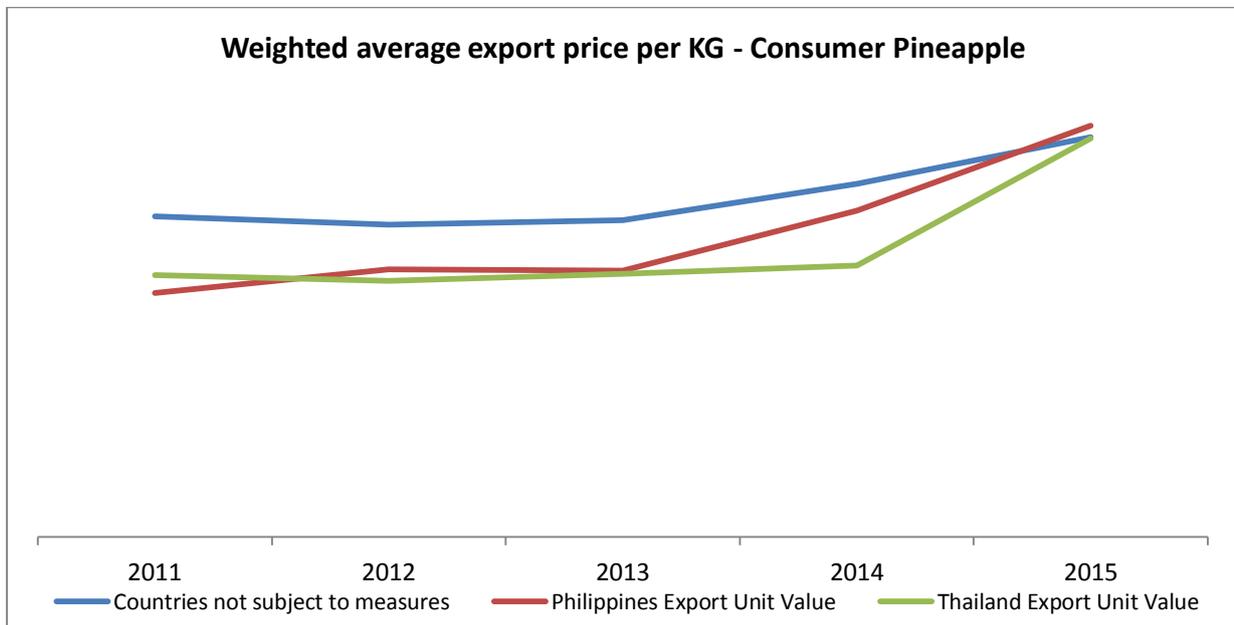
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**Figure 9 – Comparison of Golden Circle Unit CTMS and Unit Selling Price**  
*Source: Golden Circle*

**6.5.2 Export prices**

Weighted average export prices remained relatively stable between 2011 and 2013 but increased in 2014 and 2015. Weighted average export prices for the Philippines and Thailand were significantly lower than imports from countries not subject to measures in earlier years, but by 2015, weighted average export prices had converged to be within a tight range as demonstrated below in Figure 10.

