

3 June 2022

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

Dear Sir/Madam

## Reinvestigation of certain findings in relation to Continuation Inquiry No. 573 & 574 relating to Food Service and Industrial (FSI) 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 certain findings in Reports 573 and 574 in respect of Food Service and Industrial (“FSI”) pineapple exported to Australia from the Philippines and Thailand.

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

Golden Circle disagrees and rejects the Commissioner’s preliminary Report and findings therein. Golden Circle contends that the significant dumping margins determined for exporters in the Philippines and Thailand in the investigation period are indicative that the Australian industry (i.e. Golden Circle) will not be able to secure an increase in sales volume and market share at non-injurious prices. This will mean that the Australian industry will be prevented from supplying the planned increasing volumes of locally produced FSI pineapple at fair and competitive prices to support a viable local pineapple cannery.

Golden Circle urges the Commissioner to reconsider the preliminary findings in the Report and conclude that he **is satisfied** that should the measures be allowed to expire, 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 FSI 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 Commissioner’s recommendation, based upon the Senior Member’s concerns as follows:

*“Given the concerns I have expressed....regarding the specific findings made by the Commission in the Report [Report Nos 573 & 574], I am not convinced that there was an adequate basis outlined in the Report for the Commissioner not being satisfied that it was unlikely that material injury would be suffered by the Australian industry if the measures were allowed to expire. However, the analysis and material referenced in the Report is not*

*sufficient to allow me to come to a view as to whether or not the Commissioner should have been satisfied. For this reason, I have requested the reinvestigation.”*

The Senior Member of the ADRP was not satisfied that the Commission had fully considered the threat of injury in its assessment of likely recurrence of material injury from dumped exports from the Philippines and Thailand. Additionally, the Senior Member was not satisfied as to the evidence relied upon by the Commissioner to recommend that the measures be allowed to expire.

### III. Threat of Material Injury

The Commissioner accepted that despite stating that “threat” of material injury does not form part of the continuation test, the question of whether material injury is likely to recur is a “future-oriented” question that he has considered in the reinvestigation Report.

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. Likelihood of future Material Injury

Golden Circle notes the Commissioner’s findings as to why he is not satisfied that in the absence of measures, the Australian industry will likely incur material injury from future exports from the Philippines and Thailand. The Commissioner’s preliminary view is based upon the following considerations identified in respect of exports from the Philippines and Thailand.

In respect of the Philippines, the Commission has relied upon the following:

- *the low volume of exports from the Philippines;*
- *the market share of FSI pineapple not subject to measures is over 90 per cent during the inquiry period and is likely to be influencing market behavior and causing price injury to Australian industry;*
- *the presence of significantly lower priced competition available in the market not the subject to measures;*
- *the overall substantial decrease in the Australian market for FSI pineapple;*
- *no evidence of Australian industry suffering volume injury during the inquiry period;*  
*and*
- *supply constraints being experienced by Golden Circle that are not attributable to dumping.*

For Thailand, the Commission has relied upon:

- *the low volume of exports from Philippines by exporters subject to measures;*
- *the market share of FSI pineapple not subject to measures is over 90 per cent during the inquiry period and is likely to be influencing market behavior and causing price injury;*
- *the presence of lower priced competition available in the market not subject to measures from Thailand and other countries;*
- *the overall substantial decrease in the Australian market for FSI pineapple;*
- *no evidence of Australian industry suffering volume injury during the inquiry period;*  
*and*
- *supply constraints being experienced by Golden Circle that are not attributable to dumping.*

Before addressing the Commissioner’s findings, it is appropriate to recall the ADRP Senior Member’s concerns with Report 573 & 574. These are as follows:

- *the commission found that Golden Circle consistently achieved higher sales price than imports from subject countries. This does not apply to imports from the Philippines. There is however no evidence to support the conclusion that the price of imported FSI pineapple does not impact Golden circle prices;*

- *the commission found that Golden Circle experienced injury in the form of price suppression and low overall profit and profitability during the 2019-2020 period however found no evidence that cheaper imports placed price pressure on Australian industry;*
- *the commission's finding does not allow for any price elasticity;*
- *the commission's finding that the expiration of the measures would not impact Golden Circle's processing plans or its rebuilding its supply of pineapples was partly made due to the commission's view that the threat of material injury is not part of the legislative test for whether or not the measures should continue. There is a concern that the commission may have misunderstood the test in section 269ZHF(2).*

Golden Circle does not consider that the Commission has sufficiently considered the ADRP Senior Member's concerns in its reinvestigation. Golden Circle notes the Commission's dismissive comments in respect of certain findings in the reinvestigation. These are addressed below.

