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Public File

Anti-Dumping Investigation No. 628 – Food Service Pineapple exported from Indonesia and Thailand

Introduction

Golden Circle Limited (**GCL**), the Australian industry applicant in this matter, refers to the publication of Statement of Essential Facts 628 (**SEF 628**) on 21 November 2024.¹ For ease of reference, GCL has applied the same headings below as those appearing in SEF 628.

Summary

Respectfully, GCL submits that the Anti-Dumping Commission (**the Commission**) has erred in its assessment that material injury caused by the dumped exports of Food Service and Industrial (**FSI**) pineapple has not been experienced by the Australian industry. Specifically, the Commission:

- performed a flawed ‘coincidence analysis’ to assess causation, and failed to properly have regard to the *Ministerial Direction* and apply a ‘but for’ method for causation analysis;
- failed to properly conclude that industry experienced material injury in the form of lost market share, price suppression, and reduced profits and profitability;
- failed to properly conclude that the injury identified for revenue, inventories, and cash flow was attributable to dumped imports; and
- assessed that factors other than dumping were the cause of any injury to the Australian industry during the investigation period.

Therefore, the Australian industry submits that the Commissioner’s preliminary finding that the injury caused to it by the dumped goods was negligible and that the investigation must be terminated under paragraph 269TDA(13)² would not be the correct or preferable decision. Accordingly, the Commissioner should recommend that the Minister publish a dumping duty notice under subsection 269TG(1) in respect of all exports of FSI pineapple from Thailand. Furthermore, industry submits that the combination method of interim duty calculation be applied.

¹ EPR Folio No. 628/27.

² All legislative references in this submission are to the *Customs Act 1901* unless otherwise specified.

13. Has Dumping Caused Material Injury

13.3 The Commission's general approach to causation analysis

The Commission has wrongly concluded in this case to use 'coincidence analysis' to assess causation. This is in direct contradiction of the *Ministerial Direction*³, which provides in relevant part:

*In cases where it is asserted that an Australian industry **would have been more prosperous if not for the presence of dumped or subsidised imports**, I **direct** that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline.*⁴ (emphasis added)

GCL claims that its material injury has been the decline in its rate of growth. In other words, if not for the dumping, GCL would have maintained or increased its profit margins on sales and profitability. It would have also increased its market share. Furthermore, how the dumping margins found can be ignored by the Commission is clearly an error in its reasoning. To proceed on this basis would place the Commission in breach of paragraph 269TAE(1)(aa).

Even if the prescription of the *Ministerial Direction* may be distinguished from the facts and circumstances in this case, GCL observes that the *Dumping and Subsidy Manual (Manual)*⁵ indicates that there may be circumstances where ...a 'coincidence analysis' has not been possible.

GCL submits that because 'coincidence analysis' is used by the Commission to determine whether the imported dumped goods are the cause of injury to the industry, then if after removing the effects of exogenous factors, injury is found to 'coincide' in time with periods of observed dumped imports then causation is inferred. If the injury and dumping are found not to coincide in the same periods, then causation of material injury cannot be attributed to the dumping. The relevance here is that the Commission has not removed the temporary effects of the apparently relevant natural flowering event from its assessment of injury or threat of injury.

In any case, GCL submits that this was not a factor other than dumping that caused injury, nor can the Commission's SEF 628 assessment be relied on to conclude as such. The Commission offers very little detail on this flowering event factor, did not consult industry in relation to it, and provides only two short paragraphs in the SEF against which to base its conclusions:⁶

*The commission is aware that a 'natural flowering event' occurred in early 2023, resulting in unplanned, excess pineapple fruit in the market. This **may have** caused GCL to increase the production of canned pineapple and other fruit products, increasing inventories for products that it did not have sales for.*⁷

...

*The commission also notes that chapter 13.6 briefly discussed the impact of a natural flowering event in early 2023, which is another factor other than dumping that impacted GCL.*⁸

In the first instance, the Commission speculates that the flowering event *may* have caused the Australian industry to increase production volumes.⁹ In the second instance, it is described as a definitive factor other than

³ Clare, J., Minister for Home Affairs, Ministerial Direction on Material Injury 2012, Canberra, Commonwealth of Australia, 27 April 2012.