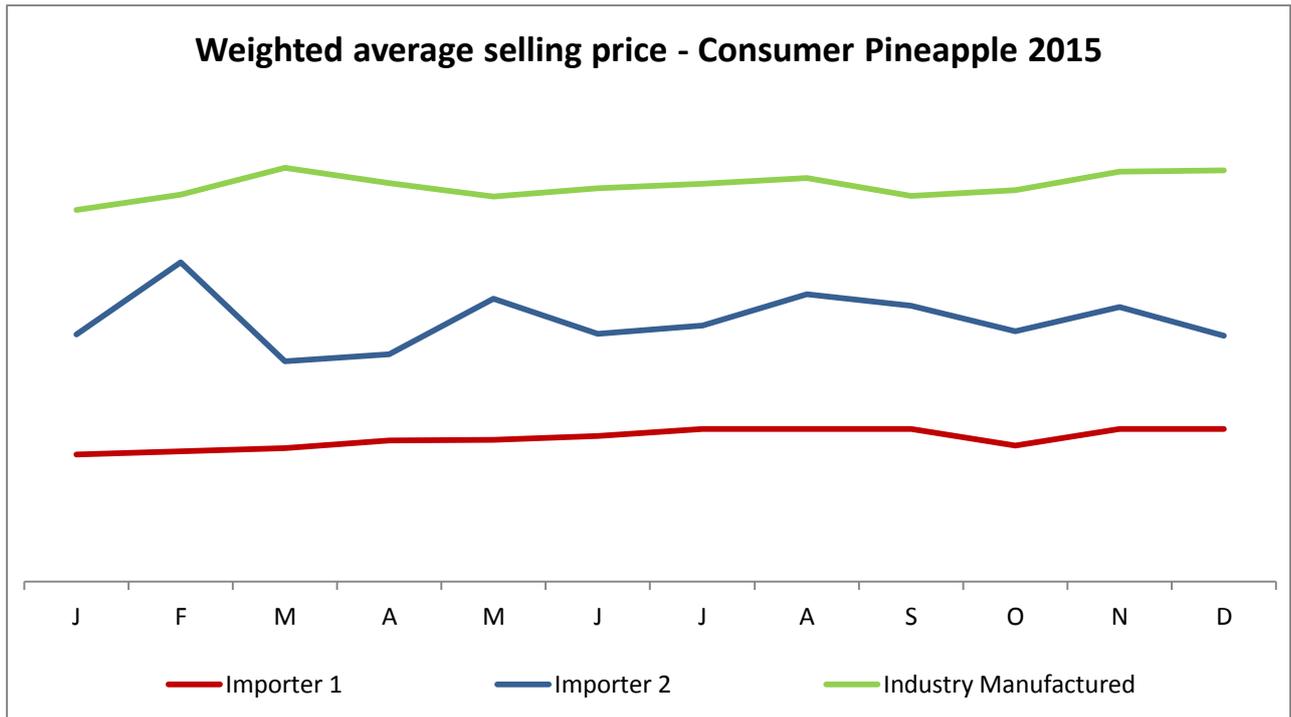


**Figure 10 – Weighted average export pricing comparison**  
*Source: ABF import database.*

### 6.5.3 Price undercutting

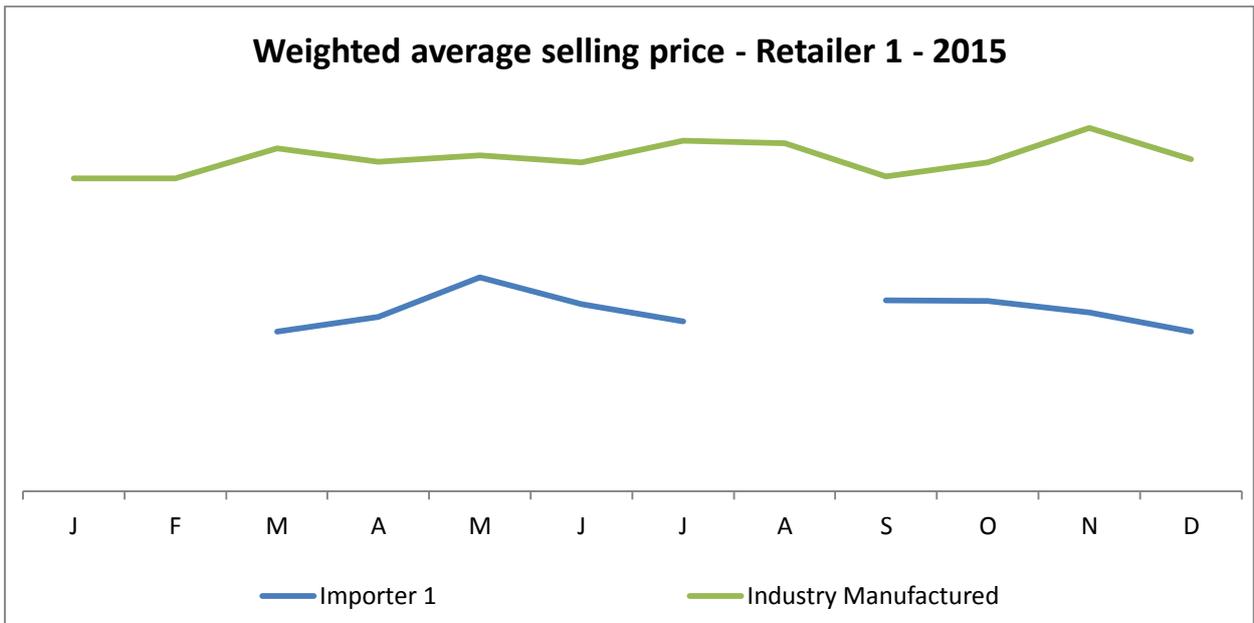
The Commission analysed transaction level data from Golden Circle and participating importers to understand the price point relationship between locally produced consumer pineapple and imported consumer pineapple.

Figure 11 below shows the level of undercutting at a gross sales level of consumer pineapple in the Australian market. It compares the weighted average selling price from two importers of consumer pineapple to the weighted average selling price of the Australian industry's locally produced consumer pineapple. Consistent with previous investigations and continuation inquiries, the data shows substantial price undercutting.



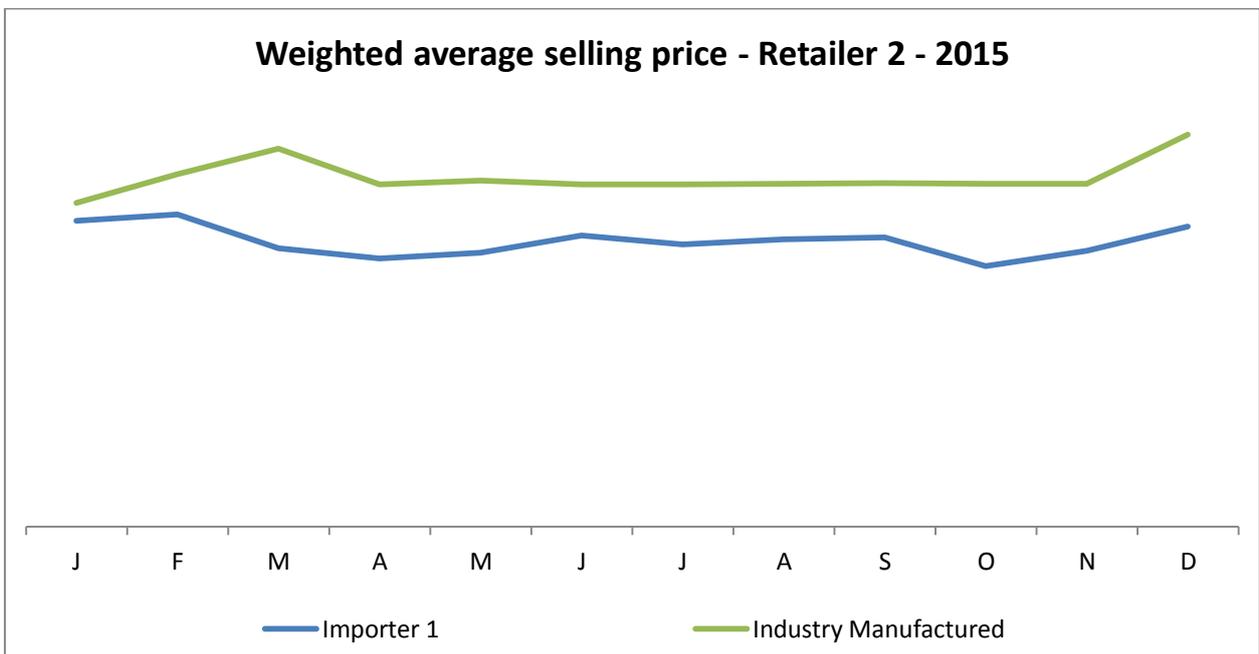
**Figure 11 – Weighted average domestic pricing comparison**  
*Source: Golden Circle and importer transactional data*

Figure 12 compares importer and Australian industry produced wholesale selling prices to a single major consumer pineapple retailer (Retailer 1). The data highlights significant undercutting across all months, where data was available.



