



Golden Circle Limited (ABN 85 054 355 618)
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9 August 2021

The Director
Investigations 4
Anti-Dumping Commission
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Canberra ACT 2601

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Dear Sir/Madam

Continuation of measures Investigations 571 and 572 – Response to Statement of Essential Facts – Consumer pineapple exported to Australia from the Philippines and Thailand

I. Executive Summary

Golden Circle Limited ("GCL") is disappointed with the proposed recommendation to the Minister for Industry, Science and Technology ("the Minister") that he not take steps to secure the continuation of anti-dumping measures on consumer pineapple exported to Australia from the Philippines and Thailand.

The Commissioner's recommendation has not adequately considered:

- the substantial dumping margins evident for consumer pineapple exported from the Philippines by Dole Philippines Inc. ("Dole") of 14.2 per cent, and uncooperative and all other exporters at 53.4 per cent – that is, all exports from the Philippines were at dumped levels;
- the greater than negligible margins from Thai exporters of consumer pineapple ranging from 3.8 per cent to 15.7 per cent (except for exports by Kuiburi Fruit Canning Co., Ltd and Kuiburi Fruit Cup Co., Ltd which were at -3.0 per cent);
- that the largest source of supply of consumer pineapple for exports to Australia is from the Philippines (with Thai exports in relatively small volumes);
- that the existence of dumping measures operate to encourage retail customers not to disclose details of alternative imported competition pricing levels; and
- that the dumping of consumer pineapple from the Philippines and Thailand influence selling prices for locally produced consumer pineapple as reflected in the price suppression and reduced profit and profitability determined for the 2020 investigation period.

Additionally, GCL strongly rejects the finding of the Anti-Dumping Commission ("the Commission") that GCL consumer pineapple operates in a "separate segment" of the consumer pineapple retail market in Australia. This is certainly not the case and was never previously established in earlier anti-dumping investigations¹.

The Commissioner's recommendation is based upon an assessment that material injury is *likely* to occur if the measures are allowed to expire. That is, material injury is considered more probable than not, in the absence of the measures. GCL has evidenced that the raw pineapple fruit industry in Australia is recovering from recent pro-longed drought conditions and GCL is working with growers to increase volumes. The failure to not continue the measures will have a disastrous impact on GCL's and the Australian Pineapple Grower's plans and strategies to grow supply over the next seven-year period. This strategy was detailed to the Commission during the investigation.

¹ Investigations No. 41 (2001), and continuation of measures investigations 110 and 111 (2006), 171d (2011), and 333 (2016).



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The Commissioner's proposed recommendation places at risk and creates uncertainty for:

- the iconic Golden Circle pineapple brand;
- Northgate's xxx direct employees;
- the annual site capital spend of \$xx Million;
- the annual supply of approx.. xxxxxx tonnes of fresh pineapples from xxx growers with a direct spend of \$xxx Million per annum;
- The need to purchase (probably via importation pineapple concentrate for Golden Circle beverages that are produced in parallel at the cannery);
- Wasted investment in new growers and planting undertaken in order to increase Australian grown pineapple.

The anti-dumping measures afford Australian pineapple growers and GCL's cannery with a level of continued certainty. The expiry of measures on consumer pineapple jeopardizes this certainty.

On the basis that the recurrence of material injury to the Australian industry is considered more likely than not should the measures expire, GCL respectfully requests that the Commissioner withdraw his preliminary recommendation and recommend to the Minister that he take steps to ensure the measures do not expire in respect of consumer pineapple exported from the Philippines and Thailand.

II. Dumping margins

The Commission received cooperation from the following exporters in Investigation 571 & 572 concerning consumer pineapple exported to Australia from the Philippines and Thailand:

- Dole Philippines Inc. ("Dole");
- Prime Products Industry Co., Ltd (Prime Products");
- Siam Food Products Public Co Ltd (Siam Food");
- Kuiburi Fruit Canning Co Ltd and Kuiburi Fruit Cup Co Ltd ("Kuiburi").

The Commission's assessment of dumping margins (contrasted with previously determined dumping margins) are reflected in Table 1.