⁴ *Ministerial Direction*, p. 2.

⁵ *Dumping and Subsidy Manual* (December 2021).

⁶ At p. 33 of GCL's industry verification report (EPR Folio No. 628/17), the Commission made a two-line reference to the flowering event, with no supporting evidence.

⁷ SEF 628, p. 77.

⁸ *Ibid.*

⁹ However, the Commission contradicts itself here at p. 69 of SEF 628 where it states that *..It appears that the improvement in profit and profitability in the investigation period is driven by the higher prices and lower total costs (which could be the result of lower input costs or lower production quantity)...*[emphasis added].

dumping that caused injury to GCL. The actual commercial reality of the flowering event was such that much of the early-ripened pineapple was either left to perish in Australian pineapple fields or was promoted to consumers in the fresh pineapple market.¹⁰

Had GCL been required to increase production volumes to such an extent to accommodate the excess pineapple raw material as the Commission alleges, it would have been borne out in its can and packaging raw materials inventory data. Contrary to a trend that would see these raw materials decline substantially in the face of the requirement to package and store large volumes of FSI pineapple due to a glut of raw material pineapple, the Commission's verified index data for cans and packaging indicates the opposite. Over the injury analysis and investigation periods, these on-hand raw material items increased substantially:

Can & packaging index (units)	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023
Can	100	219	11	308	523
Can end	100	140	58	228	374
Label	100	653	439	1048	926
Packaging (trays/cartons)	100	190	178	399	254

Reproduced SEF 628 table – Table 29: Can & packaging index (FSI pineapple) – calendar year periods¹¹

This other injury factor should therefore be dismissed by the Commission in its final report considerations.

13.4 Volume effects

The Commission has correctly assessed that thin sliced and sliced FSI pineapple are substitutable. On these two products, in SEF 628 the Commission assessed that:¹²

Based on the commission's analysis, GCL's self-produced FSI pineapple competes in the thin slice and sliced FSI pineapple portion of the Australian market. The commission estimates that thin slice and sliced FSI pineapple comprised approximately 18% of the Australian FSI pineapple market (by number of cans sold) in the investigation period. Thin slice FSI pineapple comprised approximately 9% of the Australian FSI pineapple market.

Although the dumping margins for some exporters from Thailand were above negligible levels, the commission did not identify significant volumes of dumped thin slice or sliced FSI pineapple. The majority of thin slice or sliced FSI pineapple from Thailand was undumped or was dumped at negligible levels. Dumped thin slice FSI pineapple from Thailand is around 1% of the overall Australian FSI pineapple market in the investigation period. Dumped thin slice FSI pineapple from Thailand is around 12% of the market for thin slice FSI pineapple.

What is not articulated by the Commission is the percentage of the combined dumped sliced and thin sliced FSI pineapple of the market for thin slice FSI pineapple. With sliced substitutable for thin sliced, the correct assessment should include both.

Furthermore, and important to this assessment, is the Commission's footnote 67 which states that ... *Tidbits are the most common pineapple cut sold in Australia and comprised approximately 75% of the market in the investigation period.*¹³ Assigning 75 percent of the market to tidbits, and 18 percent to sliced/thin sliced, leaves an approximate 7 percent of the Australian market as comprising of either chunks or crushed pineapple cuts.

¹⁰ Refer, <https://www.abc.net.au/news/rural/2023-01-30/queensland-pineapple-glut-hurting-farmers-add-to-costs/101906266>, <https://www.abc.net.au/news/rural/2022-12-11/how-your-christmas-spread-can-help-aussie-farmers/101754166>, and <https://www.abc.net.au/news/rural/2022-10-13/pineapple-growers-work-through-surplus-ahead-of-shortage/101527762>.

¹¹ SEF 628, p. 72.

¹² Ibid, p. 76.

¹³ Ibid, footnote 67.