**Figure 12 – Competitive pricing to major consumer pineapple buyer (Retailer 1)**  
 Source: Golden Circle and Importer transactional data

Figure 13 compares importer and Australian industry produced wholesale prices to a single major retailer (Retailer 2). The data shows price undercutting by a relatively small amount in the first month of 2015, however the level of undercutting increased and remained significant across the remainder of the 2015 year.



**Figure 13 – Competitive pricing to major consumer pineapple buyer (Retailer 2)**  
 Source: Golden Circle and Importer transactional data.

## 6.6 Profits and profitability

The Commission analysed the profit and profitability of Golden Circle between the years of 2013 and 2015 and found that the company had improved its financial performance from a loss in 2013 to a profit in 2014 and 2015.

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The Commission analysed the 2015 profits of verified importers and found that overall, importers were also profitable. This was supported by analysis of individual import transactions where the Commission was able to trace imports through to sales to final customers.

## **7 LIKELIHOOD OF DUMPING AND MATERIAL INJURY RECURRING OR CONTINUING**

### **7.1 Finding**

The expiration of measures from either the Philippines or Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of the dumping and the material injury that the anti-dumping measures are intended to prevent.

### **7.2 Continuation test**

Under subsection 269ZHF(2), the Commissioner must not recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

### **7.3 Australian industry claims**

Golden Circle claimed in its application that dumping and material injury will continue and/or recur on the grounds that:

- exporters of consumer pineapple in the Philippines and Thailand have maintained distribution links and continued to supply the Australian market during the period covered by the anti-dumping measures;
- on a prima facie basis, it appears that consumer pineapple has been exported from the Philippines and Thailand at dumped prices in 2015;
- processors in the Philippines have continued to grow exports in 2015 and the removal of measures would provide an opportunity for exporters to further increase export volumes to Australia;
- the Philippines and Thailand pineapple processing industry has significant capacity from which it can increase export volumes to Australia in the absence of anti-dumping measures;
- exporters in Thailand (the largest pineapple processing country in the world) would, in the absence of measures, seek to increase export volumes to Australia;
- both the Philippines and Thailand were affected by poor growing conditions which reduced its volume of pineapple available for supply over the inquiry period. Expected improvements in growing conditions would see a sharp increase in the supply of pineapple which could be easily directed towards the Australian market;
- dumping continues to occur in the Australian market and that the dumped products are severely undercutting the Golden Circle brand price;
- should the measures be allowed to expire, the Australian industry will likely experience further lost sales volumes and loss of market share caused by price undercutting;
- if anti-dumping measures on consumer pineapple are allowed to expire, Golden Circle will experience a recurrence of material injury that the measures are intended to prevent; and

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- material injury will also likely be experienced through price depression (as export prices decline in the absence of the floor price imposed by the current measures) and price suppression, resulting in a deterioration of profits and profitability.

### 7.4 Likelihood of dumping continuing or recurring

#### 7.4.1 History of dumping

##### Thailand

In relation to consumer pineapple from Thailand:

- The original investigation in 2001 found that exports of consumer pineapple from Thailand were dumped in the range of 32 per cent to 74 per cent.
- A review of measures in 2006 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped.
- A review of measures in 2011 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped at 56 per cent.
- A review of measures in 2012 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped by all exporters other than Thai Pineapple Canning Industry Corp., Ltd, TPC and Kuiburi Fruit Canning Co., Limited, at a margin of 10 per cent.<sup>22</sup>

As outlined further in Chapter 8, the Commission has reviewed the variable factors and calculated a dumping margin in the inquiry period of 9.2 per cent.

##### The Philippines

In relation to consumer pineapple from the Philippines:

- The original investigation in 2006 determined that exports of consumer pineapple from the Philippines (REP 112) were dumped in the range of 4.5 per cent to 81.8 per cent.
- A review of measures in 2011 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped in the range of 2.6 per cent to 15.0 per cent.

As outlined further in Chapter 8, the Commission has reviewed the variable factors and calculated dumping margins for the inquiry period in the range of 5.9 percent and 22.9 per cent.

#### 7.4.2 Capacity

Whilst the supply of pineapple has been a limiting factor over the past few years, exporters from the Philippines have significant scope to increase production capacity of consumer pineapple once pineapple supply improves. This is evidenced through the capacity utilisation rates supplied to the Commission by the cooperative exporters.

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<sup>22</sup> Noting that for certain exporters sufficient information was not available to allow the calculation of a dumping margin

### **7.4.3 Dependence on export markets**

Both the Philippines and Thailand producers of consumer pineapple are export focussed. Local domestic sales in both the Philippines and Thailand are very low for most producers and non-existent for the others. In part this is due to the consumer preferences for fresh pineapple in these markets, but mainly due to the operations having been set up or expanded specifically to service export markets.

Despite the pineapple shortage experienced in 2014 and 2015, which forced producers to ration supply, the Philippines grew its exports of consumer pineapple to Australia. Dole Philippines explained that they had strategic and commercial decisions to preference one market over another. This indicates that exporters from the Philippines place importance on maintaining sales of consumer pineapple to Australia and have rationed scarce produce to the consumer pineapple sector because it best meets its strategic and commercial needs.

