



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

*CUSTOMS ACT 1901 - PART XVB*

**Anti-Dumping Commission  
Reinvestigation Report for the  
Anti-Dumping Review Panel**

**Reinvestigation of Certain Findings  
in Report Nos 573 & 574**

**FOOD SERVICE AND INDUSTRIAL (FSI) PINEAPPLE  
EXPORTED TO AUSTRALIA FROM THE REPUBLIC OF THE  
PHILIPPINES AND THE KINGDOM OF THAILAND**

**24 June 2022**

**CONTENTS**

**ABBREVIATIONS** ..... **3**

**1 SUMMARY AND BACKGROUND** ..... **4**

1.1 INTRODUCTION ..... 4

1.2 SUMMARY OF FINDINGS ..... 4

1.3 BACKGROUND TO THE REINVESTIGATION ..... 4

1.4 COMMISSION’S APPROACH TO THE REINVESTIGATION ..... 6

1.5 SUBMISSIONS ..... 6

**2 CONTINUATION OR RECURRENCE OF MATERIAL INJURY AND SECTION 269ZHF(2)** ..... **7**

2.1 SUMMARY OF REINVESTIGATION FINDINGS ..... 7

2.2 BACKGROUND ..... 7

2.3 ADRP REINVESTIGATION REQUEST ..... 7

2.4 SUBMISSIONS RECEIVED IN RESPONSE TO FILE NOTE PUBLISHED ON 20 JANUARY 2022 ..... 7

2.5 SUBMISSION RECEIVED IN RESPONSE TO PRELIMINARY REINVESTIGATION REPORT ..... 8

2.6 COMMISSION’S ASSESSMENT ..... 8

**3 LIKELIHOOD OF FUTURE MATERIAL INJURY** ..... **9**

3.1 SUMMARY OF REINVESTIGATION FINDINGS ..... 9

3.2 BACKGROUND ..... 10

3.3 ADRP REINVESTIGATION REQUEST ..... 10

3.4 SUBMISSIONS RECEIVED IN RESPONSE TO FILE NOTE PUBLISHED ON 20 JANUARY 2022 ..... 11

3.5 SUBMISSIONS RECEIVED IN RESPONSE TO PRELIMINARY REINVESTIGATION REPORT ..... 12

3.6 COMMISSION’S ANALYSIS ..... 12

## PUBLIC RECORD

### ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
Golden Circle	Golden Circle Limited
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
FOB	Free on Board
FSI	Food Service and Industrial
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Manual	<i>Dumping and Subsidy Manual</i>
the Minister	the then Acting Minister for Industry, Science and Technology
the Philippines	the Republic of the Philippines
Prime Products	Prime Products Industry Co. Ltd
REP 573 & 574	<i>Anti-Dumping Commission Report No. 573 &amp; 574</i>
Siam	Siam Food Products Public Co Ltd
Thailand	the Kingdom of Thailand

# 1 SUMMARY AND BACKGROUND

## 1.1 Introduction

On 12 January 2022, the Anti-Dumping Review Panel (ADRP) requested that the Commissioner of the Anti-Dumping Commission (the Commissioner) undertake a reinvestigation of certain findings arising from *Anti-Dumping Commission Report Nos 573 & 574* (REP 573 & 574). REP 573 & 574 relates to anti-dumping measures applying to food service and industrial (FSI) pineapple exported to Australia from the Republic of the Philippines (the Philippines) and the Kingdom of Thailand (Thailand). After receiving and considering REP 573 & 574, the then Acting Minister for Industry, Science and Technology (the Minister) decided to not secure the continuation of the anti-dumping measures.

This report sets out the findings of the Commissioner.

## 1.2 Summary of findings

In this report the Commissioner:

- is satisfied on reviewing its analysis in REP 573 & 574, that a future-oriented analysis of whether material injury would be likely to continue or recur was considered in REP 573 & 574 (despite the language of section 269ZHF(2) of the *Customs Act 1901*<sup>1</sup> not referring to 'threat') (refer Chapter 2)
- is not satisfied that in the absence of measures, the Australian industry will likely incur material injury from future exports of FSI pineapple from the Philippines and Thailand (refer Chapter 3).

## 1.3 Background to the reinvestigation

### 1.3.1 The Minister's decision

On 25 January 2021, the Commissioner initiated an inquiry into whether the continuation of anti-dumping measures, in the form of a dumping duty notice, in respect of FSI pineapple exported to Australia from the Philippines and Thailand was justified.

Following the recommendations of the Commissioner in REP 573 & 574, on 6 October 2021 the Minister declared that:

- pursuant to section 269ZHG(1)(a), he has decided not to secure the continuation of anti-dumping measures relating to FSI pineapple exported to Australia from Thailand and the Philippines. These measures expired on 17 October 2021 and 13 November 2021 respectively.