What GCL finds perplexing with the assessment above that ... *The majority of thin slice or sliced FSI pineapple from Thailand was undumped or was dumped at negligible levels...* is how this conclusion can be reached given the 21.5 percent margin found for the verified exporter *Siam Food (2513) Company Limited (Siam)*, an exporter who exported only two MCC's – chunks and sliced pineapples – during the investigation period:

Australian Sales	Australian CTM	Domestic Sales	Domestic CTM
P-CH-T-3060-LS	CH-T-3060-LS	<i>Nil – Siam (2513) did not make and sell the goods domestically in the investigation period.</i>	
P-SL-T-3060-LS	SL-T-3060-LS		

Reproduced SEF 628 table – Table 8: MCC's sold by Siam (2513)¹⁴

Given the small Australian market weighting to chunks and crushed pineapple cuts, and the fact that Siam exported only chunks and sliced FSI pineapple, GCL questions the veracity of the Commission's assessment that the majority of thin slice or sliced FSI pineapple from Thailand was undumped or was dumped at negligible levels. This is a critically important aspect for the Commission to reassess and confirm.

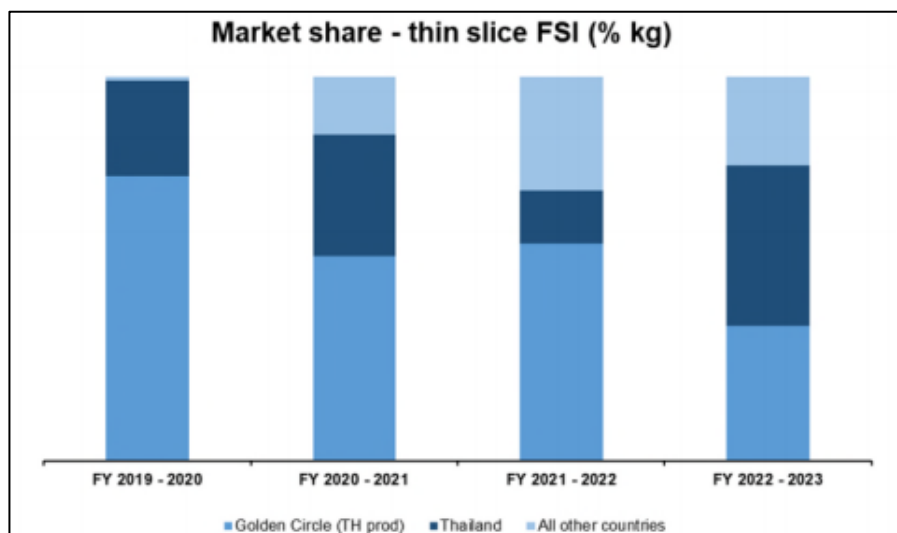
12 Economic condition of the industry

12.4 Volume

SEF 628 preliminarily determines that GCL experienced reduced sales volumes over the injury analysis period, followed by continued declines in the investigation period (albeit to a lesser degree).¹⁵ On market share, the SEF states that:¹⁶

GCL experienced reduced market share for its self-produced FSI pineapple at the start of the injury analysis period. However, after that time, GCL's market share remained steady, with a minor increase in the investigation period, due to a declining overall market size.

On the thin sliced market specifically, the Commission has found that GCL's share decreased over the injury analysis period, including in the investigation period, and that the thin slice FSI pineapple market share increased for Thailand and other countries over the full period. This was supported in SEF 628 with the following chart:



Reproduced SEF 628 figure – Figure 10: Australian market share

¹⁴ SEF 628, p. 22.

¹⁵ SEF 628, p. 64.

¹⁶ Ibid.

