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Public File

Dear Mr McGovern

Review of Measures Investigation No. 478 – Consumer pineapple exported from Thailand

Background

Golden Circle Limited ("Golden Circle") is Australia's only canned pineapple manufacturer. Golden Circle commenced operations as a grower cooperative in the 1940s, with production at the Northgate cannery commencing in 1947. The cannery was designed to produce approximately 40,000 tonnes per annum and is now producing over 150,000 tonnes of canned pineapple, fruit juices and cordials.

Golden Circle sources fresh pineapple locally from growers and produces canned pineapple in consumer (i.e. less than one litre) and food service industry (FSI) (greater than one litre) container sizes.

In January 2001 Golden Circle made an application requesting anti-dumping measures on certain pineapple products exported to Australia from Thailand. The then Minister for Justice and Customs imposed measures on consumer and FSI pineapple exported from Thailand in October 2001, except for FSI pineapple exported by Malee Sampran Public Co (MSP). The measures have been continued following investigations in 2006, 2011 and 2016 and continue to apply.

The current anti-dumping measures applying to consumer pineapple exported from Thailand were determined in October 2016 (Report No. 333 refers). Measures applicable to the applicant exporter for the current review – Prime Products Industries Co., Ltd (PPI) – were originally set in September 2015 following an accelerated review investigation (Report No. 296).

On 24 November 2017 PPI made an application for review of the measures applicable to consumer pineapple exported to Australia by PPI. PPI, however, sought to withdraw the application on 3 January 2018. As there is no provision to permit the withdrawal of an application for the review of measures, the Anti-Dumping Commission ("the Commission") continued its review investigation and recommended revised variable factors be applied to PPI. The level of measures applied to PPI reflects the 'uncooperative exporter' variable factors in light of PPI's non-cooperation in the investigation (Report No. 453 refers).

This current investigation follows an application received by the Commission on 7 May 2018 from PPI. The application claims that there has been a change in one or more of the variable factors applicable to PPI, and that the measures are no longer warranted.

PPI application for review and request for revocation

The Commissioner decided not to reject the application for the review of the variable factors applicable to PPI. The Commissioner rejected PPI's request for the revocation of the measures stating:

"The application form requires a detailed statement setting out an applicant's reasons for a revocation review. It requires evidence in support of the view that there are reasonable grounds for asserting that the measures are no longer warranted and refers to instructions and guidelines which are published on the Commission's website.

PPI has not provided a detailed statement setting out the reasons for a revocation review. Further, the evidence submitted with the application is specific to addressing changes in variable factors, without specifically addressing the likelihood of recurrence of dumping or material injury if the measures were to be revoked.

Therefore, the Commission is not satisfied that, in respect of a revocation review, PPI's application complies with section 269ZB.

The Commission recommends that the Commissioner reject the application for a revocation review pursuant to subsection 269ZC(1) as it is not satisfied of the matters referred to in subsection 269ZC(2)."

Golden Circle welcomes the Commission's recommendation to the Commissioner not to proceed with an investigation into the revocation of the measures. Golden Circle is a manufacturer of consumer pineapple in Australia and is firmly of the view that the anti-dumping measures applicable to consumer pineapple exported to Australia from Thailand are warranted.

The anti-dumping measures on exports from Thailand were continued in October 2016 to ensure that the Australian industry manufacturing consumer pineapple did not experience further material injury from dumping. In that investigation, the Commission found that all exporters from Thailand (excluding Thai Pineapple Canning Industry Co., Ltd) were exporting at dumped prices, with a 9.2 per cent dumping margin determined. Golden Circle notes the recently completed review investigation (refer Report No. 453) where the Commission determined that exports of consumer pineapple by Kuiburi Fruit Canning Co., Ltd and Kuiburi Fruit Cup Co., Ltd (Kuiburi) were at dumping margins of negative 9.7 per cent. Review investigation No. 453 did not extend to all Thai exporters of consumer pineapple and was for exports by Kuiburi only.

The measures were continued (less than two years ago) for a five-year period. Golden Circle concurs with the Commission's recommendation not to revoke the measures as:

- The applicant has not demonstrated grounds that the measures are no longer required;
- There is an Australian industry manufacturing like goods that has, in 2016, demonstrated that the measures are justified;
- The measures were only continued in October 2016 for a further five-year period; and
- In the most recent review of all measures (Report No. 333) all exporters (except TPC) were found to be exporting at dumped prices.

The measures are required to ensure that the Australian industry does not again experience material injury that the measures are intended to prevent.

Golden Circle welcomes and supports the Commission's recommendation not to revoke the measures.

