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9 December 2016

Public File Version

Mr Paul O'Connor
Member
Anti-Dumping Review Panel
c/o ADRP Secretariat
Legal Services Branch
Department of Industry and Science
By email: adrp@industry.gov.au

Dear Mr O'Connor

ADRP Review – Consumer pineapple exported from the Philippines and Thailand – Application for review of decision – Dole Philippines Incorporated

- 1.1 On 29 January 2016 Golden Circle Limited (**GCL**) made an application for the continuation of anti-dumping measures on consumer pineapple exported from the Philippines and Thailand. Following an investigation and report by the Anti-Dumping Commission to the Assistant Minister for Industry, Innovation and Science, a decision of the Assistant Minister was published on 13 September 2016 continuing the anti-dumping measures on exporters of consumer pineapple from the Philippines and Thailand at revised variable factors (refer Report No. 333).
- 1.2 On 13 October 2016 Dole Philippines Incorporated (**DPI**) made an application for review of the decision of the Assistant Minister claiming that the Commission had erred in its adjustments to the normal value.
- 1.3 GCL submits that the Commission has not erred in its assessment of the normal value applicable to consumer pineapple exported from the Philippines and that the decision of the Assistant Minister is the correct and preferred decision.

2. DPI's normal value and claimed adjustments

- 2.1 The Commission based normal values for some models of consumer pineapple exported to Australia by DPI under section 269TAC(1) where the sales were considered "suitable" (assumed to be in sufficient volumes sold in the ordinary course of trade). Normal values for the remaining models were determined under sub-section 269TAC(2)(c) based upon the constructed costs for production, selling and general administration, and an amount for profit.
- 2.2 The DPI verification report confirmed that DPI has sought adjustments to normal values for inland transport, domestic and export credit, duty drawback, export port costs, and certain specification adjustments (for differences in net contents volume and can end types).

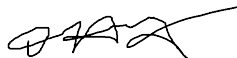
- 2.3 Following the publication of Statement of Essential Facts No. 333 (**SEF 333**) DPI submitted that the dumping margin identified in the DPI exporter verification report (i.e. 6.2 percent) was overstated. DPI sought adjustments for the following cost items:
- (a) selling expense;
 - (b) administration and other marketing expenses, trade promotions and marketing; and
 - (c) warehousing, to account for the small amount of stock at a distributors warehouse.
- 2.4 The Commission allowed an adjustment for the warehousing costs, thereby reducing the applicable dumping margin determined for DPI to 5.9 per cent.
- 2.5 The Commission rejected the claimed adjustments by DPI for selling and certain administration and other marketing expenses (including trade promotions and marketing). DPI has sought a review of the Commission's disallowance for these adjustments.
- 2.6 In respect of the adjustment sought by DPI for selling expenses, it appears that DPI sought to demonstrate that selling and administration expenses could be segregated between domestic and export sales. However, the Commission was not satisfied that the claimed expenses were anything more than the expenses "that relate more to the general cost of doing business". The Commission correctly referred to the Dumping and Subsidy Manual and stated that general expenses of this type are not within the scope of the term "differences in conditions and terms of sale". The Commission therefore denied the adjustment.
- 2.7 DPI is challenging the Commission's assessment that the selling expenses it has detailed in its worksheets have been separated between domestic and export selling expenses "and thus rebuts any claim that the expenses are spread across all sales of the company". However, it cannot be readily accepted that simply because DPI has categorized selling expenses between domestic and export sales, that the separately identified expenses are anything more than "general" selling expenses incurred in the normal cost of conducting business. It is evident that the Commission was not satisfied that the separated selling costs related to "differences in conditions and terms of sale".
- 2.8 In terms of the administration and other marketing expenses, the Commission was clear in stating that it "does not make adjustments for marketing costs unless such costs can be directly linked to the transactions the company is seeking an adjustment for". DPI is seeking a downward adjustment for certain marketing and promotional expenses. The Commission, however, was not satisfied that DPI had sufficiently demonstrated that the marketing and promotional expenses could be directly linked to the domestic sales of consumer pineapple. In the absence of this level of satisfaction, DPI's claim for a downward adjustment must fail.
- 2.9 GCL seeks to highlight that the claimed adjustments for selling and certain administration expenses (i.e. promotional and marketing activities) were not raised by DPI at the time of the verification visit. The claims for adjustment by DPI were only made following the publication of SEF 333. The opportunity to fully examine and substantiate adjustment claims is best examined at the time of the verification visit. Subsequent claims for adjustment following the completion of the verification visit impose a greater onus upon the exporter to evidence the basis for such claims.

- 2.10 GCL further notes that DPI has argued that the adjustments sought were afforded in the 2011 continuation. It cannot be concluded that simply because certain adjustments were granted in an earlier investigation that automatically DPI is entitled to receive those same adjustments in 2016. There can be a host of reasons as to why the anticipated adjustments sought by DPI were not accepted in the current investigation, including a better understanding as to the level of information required to support the adjustments.
- 2.11 In this investigation into DPI's exports of consumer pineapple, the Commission was not satisfied that DPI had provided a sufficient level of supporting evidence linking the claimed adjustments to differences in sales between the domestic and export markets.

