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2 June 2022

The Director  
Investigations 2  
Anti-Dumping Commission  
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### For Public File

Dear Sir/Madam

#### **Reinvestigation of certain findings in relation to Continuation Inquiry No. 571 & 572 relating to Consumer Pineapple exported from the Republic of the Philippines and the Kingdom of Thailand – Response to Preliminary Reinvestigation Report**

##### I. Key Recommendations

Golden Circle Limited (“Golden Circle”) has reviewed the Anti-Dumping Commission’s (“the Commission”) Preliminary Reinvestigation Report (“Report”) for the Anti-Dumping Review Panel (“ADRP”) concerning the reinvestigation of certain findings in Reports 571 and 572 concerning consumer pineapple exported to Australia from the Philippines and Thailand.

The Commissioner’s preliminary finding confirms that he is satisfied that in the absence of the measures on exports of consumer pineapple from the Philippines it is likely that the Australian industry would experience a recurrence of material injury that the measures are intended to prevent. The Commissioner – in this preliminary report – is not satisfied that in the absence of measures exports from Thailand will cause a recurrence of material injury that the measures are intended to prevent.

Golden Circle welcomes the preliminary finding concerning exports from the Philippines. Golden Circle, however, does not support a preliminary finding that the exports from Thailand will not cause a recurrence of material injury in the absence of the measures. Golden Circle respectfully contends that the measures on exports from Thailand have had the desired impact with two-thirds of exports from Thailand not at dumped prices during the investigation period. Should the measures be allowed to expire it is likely that the recent decline in export volumes from Thailand since measures were continued in 2016 will increase as exporters - unfettered by anti-dumping measures - seek to re-capture lost sales volumes and market shares previously held.

Golden Circle recommends that the Commissioner propose to the ADRP Senior Member that the measures should not have been allowed to expire and, that it is likely that the dumped exports from both the Philippines and Thailand will result in a recurrence of material injury that the measures are intended to prevent.

##### II. Background

On 20 January 2022 the Anti-Dumping Commission (“the Commission”) requested submissions from interested parties on the grounds for reinvestigation of the Minister’s decision not to secure the continuation of anti-dumping measures on consumer pineapple exported from the Republic of the Philippines (“the Philippines”) and the Kingdom of Thailand (“Thailand”). This follows an earlier request by the Senior Member of Anti-Dumping Review Panel (“ADRP”) directing the Commissioner to reinvestigate the following grounds of review, namely:



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- (i) The Commission's finding that Golden Circle product operated in its own segment of the consumer pineapple market in Australia;
- (ii) The finding the recurrence of material injury occurring should the measures be allowed to expire was incorrect; and
- (iii) The finding that the threat of future material injury is not part of the test for the continuation of measures.

On 27 May 2022 the Commissioner published a *Preliminary Reinvestigation Report to the Anti-Dumping Review Panel* ("the Report"). In the Report, the Commissioner has established that:

- (i) Despite stating that "threat" does not form part of the continuation test, the question of whether material injury is likely to recur is necessarily a future-oriented question. This matter was considered in the reinvestigation;
- (ii) Golden Circle's canned pineapple and imported canned pineapple compete in the same market where it is impacted by blower priced competition; and
- (iii) Following reconsideration of the market segment issues, the Commissioner is satisfied that the expiration of the anti-dumping measures on exports of canned pineapple from the Philippines would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent. In respect of exports of canned pineapple from Thailand, the Commissioner is not satisfied that future exports would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.

### III. Threat of material injury

The Commissioner acknowledged and agreed with the ADRP Senior Member that "*an assessment of the likelihood, or otherwise, of the continuation or recurrence of material injury in the context of the existing measures necessarily requires a future-oriented analysis*" (emphasis added). The Commissioner further stated that "*The commission agrees that this, by its very nature, involves consideration of the hypothetical situation that is the absence of the measures.*"

Golden Circle welcomes the Commissioner's reconsideration that the continuation of measures analysis requires a future oriented analysis that examines the future threat of material injury (or likelihood thereof) in the absence of the measures.

### IV. Market segmentation

Golden Circle also welcomes the Commissioner's acknowledgment that Golden Circle does not operate in its own market segment and is not immune to the injurious effects of lower priced dumped imports of canned pineapple.

This conclusion is important as Golden Circle's canned pineapple is wholly interchangeable and substitutable (and therefore is 'like goods') to the imported canned pineapple from the Philippines and Thailand. Golden Circle has maintained that prices for the locally produced canned pineapple are influenced by competitive imports of canned pineapple.

Golden Circle notes that the Commission has stated that "*Previous investigations and inquiries have also found that, in terms of retail pricing, the consumer pineapple market generally has 3 price tiers.*" Golden Circle does not agree with this generalization and would highlight that in the past Golden Circle has supplied private label products that has overlapped in pricing with proprietary branded product. This generalization is not characteristics of the canned pineapple market at all times.

Further, Golden Circle also notes the representations of Dole Philippines Inc ("Dole") including the statement that Golden Circle has "*ignored the changes in the market over the past 15 to 20 years*". This statement is unsupported by Dole and is rejected by Golden Circle. Golden Circle has sought to meet the demands and needs of its customers, subject to raw material pineapple fruit availability.



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Golden Circle reiterates that the Australian consumer pineapple market is a single market segment that includes proprietary label pineapple and private label pineapple.