Table 1 – Current anti-dumping measures and determined dumping margins for consumer pineapple in current inquiry

Country	Exporter	Existing dumping margin	Revised dumping margin	Dumping duty method
Philippines	Dole Philippines Inc	5.9%	14.2%	Combination of fixed and variable duty method
	Uncooperative and all other exporters	22.9%	53.4%	Combination of fixed and variable duty method
Thailand	Siam Food Products Public Company Ltd	2.6%	6.4%	Combination of fixed and variable duty method
	Kuiburi Fruit Canning Co Ltd & Kuiburi Fruit Cup Co Ltd	n/a	-3.0%	Floor price duty method
	Prime Products Industry Co Ltd	n/a	3.8%	Floor price duty method
	Tipco Pineapple Company Ltd	n/a	15.7%	Floor price duty method
	Uncooperative and all other exporters	16.8%	15.7%	Combination of fixed and variable duty method

Notes: 1. "n/a" dumping margins reflect a zero rate of duty due to previous review of measures investigations;
 2. Tipco Pineapple Company Ltd did not cooperate with the current inquiry and is deemed uncooperative and attracts the margin of uncooperative exporters.



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It is apparent from Table 1 that although anti-dumping measures have been applied on consumer pineapple, the subject exporters in the Philippines and Thailand (with the exception of Kuiburi) have continued to export to Australia at dumped prices.

GCL contends that this is particularly concerning in respect of the consumer pineapple exports from the Philippines which hold the greatest share of all suppliers (including the Australian industry) into the Australian consumer pineapple market².

The size of the dumping margins for the high volumes of exports from the Philippines is of further concern to GCL. Dumping margins of between 14.2 per cent and 53.4 per cent are significant. It is unfathomable that dumping margins of this size would have no impact on GCL's pricing – especially when GCL has sought to achieve price increases (due to increased input costs) from its customers and these have been denied. The price suppression and reduced profit and profitability experienced by GCL in 2020, which was as a result of GCL's inability to raise selling prices to retailers consistent with cost increases, can be attributed to the influence of the dumped exports from the largest source country – the Philippines.

GCL further notes that the Commission is satisfied that exports of consumer pineapple from the two countries will likely continue as³:

- imports have been identified from both subject countries in each year since the measures were continued in 2016;
- exporters have maintained distribution links in the Australian market; and
- exporters maintain excess production capacity.

Similarly, with the exception of exports by Kuiburi of Thailand, the Commission was satisfied that future exports from the Philippines and Thailand would likely be dumped as⁴:

- the goods have been exported at dumped prices during the inquiry period;
- these exporters were first found to be dumping during the original investigation, or in subsequent matters where variable factors need to be ascertained;
- the Commission has not identified evidence for these exporters to adjust their behavior; and
- there is no evidence to indicate dumping will not continue.

The Commission's assessment of future dumping is, therefore, definitive.

III. Likelihood of material injury recurring

The Commission referenced the 2012 Ministerial Direction on Material Injury which considers "whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped products in the market, could at another time, weakened by other events, suffer material injury from the same amount and level of dumping"⁵.

The 2012 Ministerial Direction provides a basis for the Commissioner to consider unique circumstances where the Australian industry may be vulnerable to the impact of dumped exports which would cause material injury to the industry. The consumer pineapple industry at the present time is an industry that satisfies the intended criteria outlined in the Ministerial Direction.

The Commission established that all exports of consumer pineapple to Australia from the Philippines and Thailand undercut the Australian industry's selling prices. Imports from Indonesia also undercut the Australian industry's selling prices. The volumes of consumer pineapple from the Philippines and Thailand appear to be double that of Indonesia in 2020. The impact of imports from the Philippines and Thailand must therefore be considered to be a significant influence on market selling prices.

² Refer Figure 10, Statement of Essential Facts 571 & 572, P. 27.

³ SEF 571 & 572, p.48.

⁴ SEF 571 & 572, P. 49.

⁵ Anti-Dumping Notice 2012/24.



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The Commission further confirmed that the Australian industry had suffered price suppression and reduced profit and profitability in the investigation period. It was evidenced by GCL that it could not recover the full increase in input costs and that customers had rejected the full proposed price increases.

The Commission has stated at Section 7.7.1.2 of the SEF that it "*did not observe any reference to selling prices of imported consumer pineapple, nor any perceived pricing pressure by imports from the subject countries*". GCL would highlight with the Commission that it is not within the customers' interests to disclose the source of competitive prices or supplying parties as this would disclose commercially-sensitive negotiating arrangements that the customers are prevented from doing so. GCL therefore cannot access competitive offers for imported consumer pineapple from importers sourcing from the two subject countries.