This depicts a substantial Australian industry decline in market share driven (particularly during the investigation period) by, as argued above, dumping by Thailand at above de-minimis levels. Yet the Commission concludes that partial and inconsistent volume injury trends over this period translated to a negligible impact of the dumped goods, and was not a cause of GCL's small declines in sales volumes in the investigation period.¹⁷

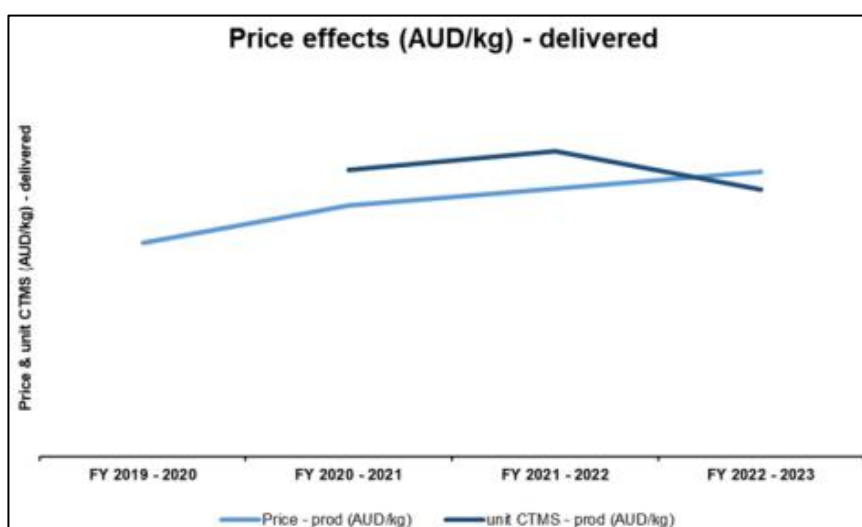
Clearly, Thailand has gained market share for thin sliced pineapple at the expense of GCL. The Commission's causation assessment here is therefore wholly inconsistent with the Minister's direction that identification of material injury may occur in circumstances of a ...*slowed...* not contracted ...*rate of the industry's growth...* and an outright contradiction of the Ministerial direction that ...*a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline.* An extract is reproduced below:¹⁸

*I note that anti-dumping or countervailing **action is possible in cases where** an industry has been expanding its market rapidly, **and dumping or subsidisation has merely slowed the rate of the industry's growth, without causing it to contract.** In cases where it is asserted that an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, **I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline.** I direct that it is **possible to find material injury where an industry suffers a loss of market share in a growing market** without a decline in profits. As in all cases, a loss of market share cannot alone be decisive. I direct that a loss of market share should be considered with a range of relevant injury indicators before material injury may be established. [emphasis added].*

As applied to this inquiry, the relevant question for the Commission under the *Ministerial Direction* is not whether there has been only ...*small declines...* in GCL's sales volumes, but rather whether the ...*dumping or subsidisation has merely slowed the rate of the industry's growth.* In this case, GCL's experience of small volume declines has transpired in the face of Thailand's rapid volume expansion in the Australian market. GCL therefore argues that, but for the presence of these materially dumped and materially injurious volumes, its market share would have been higher.

12.5 Price suppression and depression

GCL respectfully submits that the Commission's analysis of the claim of price suppression (SEF 628 Figure 11) is flawed, as it has failed to perform any trend analysis across the injury analysis period, instead only analysing the trend within the investigation period. Figure 11 is reproduced here:



Reproduced SEF 628 figure – Figure 11: Price effects – thin slice FSI pineapple¹⁹

¹⁷ SEF 628, p. 77.

¹⁸ Ministerial Direction, p. 2-3.

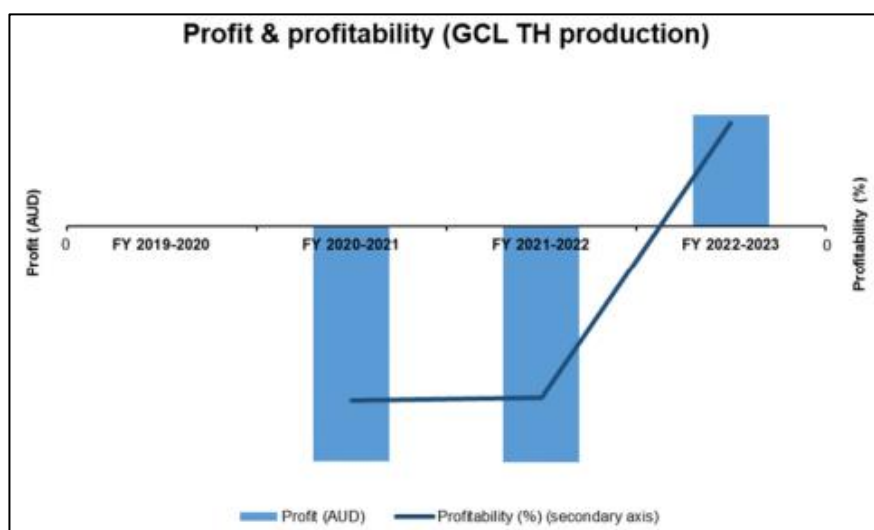
¹⁹ SEF 628, p. 68.

