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The Director
Investigations 2
Anti-Dumping Commission
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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

I. Executive Summary

Golden Circle Limited (“Golden Circle”) welcomes the Anti-Dumping Review Panel (“ADRP”) Senior Member’s direction to the Commissioner to reinvestigate certain grounds concerning the recommendations contained in Report 571 & 572 relied upon by the Acting Minister for Industry, Science and Technology (“the Minister”) in his decision dated 6 October 2021.

Golden Circle supports the Senior Member’s concerns that the recommendations in Report 571 & 572 as to the available evidence do not support findings that Golden Circle operates in its own segment within the market for consumer pineapple, and that the dumping and price undercutting by the subject imports did not cause, and are not likely to cause, a recurrence of material injury in the absence of the measures. Additionally, the Senior Member has questioned the finding that the threat of future injury is not a consideration in a continuation investigation.

II. Background

On 20 January 2022 the Anti-Dumping Commission (“the Commission”) published a File Note (EPR Document No. 025, Investigations No. 571 & 572) seeking 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”).

On 12 January 2022 the Anti-Dumping Review Panel (“ADRP”) Senior Member directed the Commissioner to reinvestigate the following grounds of review, namely:

- (i) The Anti-Dumping Commission’s (Commission) 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.

III. Market segmentation

As indicated by the Senior Member, the finding that Golden Circle operates in its own segment of the market appears to have been a key consideration of the Commission in its analysis of the likelihood of material injury from dumping continuing or recurring.

Golden Circle reaffirms its grounds detailed in its application for review of the Minister’s decision that the locally produced goods are alike in all respects to the imported consumer pineapple. In earlier investigations, the Commission was satisfied that the like goods were interchangeable for the imported goods (and *vice versa*) and therefore competed in the same market segment.

In earlier investigations Golden Circle supplied consumer pineapple for certain supermarkets for sale under the respective private brand label. In the investigation period in Investigations 571 & 572, Golden Circle was limited to supplying under its own label only due to the short-term production shortage of available pineapple fruit. This, however, does not detract from the position that the locally produced consumer pineapple and imports compete in the same market segment.

IV. Likelihood of material Injury

The Senior Member has noted that Golden Circle achieves higher prices for its locally produced goods. This is not uncommon for a local manufacturer to secure a premium for quality and short lead-times for supply. The Senior Member also noted that the imported goods (at dumped prices) undercut Golden Circle’s selling prices. This Senior Member queries the Commission’s finding that the price undercutting had not caused material injury during the inquiry period and considered that “*the Commission relies on no correlation between the higher price Golden Circle’s product obtains and the price fluctuations of imported consumer pineapple*” including what evidence was supplied by Golden Circle in negotiations with retailers.

It is naïve to consider that there exists an absence of cross elasticity of demand¹ between two wholly interchangeable products (i.e. locally produced and imported consumer pineapple). This is a point noted by the Senior Member.

¹ Refer Paragraph 32 of Senior Member’s directive to Commissioner to reinvestigate findings on consumer pineapple.

Golden Circle welcomes the Senior Member's observation between Golden Circle and its major customers that *"Both sides would be aware of the presence in the market of imported product and the significant price undercutting of such imports"*. It is not within the interests of the major customers (i.e. retailers) to disclose the details of the competing imports as it is understood that dumped imports are at advantageous low prices that permit the customers to continue to sell at high volumes. Additionally, there also exists the limitations imposed on suppliers in the retail industry by the Supplier Grocery Code of Conduct, the Australian Competition and Consumer Law and the confidentiality provisions that exist in contracts between Golden Circle's customers and its other suppliers, that prevent Golden Circle from accessing information from its retailers about competitive import pricing offers. These limitations on the ability to access competitive price offers for imported consumer pineapple from the two largest supply sources into Australia for the goods were not adequately considered by the Commission.

It is therefore difficult for Golden Circle to demonstrate (via email correspondence or quotations) that the cheaper imports place pricing pressures on Golden Circle's sales of consumer pineapple. All the parties in the market are aware of the competitive forces and that the imported consumer pineapple from the Philippines and Thailand influence the prices of locally produced Golden Circle consumer pineapple.

