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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 571 & 572**

**CONSUMER PINEAPPLE
EXPORTED TO AUSTRALIA FROM THE REPUBLIC OF THE
PHILIPPINES AND THE KINGDOM OF THAILAND**

24 June 2022

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
the applicant or Golden Circle	Golden Circle Limited
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Dole	Dole Philippines Inc.
EPR	Electronic public record
FOB	Free on board
Golden Circle	Golden Circle Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
Kuiburi	Kuiburi Fruit Cup Co Ltd and Kuiburi Fruit Canning Co., Ltd
the Manual	<i>Dumping and Subsidy Manual</i>
Pave	Pave Brands Limited
the Minister	the then Acting Minister for Industry, Science and Technology
the Philippines	the Republic of the Philippines
GOP	Government of the Philippines
Prime Products	Prime Products Industry Co. Ltd
REP 571 & 572	<i>Anti-Dumping Commission Report Nos 571 & 572</i>
SG&A	Selling, general and administrative
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 in *Anti-Dumping Commission Report Nos 571 & 572* (REP 571 & 572). REP 571 & 572 relates to anti-dumping measures applying to consumer pineapple exported to Australia from the Republic of the Philippines (the Philippines) and the Kingdom of Thailand (Thailand). After receiving and considering REP 571 & 572, 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 571 & 572, that a future-oriented analysis of whether material injury would be likely to continue or recur was considered in REP 571 & 572 (despite the language of section 269ZHF(2) of the *Customs Act 1901*¹ not referring to 'threat') (refer Chapter 2)
- is satisfied that the imported and locally produced goods are commercially alike and that, while Golden Circle Limited (Golden Circle) achieves a price premium in the market, the existence of a price premium does not place Golden Circle in a market segment where it cannot be impacted by the potentially injurious effects of lower priced competition (refer Chapter 3)
- is satisfied that the expiration of the anti-dumping measures in respect of exports of the goods from the Philippines would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent (refer Chapter 4)
- is not satisfied that the expiration of the anti-dumping measures in respect of exports of the goods from Thailand would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent (refer Chapter 4).

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 consumer pineapple exported to Australia from the Philippines and Thailand was justified.

Following the recommendations of the Commissioner in REP 571 & 572, on 6 October 2021 the Minister declared that:

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

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- pursuant to 269ZHG(1)(a), he has decided not to secure the continuation of anti-dumping measures relating to consumer pineapples exported to Australia from Thailand and the Philippines. These measures expired on 10 October 2021 and 17 October 2021 respectively.

Public notice of this decision was published on 6 October 2021.²

1.3.2 The review of the Minister's decision

The ADRP accepted an application from Golden Circle for a review of the Minister's decision. The ADRP initiated its review of the decision by public notice on 15 November 2021.³

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

- 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
- the commission erroneously found that Golden Circle's Australian product operated in its own segment of the consumer pineapple market
- available evidence confirmed that, in the absence of measures, the Australian industry will likely incur material injury from future exports of consumer pineapple from the Philippines and Thailand.

The ADRP requested the Commissioner undertake a reinvestigation under section 269ZZL. The ADRP required the Commissioner to reinvestigate the specific finding that there was not sufficient evidence to support a finding that material injury was likely to be caused by future imports at dumped prices upon the expiration of the anti-dumping measures then applying to imports of consumer pineapple from the Philippines and Thailand.⁴

1.3.3 Relevant findings in REP 571 & 572

In REP 571 & 572 the Commissioner was not satisfied that the expiration of the anti-dumping measures in respect of exports of consumer 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 571 & 572 relevant to this reinvestigation were as follows:

- Golden Circle had been able to achieve a consistently higher sales price on its consumer pineapple, despite imports from the subject countries and other countries being at lower prices

² Anti-Dumping Notice No. 2021/117

³ [ADRP review no.144 notice under 269ZZI refer](#)

⁴ [ADRP Reinvestigation Request](#)

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- There was no evidence before the commission indicating that imports from the subject countries impact the prices Golden Circle achieves
- The available evidence indicated that Golden Circle's sales of consumer pineapple was within a segment of the Australian consumer pineapple market – a segment in which imported consumer pineapple does not compete
- There was no evidence that Golden Circle had lost sales volumes to imported products or would lose sales volumes if the measures expired, with the data indicating that Golden Circle was able to process all of the raw pineapple it acquired
- The key factor limiting Golden Circle's ability to increase sales volume was the availability of raw pineapple and there was no evidence to find that imports from the subject countries impact on raw pineapple availability

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.⁵ The Commissioner received a total of 3 submissions in relation to the preliminary reinvestigation report.

For the purpose of conducting the reinvestigation, the commission has considered:

- 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
- additional information requested by the commission from certain parties⁶
- submissions received from interested parties in response to the file note the commission published inviting submissions⁷
- submissions received in response to a preliminary reinvestigation report published on 27 May 2022.⁸

⁵ EPR 571 & 572, document no. [031](#)

⁶ The commission obtained additional sales data from Coles and Woolworths Ltd and also met with representatives from Coles. EPR 571 & 572, document no. [030](#)

⁷ EPR 571 & 572, document no. [025](#)

⁸ EPR 571 & 572, document no. [031](#)

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 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:

- Prime Products Industry Co Ltd (Prime Products)⁹
- Dole Philippines Inc (Dole)¹⁰
- Golden Circle¹¹
- Siam Food Products Public Company Limited (Siam)¹²

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

- Golden Circle¹³
- Dole¹⁴
- Government of the Republic of the Philippines (GOP)¹⁵

These submissions are addressed in the relevant sections of this report.

The commission notes that Dole's submission, in addition to matters relevant to the preliminary reinvestigation report, also raised an additional point. Dole submitted that because of the Commissioner's original recommendation and the Minister's decision to allow the anti-dumping measures to expire, there was no reason for interested parties to contest proposals on variable factors that were destined to be unused. In this regard Dole submitted that it has not had any opportunity to contest the dumping margin calculated by the commission and consequently rejects arguments based on that alleged margin.

Dole's submission does not suggest that the commission needs to re-calculate Dole's variable factors and dumping margin. The reinvestigation request was limited to the specific finding set out in section 1.3.2 and did not extend to the recalculation of variable factors in REP 571 & 572.

⁹ EPR 571 & 572, document no. [029](#)

¹⁰ EPR 571 & 572, document no. [028](#)

¹¹ EPR 571 & 572, document no. [027](#)

¹² EPR 571 & 572, document no. [026](#)

¹³ EPR 571 & 572, document no. [032](#)

¹⁴ EPR 571 & 572, document no. [033](#)

¹⁵ EPR 571 & 572, document no. [034](#)

2.3 Background

In REP 571 & 572, 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.

2.4 ADRP reinvestigation request

The Senior Member of the ADRP in the correspondence requesting that the Commissioner reinvestigate certain findings of REP 571 & 572,¹⁶ 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.¹⁷

2.5 Submissions received in response to initiation of the reinvestigation

The commission published a file note¹⁸ inviting submissions from interested parties for the purposes of this reinvestigation on matters related to findings that the ADRP has requested the commission reinvestigate. The commission received the following submissions.

2.5.1 Golden Circle

Golden Circle submitted¹⁹ that the issue of a future threat of injury is a relevant consideration under section 269TAE(2B) and is an important factor in the Minister’s assessment of whether material injury is likely to be experienced by Golden Circle.