Similarly, the Thailand exporters, while decreasing their consumer pineapple exports into Australia during 2015, also chose to increase exports of FSI pineapple to Australia during 2015, taking advantage of the shift in the Philippines trade, and maintaining a significant presence in the Australian market.

### **7.4.4 Commission's assessment - likelihood of dumping continuing or recurring**

The Commission recognises that the price of consumer pineapple has increased over the last two years but is of the view that this was largely due to pineapple shortages domestically and in large producer countries. As supply of pineapples improves it is likely to cause the price of consumer pineapples to level out or decrease back toward pre-shortage levels.

A 2015 crop report from Pacific Coast International stated:

*"In 2013 the total annual Thai production of pineapple was estimated at 1,800,000 MT. As we approach the end of 2014 and as a result of the late winter pineapple crop, total production of pineapple is projected to be 1,600,000 MT (down 20% from historical performances). Projecting into 2015, the Thai pineapple industry is suggesting total production would fall in the 1,500,000 MT range. Relief isn't expected until 2016."*<sup>23</sup>

Information from previous investigations and reviews indicates that exporters of consumer pineapples from Thailand and Philippines have historically dumped their goods into the Australian market despite anti-dumping measures being in place.

While the Commission has found dumping of consumer pineapple from the Philippines, the lack of cooperation from Thailand exporters has hampered the Commission's ability to determine if exports were dumped in the inquiry period from Thailand. However, the Commission is of the view that given the additional capacity of exporters from the Philippines and Thailand and the importance of export markets to these exporters, that under normal market conditions, dumping will continue or recur in line with past findings.

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<sup>23</sup> <http://jgneil.com/wp-content/uploads/2015/01/CropUpdateImports11.21.pdf>

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The Commission's finding is that the expiration of anti-dumping measures on consumer pineapple from Thailand and Philippines would lead, or would be likely to lead, to a recurrence or continuation of the goods being exported at dumped prices.

The Commissioner is satisfied that the dumping margins in relation to exporters from the Philippines and Thailand, in and of themselves, are likely to enable importers of consumer pineapple to have a competitive advantage on price compared to the Australian industry and in the absence of measures, the levels of price undercutting, which are already substantial, would increase.

### **7.5 Likelihood of material injury continuing or recurring**

#### **7.5.1 Previous findings**

During the original dumping investigations against Thailand in 2001 (REP 41) and Philippines in 2006 (REP 112), ACS found that dumped consumer pineapple exports from Thailand and Philippines had caused material injury to the Australian industry producing like goods.

In the review and continuation of the measures in 2006 (REP 110 and 111) ACS found that Thailand generic brand consumer pineapple products were purchased at dumped prices that significantly undercut the Australian industry's 'Golden Circle' brand. In the review and continuation of the measures in 2011 (REP 171b, 171d, 172b and 172d) consumer pineapple products were purchased at dumped prices that significantly undercut the Australian industry's 'Golden Circle' brand.

In line with previous inquiries, these inquiries have found that consumer pineapple exported from the Philippines and Thailand significantly undercut the Australian industry's selling prices.

#### **7.5.2 State of the Australian industry**

Golden Circle's sales fell substantially between 2013 and 2014 and improved only marginally in 2015 mainly due to a shortage of fresh pineapple fruit as input during 2014 and 2015. The company has, however, been able to increase prices and improve profitability from a loss in 2013 to a profit in 2014 and 2015. This profit is the result of higher prices by both the Australian industry and the imported products due to the pineapple shortages in Australia and Asia, including the Philippines and Thailand during 2014 and 2015.

The general retail trade in Australia is becoming very competitive, which has steered the industry to compete more aggressively on "lowest prices" than in previous years. Retailers have needed to maintain margins, so pricing pressure supporting the "lowest price" strategy has meant the suppliers are consistently pressured to maintain lower prices.

At the same time, retailers are shifting their strategies towards manufacturer and retailer "branded" products which are positioned to compete with manufacturer branded products.

### **7.5.3 Commissioner's assessment - likelihood of material injury continuing or recurring**

An analysis of the Australian selling prices relative to the volume of the imports, together with discussions with the Australian industry, importers and exporters leads the Commission to conclude that price is a key factor in the purchasing decisions of consumers.

The Commission recognises that consumers tended to buy the Golden Circle brand for a number of reasons including perceptions of quality, preference for 'Australian made' and brand loyalty. This enables a premium to be included in the prices of Golden Circle's branded products. However, despite this, previous investigations have shown that the dumped goods which undercut Australian selling prices have caused material injury to the Australian industry.

The Commission considers it reasonable to assume that as the prices of the manufacturer and retailer "branded" products are reduced (in the absence of anti-dumping measures), the value proposition of Golden Circle brand will be less attractive to price sensitive consumers. This would likely force Golden Circle to reduce prices or lose market share leading to a reduction in profits and profitability.

Therefore, the Commission concludes that dumped consumer pineapple from the Philippines and Thailand would likely lead to a continuation of the material injury previously experienced by the Australian industry in the form of price suppression and depression, loss of sales and market share, and reduced profits.

## **7.6 Factors other than dumping**

The Commission understands that there are a number of other market factors which increase competition in the Australian consumer pineapple market. The Commission has examined some key factors to determine if their effects outweigh any future injury which may be caused by the removal of measures.

### **7.6.1 Competing branded products**

The Golden Circle brand is facing increasing competition from manufacturer and retailer branded products which are 'mid-tier' products in terms of price and perceived quality. Supermarkets are moving from offering perceived lower quality "home brand" style products to mainly offering branded (including retailer branded) products.

