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9 August 2021

The Director  
Investigations 4  
Anti-Dumping Commission  
GPO Box 2013  
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Dear Sir/Madam

### Continuation of measures Investigations 573 and 574 – Response to Statement of Essential Facts – Food Service and Industrial 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 food service and industrial ("FSI") pineapple exported to Australia from the Philippines and Thailand.

The Commissioner's recommendation has not adequately considered:

- the substantial dumping margins evident for FSI pineapple exported from the Philippines by uncooperative and all other exporters at 29.7 per cent – that is, all exports were at dumped levels;
- the significant dumping margins for exports by Siam Food Products Public Co Ltd ("Siam Food") of 20.8 per cent, and for Thai uncooperative and all other exporters of 21.1 per cent;
- that the maintenance of distribution links by exporters in the Philippines and Thailand permit exporters the opportunity to increase exports to Australia should the measures expire; and
- that the dumping measures do appear to influence the export prices of other non-subject exporters of FSI pineapple to Australia.

GCL agrees with the Commissioner's assessment that future exports of FSI pineapple to Australia from the Philippines and Thailand will likely be at dumped prices. GCL notes that the Commissioner has preliminarily concluded that it is "possible" that future exports of FSI pineapple at dumped prices may cause material injury to the Australian industry should the measures expire. GCL, however, considers that this possibility is more probable than not, as the Australian pineapple grower industry recovers from prolonged drought and embarks on a program to increase supply to GCL for processing.

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.. xxxxx tonnes of fresh pineapples from xx 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.



GCL requests that the Commissioner reconsider the proposed recommendation included in SEF 573 & 574 due to the size of the dumping margins determined, the maintenance of distribution channels by exporters, and the more probable view that in the absence of the measures material injury is more likely than not, and therefore revise the recommendation to the Minister that he take steps to secure the continuation of measures on exports of FSI pineapple from the Philippines and Thailand.

## II. Dumping margins

The Commission received cooperation from only one exporter in Investigation 573 & 574 in respect of FSI pineapple exported to Australia from the Philippines and Thailand. That exporter was Siam Food of Thailand. The Commission's assessment of dumping margins for FSI exports to Australia (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
Thailand	Siam Agro-Food Industry Public Co Ltd	22.0%	20.8%	Combination of fixed and variable duty method
	Dole Thailand	13.8%	21.1%	Combination of fixed and variable duty method
	Natural Fruit Co Ltd	9.6%	21.1%	Combination of fixed and variable duty method
	Uncooperative and all other exporters	28.6%	21.1%	Combination of fixed and variable duty method
Philippines	Uncooperative and all other exporters	18.7%	29.7%	Combination of fixed and variable duty method

**Notes:** 1. Dole Thailand, and Natural Fruit Co Ltd, did not cooperate with the current inquiry and therefore attract the margin of uncooperative exporters.

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

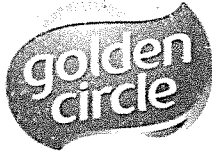
The size of the dumping margins for the subject exporters is of concern. GCL notes the Commission's assessment as to the market share held by the subject exporters for supply to the Australian market as per Figure 2 (P. 18). However, it is noted that the pricing for Thai exports to Australia that are the subject of the measures appear to influence export pricing trends for all other exporters (i.e. those not the subject of the measures).

GCL acknowledges that the Commission is satisfied that exports of FSI pineapple from Thailand and the Philippines will *likely* continue as<sup>1</sup>:

- 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 in Thailand maintain excess production capacity.

Similarly, the Commission was satisfied that future exports from the Philippines and Thailand would likely be dumped as<sup>2</sup>:

<sup>1</sup> SEF 571 & 572, p.48.



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- 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"<sup>3</sup>.

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 FSI 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 FSI pineapple to Australia from the Philippines and Thailand undercut the Australian industry's selling prices. Imports from other sources (including by exporters in Thailand not the subject of measures) also undercut the Australian industry's selling prices. The impact of the import prices for FSI pineapple from the Philippines and Thailand must therefore be considered to be a significant influence on market selling prices.

The Commission further confirmed that the Australian industry had suffered price suppression and low profit and profitability in the investigation period.

The Commission has stated at Section 7.7.1.2 of the SEF that it "did not identify any examples, nor provide any evidence to the Commission, illustrating lost tenders to imports from the subject countries during the inquiry period, nor pricing pressure in its sales to wholesalers". GCL would highlight with the Commission that it is not within the wholesalers' 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 has been unable to access competitive offers for imported FSI pineapple from importers sourcing from the two subject countries.

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

- Golden Circle has been able to achieve a consistently higher sales price on its FSI pineapple, despite its prices being undercut by imports from the subject countries and other countries;
- Future imports from Thailand and the Philippines are likely to compete on price with each other and with imports from other countries (not subject to measures); and
- Due to limited supply of raw pineapple (which is not impacted by imports from the subject countries), Golden Circle has focused on the consumer pineapple market rather than the FSI market, a factor that has led to their declining sales volume for FSI pineapple; and
- there is no evidence that Golden Circle lost sales volumes to imported products or would lose sales volumes if the measures expire, with the data indicating that Golden Circle is operating at full capacity.

GCL seeks to highlight with the Commission that contrary to the Commission's view, the supply of raw pineapple is linked to, and impacted by, imports of both consumer and FSI pineapple into Australia. The Commission is well aware that GCL is working with suppliers to rapidly expand raw pineapple supply for processing. The export of dumped consumer and FSI pineapple impacts the selling prices for GCL's consumer and FSI pineapple and thereby the prices at which GCL can provide to growers for raw pineapple fruit.

<sup>2</sup> SEF 571 & 572, P. 49.

<sup>3</sup> Anti-Dumping Notice 2012/24.



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It is therefore incorrect to decouple the price for raw material pineapple from the selling price for processed consumer and FSI pineapple.

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 573 & 574 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 xxxxx tonnes of pineapple fruit p.a.

GCL further highlights the concerns of Australian Pineapples' about the expiration of the measures. 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 FSI 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 FSI pineapple to wholesalers. 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 Commissioner's recommendation to the Minister. The anti-dumping measures on FSI 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 FSI pineapple from the Philippines and Thailand that are due to expire in October 2021.

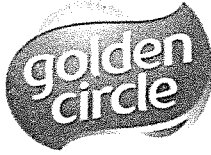
The Commission's findings in SEF 573 & 574 confirm that future exports of FSI pineapple from the Philippines and Thailand:

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

The dumping margins assessed by the Commission for exports from Thailand and the Philippines were significant (i.e. greater than 20 per cent) were significant. It is therefore likely that future exports of FSI pineapple from the Philippines will continue at dumped prices that will materially undercut the Australian industry's selling prices. Exporters of FSI 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 capital spend, the future of approximately xxx direct employees and the supply prospects for xx growers that supply xxxxx tonnes of pineapple fruit will be uncertain. The impact of the ongoing supply of dumped FSI 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 FSI 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 wholesalers should not be the determinant in a finding that material injury from dumping is not likely.



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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 573 & 574 to the Minister that the measures be allowed to expire. GCL submits that the anti-dumping measures on FSI 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

A handwritten signature in black ink, appearing to read "Carolyn Fox".

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