



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 June 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: This application for the review of the Minister for Industry, Science and technology's decision in respect of Report 565 is made by:

Golden Circle Limited
260 Earnshaw Road
Northgate Queensland 4013
Tel: (07) 3266 0000.

Type of entity (trade union, corporation, government etc.):

Golden Circle Limited is a company.

2. Contact person for applicant

Full name: Mr Mike Pretty

Position: Non-Executive Chairman, Kraft Heinz Australasia

Email address: Mike.Pretty@KraftHeinz.com

Telephone number: +64 9 308 5130

3. Set out the basis on which the applicant considers it is an interested party:

Section 269ZZC of the Customs Act 1901 ("the Act") prescribes that a person who is an interested party in relation to a reviewable decision may apply for a review of the Minister's decision.

The decision in this instance is a decision of the Minister under section 269ZHG of the Act not to continue anti-dumping measures.

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods the subject of this application are:

Consumer pineapple: pineapple prepared or preserved in containers not exceeding one litre (consumer pineapple).

7. Provide the tariff classifications/statistical codes of the imported goods:

Consumer pineapple (“the goods”) is classified to subheading 2008.20.00 statistical code 26 in Schedule 3 to the Customs Tariff Act 1995. The rate of duty for consumer pineapple is “free” for imports from the subject countries.

8. Anti-Dumping Notice details:

The Minister’s decision not to continue the anti-dumping measures on consumer pineapple exported from the Philippines and Thailand was based upon the Commissioner’s recommendations in Reports No. 571 and 572.

Anti-Dumping Notice (ADN) number: Anti-Dumping Notice No. 2021/117.

Date ADN was published: 6 October 2021.

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be **highlighted in yellow**, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Refer Attachment 2. Attachment 2 is provided in both a non-confidential form.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Refer Attachment A.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Refer Attachment A.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Refer Attachment A.

13. Please list all attachments provided in support of this application:

Attachment A – Grounds for review (in confidential and non-confidential form).

Attachment 1 – ADN 2021/117.

PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

Name: Carolyn Fox

Position: Director

Organisation: H.J.Heinz Company Australia Limited

Date: 5 November 2021

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: John O'Connor
Organisation: John O'Connor and Associates Pty Ltd
Address: P.O. Box 329, Coorparoo QLD 4151.
Email address: jmoconnor@optusnet.com.au
Telephone number: (07) 33421921

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name: Carolyn Fox

Position: Director

Organisation: H.J.Heinz Company Australia Limited



ANTI-DUMPING NOTICE NO. 2021/117

Customs Act 1901 – Part XVB

Consumer pineapple

**Exported to Australia from the Republic of the Philippines and
the Kingdom of Thailand**

Findings of Continuation Inquiries 571 and 572 into Anti- Dumping Measures

Public Notice under subsection 269ZHG(1) of the Customs Act 1901 (Cth)

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed inquiries, which commenced on 25 January 2021, into whether the continuation of the anti-dumping measures in the form of a dumping duty notice applying to consumer pineapple exported to Australia from the Republic of the Philippines (Philippines) and the Kingdom of Thailand (Thailand) is justified.¹

Recommendations resulting from these inquiries, reasons for the recommendations, and material findings of fact and law in relation to the inquiries are contained in *Anti-Dumping Commission Report No. 571 and 572* (REP 571 and 572).

I, ANGUS TAYLOR, the Acting Minister for Industry, Science and Technology, have considered REP 571 and 572 and have decided to accept the recommendation and reasons for the recommendation. This includes all the material findings of facts and law.

Pursuant to subsection 269ZHG(1)(a) of the *Customs Act 1901* (the Act), I **declare** that I have decided not to secure the continuation of the anti-dumping measures currently applying to consumer pineapple exported to Australia from Thailand and the Philippines. These measures will expire on 10 October 2021 and 17 October 2021 respectively.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

¹ Exports from Thai Pineapple Canning Industry Corp Ltd are not covered by this inquiry, as the measures currently in place in relation to consumer pineapple do not apply to that company's exports of the goods.