Public notice of this decision was published on 6 October 2021.<sup>2</sup>

<sup>1</sup> All legislative references in this report are to the *Customs Act 1901* unless otherwise specified.

<sup>2</sup> Anti-Dumping Notice No. [2021/118](#)

### **1.3.2 The review of the Minister's decision**

The ADRP accepted an application from Golden Circle Limited (Golden Circle) for a review of the Minister's decision. The ADRP initiated its review of the decision through public notice on 15 November 2021.<sup>3</sup>

The ADRP requested that the Commissioner undertake a reinvestigation under section 269ZZL that the Commissioner was not satisfied that the expiration of the anti-dumping measures applicable to FSI pineapple exported to Australia from the Philippines and Thailand would lead, or would be likely to lead, to a continuation or recurrence of, the dumping and the material injury the anti-dumping measures are intended to prevent.<sup>4</sup>

The ADRP accepted to review the following grounds of Golden Circle's application for review:

- available evidence confirmed that, in the absence of measures, the Australian industry will likely incur material injury from future exports of FSI pineapple from the Philippines and Thailand as the Australian growers of pineapple and Golden Circle embark on an increase in production strategy
- the Anti-Dumping Commission (commission) erred in law in its application of section 269ZHF(2) in stating that the threat of future material injury is not part of the test for the continuation of the measures.

### **1.3.3 Relevant findings in REP 573 & 574**

In REP 573 & 574, the Commissioner was not satisfied that the expiration of the anti-dumping measures in respect of exports of FSI pineapple from the Philippines and Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, dumping and the material injury that the anti-dumping measures were intended to prevent.

Specifically, the Commissioner's findings in REP 573 & 574 relevant to this reinvestigation were that:

- Golden Circle has been able to achieve a consistently higher sales price on its FSI pineapple, despite imports from the subject countries (and other countries) being at lower prices.
- Future imports from the Philippines and Thailand are likely to compete on price with each other and with imports from other countries (not subject to the measures). This competition is at a much lower price point than Golden Circle's sales price. There is insufficient evidence before the commission indicating that the price of imported goods impacts the prices Golden Circle achieves.
- Due to limited supply of raw pineapple (not attributable to imports from the subject countries), Golden Circle has focused on the consumer pineapple market rather than the FSI pineapple market, a factor which has led to its declining sales volume for FSI pineapple.

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<sup>3</sup> [ADRP review no.145 notice under 269ZZI refer](#)

<sup>4</sup> [ADRP Reinvestigation Request](#)

## PUBLIC RECORD

- There is no evidence that Golden Circle has lost sales volumes to imported products or would lose sales volumes if the measures expire, with the data indicating that Golden Circle is able to process all of the raw pineapple it acquires.

### 1.4 Commission's approach to the reinvestigation

The commission has assisted the Commissioner in undertaking the reinvestigation, pursuant to the Commission's function specified in section 269SMD. The reinvestigation is being conducted in accordance with section 269ZZL(2).

The Commissioner published a preliminary reinvestigation report on the electronic public record (EPR) on 27 May 2022 and invited submissions in response.<sup>5</sup> The Commissioner received a total of 3 submissions in relation to the preliminary reinvestigation report.

For the purpose of conducting the reinvestigation, the commission is considering:

- the grounds accepted for review (as the ADRP published under section 269ZZI)
- the ADRP reasons for requesting the reinvestigation
- Golden Circle's application to the ADRP for review of the Minister's decision
- submissions received from interested parties in response to a file note published by the commission inviting submissions<sup>6</sup>
- submissions received from interested parties in response to the file note the commission published on 27 May 2022.<sup>7</sup>inviting submissions

### 1.5 Submissions

For the purposes of the reinvestigation request, the commission examined submissions from the following interested parties received prior to publishing the preliminary reinvestigation report:

- Siam Food Products Public Company Limited (Siam)<sup>8</sup>
- Golden Circle<sup>9</sup>
- Dole Philippines Inc (Dole)<sup>10</sup>

The commission examined submissions received in response to the preliminary reinvestigation report from the following interested parties:

- Golden Circle<sup>11</sup>
- Dole<sup>12</sup>
- Government of the Republic of the Philippines<sup>13</sup>

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<sup>5</sup> EPR 573 & 574, document no. [020](#)

<sup>6</sup> EPR 573 & 574, document no. [016](#)

<sup>7</sup> EPR 573 & 574, document no. [020](#)

<sup>8</sup> EPR 573 & 574, document no. [017](#)

<sup>9</sup> EPR 573 & 574, document no. [018](#)

<sup>10</sup> EPR 573 & 574, document no. [019](#)

<sup>11</sup> EPR 573 & 574, document no. [021](#)

<sup>12</sup> EPR 573 & 574, document no. [022](#)

<sup>13</sup> EPR 573 & 574, document no. [023](#)

## **2 CONTINUATION OR RECURRENCE OF MATERIAL INJURY AND SECTION 269ZHF(2)**

### **2.1 Summary of reinvestigation findings**

The commission, on reviewing its analysis in REP 571 & 572, is satisfied that a future-oriented analysis of whether material injury would be likely to continue or recur was considered in REP 571 & 572.