Golden Circle consider that given the calculated dumping margins during the inquiry period, significant undercutting experienced by Australian industry and price competition between like goods and the import goods, the threat of material injury is foreseeable and imminent should the measures expire.

2.5.2 Dole

Dole submitted²⁰ 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

¹⁶ [ADRP request for reinvestigation](#)

¹⁷ Ibid paragraph 21

¹⁸ EPR 571 & 572, document no. [025](#)

¹⁹ EPR 571 & 572, document no. [027](#)

²⁰ EPR 571 & 572, document no. [028](#)

measures. Nonetheless, Dole considers that the commission's assessment in REP 571 & 572 adopted a forward-looking perspective when applying the statutory test for continuation.

2.5.3 Siam

Siam submitted²¹ that the test in section 269ZHF(2) may involve the assessment of whether there is the 'possibility' or 'likelihood' of material injury from Siam's future exports of consumer 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 its exports of consumer pineapple.

2.6 Submissions received in response to initiation of the reinvestigation

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

2.6.1 Golden Circle

Golden Circle submitted²² 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.

2.6.2 Dole

Dole submitted²³ 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 measures.

2.7 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 571 & 572 considered whether material injury was likely to continue or recur, as a future-oriented question. This reinvestigation report also considers whether material injury is likely to continue or recur (in Chapter 4) as part of the continuation test. The distinction the commission made in REP 571 & 572 was the extent to which that future-oriented analysis was required to involve consideration of a hypothetical future market-state temporally remote to the current investigation and not

²¹ EPR 571 & 572, document no. [026](#)

²² EPR 571 & 572, document no. [032](#)

²³ EPR 571 & 572, document no. [033](#)

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currently supported by evidence. The relevance of this remote analysis is considered further in this reinvestigation.

Contrary to Golden Circle's submission on the commission's preliminary reinvestigation finding and consistent with Dole's submission, 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.

3 MARKET SEGMENTATION

3.1 Summary of reinvestigation findings

The Commissioner is satisfied that:

- the imported and locally produced goods compete in the same market as they are sold to the same wholesale customers; presented for sale in the same retail environments; have the same end uses; and are directly substitutable goods
- Golden Circle achieves a price premium in the market on its proprietary label product
- despite this price premium the nature of the goods means that Golden Circle is not in a market segment where it cannot be impacted by the potentially injurious effects of lower priced competition.

3.2 Background

In REP 571 & 572, the commission found that there was market segmentation within the consumer pineapple market in Australia. The commission found that Golden Circle maintains a consistently higher selling price which does not fluctuate in response to movement in the prices of imported products. In contrast, the imported goods compete in a different segment, priced at lower price points.

Golden Circle appealed to the ADRP outlining that this finding is erroneous. The ADRP accepted this as a ground for review.

3.3 ADRP reinvestigation request

The ADRP identified the following issues with the commission's finding in REP 571 & 572 that Golden Circle operates in its own market segment:

- the finding is inconsistent with previous findings by the commission and REP 571 & 572 does not explain how the operation of the market during the inquiry period differed from earlier inquiries²⁴
- the finding is inconsistent with other findings in REP 571 & 572, notably that imported and locally produced goods are commercially alike as they are sold to the same customers and/or compete in the same markets.²⁵

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

The commission published a file note²⁶ inviting submissions from interested parties for the purposes of this reinvestigation on matters related to findings that the ADRP has requested the commission reinvestigate. The commission received the following submissions.

²⁴ Ibid paragraph 23.

²⁵ Ibid paragraph 24.

²⁶ EPR 571 & 572, document no. [025](#)

3.4.1 Golden Circle

Golden Circle submitted²⁷ that the locally produced goods are alike in all respects to the imported consumer pineapple. Golden Circle further referred to earlier investigations in which the commission was satisfied that the like goods were interchangeable for the imported goods (and vice versa) and therefore competed in the same market segment.

The only difference between earlier investigations and Continuation Inquiry No. 571 & 572 that Golden Circle has cited is that in earlier investigations Golden Circle supplied consumer pineapple to certain supermarkets for sale under respective private brand labels. During Continuation Inquiry No. 571 & 572, Golden Circle could only supply under its own label due to short-term production shortages of available pineapple fruit. Golden Circle does not consider this to be any reason to detract from findings of earlier investigations that locally produced consumer pineapple and imports compete in the same market segment.

3.4.2 Dole

Dole submitted²⁸ that Golden Circle has failed to provide any evidence of price competition due to confidentiality issues despite the commission and interested parties not being impeded in accessing detailed market information.

Dole further submitted that Golden Circle has paradoxically accepted, or not disputed that:

- there are three market segments for consumer pineapples
- it supplies a premium product
- it obtains substantial price premiums in the market
- it has increased its prices steadily since 2016
- it enjoys brand loyalty as the producer of an Australian-made product
- it has elected to sell only to the premium segment due to raw material shortages
- it has not been able or willing to furnish the commission with competitive pricing information.

Dole claims that Golden Circle have ignored the changes in the market over the past 15 to 20 years. Primarily, there is no recognition of the impact of Golden Circle exiting the private label market which has resulted in an even larger divide between Golden Circle's premium priced products and imported products from the Philippines, Thailand and other countries.

Dole also referenced Pave Brand Limited's (Pave) submission to the ADRP²⁹ which claimed that there is no evidence to suggest that consumer pineapple imported from the Philippines had any influence on pricing of consumer pineapple supplied by Golden Circle.

²⁷ EPR 571 & 572, document no. [027](#)

²⁸ EPR 571 & 572, document no. [028](#)

²⁹ [ADRP Review No. 144 Pave Limited Submission](#)

3.5 Submissions received in response to preliminary reinvestigation report

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

3.5.1 Golden Circle

Golden Circle submitted³⁰ that its product is wholly interchangeable and substitutable for the goods imported from the Philippines and Thailand. Golden Circle therefore submitted that it welcomes the Commissioner's acknowledgement that it does not operate in its own market segment.

Golden Circle did not agree with the commission's finding that the market is characterised by 3 price tiers. Golden Circle noted that in the past it had supplied private label products that overlapped in price with proprietary label product, and as such the commission's generalization was not characteristic of the market at all times.

Golden Circle reiterated that the Australian consumer pineapple market is a single market segment that includes proprietary label and private label pineapple.

3.5.2 Dole

Dole submitted³¹ that the commission should have considered Pave's submission to the ADRP which 'demonstrates that there is no evidence that Pave's prices for consumer pineapple from the Philippines to 2 of Australia's major retailers have any influence on prices achieved by G[olden] C[ircle] in the premium segment of the market'.

Dole submitted that the scan data relied upon by Pave in its submission provides 'cogent objective evidence from an independent marketing source that demonstrates that there is no significant cross elasticity of demand that might result in causing injury of a material degree'.

Dole further submitted that the commission's findings on market segmentation in the preliminary investigation report – which appears to adopt findings from the commission's reports prior to REP 571 & 572 – can only be relied upon if there has been no change to the market segmentation profile. Dole asserted that the market in 2022 is very different to that applying prior to 2017, particularly as regards Golden Circle exiting private label supply due to limited raw pineapple supply. Golden Circle's focus on its premium priced product, and the increase in raw pineapples costs has, according to Dole, accentuated the divide between Golden Circle and imports.