The Commission has also not considered the Supplier Grocery Code of Conduct, the Australian Competition and Consumer Law (ACL) and the confidentiality provisions existing in contracts between GCL's customers and its other suppliers. More particularly, GCL's customer are not permitted to share competitor pricing information with GCL pursuant to various provisions of the ACL. Providing this information would, in most cases, enable GCL to determine competitor profit margins by reference for example, to the imported price which is available from ABS on an AUD / FOB per kg. By commenting on GCL's failure to provide this information, the Commission is in fact encouraging behaviour which GCL believes would be in breach of the ACL. Furthermore, GCL's customers would likely have agreements in place (as GCL itself does with customers) regarding the supply of product. The sharing of pricing information of such third-party suppliers to GCL's customers would undoubtedly result in a common law claim for damages against GCL's customers who, in breach of such contractual arrangements, provided this information to GCL. GCL strongly submits that its inability to provide information regarding its customers' pricing from other suppliers should not be considered in determining whether to remove the current anti-dumping measures.

The Commission's analysis of pricing for imported consumer pineapple and locally produced goods established:

- Golden Circle's 'Australian' consumer pineapple is able to achieve a price premium in the Australian market;
- there appears to be a 'middle tier' of consumer pineapple which is competitive between imports from different countries; and
- the Commission considers that Golden Circle's 'Australian' product operates in its own segment within the consumer pineapple market. No other consumer pineapple, sourced from the subject countries or other countries, appears to compete in this segment.

GCL rejects the Commission's interpretation of GCL operating within its 'own segment' of the consumer pineapple market which appears to be based on GCL not being able to furnish competitive pricing information from its customers for alternative sources of supply. The Commission has completely ignored the well understood position as to why GCL's product sells at a premium to imported consumer pineapple – it is of a high quality and texture than the imported products. This quality of supply has enables GCL to sell at an historic premium – as acknowledged in earlier dumping investigations. GCL further notes in Report 271⁶ that the Commission did not consider that local proprietary label prepared or preserved tomatoes that sold at a premium to imported generic, imported private and imported proprietary goods, operated in a different segment of the retail sector for prepared or preserved tomatoes.

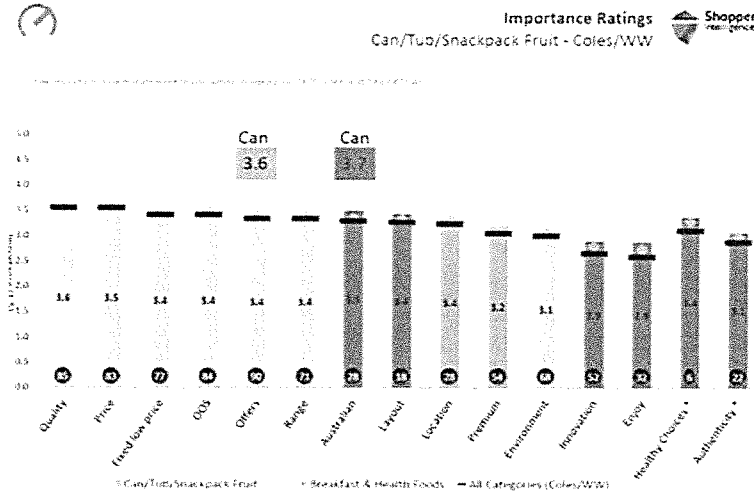
GCL draws the Commission's attention to the Shoppertracker research (2019) that confirms "*Quality & Price remain the most important factors which results in low loyalty with 1 in 3 customers willing to purchase another brand if their product was unavailable*".

⁶ Report 217, Prepared or preserved tomatoes from Italy, P. 22-23.



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Figure 1 – Shoppertracker - Importance ratings for retailers – quality & price ratings



There is only one segment of the consumer pineapple market. GCL sells its own-branded product at a premium to imported private label products. In previous years where GCL was not impacted by the supply of pineapple fruit for processing into consumer pineapple, GCL manufactured and sold locally supplied consumer pineapple as private label product for the relevant retail customer. The ability to supply at this level has been diminished in the 2019 and 2020 years due to the effect of the prolonged droughts affecting raw pineapple fruit supply.

GCL – at times where pineapple fruit is in plentiful supply – tenders for the supply of private label consumer pineapple head-to-head with imported consumer pineapple that is the subject of the anti-dumping measures.