The Commission's observations of fluctuations in industry data does not in fact discharge the Commission's obligation to assess trends in profit and profitability performance across the injury analysis period, as required under subsection 269T(2AD).²⁰ The Commission does not explain why the materially significant negative gap between unit prices and unit costs over the injury analysis period is non-injurious, except to say only that unit CTMS and price increased by approximately the same rate between FY2020 and 2022.²¹

The economic reality is that prices were below costs – and fundamentally suppressed – and that the coincidence causation analysis failed to address the but-for price suppression scenario during the investigation period.

12.6 Profit and profitability

In Figure 12, SEF 628, the Commission charted the Australian industry's annual profit and profitability performance as follows:



Reproduced SEF 628 figure – Figure 12: Profit & profitability – self produced FSI pineapple²²

The Commission's only observation for the profit and profitability assessment is that it *...observes from Figure 12 that GCL's sales of self-produced FSI pineapple appear to have returned to profitability in the investigation period after being unprofitable in the prior 2 FY periods.*²³ This assessment is not too dissimilar to the Commission's views in the original consideration report for the inquiry in question.²⁴ In relevant part:²⁵

6.5 Profit and profitability effects

Golden Circle's application shows it was unprofitable in 2019 and 2020. It appears that the price increases achieved in 2021 and 2022 (Figure 4) resulted in Golden Circle becoming profitable in that same period.

²⁰ Subsection 269T(2AD) permits analysis of trends across the injury analysis period for the purpose of assessing questions of material injury and causation: *The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry....*

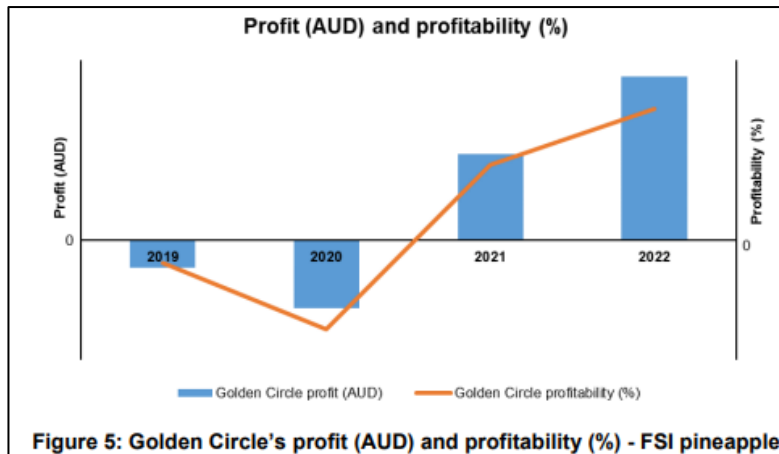
²¹ SEF 628, p. 68.

²² SEF 628, p. 69.

²³ Ibid.

²⁴ EPR Folio No. 628/2.

²⁵ Ibid, p. 18.



GCL interprets the scant SEF conclusion as based on the Commission's earlier SEF caveat that it was unable to verify production quantities for the injury analysis period, and could therefore not use unit profit in the assessment.²⁶ Nevertheless, the Commission has utilised an approach in its profit and profitability calculations that has altered from the consideration report, but which has resulted in a similar preliminary conclusion.