#### V. Likelihood of Future Material Injury

##### (a) *The Philippines*

The Commission is satisfied that following further reconsideration the expiry of the measures will likely result in a recurrence of the material injury that the measures are intended to prevent. The Commissioner concluded that future material injury from exports from the Philippines was likely due to the following facts:

- Golden Circle experienced price suppression, and injury including reduced profit and profitability during the inquiry period;
- exports from the Philippines are a proprietary label product that is substitutable for, and competes directly with, Golden Circle's proprietary label product;
- the volume of exports from the Philippines grew by 25 per cent during the inquiry period such that exports from the Philippines were the major source of supply;
- exports from the Philippines were at dumped prices – with margins of 17.5 per cent (i.e. for Dole Philippines Inc) and 49.9 per cent (i.e. uncooperative and all other exporters), with margins of dumping higher than those determined in recent review of measures inquiries;
- the selling prices for exports from the Philippines undercut the Australian industry's selling prices during the investigation period; and
- the injury experienced by Golden Circle during the inquiry period was material and can be attributed to the presence of dumped goods from the Philippines.

On the basis that the exports of canned pineapple from the Philippines were at significantly dumped prices and increased in volumes during the investigation period that caused material injury to the Australian industry manufacturing like goods, Golden Circle agrees with the Commissioner that in the absence of measures Golden Circle is likely to continue to suffer material injury in the form of price suppression and associated injury factors due to dumped exports from the Philippines.

Golden Circle also notes the Commissioner's reconsideration in the re-investigation of:

- the cross-elasticity of demand between the locally produced goods and the imported goods; and
- the influence (or power) of the supermarkets to influence the market for consumer pineapple.

Golden Circle concurs with the Commissioner's views that the "*pricing power of the supermarkets could allow them to increase profit margins they can attain to the detriment of their suppliers*" which could be a cause of injury sustained by the Australian industry. As such, both the substitutability of the imported and locally produced goods and the influence of the supermarkets to improve profit margins that may be aided by the dumping are relevant factors in the assessment of the likelihood of a recurrence of material injury.

Golden Circle also highlights with the Commissioner that anti-dumping measures against exporters from the Philippines have been in operation for 15 years and that in each investigation exporters in the Philippines have continued to supply at dumped prices. It would appear that exporters in the Philippines do little more than establish export prices at the benchmark determined by the most recent review of measures notice and do not monitor whether export prices are at non-dumped levels. This practice is indicative of future material injury to Golden Circle in the absence of the measures.

Golden Circle supports the preliminary finding of the Commissioner that in the absence of the measures Golden Circle is likely to experience a recurrence of the material injury the measures are intended to prevent.



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Golden Circle therefore requests the Commissioner to conclude in his re-investigation report that the anti-dumping measures are required to ensure Golden Circle does not experience a recurrence of material injury that the measures are intended to prevent.

*(b) Thailand*

The Commissioner's preliminary reinvestigation report states that "*the Commissioner is not 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 material injury that the anti-dumping measures are intended to prevent*".

The Commissioner is proposing that the measures on exports of canned pineapple from Thailand be allowed to expire.

Golden Circle has observed the Commission's analysis of undumped exports and six identified Thai exporters of canned pineapple to Australia during the investigation period (Table 2: Volume and price analysis of dumped Thai exports during 2020). Golden Circle further notes the Commission's stated finding that dumped exports from Thailand accounted for less than 1 per cent of the Australian market for canned pineapple in the investigation period.

Additionally, the Commission established that:

- the majority of exports from Thailand during the investigation period were undumped and were exported by exporters with long held distribution links to the Australian market;
- undumped exports from Thailand during the investigation period accounted for about 2 per cent of the Australian market;
- dumped exports from Thailand were from six exporters and accounted for 0.7 per cent of the Australian market;
- there was a significant difference in pricing between the dumped and undumped exports from Thailand.

Of particular relevance is the Commission's assessment that "*in relation to exports from Thailand, undumped exports are the more likely influencer of price in the Australian market.*" These exports accounted for approximately 2 per cent of the Australian market in the inquiry period. Golden Circle does not consider that the Commission has afforded any weight to the impact of the anti-dumping measures that applied in the investigation period. The measures would have acted as a deterrent to exporters in Thailand – as reflected in the approximate two-thirds of total exports during the inquiry period – not being at dumped prices. The Commission found that the undumped exports from Thailand were priced above the dumped selling prices for consumer pineapple from the Philippines and that export volumes from Thailand have declined in market share since the measures were continued in 2016.

Golden Circle submits that the Commission has not adequately considered the impact of the operative anti-dumping measures in its assessment of whether a recurrence of material injury is likely should the measures expire. Golden Circle contends that in the absence of the measures it is likely that exporters in Thailand – unfettered by the anti-dumping measures – will likely take steps to secure increased market shares with reduced export prices to Australia. The Commission has confirmed that the Thai exporters possess excess production capacity and, combined with maintained distribution channels into the Australian market, will likely seek to recover market positions in the absence of the measures.

Golden Circle considers that the operation of the anti-dumping measures since 2016 have influenced the pricing intentions of Thai exporters in the four-year period that the measures were in force. This has resulted in a relatively limited injurious dumping from Thailand as a source of supply during the investigation period. It is further considered by Golden Circle that there exists reasonable grounds to



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conclude that it is more likely (than not) that in the absence of the anti-dumping measures that a recurrence of material injury will occur.

Golden Circle urges the Commissioner to re-consider the preliminary finding in its report to the ADRP Senior Member concerning exports of consumer pineapple from Thailand such that he is now satisfied that future exports would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.

Golden Circle requests the Commissioner to propose that the measures on exports from the Philippines and Thailand not be allowed to expire.

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

Yours sincerely

**Carolyn** Digitally signed by Carolyn  
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