REP 571 and 572 has been placed on the public record and is available at www.adcommission.gov.au

Enquiries about this notice may be directed to the Case Director on telephone number +61 3 8539 2477 or email investigations4@adcommission.gov.au.

Dated this 6th day of October 2021.



ANGUS TAYLOR
Acting Minister for Industry, Science and Technology

A. Background

On 6 November 2020 the Commissioner published a notice inviting applications from relevant persons for the continuation of anti-dumping measures on consumer and Food Service & Industrial (“FSI”) pineapple fruit exported from the Philippines and Thailand.

The measures on consumer and FSI pineapple fruit exported from Thailand were due to expire on 17 October 2021. The measures on consumer pineapple fruit exported from the Philippines were due to expire on 10 October 2021. The measures on FSI pineapple fruit exported from the Philippines were due to expire on 13 November 2021.

Following an application for the continuation of measures submitted by Golden Circle Limited (“Golden Circle”) in respect of consumer and FSI pineapple exported from the Philippines and Thailand, the Commissioner published on 25 January 2021 ADN No. 2021/004 (consumer pineapple fruit) and 2021/005 (FSI pineapple fruit) commencing investigations into the continuation of the anti-dumping measures.

On 6 October 2021 the Commissioner published Anti-Dumping Notice No. 2021/117 (consumer pineapple fruit) and 2021/118 (FSI pineapple fruit) notifying that the Minister for Industry, Science and Technology (“the Minister”) had accepted the recommendations of the Commissioner as contained in Anti-Dumping Commission Report No. 571 and 572 concerning the continuation of anti-dumping measures applying to consumer pineapple exported to Australia from the Philippines and Thailand (“Report 571 & 572”) and Anti-Dumping Commission Report No. 573 and 574 concerning the continuation of anti-dumping measures applying to FSI pineapple exported to Australia from the Philippines and Thailand (“Report 573 & 574”), respectively, not to secure the continuation of anti-dumping measures that were due to expire on the above specified dates.

By this application Golden Circle seeks review by the Anti-Dumping Review Panel (“ADRP”) under sections 269ZZA(1)(d) and 269ZZC of the Customs Act 1901 (“the Act”) of the decision of the Minister under section 269ZHG(1) of the Act to allow the anti-dumping measures on consumer pineapple exported to Australia from the Philippines and Thailand to expire. A separate application is made by Golden Circle seeking review of the decision of the Minister to allow the anti-dumping measures on FSI pineapple exported to Australia from the Philippines and Thailand to expire.

Set out hereunder are the requirements specified in section 269ZZE(2) of the Act in relation to Golden Circle’s grounds of review of the Minister’s decision.

B First Ground – the consumer pineapple fruit exported by Siam Food Products Public Company Limited were at dumped prices.

9. Grounds for review

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

(a) Legislation

Section 269ZHF(2) provides that the Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the dumping measure is intended to prevent.

(b) Dumping by Siam Food Products Public Company Limited

Statement of Essential Facts No. 571 & 572 published on 19 July 2021 (“SEF 571 & 572”) confirmed that exports of consumer pineapple to Australia by Siam Food Products Public Company Limited (“Siam Foods”) were exported at dumped prices with a preliminary dumping margin determined of 6.4 per cent¹.

On 4 August 2021 the Anti-Dumping Commission (“the Commission”) published File Note – “Exporter – Multiple Exporters – verification File Note” (“File Note”)². The File Note detailed the determination of normal values, export prices and dumping margins for the following exporters:

- Prime Products Industry Co., Ltd (“Prime Products”);
- Siam Food Products Public Co., Ltd (“Siam Food”);
- Kuiburi Fruit Canning Co., Ltd (“Kuiburi Fruit Canning”); and
- Kuiburi Fruit Cup Co., Ltd (“Kuiburi Fruit Cup”).

The dumping margins for the exporters Prime Products, Kuiburi Fruit Canning, and Kuiburi Fruit Cup did not alter from the margins determined in SEF 571 & 572.

The calculated dumping margin for Siam Food, however, changed from a positive 6.4 per cent (as published in SEF 571 & 572) to a negative 5.3 per cent (as per the File Note).