The supermarket strategies are a genuine threat to the brand value and possible premium that Golden Circle may be able to leverage in the future. While these strategies are a threat in themselves, the Commission considers that additional pricing pressure from dumped goods will magnify or accelerate any decline in brand premium.

### **7.6.2 Market power of customers**

Golden Circle sells to large retailers which command significant buyer power. Their purchase of large volumes means that retailers can drive down prices.

### **7.6.3 Higher costs of production**

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 and has shown recent improvement. Despite the recent improvement, profit and profitability of the Australian industry is marginal and has yet to be sustained. As a result, based on evidence currently available, the Commission considers that the Australian industry remains susceptible to material injury caused by dumping.

### **7.7 Commission's overall assessment**

As previously stated, the Commission considers that the expiration of the measures from either the Philippines or Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

Whilst the Commission recognises that there are other factors in the consumer pineapple market that will place pressure on the Australian industry, in line with the *Ministerial Direction on Material Injury 2012*, dumping need not be the sole cause of injury to the industry. The Commission considers that, should measures be left to expire, it is likely that dumping will lead to reduced prices or loss of market share and will cause material injury to the Australian industry.

## **8 REVIEW OF VARIABLE FACTORS**

### **8.1 Finding**

The Commission has found that the variable factors have changed. Dumping margins have been calculated as set out below.

Country	Exporter	Dumping margin
The Philippines	Dole Philippines Inc.	5.9%
	All Other Exporters	22.9%
Thailand	All Exporters (except TPC)	9.2%

**Table 2: Dumping margins**

### **8.2 Introduction**

In its application, Golden Circle claimed that one or more of the variable factors relevant to the taking of anti-dumping measures have changed. Exporter questionnaires were sent to companies identified as suppliers of consumer pineapple from the Philippines and Thailand in the ABF import database during the inquiry period.

The Commission received two responses to the exporter questionnaire from Dole Philippines (the Philippines) and Prime Products (Thailand).

### **8.3 Dumping - the Philippines**

#### **8.3.1 Dole Philippines**

##### Verification

The Commission conducted an in-country visit to Dole Philippines in May 2016 to verify the information disclosed in its exporter questionnaire response. A detailed report covering the visit findings is available on the EPR.

##### Export price

The Commission considers that sufficient information is available to establish the export price for Dole Philippines under subsection 269TAB(1)(a). In particular, the Commission found that the goods were exported by Dole Philippines to Australia (i.e. otherwise than by the importer) and were purchased in an arms length transactions by the importer from Dole Philippines. Therefore, export price was determined to be the price paid by the importer to the exporter less transport and other costs arising after exportation.

##### Normal value

Based on the verified information provided by Dole Philippines, the Commission is satisfied that prices paid in respect of its domestic sales are suitable for assessing normal values under subsection 269TAC(1) for some models of consumer pineapple exported to Australia during the inquiry period.

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For the remaining models, the Commission has constructed normal values in accordance with subsection 269TAC(2)(c). To construct the normal value for each quarter, the Commission has used the weighted average cost to make for Australian export sales; plus selling, general and administrative (SG&A) expenses applicable to goods sold domestically; plus profit on domestic sales made in the ordinary course of trade in accordance with sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation).

The cost of production was calculated under subsection 43(2) of the Regulation, using the exporter's records. SG&A costs were calculated under subsection 44(2) of the Regulation, using the exporter's records. The amount of profit was worked out under subsection 45(2) of the Regulation.

### Adjustments

To ensure the comparability of normal values to export prices, the Commission made adjustments pursuant to subsections 269TAC(8)<sup>24</sup> and (9).<sup>25</sup>

### Submissions regarding Dole Philippines' adjustments

Following the SEF, Golden Circle<sup>26</sup> submitted that the Commission should re-examine the downwards duty drawback adjustments and upwards/downwards specification adjustments made to Dole Philippines' normal values. In relation to the duty drawback adjustment, Golden Circle stated that a sufficient and adequate document trail linking the importation of the dutiable goods with the exported consumer pineapple to Australia, must be verified by the Commission.

It is reiterated that, as documented in the Dole Philippines' verification visit report,<sup>27</sup> the Commission was able to verify that Dole Philippines pays 5 per cent duty on imported input materials used for domestic consumption; however duties are not paid on input materials used in the manufacture of exported products. The verification team was able to establish a link and document trail to support this adjustment. As a result, the verification team applied a downwards adjustment for the duty on those input materials to the normal value for the relevant domestic transactions. The Commission remains satisfied that this adjustment is warranted.

In relation to the specification adjustments, Golden Circle stated that the adjustment must reflect actual costs incurred and verified by the Commission (including validation of duty drawback on can ends). As documented in the Dole Philippines verification visit report, specification adjustments were required where particular models were sold in low volumes, but a surrogate model was able to be used to establish normal values under

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<sup>24</sup> Where the normal value was calculated under subsection 269TAC(1), to ensure the comparability of normal values to export prices, adjustments are required for maintaining price comparability pursuant to subsection 269TAC(8).

<sup>25</sup> Where normal value was calculated under subsection 269TAC(2)(c), to ensure the comparability of normal values to export prices, adjustments are required for maintaining price comparability pursuant to subsection 269TAC(9).

<sup>26</sup> No 18 of EPR 333

<sup>27</sup> No 14 of EPR 333

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subsection 269TAC(1). The Commission confirms that the specification adjustments were made based on actual costs incurred by Dole Philippines.

Dole Philippines<sup>28</sup> submitted that the preliminary dumping margin detailed in the SEF of 6.2 per cent overstated because the Commission did not make certain claimed adjustments which impact on the fair comparison between export price and normal values.