3.6 Commission's assessment

On reinvestigation the commission considers that Golden Circle does not operate in its own market segment, immune to the potentially injurious effects of competition from lower priced imports.

³⁰ EPR 571 & 572, document no. [032](#)

³¹ EPR 571 & 572, document no. [033](#)

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In previous investigations and inquiries, including in REP 571 & 572, the commission concluded that Golden Circle's product and the imported product are like goods as they:

- compete in the same market and are sold to the same customers
- have the same end uses and are substitutable.³²

Previous investigations and inquiries have also found that, in terms of retail pricing, the consumer pineapple market generally has 3 price tiers. In REP 571 & 572 those price tiers were identified as:

1. Golden Circle's proprietary label product, branded as 'Australian' pineapple, which attracts the highest retail price.
2. Imported proprietary label product such as Dole and Golden Circle's imported range (branded as 'Tropical' pineapple) which sell in the medium price range.
3. The retailer branded 'private label' products, which are an imported product offered at the lowest prices.

The commission notes, as detailed in Golden Circle's submission in response to the preliminary reinvestigation report, that in previous periods Golden Circle has supplied private label product which has overlapped in price with imported proprietary label product. Due to supply constraints Golden Circle elected not to supply private label products during the inquiry period. To that extent the commission acknowledges that there has been a change in the characteristics of the Australian market. The commission does not consider that change by itself alters its finding that imported and locally produced goods are directly substitutable and compete in the same market, which, during the inquiry period, had 3 identifiable price tiers. As such, the commission is satisfied that its characterisation of the market during the inquiry period is reasonable.

In REP 571 & 572, unlike in previous investigations and inquiries, the commission concluded that Golden Circle operated in its own market segment and that the price of dumped imports did not influence the price Golden Circle could achieve. This was based on the commission's interpretation of retail pricing data which showed that:

- Golden Circle maintains a consistently higher selling price than its competition
- Golden Circle's retail selling price does not fluctuate in response to movements in the prices of imported products.

The implication of this conclusion was that if dumped imports did not influence the price that Golden Circle could achieve in the retail market dumped imports could not be the cause of any injury suffered by Golden Circle.

In its submission in response to the preliminary reinvestigation report Dole supports this conclusion from REP 571 & 572. Dole references Pave's submission to the ADRP as cogent, objective evidence that there is no significant cross elasticity of demand that would cause material injury. Pave's submission included scan data of selling prices and volumes for 2 leading supermarkets.

The commission considers that the data relied upon by Pave is consistent with the data the commission itself used for its retail pricing analysis. The commission further considers

³² [Anti-Dumping Commission Report No. 571 & 572](#) at page 15

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that similar observations emerge from its analysis of the data as that drawn by Pave in its submission. The key observations common to both analyses were that Golden Circle achieves a price premium and that there was an apparent lack of correlation between Golden Circle's retail selling prices (and volumes) in response to movement in the price of Dole products.

However, the commission considers that the conclusions drawn from the retail pricing analysis presented in REP 571 & 572, and the arguments presented by Pave and Dole in support of those conclusions, are not preferable. The commission has reached a different interpretation of that data for the purposes of establishing whether Golden Circle operates in its own market segment and may experience material injury due to the presence of lower priced competition.

The previous analysis, and Dole's submission in response to the preliminary reinvestigation report in support of it, implies that, despite the direct substitutability of consumer pineapple, there is *no* cross elasticity of demand in the consumer pineapple market. That is to say, if the conclusion drawn from the analysis and Dole's submission holds true, Golden Circle could achieve any price premium it demands in the market as no customers would substitute a lower priced option for the Golden Circle product.

Noting that consumer pineapple is a substitutable product, the commission considers that the price premium achievable by Golden Circle is not infinite. A price premium can only be understood by reference to the price of the lower priced competing product. The commission considers it reasonable to infer that the higher the premium the supermarkets seek on Golden Circle's products, the greater the likelihood that material volumes would flow to a lower priced, substitutable product. If the price premium sought by the supermarkets on Golden Circle product shifted too far from the lower priced competing product, consumers would move toward the lower priced competing product which would represent the better overall value proposition. With respect to the consumer pineapple market the substituted product would be the imported proprietary label product.

The commission considers that the retail pricing analysis, and the arguments mounted by Dole, support an inference that the supermarkets have strategically calibrated retail price points to maximise sales within each price tier, and understand the sensitivities around those price points. For example, the data indicates that the temporary discounting of a Dole product may result in more sales of that product rather than a permanent shift in consumer preference away from the equivalent Golden Circle product. The commission does not however consider that such observations can be extended to conclude that the price tiers operate in complete independence, and that Golden Circle therefore operates in its own market segment unaffected by price competition. The fact that Golden Circle's retail price has a practical limitation in terms of consumers' willingness to pay supports the commission's conclusion that Golden Circle competes in the same retail market as the directly substitutable imported product.

On reinvestigation the commission considers that:

- consumer pineapple produced by Golden Circle and the imported goods are substitutable, are sold to the same supermarket customers and compete in the same markets

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- the gateway to the market for both locally produced and imported products is through the supermarkets, which exert considerable influence on price in the market
- at the retail sales point Golden Circle does achieve a price premium, which may be based on factors such as brand loyalty, perceptions of quality, support for local producers and the way in which the products are presented at the supermarket shelves
- the fact that Golden Circle's product achieves a price premium does not inoculate it from the forces of competition which frame its value proposition, especially in the context where there are no switching costs for end consumers (e.g. the supermarkets could determine at any point in time to not support the category differentiation between pineapples).

The commission further considers that the point at which Golden Circle suffers injury is at the point of sale to its customers, the supermarkets, not at the retail sales point. As such, in relation to consumer pineapple, the commission considers that, even though the locally made product is able to achieve a higher price than the comparable imported product, the lower priced product nonetheless affects the price the local product is able to achieve given they are directly and easily substitutable.

The commission is therefore of the view that Golden Circle does not operate in its own market segment, immune to the potentially injurious effects of competition from lower priced imports.

4 LIKELIHOOD OF FUTURE MATERIAL INJURY

4.1 Summary of reinvestigation findings

As consumer pineapple is subject to separate notices for each of exports from the Philippines³³ and exports from Thailand,³⁴ the commission has separated the injury analysis for each of these countries where relevant. The commission has also assessed future material injury in the absence of measures separately for each notice.

4.1.1 Philippines

Following reconsideration of the market segmentation issues, with respect to exports from the Philippines, the Commissioner is satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.

The Commissioner proposes that measures continue in relation to exports from the Philippines, which differs from the recommendation in REP 571 & 572.

The Commissioner has made this finding on the basis that:

- Golden Circle suffered price suppression, and associated injury factors such as reduced profit and profitability during the inquiry period
- exports from the Philippines are a proprietary label product that is substitutable for, and competes directly with, Golden Circle's proprietary label product
- the volume of exports from the Philippines grew by 25% during the inquiry period such that exports from the Philippines became the dominant source of supply to the Australian market
- exports from the Philippines were dumped, and at dumping margins considerably higher than those determined in the most recent review of measures
- exports from the Philippines undercut Golden Circle's prices to a significant extent
- the injury suffered by Golden Circle during the inquiry period was material and can be attributed to the presence of dumped goods from the Philippines in the market
- in the absence of measures Golden Circle is likely to continue to suffer material injury in the form of price suppression and associated injury factors due to dumped exports from the Philippines.