The Commissioner’s Report 571 & 572 provides no insight as to the change in the dumping margin for Siam Food.

Golden Circle notes that in SEF 571 & 572, the Commissioner published Table 10 – Summary of adjustments – Siam Food (p 44). Table 10 identified the following adjustments made to Siam Food’s normal value:

Adjustment Type	Deduction/addition
Export packaging costs	Add an amount for export packaging costs
Export inland freight	Add an amount for export inland freight
Export port handling charges	Add an amount for export port handling charges
Export credit	Add an amount for export credit

Table 10 – Summary of adjustments – Siam Food

¹ SEF 571 & 572, pp 34 and 44.

² EPR Document No. 016.

In the File Note, however, the identified adjustments to Siam Food’s normal value were as follows (at P.6):

Adjustment Type	Deduction/addition
Export inland freight	Add an amount for export inland freight
Export port handling charges	Add an amount for export port handling charges
Export credit	Add an amount for export credit

Table 2 – Summary of adjustments – Siam Food

Export packaging costs are absent from the table set out in the File Note. It appears that the absence of an adjustment for export packaging costs to Siam Food’s normal value has impacted the determined dumping margin (reducing it from 6.4 per cent to negative 5.3 per cent).

In Report 571 & 572, the Commissioner published Table 10 (in the same terms as it appears in SEF 571 & 572) and purportedly included an adjustment for export packaging costs, as follows (at pp 44 and 45):

Adjustment Type	Deduction/addition
Export packaging costs	Add an amount for export packaging costs
Export inland freight	Add an amount for export inland freight
Export port handling charges	Add an amount for export port handling charges
Export credit	Add an amount for export credit

Table 10 – Summary of adjustments – Siam Food

Despite the inclusion of export packaging costs, the dumping margin calculated in Report 571 & 572 was negative 5.3 per cent. In the absence of any explanation as to the reason(s) for the change in the determination of dumping margin (and what appears to be the removal of the upward adjustment for export packaging costs as in the File Note), it appears that the Commissioner has made an error in the determination of dumping margin for Siam Food.

It is further noted that, for all exporters (including Dole Philippines Inc.), and the Thai cooperative exporters, Kuiburi Fruit Canning and Kuiburi Fruit Cup, adjustments were also made to normal values for export packaging costs, resulting in dumping margins of 17.5 per cent and 3 per cent, respectively. Prime Products was the only exporter not to have had an adjustment for export packaging costs, yet its dumping margin was still calculated to be positive 3.8 per cent.

In these circumstances, Golden Circle contends that the Commissioner has erred in his assessment of the correct dumping margin for Siam Food. It would appear that the Report 571 & 572 Exporter – Multiple exporters – verification file note – has omitted the upward adjustment for export packaging costs for Siam Food to arrive at a negative 5.3 per cent dumping margin.

Siam Food’s normal value should reflect an upward adjustment for export packaging costs such that the dumping margin should be 6.4 per cent.

10. Correct or preferable decision

Identify, what, in the applicants opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The correct or preferable decision is for the decision under review to be revoked and, in substitution for that decision a declaration that the Minister has decided to secure the continuation of the anti-dumping measures concerned (section 269ZZM(1)(b), read with section 269ZHG(1)(b)).

11. Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision.

Golden Circle refers to its arguments set out in response to question 9 above. Those arguments connect the grounds of review to the proposed correct or preferable decision.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision.

The proposed decision is materially different from the reviewable decision as it would result in the determination of a positive dumping margin for consumer pineapple exported to Australia by Siam Foods (with dumping measures to apply where the anti-dumping measures would have been continued).

C. Second Ground – Golden Circle’s ‘Australian’ product operates in its own segment within the consumer pineapple market.

9. Grounds for review

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

(a) Commission’s findings in Report 571 & 572

The Commission found that, as Golden Circle’s consumer pineapple is sold at a premium to other imported consumer pineapple, Golden Circle operates in own “segment” of the consumer pineapple market in Australia. For the reasons that follow, that finding is erroneous.

The Commission’s conclusion was based upon its assessment of:

- (i) data available from the ABF import database; and
- (ii) sales data from a leading retailer in Australia.