### **2.2 Background**

In REP 573 & 574, the commission noted that ‘threat of future material injury’ is not part of the test for the continuation of measures.

Golden Circle appealed to the ADRP stating that the commission has made an error of law in not considering the threat of future material injury as part of the Commissioner’s consideration in conducting a continuation inquiry. The ADRP accepted this as a ground for review.

### **2.3 ADRP reinvestigation request**

The Senior Member of the ADRP in the correspondence requesting that the Commissioner reinvestigate certain findings of REP 573 & 574,<sup>14</sup> outlined concerns with the commission’s commentary on threat in a continuation inquiry. The Senior Member is concerned that the commission has misunderstood the test in a continuation of measures and may not have considered the hypothetical situation of what may occur should the measures be allowed to expire.

### **2.4 Submissions received in response to file note published on 20 January 2022**

The commission published a file note<sup>15</sup> inviting submissions from interested parties for the purposes of this reinvestigation on matters related to findings that the ADRP has requested the commission to reinvestigate. The commission also invited further submissions in response to the preliminary reinvestigation report.

#### **2.4.1 Siam**

Siam submitted<sup>16</sup> that the test in section 269ZHF(2) may involve an assessment of whether there is a ‘possibility’ or ‘likelihood’ of material injury from Siam’s future exports of FSI pineapple to Australia. Siam considers that there is no possibility or likelihood of Australian industry suffering material injury in the future as a result of exports of FSI pineapple.

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<sup>14</sup> [ADRP request for reinvestigation](#)

<sup>15</sup> EPR 573 & 574, document no. [016](#)

<sup>16</sup> EPR 573 & 574, document no. [017](#)

## **2.4.2 Dole**

Dole submitted<sup>17</sup> that there is no lawful basis when applying the continuation test to introduce or substitute a requirement that the Commissioner be satisfied that the threat, rather than the actuality, of material injury is a likely consequence of the expiry of the measures. Nonetheless, Dole considers that the commission's assessment in REP 573 & 574 adopted a forward-looking perspective when applying the statutory test for continuation.

## **2.5 Submission received in response to preliminary reinvestigation report**

The commission received the following submission in response to the preliminary reinvestigation report.

Golden Circle submitted that it welcomes the Commissioner's consideration 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 measures.

## **2.6 Commission's assessment**

The commission agrees with the ADRP Senior Member that an assessment of the likelihood, or otherwise, of the continuation or recurrence of material injury in the context of existing measures necessarily requires a future-oriented analysis. The commission agrees that this, by its very nature, involves consideration of the hypothetical situation that is the absence of measures.

The commission confirms that REP 573 & 574 considered whether material injury is likely to continue or recur, as a future-oriented question. This reinvestigation report will also consider whether material injury is likely to continue or recur (in Chapter 3) as part of the continuation test.

Contrary to Golden Circle's submission on the commission's preliminary reinvestigation finding, the commission notes that the language of section 269ZHF(2) does not refer to 'threat', in contrast to the language of section 269TAE. The commission however agrees that the Australian industry does not have to currently be suffering material injury from dumping for the measures to be continued.

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<sup>17</sup> EPR 573 & 574, document no. [019](#)



## 3 LIKELIHOOD OF FUTURE MATERIAL INJURY

### 3.1 Summary of reinvestigation findings

As consumer pineapple is subject to separate notices for each of exports from the Philippines<sup>18</sup> and exports from Thailand,<sup>19</sup> the commission has separated the injury analysis for each these countries where relevant.

#### 3.1.1 Philippines

In respect to exports from the Philippines, the Commissioner is not satisfied that in the absence of measures, the Australian industry will likely incur material injury from future exports of FSI pineapple from the Philippines.

The Commissioner proposes that the measures do not continue in relation to exports of FSI pineapple from the Philippines, which is the same as the recommendation in REP 573 & 574.