4.1.2 Thailand

In respect of exports from Thailand, the Commissioner is not satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the material injury that the anti-dumping measures are intended to prevent.

The Commissioner proposes that measures be allowed to expire in relation to exports from Thailand, which is the same as the recommendation in REP 571 & 572.

³³ [ADN 2016/81](#)

³⁴ [ADN 2016/82](#)

The Commissioner has made this finding on the basis that dumped imports from Thailand are not influencing pricing in the Australian market given these imports account for less than 1% of the market and compete in a market dominated by exports from the Philippines.

4.2 Background

In REP 571 & 572, the commission found that in the absence of measures, it was not likely that Australian industry will incur material injury from future exports of consumer pineapple from the Philippines and Thailand.

The Commissioner based his conclusion on the following findings:

- Golden Circle had been able to achieve a consistently higher sales price on its consumer pineapple, despite imports from the subject countries and other countries being at lower prices
- There was no evidence before the commission indicating that imports from the subject countries impact the prices Golden Circle achieves
- The available evidence indicated that Golden Circle's sales of consumer pineapple was within a segment of the Australian consumer pineapple market – a segment in which imported consumer pineapple does not compete
- There was no evidence that Golden Circle's loss of sales volumes was attributable to competition from imports nor that it would lose sales volumes if the measures expired, with the data indicating that Golden Circle was able to process all of the raw pineapple it acquired
- The key factor limiting Golden Circle's ability to increase sales volume was the availability of raw pineapple and there was no evidence to find that imports from the subject countries impact on raw pineapple availability.

Golden Circle appealed 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 consumer pineapple from the Philippines and Thailand. The ADRP accepted this as a ground for review.

4.3 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 571 & 572 that there was not sufficient evidence that material injury was likely to be caused by future imports at dumped prices:

- The commission placed significant weight on the lack of a reference to the prices of imported product in the examples of negotiations with the supermarkets, however both sides would be aware of the presence in the market of imported product and the significant price undercutting of those imports. The conclusion reached by the commission does not take into account that price negotiations take place in that context.³⁵

³⁵ Ibid paragraph 29.

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- The commission found that Golden Circle experienced injury in the form of price suppression however found no evidence that cheaper imports placed price pressure on Australian industry.³⁶
- The commission's finding may be partly explained by the power of the supermarkets, however the power of the supermarkets could also be increased by the presence of significantly cheaper imports.³⁷
- The commission's finding implies there is no cross elasticity of demand between locally produced and imported product, such that no matter how much more expensive the local product became, there would be no consumers who switch to an imported product.³⁸
- If there was material injury suffered by the Australian industry during the inquiry period, given the finding that dumping was likely to continue, it would be expected that material injury would continue.³⁹
- If material injury was not suffered by the Australian industry during the inquiry period, and dumping was found to be likely to continue, an analysis of whether dumped exports were likely to increase would be expected.⁴⁰

4.4 Submissions received in response to initiation of the reinvestigation

The commission published a file note⁴¹ 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 received the following submissions.

4.4.1 Golden Circle

Golden Circle submitted⁴² that given the dumping margins calculated by the commission for exporters from the Philippines and uncooperative exporters in Thailand, the commission has incorrectly concluded that material injury from dumping is not likely to continue or recur should the measures be allowed to expire.

Golden Circle also submitted that it is unable to provide evidence to demonstrate the pricing pressure placed on Golden Circle's sales of consumer pineapple due to limitations imposed on suppliers in the retail industry by the Supplier Grocery Code of Conduct, Australian Competition and Consumer Law and the confidentiality provisions that exist in contracts between Golden Circle's customers and its other suppliers.

4.4.2 Dole

Dole submitted⁴³ that given the form of anti-dumping measures present at the time of Continuation Inquiry No. 571 & 572 was a combination duty method, any injury suffered

³⁶ Ibid paragraph 30.

³⁷ Ibid paragraph 31.

³⁸ Ibid paragraph 32.

³⁹ Ibid paragraph 33.

⁴⁰ Ibid paragraph 34.

⁴¹ EPR 571 & 572, document no. [025](#)

⁴² EPR 571 & 572, document no. [027](#)

⁴³ EPR 571 & 572, document no. [028](#)

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by Golden Circle during that period would have been offset by this method of duty. Any injury suffered by Golden Circle during that period must therefore be attributable to factors other than dumping or to exports that were not subject to anti-dumping measures.

Further, Dole referred to the commission's finding in the previous continuation inquiry and in Continuation Inquiry No. 571 & 572, that the non-injurious price was higher than the normal value for all exports from the Philippines and Thailand. Dole claims that this confirms that Golden Circle is not competitive with undumped exports and that factors other than undercutting, price suppression and impaired profitability are contributing to material injury suffered by Australian industry.

Dole concludes that due to the number of factors other than dumping, it is likely that even if Golden Circle does suffer future injury following the expiry of measures, it is unlikely a material degree of such injury can be attributed to dumping of the subject goods.

4.4.3 Prime Products

Prime Products submitted⁴⁴ that, as confirmed by the commission in REP 571 & 571, exports of consumer pineapple from Thailand made up a small portion of the Australian market. Of these, Prime Products supplied only 2 can sizes, with the larger of these sold primarily to food service sector and therefore, not having any impact on Australian industry sales of consumer pineapple.

Prime Products also submitted that due to seasonal availability of raw pineapple in Australia, Australian industry is unable to meet customer requirements, resulting in customers in Australia having no choice but to purchase imported consumer pineapple.

4.4.4 Siam

Siam submitted⁴⁵ that it was not found to be dumping consumer pineapple to Australia during the inquiry period. Additionally, the volume of exports from Thailand is low and has declined since 2016. Siam further submitted that no evidence has been presented by Golden Circle to demonstrate how, as a result of these low volumes, material injury could continue or recur.

Siam also notes that some of the lowest priced exports of consumer pineapple in Australia are exported from countries not subject to measures. These countries have an increasing market share in the Australian consumer pineapple market however, Golden Circle has not applied for an investigation of alleged dumping from these countries.

4.5 Submissions received in response to preliminary reinvestigation report

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

⁴⁴ EPR 571 & 572, document no. [029](#)

⁴⁵ EPR 571 & 572, document no. [026](#)

4.5.1 GOP

The GOP submitted⁴⁶ that the material injury being experienced by Golden Circle cannot be attributed solely on the importation of consumer pineapple from the Philippines. The GOP submitted that the cause of injury to Golden Circle is:

- Golden Circle's reduced production from 2017 to 2020 due to supply constraints of raw materials which contributed to the reduction of productivity and failure to meet local consumer demand, consequently, reducing profit
- The presence of significant and increasing volumes of low-priced consumer pineapple from Indonesia, which captured a substantial share in the Australian market.

In view of these factors the GOP asserts that the material injury on Golden Circle was not a direct consequence of the importation of consumer pineapple from the Philippines.

4.5.2 Golden Circle

Golden Circle's submission⁴⁷ supports the Commissioner's preliminary finding that, in relation to the Philippines, in the absence of the measures, Golden Circle is likely to experience a recurrence of the material injury the measures are intended to prevent.