The Commission’s assessment of the data led it to conclude that from “*the prices and information received from Golden Circle, cooperating retailers³ and importers that pricing is tiered into three segments*”⁴:

1. Golden Circle’s goods processed in Australia, branded as ‘Australian’ pineapple, attracts the highest retail price.
2. Imported (branded) product such as Dole, Golden Circle’s import range (branded as ‘Tropical’ pineapple) and SPC branded pineapple sell in the medium range.
3. The retailer branded ‘private label’ products offered at the lowest prices.

The Commission noted that “[l]arge supermarkets control the majority of the Australian market for consumer pineapple due to the significant bargaining power they hold”. This is an important consideration in the pricing analysis for consumer pineapple in Australia as it is the retailers that determine pricing and shelf space.

(b) Previous investigations - consumer pineapple

In the 2016 investigation into the continuation of measures on consumer pineapple exported from the Philippines and Thailand the Commission determined⁵:

“...locally produced consumer pineapple and imported consumer pineapple are directly substitutable with each other. While there are some perceived quality differences, pricing is an important determinant in consumer’s pricing decisions, as evidenced by the volumes of lower priced product being purchased by consumers.

Initially, the “homebrand” value offerings obtained a significant share of the Australian market on the back of lower prices, however, more recently, the “manufacturer” branded products hold a large and increasing proportion of the Australian market.”

The Commission’s findings in Report 333 remain relevant in 2021; and nothing that is said in Report 571 & 572 indicates otherwise. Imported consumer pineapple and locally manufactured consumer pineapple are directly substitutable with each other. The consumer pineapple segment of the market – and there is only one segment of the market – is price sensitive due to the competition from imported consumer pineapple.

³ The EPR confirms only one retailer cooperated with the Commission in Investigation 571 & 572.

⁴ Report 571 & 572 at p 19.

⁵ Report No. 333 – Continuation Inquiry – Consumer pineapple from the Philippines and Thailand, 2016 at p 25.

The influence of the retailers in controlling the Australian consumer pineapple market is (as confirmed by the Commission) significant “*due to the bargaining power they hold*”.

In earlier investigations (including Investigations 110 and 111, 171b, 171d, 172b and 172d, and 333) the Commission concluded⁶ that “*consumer pineapple exported from the Philippines and Thailand significantly undercut the Australian industry’s selling prices*”.

Therefore, in investigation No. 571 & 572, the same price-effect indicators that applied in earlier investigations continue to apply in 2020 and 2021.

Importantly, in Investigation 333, the Commission acknowledged that⁷:

*“An analysis of the Australian selling prices relative to the volume of the imports, together with discussions with the Australian industry, importers and exporters leads the Commission to conclude that **price** is a key factor in the purchasing decisions of consumers” (emphasis added).*

And further:

“The Commission recognises that consumers tended to buy the Golden Circle brand for a number of reasons including perceptions of quality, preference for ‘Australian made’ and brand loyalty. This enables a premium to be included in the prices of golden Circle’s branded products. However, despite this, previous investigations have shown that the dumped goods which undercut Australian selling prices have caused material injury to the Australian industry.”

(c) Incorrect conclusion as to segmentation

In Investigation 571 & 572 the Commission has afforded no consideration to its earlier findings. The Commission has disregarded the price sensitive nature of the consumer pineapple market and incorrectly concluded that, because of price, Golden Circle operates in the consumer pineapple market in its own premium segment and is not affected by the lower prices of directly substitutable imported pineapple.

Each conclusion is erroneous: the consumer pineapple market in Australia is not segmented; and Golden Circle *is* affected by the lower prices of directly substitutable imported pineapple.

The Commission has incorrectly concluded on the basis of weighted-average selling price data that imported consumer pineapple sells below Golden Circle branded premium Australian-grown consumer pineapple. The Commission’s simplistic analysis in Report 571 & 572 has contributed to its finding that Golden Circle operates in its own segment of the Australian consumer pineapple market.