The Commissioner has made this finding on the basis of:

- the low volume of exports from the Philippines
- the market share of FSI pineapple not subject to measures is over 90% during the inquiry period and is likely to be influencing market behaviour and causing price injury to Australian industry
- the presence of significantly lower priced competition available in the market not subject to measures
- the overall substantial decrease in the Australian market for FSI pineapple
- export prices not being set relative to existing measures
- no evidence of Australian industry suffering volume injury during the inquiry period
- Golden Circle's supply constraints that are not attributable to dumping.

On the evidence available, particularly the presence of a number of variables that are not related to dumping, the Commissioner is not satisfied that there is a likelihood that material injury would be caused by imports from the Philippines in the absence of measures.

#### 3.1.2 Thailand

In respect to exports from the Thailand, the Commissioner is not satisfied that in the absence of measures, the Australian industry will likely incur material injury from future exports of FSI pineapple from Thailand.

The Commissioner proposes that the measures do not continue in relation to exports of FSI pineapple from Thailand, which is the same as the recommendation in REP 573 & 574.

The Commissioner has made this finding on the basis of:

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<sup>18</sup> [ADN 2016/83](#)

<sup>19</sup> [ADN 2016/84](#)

## PUBLIC RECORD

- the low volume of exports from the Thai exporters subject to measures
- the market share of FSI pineapple not subject to measures is over 90% and is likely to be influencing market behaviour 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
- export prices not being set relative to existing measures
- no evidence of Australian industry suffering volume injury during the inquiry period
- Golden Circle's supply constraints that are not attributable to dumping.

On the evidence available, particularly the presence of a number of variables that are not related to dumping, the Commissioner is not satisfied that there is a likelihood that material injury would be caused by imports from Thailand in the absence of measures.

### 3.2 Background

In REP 573 & 574, the Commissioner found that in the absence of measures, it was not likely that Australia industry would incur material injury from future exports of FSI pineapple from the Philippines and Thailand.

Golden Circle requested merits review of the Minister's decision to accept recommendations in REP 573 & 574 to the ADRP stating that available evidence confirmed that, in the absence of measures, the Australian industry will likely incur material injury from future exports of FSI pineapple from the Philippines and Thailand. The ADRP accepted this as a ground for review.

### 3.3 ADRP reinvestigation request

In requesting a reinvestigation into the likelihood of future material injury, the ADRP identified the following issues with the commission's finding in REP 573 & 574 that the Commissioner was not satisfied that the expiration of the anti-dumping measures applicable to FSI pineapple exported to Australia from the Philippines and Thailand would lead, or would be likely to lead, to a continuation or recurrence of, the dumping and the material injury the anti-dumping measures are intended to prevent:

- The commission found that Golden Circle consistently achieved a 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.<sup>20</sup>
- 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.<sup>21</sup>
- The commission's finding does not allow for any price elasticity.<sup>22</sup>

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<sup>20</sup> Paragraph 27, [ADRP request for reinvestigation](#)

<sup>21</sup> Ibid, Paragraph 28

<sup>22</sup> Ibid, Paragraph 29

- The commission's finding that the expiration of the measures would not impact Golden Circle's pineapple processing plans or it 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).<sup>23</sup>

### **3.4 Submissions received in response to file note published on 20 January 2022**

The commission published a file note<sup>24</sup> inviting submissions from interested parties for the purposes of this reinvestigation on matters related to findings that the ADRP has requested the commission to reinvestigate. The commission also invited further submissions in response to the preliminary reinvestigation report.

#### **3.4.1 Golden Circle**

Golden Circle submit<sup>25</sup> that as per the *2012 Ministerial Direction on Material Injury* (the Direction), the commission should consider the Australian industry to be vulnerable to the impact of dumped exports which would cause material injury given the droughts that have caused raw material supply issues.

Golden Circle confirms it has an underutilised processing facility at Northgate, Queensland. The plant's production capacity is limited by the supply of raw pineapple for processing, which has been caused by prolonged drought and its impacts on growers. The supply of raw material does not alter the actual production capacity or utilisation rate of the processing plant. Golden Circle therefore disagrees with the conclusion that it is operating at 100% of its real capacity in relation to the goods.

Golden Circle submit that the supply of raw pineapple is linked to, and impacted by, imports of both consumer and FSI pineapple into Australia, and the price it can pay suppliers for raw material pineapple is directly linked to the selling price for processed consumer and FSI pineapple.

Golden Circle further submit that given the dumping margins calculated by the commission for exporters from the Philippines and Thailand, it is likely that future exports of FSI pineapple from the Philippines and Thailand will likely be exported at dumped prices. This will collectively undercut the Australian industry's selling prices, and impede on plans to increase the supply of locally-grown pineapples for processing.

#### **3.4.2 Dole**

Dole submit<sup>26</sup> that both the Philippines and Thailand have a 'miniscule' presence in the Australian FSI pineapple market, and data points to a strong export market from countries and/or exporters that are not subject to anti-dumping measures.