GCL submits that the Commission cannot caveat its analysis and provide little in the way of a meaningful profitability conclusion. Furthermore, the Commission's coincidence-causation-type comment of a *...return to profitability...* ignores both the highly negative profit and profitability results from the injury analysis period, and the "profit foregone" in the investigation period. The *Ministerial Direction* is clear on this question:²⁷

On 22 June 2011 the Australian Government announced its 'Streamlining Australia's anti-dumping system' policy. This included a commitment to revise the current Ministerial Direction on material injury to confirm that profits foregone and loss of market share in an expanding market are relevant injury considerations. [emphasis added]

Specifically, the Minister directs:²⁸

I note that anti-dumping or countervailing action is possible in cases where an industry has been expanding its market rapidly, and dumping or subsidisation has merely slowed the rate of the industry's growth, without causing it to contract. In cases where it is asserted that an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline. [emphasis added].

It is not sufficient under the *Ministerial Direction* for the Commission to simply decide, based on appearances²⁹ and what they are driven by, that material profit and profitability injury is not apparent, without also considering whether the industry would have been more prosperous if not for the presence of dumped imports.

²⁶ SEF 628, p. 69.

²⁷ Ministerial Direction, p. 1.

²⁸ Ministerial Direction, p. 2.

²⁹ To re-quote the SEF on these comments, at p. 69:

The commission observes from Figure 12 that GCL's sales of self-produced FSI pineapple appear to have returned to profitability in the investigation period after being unprofitable in the prior 2 FY periods. [emphasis added].

It appears that the improvement in profit and profitability in the investigation period is driven by the higher prices and lower total costs (which could be the result of lower input costs or lower production quantity), rather than higher prices alone, noting that GCL sold less FSI pineapple in the investigation period. [emphasis added].

12.7 Other economic factors

12.7.2 Revenue / 12.7.6 Stocks and inventories / 12.7.7 Cashflow

In SEF 628 the Commission observed:

- a decline in GCL's FSI pineapple revenue of approximately 14 percent in the investigation period, when compared to the start of the injury analysis period;³⁰
- injury for finished goods and raw materials inventories;³¹ and
- a reduction to the Australian industry's cashflow.³²

On the revenue factor, the Commission dismissed the injury as material on the basis of its reliance on volume and price as inputs.³³ The Commission's coincidence analysis on volume and price has been refuted above, and GCL argues for material injury and causation on both volumes and price. By extension therefore, the 14 percent decline in revenue should be attributed to dumped Thailand exports.

On inventories and cash flow, the Commission briefly concludes that there is no link between the injury found and the dumped goods.³⁴

GCL contends that the observed decline in the above other factors reflects the actual lost sales volumes and market share, price suppression and reduced profits and profitability experienced by the Australian industry throughout the full inquiry period. The Commission was therefore wrong to ignore the declines in these economic factors as material injury caused by dumped Thailand exports. Rather, they serve as additional factors supporting the overall correct and preferable conclusion that the industry experienced material injury caused by the dumping. This approach is consistent with the *Ministerial Direction*:³⁵

*I note that relevant economic factors to be considered when assessing material injury are referenced at subsection 269TAE(3) of the Customs Act. These **include, but are not limited to** the quantity of goods of the kind in question, or like goods, produced or manufactured in the industry; the value of sales of, or forward orders for, goods of that kind or like goods, produced or manufactured in the industry; the level of profits earned in the industry, that are attributable to the production or manufacture of goods of the kind in question, or like goods; the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of the goods in question, or like goods; the terms and conditions of employment (including the number of hours worked) of persons employed in the industry; and investment in the industry. (emphasis added).*

Conclusion

Should you have any queries regarding this submission, please contact GCL's representative Mr Chad Uphill.

Yours sincerely,



Mike Pretty
Non-Executive Chairman – Kraft Heinz Australasia

³⁰ SEF628, p. 70.

³¹ Ibid, p. 72.

³² Ibid.

³³ Ibid, p. 77.

³⁴ Ibid.

³⁵ Ministerial Direction, p. 3.