The Minister’s acceptance of the Commissioner’s finding that Golden Circle operates in its own ‘segment’ of the consumer pineapple market unaffected by dumped import prices is not the correct or preferable decision. The finding is inconsistent with earlier investigations into the consumer pineapple market that found that Golden Circle’s selling prices were influenced by import prices that undercut it. Implicit in that finding is the proposition that Golden Circle operates in the same market as those entities that export consumer pineapple to Australia.

For the foregoing reasons, the ADRP should find that there is only one segment of the processed pineapple market in Australia comprising consumer pineapple. In that market Golden Circle supplies locally manufactured processed pineapple that sells at a premium to imported consumer pineapple prices (due to quality and local supply loyalty) and is wholly substitutable with imported pineapple that undercuts Golden Circle’s selling prices due to the lower prices of the imported pineapple from the Philippines and Thailand, which the Commission found was dumped during the investigation period and would continue to be dumped should the anti-dumping measures concerned be allowed to expire.

⁶ See Report 333 at p 38.

⁷ Ibid at p 39.

10. Correct or preferable decision

Identify, what, in the applicants opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The correct or preferable decision is for the decision under review to be revoked and, in substitution for that decision a declaration that the Minister has decided to secure the continuation of the anti-dumping measures concerned (section 269ZZM(1)(b), read with section 269ZHG(1)(b)).

11. Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision.

Golden Circle refers to its arguments set out in response to question 9 above. Those arguments connect the grounds of review to the proposed correct or preferable decision.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision.

The proposed decision is materially different from the reviewable decision as the proposed decision would result in contributing to a finding that Golden Circle's selling prices for consumer pineapple are sensitive and susceptible to lower import prices of dumped imported pineapple from the Philippines and Thailand.

D. Third Ground – Will future exports of consumer pineapple likely cause, or threaten, a recurrence of material injury?

9. Grounds for review

Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

Section 269ZHF(2) of the Act provides that “[t]he Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.”

At section 7.2 of Report 571 & 572 the Commission states as follows:

“The commission notes that its assessment of the likelihood of certain events occurring and their anticipated effect, as is required in a continuation inquiry, necessarily requires an assessment of a hypothetical situation. The Anti-Dumping Review Panel has supported this view, noting that the commission must consider what will happen in the future should a certain event, being the expiry of the measures, occur. However, the Commissioner’s conclusions and recommendations must nevertheless be based on facts.”

At section 7.6.2 the Commission was satisfied that, except for exports from Kuiburi⁸ and Siam Food,⁹ “there is no evidence that indicates dumping will not continue”.

The Commission’s determined dumping margins for exporters in the Philippines and Thailand are reflected in the following Table 11 extract from Report 571 & 572 (at p 46):

Country	Exporter	Dumping margin
Philippines	Dole Philippines Inc.	17.5%
	Uncooperative and all other exporters	49.9%
Thailand	Siam Food Products Public Company Limited	-5.3%
	Kuiburi Fruit Canning Co., Ltd and Kuiburi Fruit Cup Co., Ltd	-3.0%
	Prime Products Industry Company Limited	3.8%
	Uncooperative and all other exporters	15.7%

Table 11: Dumping margin summary

It should be noted that, in 2020, the import volumes of consumer pineapple from Thailand had declined to 31 per cent of 2016 volumes, and volumes of consumer pineapple imported from the Philippines had increased by 27 per cent in 2020 over 2016 levels¹⁰.

In respect of market share held by the subject imports, the volume of share held by imports from the Philippines represents the largest share in the Australian market, with the volume of imports from Thailand the subject of measures accounting for a small share of the Australian market¹¹.

Notably, the Commission’s analysis did consider that exporters from the Philippines – with the advantage of dumping margins between 17.5 per cent and 49.9 per cent – increased export volumes

⁸ Kuiburi Fruit Canning and Kuiburi Fruit Cup.

⁹ As submitted in support of ground 1, Siam Food *did* export at dumped prices during the investigation period.

¹⁰ See Table 12 at section 7.5.1 of Report 571 & 572 (p 49).

¹¹ See Figure 2 at section 4.4 of Report 571 & 572 (p 18).

and market share in 2020 due to the dumping. Golden Circle notes that the issue of future dumping from the Philippines and Thailand is not in dispute.