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<sup>23</sup> Ibid, Paragraph 31

<sup>24</sup> EPR 573 & 574, document no. [016](#)

<sup>25</sup> EPR 573 & 574, document no. [018](#)

<sup>26</sup> EPR 573 & 574, document no. [019](#)

Dole suggests that the commission take the opportunity with the reinvestigation to identify the factors and the subsequent influence on the causation issue, such as Golden Circle's lack of competitiveness, volume and price of undumped like goods, contractions in demand, fresh pineapple availability constraints, increased cost of fresh pineapple, and the Golden Circle's imports of like goods.

### **3.4.3 Siam**

Siam submit<sup>27</sup> that the commission found that imports from Thailand subject to measures amount to only about 5% of the Australian market, and that Golden Circle has not provided evidence to show these volumes are causing, or could cause, material injury.

Siam further submit that countries that are not subject to measures are dramatically increasing their Australian market share. Siam also note that Golden Circle has not applied for the initiation of an inquiry into FSI pineapple exports from these other sources, despite them being amongst the lowest price products.

## **3.5 Submissions received in response to preliminary reinvestigation report**

The commission received the following submission in response to the preliminary reinvestigation report.

### **3.5.1 Golden Circle's submission of 3 June 2022**

Golden Circle submitted that the commission has not sufficiently considered the ADRP Senior Member's concerns in its preliminary reinvestigation report that in the absence of measures, Golden Circle will be materially injured from exports at dumped prices as it seeks to recover production capability via a planned, staged recovery to 2027. Golden Circle considers that it is experiencing injury from dumped exports, with significant dumping margins calculated for exporters from the Philippines and Thailand. Golden Circle considers that the measures have resulted in increased pricing from the Philippines and Thailand and despite the low market share held by these exporters, Golden Circle consider these will have an influence on the market and on industry profit and profitability in the absence of measures.

Golden Circle also does not consider that the commission has given regard to the effectiveness of the measures for exports of FSI pineapple from the Philippines and Thailand.

## **3.6 Commission's analysis**

When assessing the likelihood of whether material injury was likely to be caused by future imports at dumped prices, the commission considers that a number of factors are relevant, as set out in the *Dumping and Subsidy Manual – December 2021* (the Manual)<sup>28</sup>.

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<sup>27</sup> EPR 573 & 574, document no. [017](#)

<sup>28</sup> Page 137 of [the Manual](#) refers.

## PUBLIC RECORD

The following analysis, therefore, examines a range of factors which the commission considers relevant to this reinvestigation for each of the Philippines and Thailand.

### 3.6.1 Dumping margins in REP 573 & 574

Table 1 is a summary of the dumping margins calculated in REP 573 & 574 relating to exports of FSI pineapple from the Philippines and Thailand.

Country	Exporter	Dumping margin
Philippines	Uncooperative and all other exporters	22.9%
Thailand	Siam	14.5%
	Uncooperative and all other exporters	14.8%

**Table 1: Dumping margins summary**

### 3.6.2 Import volumes of dumped goods

For the purposes of this analysis, where the commission did not have verified data,<sup>29</sup> best available information from the Australian Border Force (ABF) import database was used.

The commission observed that the overall Australian market size had reduced significantly between 2017 and 2020, reducing by over 30% between 2019 and 2020.

#### Philippines

The commission notes that the ‘uncooperative and all other exporters’ rate is calculated using best available information, without considering actual export price and normal value data for those exporters. For this reason, the scale of the ‘uncooperative and all other exporters’ dumping margin does not indicate that those goods are presently being exported at dumped prices. The commission has nonetheless reviewed import volumes from the Philippines considered to be dumped in REP 573 & 574 during the inquiry period.

Import volumes from the Philippines have dropped since the Minister accepted the recommendations contained in *Anti-Dumping Commission Report No. 334* in 2016 and have remained stable year-on-year up to 2020. There has not been a shift between importers and exporters from the Philippines during this period. The commission does not anticipate increases in volumes as the FOB export price from the Philippines has increased significantly as discussed at chapter 3.5.4 below.

#### Thailand

The commission notes that the ‘uncooperative and all other exporters’ rate is calculated using best available information, without considering actual export price and normal value data for those exporters. For this reason, the scale of the ‘uncooperative and all other exporters’ dumping margin does not indicate that those goods are presently being

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<sup>29</sup> The commission verified information submitted by Golden Circle and by Siam from Thailand. All other import data has been obtained from the Australian Border Force import database.

## PUBLIC RECORD

exported at dumped prices. The commission has nonetheless reviewed import volumes from Thailand considered to be dumped in REP 573 & 574 during the inquiry period.