In relation to Thailand, Golden Circle submitted that:

- the commission did not afford any weight to the impact of the measures during the inquiry period which would have acted as a deterrent to Thai exporters
- in the absence of measures Thai exporters, who maintain excess production capacity, will take steps to secure increased market share by reducing prices.

As such Golden Circle consider that there exist reasonable grounds to conclude that in the absence of measures it is more likely that not that a recurrence of material injury will occur in respect of exports from Thailand.

4.5.3 Dole

Dole submitted⁴⁸ that over the last 20 years the focus of pineapple production in Australia has shifted toward supplying the fresh pineapple market rather than the canned pineapple market. As such, Dole submitted that:

- Golden Circle will continue to experience supply constraints and the severity of those constraints is likely to increase
- the expiration of measures will not have injurious effects on Golden Circle's sales volumes
- Golden Circle's market share is limited by supply constraints, not by the presence of exports from the Philippines
- because of declining throughput, Golden Circle's cost of production must be under constant pressure which must exacerbate the company's long-term underlying lack of competitiveness.

⁴⁶ EPR 571 & 572, document no. [034](#)

⁴⁷ EPR 571 & 572, document no. [032](#)

⁴⁸ EPR 571 & 572, document no. [033](#)

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As such Dole submitted that supply constraints are overwhelmingly the dominant factor governing Golden Circle's economic performance.

Dole further submitted that the commission's finding that Golden Circle's economic performance is sensitive to pricing of imports is demolished by the scan data provided by Pave. This data showed that sales volumes did not move to Dole when Golden Circle's retail prices increased, when Dole's retail price was discounted, or when Golden Circle was out of stock. Dole submitted that because none of these cause/effect scenarios were observed, factors other than dumping must be the cause of injury to Golden Circle.

Dole submitted that those other factors include the volume and price of imports from other countries, a static overall market, imports of the goods by Golden Circle and Golden Circle's withdrawal of a number of product lines from the market.

4.6 Commission's consideration of issues raised by the ADRP

REP 571 & 572 placed considerable weight on an analysis of retail selling prices during the injury analysis period. This analysis showed that:

- in each year from 2016 onwards, the selling prices of Golden Circle's consumer pineapple were the highest, well above consumer pineapple imported from the Philippines and countries not subject to the measures
- fluctuations in the selling prices of consumer pineapple imported from the Philippines appear to have little to no impact on the selling prices of consumer pineapple from Golden Circle (specifically, while selling prices of imported goods from the Philippines declined from 2017 to 2019, the selling prices of Golden Circle's consumer pineapple increased from 2017 to 2018).

The commission concluded from this analysis that changes in the prices of the goods from one of the subject countries (the Philippines) have not influenced the prices that Golden Circle is able to achieve.

On reinvestigation, the commission does not consider the retail sales analysis to be the preferred approach to assessing potential injury suffered by Australian industry. The commission considers that 2 issues raised by the ADRP that flow from the commission's reliance on this retail pricing analysis are of particular significance. These are considered below.

4.6.1 Cross elasticity of demand

The analysis presented in REP 571 & 572 implies that there is no cross elasticity of demand in the tinned pineapple market. That is to say that if the conclusion of REP 571 & 572 holds true, Golden Circle could achieve any price it demands in the market as no customer will shift to a lower priced option. Dole submitted in response to the preliminary reinvestigation report that the scan data provided by Pave in its submission to the ADRP indicates that there is no significant cross elasticity of demand that might result in causing injury of a material degree.

The commission's analysis of this issue has been presented in section 3.6 above.

4.6.2 Power of the supermarkets and the point of injury to Australian industry

REP 571 & 572 found that large supermarkets control the majority of the Australian market for consumer pineapple.

On reinvestigation the commission considers that while prospective retail pricing may be one factor in negotiations with suppliers, the reliance on pricing analysis at the retail level in REP 571 & 572 does not support analysis of the impact of the dumped products on the prices and volumes Golden Circle achieves at the wholesale, supermarket level.

The commission noted from its comparison of the price Golden Circle receives from the supermarkets against the retail selling prices obtained by the supermarkets on the sale of Golden Circle product that the supermarkets have increased the retail selling price to a significantly greater extent than the price they pay Golden Circle for its product. This indicates that the pricing power of the supermarkets could allow them to increase the profit margins they can attain to the detriment of their suppliers, and therefore could be a cause of the price and profit injury suffered by Australian industry.

The commission considers that relying on retail selling prices determined by the supermarkets to inform its injury analysis obscures the potential impact of dumped imports. By so doing the potential for a causal link between dumped imports and material injury to Australian industry may appear to be broken because of pricing distortions resulting from supermarkets operating as the primary gateway to market for the goods.

The commission found in REP 571 & 572 that Golden Circle had experienced price suppression. Price suppression occurs when price increases that would otherwise have occurred, such as when a manufacturer experiences increased cost of production, have been prevented. Price suppression occurs at the point of transaction between the seller and the buyer of the goods, not at the point of resale of the goods by the buyer of those goods. As such the price suppression experienced by Golden Circle must be assessed within the context of the price negotiation between Golden Circle and the supermarkets. Once the ownership of the goods has transferred from Golden Circle, no further price injury can accrue to it.

In terms of the price negotiation that takes place between Golden Circle and the supermarkets, on reconsideration the commission considers that the supermarkets' access to lower priced imported goods must be a relevant consideration.

In that context, a further issue of concern for the ADRP was that REP 571 & 572 placed considerable weight on the lack of direct evidence of the influence of dumped imports on price negotiations between Golden Circle and the supermarkets.

On reconsideration, the commission considers that, in respect of consumer pineapples, all wholesale market participants are aware of the presence of the imported product in the market. In that context direct evidence of the type envisaged by REP 571 & 572 is not necessary to satisfy the commission that the availability of lower priced imports would be a factor in price negotiations between Golden Circle and the supermarkets. Rather, the commission's analysis of the operation and composition of the market, and price and volume trends in the market supports its finding.

4.7 Commission’s assessment

When assessing the likelihood of whether material injury is 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)⁴⁹.

The following analysis, therefore, examines a range of factors which the commission considers relevant to this reinvestigation.

4.7.1 Dumping margins in REP 571 & 572

Table 1 provides a summary of the dumping margins calculated in REP 571 & 572 relating to exports of consumer pineapple from the Philippines and Thailand.

Country	Exporter	Dumping margin
Philippines	Dole	17.5%
	Uncooperative and all other exporters	49.9%
Thailand	Siam	-5.3%
	Kuiburi	-3.0%
	Prime Products	3.8%
	Uncooperative and all other exporters	15.7%

Table 1: Dumping margins summary

In REP 571 & 572 the commission found sufficient evidence to conclude that the dumping of the goods from the Philippines and Thailand (from exporters other than Kuiburi and Siam Food) was likely to continue or recur.

The commission did not consider that there was sufficient evidence to conclude that exports of the goods to Australia from Kuiburi and Siam at dumped prices were likely to continue or recur. As the ADRP has not requested a reinvestigation of whether dumping is likely to continue or recur, and because consumer pineapple exported by Kuiburi and Siam was not dumped, the commission has not considered whether exports from these exporters are likely to lead to a continuation or recurrence of material injury.