Review of variable factors

Australian Dumping Notice 2018/101 (ADN 2018/101) notified that following consideration of the application from PPI to review the variable factors applicable to its exports to Australia, the Commissioner wrote to the then Assistant Minister for Science, Jobs and Innovation (Assistant Minister) and recommended that the review investigation on consumer pineapple exported to Australia be extended to all Thai exporters.

The Assistant Minister wrote back to the Commissioner notifying of his acceptance of the Commissioner's recommendation to extend the review of measures to all exporters in Thailand. The Commissioner notified that the review of the measures on consumer pineapple exported to Australia from Thailand extended to all exporters the subject of the measures.

Normal value determination

The Commission has received completed exporter questionnaire responses from the following Thai exporters of consumer pineapple to Australia:

- Siam Food Products Public Company Limited;
- Prime Products Industry Co., Ltd;
- Kuiburi Fruit Cup Co., Ltd;
- Kuiburi Fruit Canning Co., Ltd;
- Tipco Foods Public Co., Ltd and Tipco Pineapple Co., Ltd (joint exporter questionnaire response).

Golden Circle notes that Siam Food Products Public Company Limited ("Siam Foods") sells like goods domestically in Thailand. Section D of Siam Food's exporter questionnaire response ("EQR") addresses distribution channels, the domestic sales process, etc. Kuiburi Fruit Canning Co., Ltd ("Kuiburi Fruit Canning") also appears to sell the goods (i.e. canned pineapple) domestically as per Section of its EQR. It is further noted that Prime Products Industry Co., Ltd ("Prime Products") does not sell the goods domestically and it is not clear from the Tipco Foods Public Company Limited and Tipco Pineapple Co. Limited ("Tipco") EQR whether it sells goods domestically.

On the basis that Siam Foods and Kuiburi Fruit Canning sell canned consumer pineapple ("the goods") domestically in the ordinary course of trade ("OCOT"), the Commission will determine normal values for both exporters on the basis of domestic sales under subsection 269TAC(1). Normal values for Prime and Tipco cannot be determined under subsection 269TAC(1) due to the absence of domestic sales. Normal values for Prime Products and TIPCO therefore, can be determined under subsection 269TAC(2)(c) on a constructed selling price methodology using the validated costs of production, and relevant selling, general and administrative expenses for the respective exporter for the goods, in accordance with the conditions of Sections 43, 44 and 45 of the *Customs (International Obligations) Regulation 2015* (the Regulation). For the exporter's production costs, and the selling and general administration costs, to be used they must be maintained in accordance with the generally accepted accounting principles (GAAP) in the country of export, and reasonably reflect competitive market costs associated with the relevant costs for production and sale of like goods.

In respect of an appropriate level of profit to be applied to the constructed normal value, Section 45 of the Regulation specifies a number of available options for the Minister to consider. As the exporter (i.e. Prime Products and Tipco) do not sell the goods domestically, the Minister can have regard to Regulation 45 (3) (b) which permits the level of profit to be determined in accordance with that achieved by other exporters on sales of like goods on the domestic market in Thailand (i.e. in this instance, profit achieved on domestic sales by Siam Foods and Kuiburi Fruit Canning).

The normal value for Kuiburi Fruit Cup – in the absence of domestic sales of pineapple in plastic containers – may also be determined in accordance with the Regulations. The Commission will have access to Kuiburi Fruit Cup's production costs and, selling and general administrative expenses, and can utilise Kuiburi Fruit Canning's profit on domestic sales of like goods (i.e. canned pineapple) in its constructed normal value.

Recommendations

Golden Circle is opposed to the revocation of the measures on canned pineapple exported from Thailand. The then Assistant Minister accepted the need for the continuation of the measures in October 2016 (less than two years ago) and, Golden Circle's view the same reasons that existed for the measures to be continued, remain in existence today. Golden Circle therefore supports the Commissioner's recommendation not to conduct a revocation review of the measures on consumer pineapple exported from Thailand.

Golden Circle has examined the EQR's from the cooperating exporters and notes that Prime Products and Tipco do not sell like goods domestically in Thailand. Normal values for Prime Products and Tipco therefore may be determined under subsection 269TAC(2)(c) on a constructed basis and in accordance with Regulations 43, 44 and 45. The level of profit applied to Prime Products and Tipco's normal value can be determined under Regulation 45 (3)(b) by reference to the level of profit achieved on the Thai domestic market by other Thai exporter's of like goods.

If you have any questions concerning this submission, please do not hesitate to contact me on (03) 9861 5058 or Golden Circle's representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely



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