In respect of exports from the Philippines, the Commission confirmed (at Section 4.5.4 of Report):

- export prices from the Philippines increased in 2016 and 2017, and were between 100 and 200 per cent higher than those not the subject of measures (presumably exporters in countries other than the Philippines); and
- exporters from the Philippines would have needed to reduce export prices by more than 50 per cent to be competitive with exporters not the subject of measures.

The Commission's comments concerning the export prices from the Philippines (all exporters are the subject of measures) provides no credence to the effectiveness of the measures that were re-imposed in 2016. Similarly, the suggestion that Philippines exporters would have to reduce export prices for future exports to be competitive also ignores the effectiveness of the measures.

Golden Circle does not consider that the Commission has had due regard to the impact of the applicable measures in influencing the forward price intentions of exporters in the Philippines.

In respect of exports from Thailand, the Commission confirmed:

- in all but one year since 2017, FSI pineapple imported from Thailand by exporters subject to measures had a higher FOB export price than exporters from Thailand that are not the subject of measures by between 12 and 42 per cent;

This finding alone confirms that the measures in place since 2016 have had a positive impact on the export intentions of exporters in Thailand. The Commission has then embarked upon a suggestion about how much exporters the subject of measures would need to reduce prices to compete with export prices from exporters not the subject of measures. In the absence of measures the subject exporters would very likely to adjust export prices downward to compete with other suppliers.

Golden Circle contends that the evidence is persuasive that the measures have had the desired impact of influencing the pricing intentions of the subject exporters – for exporters in both the Philippines and Thailand.

In a brief assessment of the ADRP Senior Member's concern about Golden Circle's planned increase in production volumes, the Commission states that Golden Circle's "supply constraints" are "not attributable to dumping" and dismisses the planned increase in raw material supply<sup>1</sup> from drought-affected conditions as due to "past agricultural issues". Golden Circle respectfully disagrees. Just as a new market entrant is hindered from establishing itself as a local producer due to dumping and/or subsidization (i.e. the retardation of an industry), Golden Circle is experiencing injury from dumped exports with significant margins of dumping, as the industry recovers from drought-affected raw fruit supply. The dumping of exports from the Philippines and Thailand (with margins assessed as 22.9 per cent and 14.5 -14.8 per cent respectively, have caused price suppression and reduced profit and profitability in Golden Circle's FSI business and will continue unless the measures are continued.

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<sup>1</sup> Golden Circle's planned forecast increase in production to 2027.

Finally, Golden Circle notes the Commission's statement in its conclusion (at Section 4.5.6) that "*whilst the presence (or absence) of dumping during the inquiry period may be indicative of future behavior, **this factor alone is not determinative***" (emphasis added). Golden Circle does not view the presence of the measures alone being determinative, however, it does consider that the Commission cannot disregard the demonstrated effect of the measures in influencing the future export intentions of the subject exporters. The measures have had the desired and intended effect – resulting in higher export prices for exports from the Philippines and the subject exporters in Thailand. To remove these measures would likely result in a deterioration in the industry's profit and profitability caused by increased price suppression. Whilst the market shares held by the dumped imports from the Philippines and Thailand may appear small when contrasted with supply from sources not the subject of the measures, it is recognized that suppliers with only small market shares can have a material influence on industry profit and profitability when afforded the commercial advantage of dumping in the absence of measures.

In further dismissing the impact of the dumped exports as occurring "in a market which is almost entirely unaffected by dumping" the Commission has relied upon assumption rather than recognizing the positive impact of the measures and failed to adequately consider the vulnerable position of the local industry in its recovery to normal trading conditions.

## V. Conclusions and recommendation

The Commissioner's preliminary findings in the Report on FSI pineapple exported from the Philippines and Thailand is dismissive of the following:

- the significant dumping margins determined for exports from the Philippines and Thailand during the investigation period;
- the effect of the dumping measures imposed on subject exporters in 2016 including in both volume and price terms; and
- the likely impact on the Australian industry of future dumping that will result in incremental injury that is material to the Australian industry.

These factors are key and relevant considerations as to whether the Australian industry will likely experience material injury (or a recurrence of) in the absence of the measures. Additionally, Golden Circle does not consider that the Commission has adequately considered the ADRP Senior Member's concern that in the absence of the measures Golden Circle will be materially injured from exports at dumped prices (through price undercutting and price suppression impacting profit and profitability) as it seeks to recover production capability via a planned, staged recovery to 2027.

On this basis, Golden Circle requests the Commissioner to reconsider his preliminary findings contained in the Reinvestigation Report on FSI pineapple exported from the Philippines and Thailand so that he **is satisfied** that the expiration of the measures would lead, or would be likely to lead, to a continuation of, the dumping and 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

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