The commission notes that the volumes of exports from exporters subject to the measures has decreased significantly since 2016, with the largest decreases between 2017 and 2018. The commission further notes that these decreases correlate with major exporters from Thailand becoming exempt from measures and the overall market size has decreased significantly, although to a lesser extent between 2017 and 2018.

### 3.6.3 Impact of measures on market share

For the purposes of this analysis, where the commission did not have verified data, best available information from the ABF import database was used.

Exports from the Philippines and Thailand that are subject to measures made up less than 2% of the overall Australian market during the inquiry period, excluding any imports by Australian industry as the commission does not consider imports by Australian industry to be causing material injury to Australian industry.

During the inquiry period, the market was also made up of exports that are not subject to measures from Thailand (almost 30% of the market share), Indonesia (over 25% of the market share) and smaller volumes from other countries (collectively making up over 35% of the market share).

#### Philippines

The commission observes that the market share of exports from the Philippines have remained stable each year, making up between 0.3% and 0.6% of the Australian market each year between 2017 and 2020.

The commission considers the market share of exports not subject to measures (over 90% of the market) at lower prices than goods subject to measures (as discussed at chapter 3.5.4 below) to be placing pressure on Australian industry selling prices rather than imports from the Philippines.

#### Thailand

The commission observes that the market share of exports from Thailand subject to measures, excluding imports by Australian industry, have remained stable since 2019 2020, making up between 1.1% and 1.3% of the overall Australian market.

Although market share of exports from Thailand subject to the measures reduced significantly between 2017 and 2018 (from approximately 38% to less than 11%), this correlates with a similar increase in the market share of exports from Thailand not subject to measures (from approximately 13% to almost 35%) during the same period. This coincides with a major exporter becoming exempt from measures as a result of *Anti-Dumping Commission Report No. 477*. The exempt exporter continues to export FSI pineapple to Australia.

The commission considers the market share of exports not subject to measures (over 90% of the market) at lower prices than the goods subject to measures (as discussed at



chapter 3.5.4 below) to be placing pressure on Australian industry selling prices rather than imports from Thailand.

#### **3.6.4 Prices of imported goods from all sources**

For the purposes of this analysis, where the commission did not have verified data, best available information from the ABF import database was used. The commission has removed all imports by Australian industry in this analysis as these imports are not considered to be causing material injury to Australian industry.

##### Philippines

The commission notes that the Free on Board (FOB) export price from the Philippines has increased between 2016 and 2017. In each year since 2017, FSI pineapple imported from the Philippines had a higher FOB export price than those not subject to measures by between 100% and 200%.

The commission does not agree with Golden Circle's claims that the increase in export prices from the Philippines is an indication of the effectiveness of the measures. The commission notes that if the measures were effective then we would expect the export prices from the Philippines to more or less equate to the variable component of the measures (ascertained export price). The export price from the Philippines in each year from 2017 onwards is between 74% and 118% higher than the variable component of the measures. This indicates that export prices from the Philippines are not set relative to the measures.

During the inquiry period, exporters from the Philippines would have needed to reduce their prices by more than 50% to be competitive with exporters not subject to measures. The commission does not consider it likely that exporters from the Philippines would reduce their prices by this amount in the absence of measures. It is therefore the commission's view that it is not likely that exports of FSI pineapple from the Philippines will cause material injury in the future in the absence of measures.

##### Thailand

The commission notes that the FOB export price from exporters subject to measures in Thailand has remained stable in all but one year since 2016. 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 subject to measures by between 12% and 42%. In 2016, the FOB export price from Thailand by exporters subject to measures was marginally lower than those from Thailand not subject to measures (less than 1%).

The commission does not agree with Golden Circle's claim that FOB export prices by exporters subject to measures being higher than those of exporters not subject to measures is an indication that measures in place since 2016 have had a positive impact on the export intentions of exporters in Thailand. The commission notes that if the measures were effective then we would expect the export prices from Thailand to more or less equate to the variable component of the measures (ascertained export price). The commission has examined the pricing trends relative to the variable component of the measures for each exporter between 2016 and 2020. The commission observes that the

## PUBLIC RECORD

only exports from Thailand during the inquiry period were from one exporter listed in the Dumping Commodity Register and from 'all other exporters'. The FOB export prices by the listed exporter were between 4% and 38% higher than the variable component of the measures. This indicates that export prices from the named exporter are not set relative to the measures.

The FOB export prices for 'all other exporters' from Thailand were between 11% and 28% lower than the variable component of the measures in some years and between 25% and 37% higher in the other years. As duties would have been paid on exports where the export price was lower than the variable component of measures, these export prices are not likely to have been set relative to the measures. Additionally, given that FOB export prices in other years were significantly higher than the ascertained export price, it is not likely that these have been set relative to measures.