The commission’s reinvestigation therefore focuses on whether exports from the Philippines and Thailand by exporters other than Kuiburi and Siam is likely to lead to a continuation or recurrence of material injury.

⁴⁹ Page 137 of [the Manual](#)

4.7.2 Market size and share

As part of the reinvestigation the commission has reviewed the size and composition of the Australian market. The commission’s revised findings are shown in Figure 1 below.

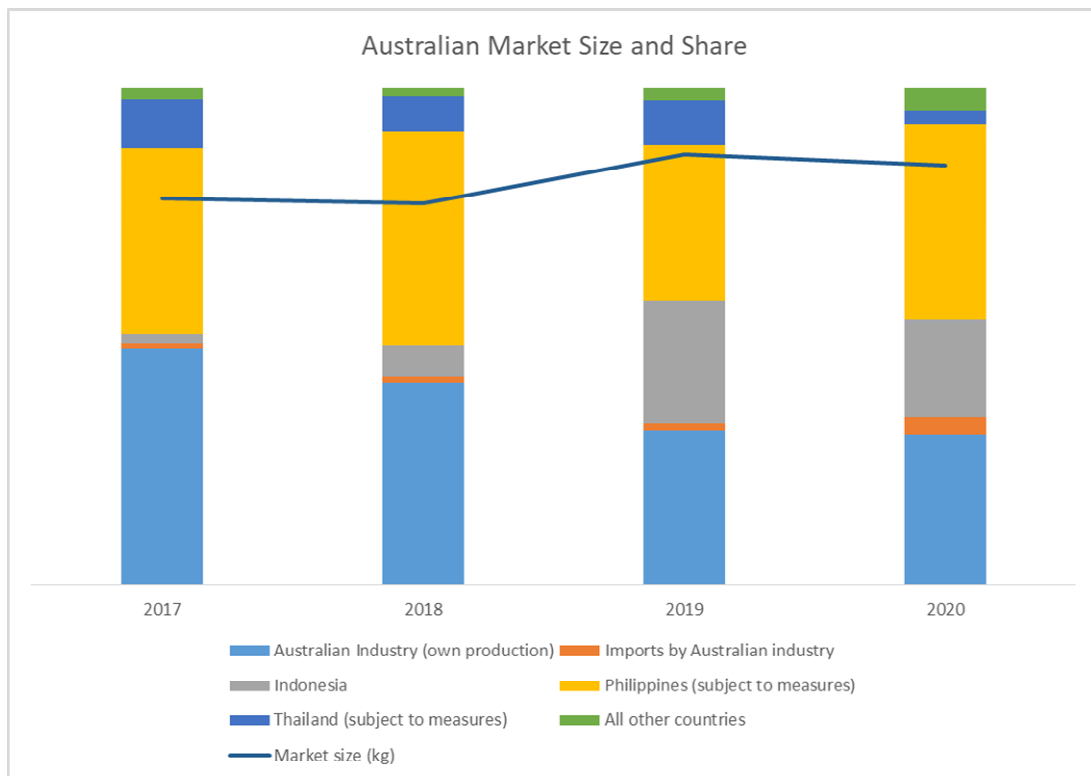


Figure 1: Australian market size and share

Figure 1 indicates that:

- since 2017 the Australian market size has grown, however during the inquiry period the market contracted
- Australian industry has experienced a year-on-year reduction in market share in respect of its own production, however during the inquiry period increased the volume of imported tinned pineapples
- exports from the Philippines have been a significant presence in the Australian market throughout the injury analysis period, and during the inquiry period increased sales volumes by approximately 25% (in a contracting market) to become the largest source of supply to the Australian market
- exports from Indonesia emerged as a significant presence in the Australian market during 2019
- Indonesia’s market share diminished during the inquiry period, with exports from the Philippines recapturing market share from Indonesia
- exports from Thailand that are subject to measures maintained a small share of the market throughout the injury analysis period, and experienced a significant decline during the inquiry period. The commission notes however that the fall in market share related to reduced volumes of exports that were not found to have been dumped during the inquiry period.

4.7.3 Likely effect on volumes

The commission has analysed the market share of the key market participants as detailed in Figure 1 to inform its consideration of the likely effect on volumes of the expiration of measures.

The commission makes the following observations:

- during the inquiry period export volumes from the Philippines grew by approximately 25% to emerge as the largest source of supply to the Australian market, despite the overall market contracting
- dumped exports from Thailand accounted for less than 1% of the Australian market despite having only a nominally higher landed price in comparison to the goods exported from the Philippines
- verified exporters maintained excess production capacity
- Dole, the largest supplier from the Philippines, supplies proprietary label product into the Australian market which is the product most directly substitutable for Golden Circle's proprietary label product
- the proportion of the market represented by proprietary label product expanded during the inquiry period, while private label product (primarily supplied from Indonesian production) contracted
- exports by Dole were subject to a 5.9% rate of dumping duty during the inquiry period, however the review of variable factors determined that the actual rate of dumping was 17.5%.

The commission considers that these facts support a finding that Dole is the dominant supplier of proprietary label product to the Australian market, and is therefore the key competitive threat to the Australian industry. In the absence of measures the commission considers that Dole specifically, and exporters from the Philippines generally, would have a strengthened competitive advantage and would likely increase the volume of exports to Australia.

The commission notes however that the injurious effects of any increase in volume must be considered within the context of Australian industry's ability to supply the Australian market. Both Dole and the GOP submitted in response to the preliminary reinvestigation report that supply constraints are the dominant factor governing Golden Circle's economic performance.

Golden Circle has acknowledged that there was a reduction in the quantities it could produce in the years 2017 to 2020 due to drought affecting its supply of raw materials from Australian growers. Information obtained from Golden Circle indicates that Golden Circle has responded to these supply constraints by:

- focussing production on its proprietary label product
- ceasing production of private label product
- importing tinned pineapples to supply its "Tropical" label range.

The commission analysed Golden Circle's weekly sales volumes for 2 large supermarkets and identified that during the inquiry period the supermarkets on occasion exhausted their supply of particular lines of Golden Circle product. On those occasions the data indicates

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that consumers switched to a different Golden Circle product (for example when 450 gram pineapple slices in juice were low or out of stock the volume of sales of 450 gram pineapple pieces in syrup increased to compensate). In aggregate terms, across all products and both supermarkets, the commission observed that Golden Circle experienced an upward trend in its weekly moving average sales volume across the inquiry period.

The commission considers that, consistent with Dole's submission in response to the preliminary reinvestigation report, Golden Circle may continue to experience supply constraints due to the availability of raw pineapples. In these circumstances, the commission considers that the expiration of the measures will not necessarily have injurious effects on Australian industry's sales volumes, which is substantively similar to Dole's submission.

4.7.4 Likely effect on price

As detailed in section 4.7.3 above, the commission considers that, due to the supply constraints that Golden Circle may continue to experience, the expiration of measures will not necessarily have injurious effects on sales volumes. The commission considers that while supply constraints affect Golden Circle's ability to supply the market, those constraints are unlikely to adversely influence the price Golden Circle can achieve in the market. In fact, in a period of constrained supply it could be expected that Golden Circle would obtain a higher price in the market for its product. The commission established in REP 571 & 572 that Golden Circle achieved a slight year-on-year increase in unit selling prices, however the rate of increase in unit CTMS was significantly higher, leading to price suppression. As part of the reinvestigation the commission has reviewed the likely effect on price in the Australian market in the absence of measures.