It is also relevant that the Senior Member has highlighted that it is not a requirement that the Australian industry has suffered material injury during the investigation period. As such, Golden Circle concurs with the Senior Member that the Commission has not adequately addressed the statutory test of subsection 269ZHF(2) concerning the recurrence of material injury and agrees that it is difficult to understand *"how a threat of material injury from dumping in the event of the measures not being continued is not part of what is contemplated by s.269ZHF(2)"*.

It can be recalled that all exports of consumer pineapple from the Philippines were assessed by the Commission as having been made at dumped prices. Further, all exports of consumer pineapple (except for exports by Siam Food Products Public Company Limited and Kuiburi Fruit Canning Co., Ltd (and Kuiburi Fruit Cup Co., Ltd) were found to have margins of dumping above negligible levels. The determined margins for all exporters from the Philippines and the uncooperative exporters in Thailand were significant (i.e. greater than 15 per cent and up to 49.9 per cent).

Given the size of the dumping margins determined Golden Circle concurs with the Senior Member's concerns *"that no material injury was suffered by the Australian industry during the inquiry period"* and that there appears to have been an absence of an assessment of *"what might occur hypothetically if the measures were allowed to expire"*.

Golden Circle maintains that it suffered material injury during the investigation period. This is confirmed in the Commission's Report No. 571 & 572 and relied upon by the Minister for Industry, Science and Technology ("the Minister") in making his decision. The central question that was incorrectly assessed by the Commission as to whether material injury was likely should the measures be allowed to expire, ignores the relevant facts concerning the existence of the dumping – with exports from the Philippines with the largest margins of dumping accounting for the largest share of the Australian market in the investigation period – and the impact of continuing exports at dumped prices on the future profit and profitability of the Australian industry.

Golden Circle shares the concern of the Senior Member that the Commission has misunderstood the test in s.269ZHF(2) and that given the existence of the dumping and levels of price undercutting evident, it can only be concluded that material injury from dumping is likely should the measures be allowed to expire.

V. Threat of future material injury

In its reinvestigation request, the Senior Member has questioned that [the Senior Member] is not sure what to make of the Commission's comment in Report 571 & 572 "*that the threat of future material injury is not part of the test for the continuation of measures*".

The Senior Member agrees with Golden Circle's ground of appeal concerning the future "threat" of material injury as not being inconsistent with Justice Rares in *Siam Polyethylene Co Ltd v Minister of State for Home Affairs [No 2]* (as paragraph 19 of the Reinvestigation request). The issue of a future threat of injury is a relevant consideration under subsection 269TAE(2B) namely "*that the Minister take into account only such changes in circumstances as would make that injury foreseeable and imminent unless measures were imposed*".

The *threat* of material injury is therefore a very real and relevant consideration in the Minister's assessment of whether material injury is *likely* to be experienced by Golden Circle. The exports of consumer pineapple from the Philippines and Thailand have been assessed as having been at dumped prices (except for Siam and Kuiburi of Thailand), there exists significant price undercutting of Golden Circle's prices by the dumped exports and price competition exists between the like goods and the import goods. It is therefore irrefutable that a threat of material injury is foreseeable and imminent should the measures expire.

VI. Conclusion

Golden Circle reiterates its view that the Minister's decision to allow the anti-dumping measures to expire on consumer pineapple exported from the Philippines and Thailand is not the correct decision. The ADRP Senior member's request for reinvestigation of the recommendations supports this view.

The ADRP Senior Member has identified concerns that demonstrate the Commission's findings as they relate to:

- Golden Circle operating a separate market segment to the imported goods is in conflict with the like goods assessment and cannot be supported;
- the finding that material injury from dumping is not likely when it is evident that there exist cross-elasticity of demand between the imported goods and the like goods, there is price undercutting by the imported goods, and all market participants are aware of the pricing of the imported goods; and
- the finding that the threat of material injury is not a relevant consideration in a continuation investigation.

The above findings upon which the recommendations to the Minister in Report 571 & 572 are based do not reflect the facts or available information concerning the competitive nature of the consumer pineapple market which is supplied by the Australian industry and competitive imports from the Philippines and Thailand.

Golden Circle requests the Commissioner to rescind the recommendations in Report 571 & 572 and recommend that the Minister take steps to continue the anti-dumping measures on consumer pineapple exported from the Philippines and Thailand.

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

A handwritten signature in blue ink, appearing to read 'M. Green', is positioned above the typed name 'For Carolyn Fox'.

For Carolyn Fox

Carolyn Fox
Director
H J Heinz Company Australia Limited