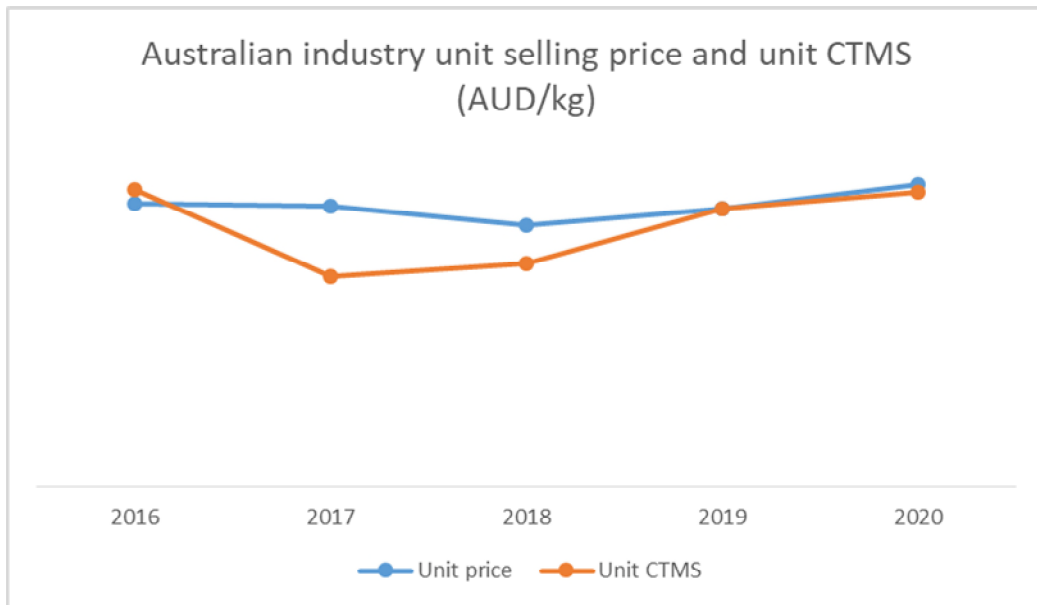
During the inquiry period, exporters from Thailand subject to measures would have needed to reduce their prices by up to 11% to be competitive with other exporters from Thailand not subject to measures and by 8% to be competitive with all exporters not subject to measures. As export prices are not likely to be set in relation to the existing measures, the commission considers it is not likely that exporters from Thailand that are subject to measures would reduce their prices by this amount in the absence of measures. The commission does not dispute, as Golden Circle suggests, the possibility that these exporters in the absence of measures may reduce their prices to be competitive with exports that are not dumped. However, given the size of the reduction in export prices required for these exporters to become competitive in the Australian market, the commission considers that it is not likely that these exporters would reduce export prices by these amounts in the absence of measures as to do so would result in significant decreases in profit. The commission therefore does not consider that in the absence of measures, exports from Thailand would cause price injury to Australian industry.

### 3.6.5 State of the Australian industry

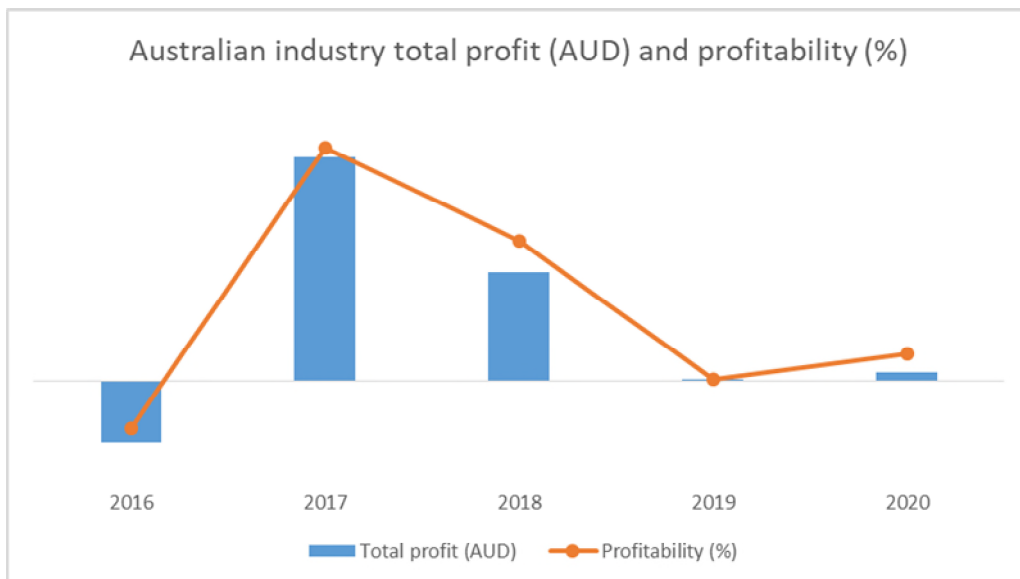
The commission has analysed price and profitability data of the Australian industry at Figures 1 and 2 below.