In previous inquiries and for the purposes of REP 571 & 572, the commission has established that Golden Circle proprietary label products achieve a price premium within the Australian market. This price premium may be supported by brand loyalty, perceptions of quality and/or a desire on behalf of consumers to support an Australian-made product. The commission nonetheless considers that price remains a key determinant in the value proposition when consumers choose between Golden Circle's products and imported products.

Dole submitted in response to the preliminary reinvestigation report that scan data provided by Pave 'demolished' any notion of a cause and effect relationship between the retail pricing achieved by Golden Circle and the retail pricing of Dole products.

The commission considers that the scan data provided by Pave does not (as discussed in section 3.6 above) lead to the conclusion that there is no cross elasticity of demand in the consumer pineapple market. Consistent with previous inquiries, the commission considers it reasonable to assume that as the prices of imported products are reduced (as would be the case where anti-dumping measures are removed), the value proposition of Golden Circle proprietary product would be less attractive, likely forcing downward pressure on the price the supermarkets can obtain for Golden Circle proprietary brand product. This in turn will inform the price that the supermarkets are prepared to offer Golden Circle.

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More broadly, as detailed in section 4.6.2 above, the retail sales point is not the point at which injury accrues to Golden Circle (and, as such, retail sales data is not informative when assessing Golden Circle's injury). Rather, injury accrues to Golden Circle at the negotiation point between Golden Circle and the purchasers of its product, the supermarkets. The commission considers that the negotiation between Golden Circle and the supermarkets is undertaken within the context of the supermarkets' access to lower priced imported goods, the pricing of which influences the overall value proposition of Golden Circle's proprietary product on the supermarket shelf.

Exports from the Philippines

Within that context, during the inquiry period, exports from the Philippines:

- increased sales volumes into the Australian market by 25%
- emerged as the largest source of supply of consumer pineapple to the Australian market
- maintained the same distribution links to the Australian market as Golden Circle
- maintained excess production capacity
- dumped the goods into the Australian market with a dumping margin of 17.5% for Dole and 49.9% for all other exporters from the Philippines
- significantly undercut the price sought by Golden Circle from the supermarkets for the supply of its product.

The commission considers that these factors provide the supermarkets with considerable leverage to suppress the price that Golden Circle could expect to receive for its product. The commission determined that Golden Circle experienced price suppression during the inquiry period, and considers this was caused by the significant price advantage available to exports from the Philippines being at dumped prices. The commission further considers that in the absence of measures it is likely that Golden Circle will continue to suffer material injury in the form of price suppression (and associated injury factors) due to the dumped exports from the Philippines undercutting the prices it can obtain from the supermarkets.

The commission notes that during the inquiry period, Dole, the primary supplier of consumer pineapple from the Philippines was subject to dumping duties at the rate of 5.9%. Dole submitted that as it is subject to a combination duty method, any injury suffered by Golden Circle during that period would have been offset by this method of duty. The review of variable factors showed an actual rate of dumping of 17.5%. In this event the commission considers that during the inquiry period Dole has enjoyed a pricing advantage over Golden Circle well in excess of what the existing duties could remedy, and that additional price advantage has been injurious to Golden Circle and, in the absence of measures, would be likely to lead to a continuation of Golden Circle's material injury.

The commission considers that the materiality of Golden Circle's price injury can be measured in relation to the degree of dumping – Golden Circle's price negotiation with the supermarkets during the inquiry period occurred in the context of the dominant supplier to the Australian market having a material price advantage due to dumping.

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In the absence of measures that pricing advantage would continue. The commission is therefore satisfied that the continued export of dumped consumer pineapple from the Philippines would likely lead to a continuation of the material injury previously experienced by the Australian industry in the form of price suppression and related injury factors such as reduced profit and profitability.

The commission therefore proposes that measures continue in relation to exports from the Philippines.

Exports from Thailand

The commission analysed data obtained from the Australian Border Force (ABF) import database to inform its consideration about the likely effect on price in the Australian market by those Thai exporters that the commission found likely to export at dumped prices in the absence of measures.

The commission notes that REP 571 & 572 concluded that exports of the goods to Australia from Kuiburi and Siam at dumped prices were not likely to continue or recur. The commission considers that the likely effect on prices in the Australian market by dumped exports from Thailand must be assessed within the context of the presence of these undumped exports.

In that context the commission has compared, for each exporter found to be dumping during the inquiry period:

- its share of exports from Thailand
- its share of the Australian market
- its landed price (which includes duties) relative to the landed price of undumped exports from Thailand.

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This comparison is shown in Table 2.

Exporter	Share of Thai exports 2020	Australian market share 2020	Landed price relative to undumped exports
Thailand undumped	73.7%	2.1%	100
Exporter 1	0.0%	0.0%	235
Exporter 2	4.1%	0.1%	89
Exporter 3	12.3%	0.3%	131
Exporter 4	9.9%	0.3%	71
Exporter 5	0.0%	0.0%	87
Exporter 6	0.1%	0.0%	176

Table 2: Volume and price analysis of dumped Thai exports during 2020

The commission's analysis shows that:

- the majority of exports from Thailand during the inquiry period were undumped, and were exported by exporters with long established distribution links to the Australian market
- since 2016 these exporters have been responsible for the majority of exports from Thailand
- undumped exports from Thailand during the inquiry period represented around 2% of the Australian market
- dumped exports from Thailand during the inquiry period represented around 0.7% of the Australian market and came from 6 separate exporters
- of these 6 exporters, 5 had established distribution links to the Australian market prior to the inquiry period, while the sixth was a new participant
- of the 5 exporters which had already established distribution links into the Australian market historical pricing and export volumes since 2016 have been relatively stable
- there is a significant difference in pricing relativities between undumped exports and dumped exports, further discussed below.

The commission considers this analysis to be informative about current and prospective pricing behaviours, particularly in respect of the 3 largest exporters of dumped goods from Thailand (Exporters 2, 3 and 4). Given the immaterial volumes exported by the remaining exporters (Exporters 1, 5 and 6) the commission does not consider the pricing relativities for these exporters to be informative of broader pricing behaviours.

In respect of Exporters 2 and 4, the commission notes a significant price discount relative to undumped exports. Despite this discount, these exporters have not increased market share beyond 0.3% of the Australian market. This indicates that factors other than price are influencing their ability to penetrate the Australian market. The commission therefore does not consider it likely that these exporters would further reduce prices in the absence of measures given the already discounted price it is offering in the market relative to undumped exports.

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In respect of Exporter 3, the commission notes a significant price premium over undumped exports. The commission considers that this exporter could have exported at significantly lower prices during the inquiry period to be more competitive with the predominant exporters of undumped goods, however did not. The commission therefore does not consider it would be likely for this exporter to reduce prices in the absence of measures to levels comparable to the undumped exports.

This analysis reinforces the commission's view that, in relation to exports from Thailand, undumped exports are the more likely influencer of price in the Australian market.