The Commission also noted, at section 7.3, that there are a number of factors for it to consider as outlined at pp 175-176 of the Dumping and Subsidy Manual (“the Manual”). In respect of the likelihood of continuing or recurring injury, relevant factors include, but are not limited to, the following:

- state of the Australian industry;
- production capacity;
- other causes of injury;
- market size and share;
- demand for the goods;
- any changes in the structure and operation since the measures were imposed;
- price of exports compared with NIP and USP;
- measures relevance to selling prices;
- the impact of imports of the goods not dumped from other sources;
- changes in technology, product types, consumer preferences, demand and supply.

The Commission set out, at section 7.4, Golden Circle’s claims in support of the continuation of the anti-dumping measures.

The Commission also referenced a submission by Australian Pineapples that Golden Circle was working with the pineapple growing industry to increase pineapple fruit volumes in a strategy from 2022 to 2027 to permit Golden Circle to increase supply of processed pineapples to the consumer market following a prolonged drought period evident until early 2020.

Report 571 and 572 confirmed that the Commission was satisfied that:

- exports of consumer pineapple will continue from the Philippines and Thailand;
- the exporters in the Philippines and Thailand had maintained distribution links into the Australian market;
- excess capacity for cooperative exporters in the Philippines and Thailand ranged between 13 per cent and 57 per cent; and
- there is “*no evidence to indicate that dumping will not continue*”.¹²

The Commission was also satisfied that “*all imports of the goods undercut the Australian industry’s selling prices during the inquiry period. This includes imports of the goods from the subject countries.*”¹³

Imports from Indonesia, which accounted for 83 per cent of all imports not the subject of the measures, “*undercut the Australian industry by the greatest amount*”.¹⁴

The apparent issue of concern to the Commission about future material injury being likely appeared to be Golden Circle’s alleged inability to demonstrate that, in pricing negotiations with the supermarkets, imports from the subject countries were the cause of Golden Circle not being able to secure high prices to recover increased costs.¹⁵ In particular, the Commission stated it “*has not identified evidence to indicate that the imports of consumer pineapple have impacted on the prices Golden Circle has been able to achieve.*”

Golden Circle had indicated to the Commission in its response to SEF 571 & 572 that the Supplier Grocery Code of Conduct, the Australian Competition and Consumer Law and the confidentiality provisions existing in contracts between Golden Circle’s customers and its other suppliers prevented Golden Circle from accessing information from its retailers about competitive import pricing offers. Though not discussed in its report, this consideration does not appear to have been accepted by the

¹² Report 571 & 572 at [7.5.4].

¹³ Report 571 & 572 at [7.7.1.1] (p 55).

¹⁴ Report 571 & 572 at [7.7.1.1] (p 55).

¹⁵ Report 571 & 572 at [7.7.1.5] (p 57) (see also at [7.7.1.2]-[7.7.1.3]).

Commission, as it maintained that Golden Circle could not evidence competitive price offers for imports from the Philippines and Thailand with which it was competing.

An absence of examples of pricing offers from retailers of alternative offers to Golden Circle's prices appears to have been a key consideration in the Commission's findings and the Commissioner's non-satisfaction that future material injury from dumping was likely.

However, the guidance in the Manual indicates that there are a range of factors for consideration and "[n]o one factor can provide decisive guidance"¹⁶.

Golden Circle refers to the factors as identified in the Manual for consideration as to the likelihood of a recurrence of material injury. Golden Circle has demonstrated that the industry was recovering from prolonged drought conditions (noted at [7.7.2 of Report 571 & 572), was seeking to rebuild pineapple volumes from suppliers and had in place a strategy that would deliver incremental increases from 2022 to 2027. The industry at the present time is susceptible to injury from dumping as increased volumes of dumped imports – particularly from the Philippines – would jeopardise the growth strategy that Golden Circle and grower members of Australian Pineapple had embarked on.

Golden Circle demonstrated to the Commission that it was building production volumes again to utilise its under-utilised production capacity (Golden Circle submission of 8 June 2021).