## PUBLIC RECORD



**Figure 1: Golden Circle Unit Selling Price vs Unit CTMS**



**Figure 2: Golden Circle Profit and Profitability**

The commission observes that Australian industry increased selling prices between 2018 and 2020, however due to increases in costs to manufacture, experienced price suppression between 2017 and 2019. Australian industry experienced a significant decrease in profitability on FSI pineapple between 2017 and 2019, with profitability increasing in 2020.

### Market share and capacity

The commission also observes that Australian industry has experienced a reduction in market share year-on-year with a drop from less than 7% of the Australian market in 2017 to less than 4% of the Australian market in 2020. At the same time, the overall Australian market for FSI pineapple has decreased each year with the largest drop between 2019 and 2020 of 32%.

## PUBLIC RECORD

REP 573 & 574 stated, and Golden Circle confirmed in its submission to this reinvestigation, that Golden Circle was able to process all raw pineapple available to it. Golden Circle however has an underutilised processing facility, which when resourced with raw pineapple, would increase production capacity. Golden Circle is of the view that if the measures are allowed to expire, the ability to secure long-term supply contracts with producers will be impacted, further limiting its ability to supply FSI pineapple. Golden Circle claims<sup>30</sup> that the commission has not given proper consideration to its planned forecast increase in production to 2027 and to its ability to recover from drought-affected raw fruit supply which is impacted by significant dumping margins. Golden Circle further claim that this dumping has caused price suppression and reduced profit and profitability.

The commission notes that the supply constraints being experienced by Golden Circle are not attributable to dumping but rather past agricultural issues. Further, as discussed at sections 3.5.2 to 3.5.4 above, the commission's finding is that large market shares are held by exporters not subject to measures and who are exporting at lower prices than exporters subject to measures. Noting this, even if Golden Circle's ability to recover from drought-affected raw fruit supply is impacted by exports, it is more likely to be affected by undumped exports.

### 3.6.6 Conclusion

As a general principle, the commission considers that whilst the presence (or absence) of dumping during the inquiry period may be indicative of future behaviour, this factor alone is not determinative. Despite the dumping margins during the inquiry period, given the lowest priced FSI pineapple in the Australian market not being subject to anti-dumping measures, it is likely that the material injury to Australian industry is caused by FSI pineapple that is not subject to anti-dumping measures. Therefore, the absence of anti-dumping measures is not likely to cause any future material injury to Australian industry.

While there may be a close relationship between price and volume in terms of purchasing behaviour, this occurs in a market which is almost entirely unaffected by dumping. As found in REP 573 & 574, Golden Circle's prices are, in the main, higher than those achieved by all exporters, both subject to measures and not.

#### Philippines

The commission is required to assess whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent for the goods exported to Australia from the Philippines by exporters subject to measures.

Notwithstanding the presence of dumping, on the evidence available, particularly the presence of a number of variables that are not related to dumping, the Commissioner is not satisfied that there is a likelihood that material injury would be caused by imports from the Philippines in the absence of measures. This is based on:

- the low volume of exports from the Philippines

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<sup>30</sup> EPR 573 & 574, document no. [021](#)

## PUBLIC RECORD

- the market share of FSI pineapple not subject to measures is over 90% during the inquiry period and is likely to be influencing market behaviour and causing price injury to Australian industry
- the presence of significantly lower priced competition available in the market not subject to measures
- the overall substantial decrease in the Australian market for FSI pineapple
- export prices not being set relative to existing measures
- no evidence of Australian industry suffering volume injury during the inquiry period
- Golden Circle's supply constraints are not attributable to dumping.

### Thailand

The commission is required to assess whether the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent for the goods exported to Australia from Thailand by exporters subject to measures.

Notwithstanding the presence of dumping, on the evidence available, particularly the presence of a number of variables that are not related to dumping, the Commissioner is not satisfied that there is a likelihood that material injury would be caused by imports from Thailand in the absence of measures. This is based on:

- the low volume of exports from Thai exporters subject to measures
- the market share of FSI pineapple not subject to measures is over 90% and is likely to be influencing market behaviour 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
- export prices not being set relative to existing measures
- no evidence of Australian industry suffering volume injury during the inquiry period
- Golden Circle's supply constraints are not attributable to dumping.