The adjustments claimed but not accepted by the Commission for the purposes of the SEF were for:

- Selling expenses – the Commission considers that selling costs are general sales and administration expenses that relate more to the general cost of doing business. As detailed in the Manual, the Commission considers that general expenses of this nature are not within the scope of the term ‘differences in conditions and terms of sale’. As a result, the Commission has not made an adjustment for Dole Philippines’ selling expenses.
- Admin and other marketing expenses, trade promotions and merchandising – as outlined in the Manual, the Commission does not make adjustments for marketing costs unless such costs can be directly linked to the transactions the company is seeking an adjustment for. The Commission is not satisfied that this requirement has been met and has not made an adjustment for such expenses.
- Warehousing - Dole Philippines has a small amount of domestic stock stored at a distributors premises. Dole Philippines pays for this third party storage and claimed an adjustment to normal values for these warehousing costs. The Commission has reviewed this claim and agrees that an adjustment to normal values is warranted in order to ensure fair comparison to export price. The Commission has recalculated Dole Philippines’ dumping margin and as a result the dumping margin has reduced from 6.2 per cent to 5.9 per cent.

### Dumping margin

A dumping margin has been calculated for consumer pineapple exported by Dole Philippines over the inquiry period based upon a comparison of the quarterly normal values and the quarterly export prices.<sup>29</sup> The dumping margin calculated for Dole Philippines is 5.9 per cent.

### **8.3.2 Uncooperative and all other exporters – the Philippines**

Subsection 269T(1) provides that an exporter is an “uncooperative exporter” where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

Having regard to the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Direction), and in particular subsection 8(b) of the Direction, the Commissioner

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<sup>28</sup> No 20 of EPR 333

<sup>29</sup> All dumping margins in this section have been calculated in accordance with subsection 269TACB(2)(a).

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determined all exporters from the Philippines who did not provide a response to the exporter questionnaire, or request a longer period to provide a response within the legislated period (15 April 2016), to be uncooperative exporters under subsection 269T(1).

The Commission is treating all exporters of the goods from the Philippines other than Dole Philippines, as uncooperative exporters as defined in subsection 269T(1).

Subsection 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters. This provision specifies that for uncooperative exporters, export prices are to be calculated under subsection 269TAB(3) and normal values are to be calculated under subsection 269TAC(6).

The Commission has therefore determined an export price pursuant to subsection 269TAB(3) after having regard to all available information. Specifically, the Commission has used a weighted average export price for the Philippines as recorded in the ABF import database at FOB terms in the inquiry period.

The Commission has determined normal value for the uncooperative exporters pursuant to subsection 269TAC(6) after having regard to all relevant information. Specifically, the Commission has used the weighted average normal values established for Dole Philippines in the inquiry period.

The dumping margin for uncooperative and all other exporters of consumer pineapple from the Philippines is 22.9 per cent.

### **8.4 Dumping - Thailand**

#### **8.4.1 Uncooperative and all other exporters – Thailand**

Having regard to the Direction, and in particular subsection 8(b) of the Direction, the Commissioner determined all exporters from Thailand who did not provide a response to the exporter questionnaire, or request a longer period to provide a response within the legislated period (15 April 2016), to be uncooperative exporters under subsection 269T(1).

The Commission is treating all exporters of the goods from Thailand in the inquiry period other than Prime Products as uncooperative exporters as defined in subsection 269T(1).

The Commission has determined an export price pursuant to subsection 269TAB(3) and has determined normal value pursuant to subsection 269TAC(6), having regard to all available information. Specifically, it has used a weighted average export price for Thailand from the ABF import database at FOB terms and the weighted average normal value determined for Dole Philippines, as there were no exports from Thai exporters.<sup>30</sup>

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<sup>30</sup> Consistent with Chapter 13.3 of the Manual which permits the use of information gathered from other countries subject of the same investigation in establishing normal values under subsection 269TAC(6)

## **8.4.2 Prime Products**

### Approach in SEF

As outlined in the SEF, whilst the Commission is satisfied that Prime Products cooperated with the inquiry for Thailand, sufficient data was not available to enable the Commission to determine export price and normal value for Prime Products and, therefore a dumping margin.<sup>31</sup>

The Commission therefore determined Prime Products' export price pursuant to subsection 269TAB(3) and has determined normal value pursuant to subsection 269TAC(6), having regard to all available information in the same manner set out for uncooperative exporters.

### Submission by Prime Products

Following the SEF, Prime Products<sup>32</sup> submitted that the Commission did not evaluate and assess all relevant information and conduct an objective analysis in its determination of the best available information for Prime Products. Prime Products claims that it has not been provided with sufficient information by the Commission to properly understand the basis of the normal value ascertained for Dole Philippines, in particular the like good domestic models and Australian exported models.

Prime Products put forward a number of alternative sources of relevant information that could allow the Commission to determine export prices and normal values and requested that the Commissioner reconsider its position and not treat it the same way as uncooperative exporters.

In summary, Prime Products' raised the following:

- Calculation of normal value based on un-dumped exports from Thailand – Prime Products submits that, based on its assumption that the vast majority of exports from Thailand during the inquiry period were from exporters currently not subject to anti-dumping measures (e.g. TPC), TPC's export prices of consumer pineapple are neither dumped, nor injurious. On that basis, Prime Products considers it appropriate and reasonable for the Commission to recommend that the Parliamentary Secretary ascertain a normal value for its exports of consumer pineapple, at a price equivalent to the weighted average export price by TPC during the inquiry period;
- Normal value based on third country sales – Prime Products requested that the Commission consider using its third country sales in ascertaining its normal value, which could be set equal to its export price, thus acting as a floor price; or
- Dole Philippines' normal value set equal to Prime Products' export price – Prime Products submitted that its ascertained export price could be set at the same level as the ascertained normal value of Dole Philippines, which reflects a un-dumped price by Dole Philippines.