The Commission did not engage with this material at [7.7.2] of its report, and instead made a conclusionary statement to the effect that there was not sufficient evidence to show that the expiration of the anti-dumping measures would impact Golden Circle's pineapple processing plans. That conclusion was devoid of any analysis.

Golden Circle acknowledges that imports from Indonesia also undercut its selling prices; however, the volumes from the Philippines at significant margins of dumping are substantially greater than those from Indonesia and, thus, have a far greater impact on Golden Circle's selling prices.

There has been an increase in demand for consumer pineapple in 2020 (as per Figure 1 in Report 571 & 572) and imports from the Philippines have increased market share in this period – aided by the significant margins of dumping as found by the Commission.

The available facts confirm that:

- dumping from the Philippines and Thailand will continue;
- the Philippines and Thailand are the two largest exporters of processed pineapple globally;
- the cooperative exporters in the Philippines and Thailand have excess capacity with which to supply the Australian market of between 13 and 57 per cent;
- all import prices from the Philippines and Thailand undercut the Australian industry's selling prices;
- the Australian market for consumer pineapple is price sensitive;
- whilst Golden Circle's Australian pineapple sells at a premium to imported pineapple, the two products are substitutable;
- the Australian industry is susceptible to increased imports at dumped prices as it embarks on a recovery from a drought-affected period where volumes were constrained¹⁷; and
- that, in the absence of measures, it is likely that the exporters in the Philippines and Thailand will increase exports to Australia to retard Golden Circle's ability to re-grow displaced volumes over the period 2022-2027 as planned.

These facts establish that the Minister's decision (the reviewable decision) to accept the Commissioner's recommendation to allow the measures to expire on consumer pineapple exported from the Philippines and Thailand was not the correct or preferable decision.

¹⁶ Report 571 & 572, Section 7.3, P.47.

¹⁷ In its SEF response dated 9 August 2021 Golden Circle referenced the 2012 Ministerial Direction concerning material injury where an Australian industry may be vulnerable to the impact of dumping.

The available evidence confirms that, in the absence of the measures, the Australian industry will **likely** incur material injury from future exports of consumer pineapple from the Philippines and Thailand.

There is a further difficulty with the Commission's analysis: it erred in law in its application of section 269ZHF(2) of the Act. At [7.7.2], it said that "'threat of future material injury' is not part of the test for the continuation of measures". That is not correct. The phrase "material injury" when used in section 269ZHF(2) bears the same meaning as it does in Division 1 of Part XVB of the Act (particularly section 269TAE) and those matters set out in section 269TAE(2A) (for the purposes of section 269TAE(1)) at the very least may bear upon the formation by the Commissioner of the state of satisfaction in section 269ZHF(2).¹⁸ Section 269TAE, in turn, relevantly speaks of material injury to an Australian industry being "threatened" (see sub-sections 269TAE(1), (2), (2A) and (2B)).

For all these reasons, the Commissioner should have found that the future exports of consumer pineapple at dumped prices from the Philippines and Thailand (except for exports by Kuiburi Fruit Canning and Kuiburi Fruit Cup) to Australia will likely cause, or threaten, a recurrence of material injury to the Australian industry that the anti-dumping measures were intended to prevent.

10. Correct or preferable decision

Identify, what, in the applicants' opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9.

The correct or preferable decision is for the decision under review to be revoked and, in substitution for that decision a declaration that the Minister has decided to secure the continuation of the anti-dumping measures concerned (section 269ZZM(1)(b), read with section 269ZHG(1)(b)).

11. Grounds in support of decision

Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision.

Golden Circle refers to its arguments set out in response to question 9 above. Those arguments connect the grounds of review to the proposed correct or preferable decision.

12. Material difference between the decisions

Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision.

The proposed decision is materially different from the reviewable decision as it would result in the continuation of the anti-dumping measures on consumer pineapple exported from the Philippines and Thailand for a further five-year period.

¹⁸ *Minister of State for Home Affairs v Siam Polyethylene Co Ltd* (2010) 187 FCR 229 at [107], [118], [122] per Graham and Flick JJ.