Golden Circle submitted in response to the preliminary reinvestigation report that the commission's analysis did not take account of the impact of the measures during the inquiry period and the fact that they operated to deter exporters from exporting at dumped prices. Golden Circle submitted that exporters of dumped goods will take steps to secure increased market share by reducing prices.

The commission does not agree with Golden Circle's submission.

The commission notes that if the measures were effective then the export prices from Thailand would more or less equate to the variable component of the measures (ascertained export price). The export price from Thailand for the years from 2019 onwards is between 16% and 105% higher than the variable component of the measures. This indicates that export prices from Thailand are not set relative to the measures.

Further, the commission found the majority of exports during the inquiry period to be undumped and also did not consider that dumping would recur in relation to those exports. The exporters responsible for the undumped exports were either found not to be dumping during the inquiry period or were not subject to measures during the inquiry period. As such the commission considers the approach it has taken, to assess the price and volume trends of other exporters (which were found to be dumping during the inquiry period) relative to these exporters, to be informative in determining whether the existing measures have been effective and whether dumped goods from Thailand will likely cause future material injury to Golden Circle in the absence of measures.

From this analysis the commission observed that during the inquiry period cheaper priced dumped exports from Thailand did not erode the market share of exporters exporting undumped goods nor of Australian industry itself. In addition, the more expensive dumped exports were at such significant price premiums to the undumped goods that it is likely that factors other than price are the foundation of competition. In this context the commission does not consider that the measures have influenced the price at which the small volume of dumped goods were exported during the inquiry period. The commission considers that undumped exports from Thailand, which account for the vast majority of exports and which have long established distribution links into the Australia market will continue to be the dominant competitive force capable of influencing the economic performance of Golden Circle.

On the evidence available, the commission does not consider it likely that in the absence of measures dumped exports from Thailand, which account for such a small portion of the Australian market, will influence the price that Golden Circle achieves in the market, particularly in the context of the volume of undumped exports from Thailand. The

commission accepts that in the absence of measures new exporters from Thailand may enter the Australian market, however for the reasons stated, the commission does not consider it likely that those new entrants would cause material injury to Australian injury given the predominance of undumped exports from Thailand. The commission therefore does not consider dumped exports from Thailand to be a cause of material injury to Golden Circle, or to be likely to cause a continuation or recurrence of material injury in the event that measures expire.

The commission therefore proposes that measures be allowed to expire in relation to exports from Thailand.

4.7.5 Factors other than dumping

As Dole noted in its submission, there may be factors other than dumping which are contributing to material injury suffered by Australian industry. The commission has examined some key factors to determine if their effects outweigh any continuation or recurrence of injury which may be caused by the removal of measures.

The commission recognises that while there may be other factors in the consumer pineapple market that will place pressure on the Australian industry, in line with the Ministerial Direction on Material Injury 2012, dumping need not be the sole cause of injury to the industry.

Competing lower priced products

As detailed in section 3.6, the commission considers that, at the retail sales point pricing tiers exist, and Golden Circle operates with a price premium at the highest price point.

As such Golden Circle is constantly subject to price pressure from mid-tier proprietary label product as well as the lowest price private label products (Homebrand etc.). The supermarkets' strategy to market competing products at these various price points represent a threat to the value proposition offered by Golden Circle, and the price premium Golden Circle products may achieve. While the marketing strategies of the supermarkets may be a threat in themselves, the commission nonetheless considers that the additional pricing pressures brought to bear on Golden Circle from dumped goods further exacerbates that threat.

Goods not subject to measures

As detailed in section 4.7.2, imports from Indonesia that are not subject to measures are the second largest source of imports after exports from the Philippines.

The commission also noted that these imports are the lowest priced in the market, undercutting the landed price of imports from the Philippines by approximately 25%.

The GOP submitted in response to the preliminary reinvestigation report that it is these exports that are causing injury to Australian industry.

While exports from Indonesia are not subject to the inquiry, the commission understands that these exports are predominantly sourced to supply the lowest priced, private label tier of the retail market. The commission notes that during the inquiry period the proprietary

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label tier expanded sales volume at the expense of the private label tier, despite the significantly lower landed price of the Indonesia exports.

The fact that Golden Circle's business strategy has, in a time of constrained supply, focused on its proprietary label product, pitches it competitively against other proprietary label product such as that sourced from the Philippines and Thailand, rather than the Indonesian offering. As such, while the commission notes the low price of Indonesian imports in the market, the commission considers that the pricing of the more comparable products from the Philippines and Thailand would likely have the greater influence on the price Golden Circle can achieve.

4.7.6 Conclusion

The commission has reinvestigated the findings contained in REP 571 & 572 that led the Commissioner to conclude that in the absence of measures, it was not likely that Australia industry would incur material injury from future exports of consumer pineapple from the Philippines and Thailand.

Philippines

The commission considers that:

- Golden Circle does not operate in its own market segment, immune to the potentially injurious effects of competition from lower priced imports
- price negotiations between Golden Circle and the supermarkets are undertaken with full knowledge that the supermarkets have access to cheaper priced imports
- Golden Circle suffered price suppression and associated injury factors such as reduced profit and profitability during the inquiry period
- exports from the Philippines are a proprietary label product that competes directly with Golden Circle's proprietary label product
- the volume of exports from the Philippines grew by 25% during the inquiry period such that exports from the Philippines became the dominant source of supply to the Australian market
- exports from the Philippines were dumped and at dumping margins considerably higher than those determined in the most recent review of measures
- exports from the Philippines undercut Golden Circle's prices to a significant extent
- Golden Circle's injury during the inquiry period was material and can be attributed to the presence of dumped goods from the Philippines in the market
- in the absence of measures Golden Circle is likely to continue to suffer material injury in the form of price suppression and associated injury factors due to dumped exports from the Philippines.

The commission therefore considers that the expiration of the measures in relation to exporters from the Philippines, would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent.

Thailand

The commission considers that, due to:

- the dominant market position held by exporters from the Philippines
- the volume and price of undumped exports from Thailand

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- the volume of dumped exports from Thailand accounting for less than 1% of the Australian market
- consideration of historical volume and pricing trends for both dumped and undumped exports from Thailand
- the price suppression caused to Golden Circle by exports from the Philippines which will likely continue to place price pressure on Golden Circle

dumped imports from Thailand did not exert an injurious influence on pricing in the Australian market during the inquiry period, nor would be likely to exert an injurious influence in the absence of measures.

The commission therefore does not consider that the expiration of the measures in relation to exporters from Thailand, would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent.

5 REINVESTIGATION FINDINGS

5.1 Philippines

Taking the above analysis into account, the Commissioner is satisfied that there is sufficient evidence to support a finding that the expiration of the measures as they relate to exporters from the Philippines, would lead, or would be likely to lead, to a continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent.

Whilst the commission recognises that there are other factors in the consumer pineapple market that will place pressure on the Australian industry, in line with the Ministerial Direction on Material Injury 2012, dumping need not be the sole cause of injury to the industry. The Commission considers that, should measures expire, it is likely that dumped exports from the Philippines will lead to material injury in the form of price suppression and associated injury factors such as reduced profits and profitability.

5.2 Thailand

Taking the above analysis into account, the Commissioner is not satisfied that there is sufficient evidence to support a finding that the expiration of the measures, would be likely to lead to a continuation or recurrence of the material injury that the anti-dumping measures are intended to prevent.