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<sup>31</sup> This finding is consistent with an earlier accelerated review request from Prime Products, ADN 2015/111 refers

<sup>32</sup> No 17 of EPR 333

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In considering the best available information, the Commission notes the following:

- as outlined in Figure 7b, exports of consumer pineapple by TPC to Australia declined in the inquiry period. In addition, it is not possible for the Commission to conclude whether TPC's exports to Australia are relevant to Prime Products, as Prime Products has not exported consumer pineapple to Australia. Therefore the Commission has not established normal values for Prime Products based on exports from TPC of Thailand;
- in certain circumstances, normal values can be based on comparable third country sales, pursuant to subsection 269TAC(2)(d). Although Prime Products did sell like goods to a number of third countries, as outlined in Chapter 10 of the Manual, in determining whether it is appropriate to use such information in establishing normal values, the Commissioner must have regard to whether:
  - the volume of trade from the country of export to the selected third country is similar to the volume of trade from the country of export to Australia; and
  - the nature of the trade in like goods between the country of export and the selected third country is similar to the nature of trade between the country of export and Australia (in considering "nature of trade" such things as the level of trade in a third country may be relevant).Given that Prime Products did not make any sales of the goods to Australia during the inquiry period, Prime Products does not meet the above requirements.
- Given the inability of the Commission to determine a normal value for Prime Products based on its own data, the Commission cannot be satisfied that it is reasonable to set Prime Products' export price equal to Dole Philippines' normal value, which act as a floor price.

Having regard to the above and having considered Prime Products' data and other relevant information, the Commissioner finds that the approach taken for the purposes of the SEF in relation to Prime Products was based on best available information.

The Commission notes that Prime Products is entitled to apply for an accelerated review, or review under Division 5 after a period of 12 months of the change of the notice, should its circumstances change. In addition, importers of goods from Prime Products can also apply for a duty assessment if the relevant legislative requirements are met.

### 8.4.3 All exporters from Thailand

The Commission has calculated a dumping margin for all exporters of consumer pineapple from Thailand of 9.2 per cent.

## 9 NON-INJURIOUS PRICE

### 9.1 Introduction

The NIP is defined in section 269TACA as “the minimum price necessary to prevent the injury, or a recurrence of the injury, or to remove the hindrance to the Australian industry” caused by the dumped goods the subject of a notice under section 269TG.

The calculation of the NIP is relevant for the purposes of the lesser duty rule as set out under the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).<sup>33</sup> The level of dumping duty imposed by the Parliamentary Secretary cannot exceed the margin of dumping, but, where the NIP of the goods is less than the normal value of the goods, the Parliamentary Secretary must (unless certain circumstances apply) also have regard to the desirability of fixing a lesser amount of duty.

### 9.2 USP and NIP

The Commission generally derives the NIP by first establishing a price at which the applicant might reasonably sell its product in the Australian market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The Commission’s preferred approach to establishing an USP observes the following hierarchy:

- Australian industry selling prices at a time unaffected by dumping;
- constructed Australian industry prices – based on the Australian industry’s CTMS plus a profit (if appropriate); or
- selling prices of un-dumped imports.

Having calculated the USP, the Commission then calculates a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

#### 9.2.1 Submission by Golden Circle

Golden Circle<sup>34</sup> submitted that the USP should be updated using its CTMS and a profit.

#### 9.2.2 Commission’s assessment

As dumping was found during the previous continuation inquiries, and occurred throughout the inquiry period for these continuation inquiries, the Commission is unable to use contemporaneous Australian industry selling prices at a time unaffected by dumping.

Therefore, the Commission has calculated an USP by constructing an Australian industry selling price based on its CTMS and a profit.

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<sup>33</sup> Subsection 8(5B) of the Dumping Duty Act.

<sup>34</sup> No 11 of EPR 333

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Post-exportation cost data gathered from importers during the inquiries form the basis of deductions from the USP to calculate the NIP.

The Commission has found that the NIP is higher than the normal values for all exports of the goods from the Philippines and Thailand. In such cases, the Parliamentary Secretary is not required to have regard to the lesser duty rule<sup>35</sup> and accordingly, the Commissioner proposes to recommend that dumping duties be based on the full margins of dumping.

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<sup>35</sup> Subsection 8(5B)(b) of the Dumping Duty Act.

## **10 FORM OF MEASURES**

The form of measures currently applicable to consumer pineapple from the Philippines and Thailand is the combination fixed and variable duty method, which consists of:

- an amount equal to the interim dumping duty rate per kilogram; plus
- the amount, if any, by which the actual export price is lower than the ascertained export price.

The only interested party to comment on the form of measures in relation to consumer pineapple was Golden Circle, who supported leaving the form of measures unchanged

Commission proposes to leave the form of measures unchanged.

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## 11 RECOMMENDATIONS

On the basis of the reasons contained in this report, and in accordance with subsection 269ZHF(2) of the Act, the Commissioner is satisfied that the expiration of the anti-dumping measures applicable to consumer pineapple exported to Australia from the Philippines and Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

As such, the Commissioner recommends that the Parliamentary Secretary take steps, in accordance with subsection 269ZHG(1)(b), to secure the continuation of the anti-dumping measures relating to consumer pineapple exported to Australia from the Philippines from the expiry date of 10 October 2016.

The Commissioner also recommends that the Parliamentary Secretary take steps, in accordance with subsection 269ZHG(1)(b), to secure the continuation of the anti-dumping measures relating to consumer pineapple exported to Australia from Thailand from the expiry date of 17 October 2016.