It is therefore ill-conceived to conclude that GCL operates in its ‘own segment’ of the consumer pineapple market. The limitation of supply of raw material pineapple fruit has hindered GCL’s ability to supply from local production more broadly within the consumer pineapple segment of the market. It is also appropriate for GCL to clarify the Commission’s finding concerning capacity utilization. The Commission has concluded at Section 5.5.4 of SEF 571 & 572 that GCL is “operating at 100% of their real capacity in relation to the goods” (emphasis added). It cannot be disputed that GCL has an underutilized processing facility at Northgate, Queensland. The plant’s production capacity is limited by the supply of raw pineapple fruit for processing. This has been caused by the prolonged drought impact on growers. The supply of raw material fruit does not alter the actual production capacity or utilization rate of GCL’s processing plant. Rather, the reduced through-put of the plant due to the lower supply volume of pineapple fruit results in a reduced capacity utilisation of the plant. It cannot be concluded that GCL is operating at 100 per cent capacity of a plant that can readily process in excess of xxxxxx tonnes of pineapple fruit p.a.

GCL notes the Commission’s assessment of Australian Pineapples’ submission⁷ that it “considers there is insufficient evidence to indicate that supply certainty will be limited by the dumping of imports from the subject exporters of this inquiry”. GCL will be hampered in its ability to supply increasing levels of processed pineapple (consumer and FSI) to the Australian market due to the availability of dumped imports from the Philippines and Thailand. The Commission has confirmed that future exports at dumped prices are likely should the measures expire, hence GCL’s concerns are well founded.

GCL submits that the Commission’s acceptance “that, should the measures be allowed to expire, it is possible that consumer pineapple will be exported to Australia at dumped prices in the future and materially injure the Australian industry” errs on the side of caution and does not reflect the facts that GCL will be impeded by the dumped from increasing supply of consumer pineapple to retail customers. The probability of the material injury occurring in the absence of anti-dumping measures is more likely than not and this should be reflected in the

⁷ EPR 571 & 572, Document 11.



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Commissioner's recommendation to the Minister. The anti-dumping measures on consumer pineapple exported from the Philippines and Thailand therefore should not be allowed to expire.

IV. Recommendation

GCL respectfully disagrees with the Commissioner's proposed recommendation to the Minister not to continue the anti-dumping measures on exports of consumer pineapple from the Philippines and Thailand that are due to expire in October 2021.

The Commission's findings in SEF 571 & 572 confirm that future exports of consumer pineapple from the Philippines and Thailand:

- will likely continue should the measures be allowed to expire; and
- will likely be at dumped prices.

The exports of consumer pineapple to Australia from the Philippines in 2020 were the largest import source into the Australian market. The dumping margins assessed by the Commission were significant. It is therefore likely that future exports of consumer pineapple from the Philippines will continue at dumped prices that will materially undercut the Australian industry's selling prices. Exporters of consumer pineapple from Thailand have maintained distribution links into the Australian market and will also likely export at dumped levels.

GCL has demonstrated that as Australian pineapple fruit growers embark on a post-drought program to increase plantings and boost supply to GCL for processing, the business is vulnerable to continued exports at dumped prices from the Philippines and Thailand. GCL's annual \$xx Million site capital expenditure, the future of approximately xxx direct employees and the supply prospects for xx growers that supply xxxxx tonnes of pineapple fruit will be uncertain and be counter-productive to the capital investment over of last 5 years of \$xx Million, spent on ensuring long term resilience of an iconic Australian brand.

The impact of the ongoing supply of dumped consumer pineapple from the Philippines and Thailand is that it will prevent GCL from displacing dumped exports at retail customers as local processed volumes increase from 2021/22.

GCL's efforts to improve local supply of consumer pineapple will likely be hindered due to the dumping and are consistent with the circumstances envisaged in the *2012 Ministerial Direction*. An absence of competitive price offers from importers that cannot be furnished by retailers should not be the determinant in a finding that material injury from dumping is not likely.

GCL views the likelihood of a recurrence of material injury occurring from the dumping as more likely than not – it is certainly more probable than the Commission's assessed "possible" prediction.

GCL requests that the Commissioner reconsider the proposed recommendation in SEF 571 & 572 to the Minister that the measures be allowed to expire. GCL submits that the anti-dumping measures on consumer pineapple exported from the Philippines and Thailand are required and should not be allowed to expire from 10 October 2021 to ensure that the measures continue to operate to prevent a recurrence of future material injury from dumping.

If you have any questions concerning this submission, please do not hesitate to contact me on (03) 9681 5181, or KraftHeinz' representative Mr John O'Connor on (07) 3342 1921.

Yours sincerely

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