### **The Commissioner recommends the Parliamentary Secretary be satisfied:**

- in accordance with subsection 269TAAD(1), sales of certain models of like goods were sold by Dole Philippines in sales that are arms length transactions in substantial quantities during an extended period for home consumption in the Philippines at a price less than the cost of such goods and it is unlikely that Dole was able to recover the cost of such goods within a reasonable period;
- for exports of consumer pineapple exported to Australia from the Philippines by Dole Philippines, that sufficient information has been furnished to enable the export price to be determined under subsection 269TAB(1)(a);
- that sufficient information has been furnished to enable the normal value for certain models of consumer pineapple exported to Australia by Dole Philippines to be ascertained under subsection 269TAC(1);
- in accordance with subsection 269TAC(2)(a)(i), the normal value of certain models of consumer pineapple exported to Australia from the Philippines by Dole Philippines cannot be ascertained under subsection 269TAC(1) because of an absence or low volume of sales of like goods in the Philippines that would be relevant for the purpose of determining a price under subsection 269TAC(1);
- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of consumer pineapple exported to Australia by all exporters from the Philippines other than by Dole Philippines to be determined under subsection 269TAB(1);
- in accordance with subsection 269TAB(3), that sufficient information has not been furnished and is not available, to enable the export price of consumer pineapple exported to Australia by all exporters from all exporters from Thailand to be determined under subsections 269TAB(1); and
- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of consumer pineapple

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exported to Australia from the Philippines by all exporters other than by Dole Philippines under the preceding subsections of section 269TAC (other than subsection 269TAC(5D)); and

- in accordance with subsection 269TAC(6), sufficient information has not been furnished and is not available to enable the normal value of consumer pineapple exported to Australia from Thailand by all exporters to be ascertained under the preceding subsections of section 269TAC (other than subsection 269TAC(5D)).

### **The Commissioner recommends that the Parliamentary Secretary determine:**

- in accordance with subsection 269ZHG(4)(a)(iii) that after 10 October 2016 the dumping duty notice in relation to consumer pineapple exported from the Philippines has effect, in relation to Philippine exporters generally, as if different variable factors had been fixed relevant to the determination of duty, those factors being set out in **Confidential Attachment 7**;
- in accordance with subsection 269ZHG(4)(a)(iii) that after 17 October 2016 the dumping duty notice in relation to consumer pineapple exported from Thailand has effect, in relation to Thailand exporters generally, as if different variable factors had been fixed relevant to the determination of duty, those factors being set out in **Confidential Attachment 7**;
- in accordance with subsection 269TAAD(4), and for the purpose of working out the cost of goods and determining whether the price paid for like goods sold in the country of export in sales that are arms length transactions are taken to have been in the ordinary course of trade, that the amounts for the cost of production or manufacture of consumer pineapple by Dole Philippines and the administrative, selling and general costs associated with the sale of those goods are as set out in that exporter's records;
- being satisfied that subsection 269TAB(1)(a) applies, that the export price of consumer pineapple exported to Australia from the Philippines by Dole Philippines is the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of any other matter arising after exportation, as set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAC(1), being satisfied that certain models of like goods are sold in the ordinary course of trade for home consumption in the Philippines in sales that are arms length transactions by Dole Philippines, that the normal value of those models of consumer pineapple exported to Australia from the Philippines is the price paid or payable for like goods as set out in **Confidential Attachment 3**;
- in accordance with subsection 269TAC(2)(c), that the normal value of certain models of consumer pineapple exported by Dole Philippines is the sum of:
  - the cost of production or manufacture of those goods as set out in **Confidential Attachment 3**; and
  - on the assumption that those goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the Philippines, the administrative, selling and general costs associated with the sale and the profit on that sale as set out in

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### **Confidential Attachment 3,**

as adjusted in accordance with subsection 269TAC(9), as set out in section 8.3 of this report, to ensure that the normal value of the goods so ascertained is properly comparable to with the export price of the goods;

- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of consumer pineapple exported from the Philippines other than by Dole Philippines is set out in **Confidential Attachment 4**;
- in accordance with subsection 269TAB(3), having regard to all relevant information, that the export price of consumer pineapple exported from Thailand is set out in **Confidential Attachment 5**;
- in accordance with subsection 269TAC(6), that the normal value of consumer pineapple exported from the Philippines other than by Dole Philippines is as set out in **Confidential Attachment 4**;
- in accordance with subsection 269TAC(6), that the normal value of consumer pineapple exported from Thailand is as set out in **Confidential Attachment 5**; and
- having applied subsection 269TACB(2)(a) and in accordance with subsection 269TACB(1) and the dumping margins in respect of the goods is the difference between the weighted average export prices of the consumer pineapple over the inquiry period and the weighted average of corresponding normal values over that period as set out in chapter 8.

### **The Commissioner recommends that the Parliamentary Secretary directs:**

- in accordance with subsection 269TAC(8), that, as the normal value of certain models of consumer pineapple exported to Australia from the Philippines by Dole Philippines is the price paid or payable for like goods sold in the Philippines, the normal value be adjusted for specified differences between like goods sold in the Philippines and export sales, as set out in section 8.3.

### **The Commissioner recommends that the Parliamentary Secretary declare:**

- in accordance with subsections 269ZHG(1)(b) and 269ZHG(5) that the dumping duty notice as it applies to consumer pineapple from the Philippines continue in force after 10 October 2016; and
- in accordance with subsections 269ZHG(1)(b) and 269ZHG(5) that the dumping duty notice as it applies to consumer pineapple from Thailand continue in force after 17 October 2016.

**12 APPENDICES AND ATTACHMENTS**

<b>Confidential Attachment 1</b>	Market Analysis
<b>Confidential Attachment 2</b>	Injury Analysis
<b>Confidential Attachment 3</b>	Dole Philippines Dumping Margin
<b>Confidential Attachment 4</b>	Philippines All Other Exporters Dumping Margin
<b>Confidential Attachment 5</b>	Thailand All Exporter Dumping Margin
<b>Confidential Attachment 6</b>	USP and NIP calculations
<b>Confidential Attachment 7</b>	Variable Factors Summary