3. Conclusion

- 3.1 The Commission has correctly determined that adjustments sought by DPI for selling expenses were little more than general expenses incurred in the general conduct of business, and that certain administration expenses (including promotional and marketing costs) could not be sufficiently evidenced as being linked to activities incurred for the goods under consideration sold on the domestic market in the Philippines.
- 3.2 DPI's contention that the adjustments were afforded in the 2011 continuation investigation and no changes in relevant laws or the published policies and practices of the administering authorities have altered, is not a sufficient reason to grant the claimed adjustments. The expenses the subject of the adjustments must be sufficiently evidenced to support a claim for adjustment in the current investigation period.
- 3.3 The decision of the Assistant Minister to accept the Commission's recommendation to not afford DPI adjustments to normal values for selling and certain administration expenses is the correct and preferred decision and should be affirmed by the Anti-Dumping Review Panel. It is therefore not necessary to address DPI's contention that the Anti-Dumping Review Panel recommend to the Assistant Minister that the measures applicable to consumer pineapple exported to Australia by DPI be revoked.
- 3.4 If you have any questions concerning this submission, please do not hesitate to contact the writer.

Yours sincerely



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Dear Mr O'Connor

ADRP Review – Food Service Industry pineapple exported from Thailand – Application for review of decision – Kuiburi Fruit Canning Co., Ltd

- 1.1 On 29 January 2016 Golden Circle Limited (**GCL**) made an application for the continuation of anti-dumping measures on Food Service Industry (**FSI**) pineapple exported from the Philippines and Thailand. Following an investigation and report by the Anti-Dumping Commission to the Assistant Minister for Industry, Innovation and Science, a decision of the Assistant Minister was published on 13 September 2016 continuing the anti-dumping measures on exporters of consumer pineapple from the Philippines and Thailand at revised variable factors (refer Report No. 334).
- 1.2 On 7 October 2016 a Thai exporter of FSI pineapple, Kuiburi Fruit Canning Co., Ltd (**Kuiburi**), made an application for review of the decision of the Assistant Minister claiming that the Commission had erred in the following areas:
 - (a) the rate of profit applied in the constructed normal value;
 - (b) the acceptance of a rate of profit from another market;
 - (c) the recurrence of material injury; and
 - (d) the decision to recommend the continuation of the measures.
- 1.3 GCL does not consider that Kuiburi has demonstrated that any of the above grounds of appeal have been made out to establish that the Assistant Minister made the incorrect or non-preferred decision.

2. Rate of profit

- 2.1 It is submitted by Kuiburi that the Commission has not included certain sales of pineapple puree that were at a loss in the third quarter of the investigation period in the normal value calculations.

2.2 Section 8.4.1 of Report No. 334 confirms that:

“The Commission has reconsidered Kuiburi’s claims and agrees that the relevant model should be considered a like good [i.e. pineapple puree]. As a result, the Commission has recalculated the amount of profit to be used in Kuiburi’s constructed normal value.”

2.3 The impact of including the profit for pineapple puree was a reduction in the dumping margin applicable to Kuiburi from 9.2 per cent to 7.9 per cent.

2.4 It appears from Report No. 334 that the Commission has included the sales of the like good in Kuiburi’s normal value calculations.

3. Profit from another market

3.1 It is contended by Kuiburi that the inclusion of a level of profit in the unsuppressed selling price (**USP**) for FSI pineapple derived from the consumer pineapple market is erroneous.

3.2 The Dumping and Subsidy Manual provides guidance on sourcing or an appropriate profit mark-up in the absence of actual profit mark-ups achieved for the goods under consideration immediately prior to the commencement of dumping. That is, the Commission may refer to the profit rate (% mark up) from the Australian industry’s similar category of goods.

3.3 In this instance, consumer pineapple is considered a product that is in a similar category of goods to FSI pineapple.

4. Recurrence of material injury

4.1 Kuiburi has argued that the Assistant Minister has erred in his finding that the recurrence of material injury does not take account of the recent increases in the company’s export prices to Australia.

4.2 Kuiburi has failed to consider that the assessment of material injury (including threat thereof) takes account of the exports from all exporters the subject of the measures. Kuiburi’s exports to Australia for FSI pineapple were at margins of dumping 7.9 percent – significantly above negligible levels. Similarly, the dumping margins determined for all remaining Thai exporters and exporters in the Philippines exceeded Kuiburi’s dumping margins.

4.3 When considered in terms of the impact on the Australian industry, it is clear that the significant dumping margins evident in the 2015 investigation period would, in the absence of the anti-dumping measures, result in a recurrence of injury that the measures are intended to prevent.

4.4 The Assistant Minister has not failed to consider the impact of the injurious export prices on the economic performance of the Australian industry manufacturing like goods.

5. Continuation of measures

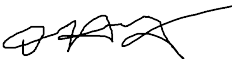
5.1 Kuiburi has attempted to argue that as Thai processors benefit from lower labour and input costs, that the material injury experienced by the Australian industry is due to the industry’s higher production costs.

- 5.2 Kuiburi has failed to concede that all of the exports from the Philippines and Thailand during 2015 were at dumped prices that significantly exceeded negligible levels. The dumping resulted in the Australian industry having to reduce its selling prices to compete, resulting in reduced profit and profitability.
- 5.3 The Assistant Minister is required to take account of the impact that the expiry of measures would likely have on the Australian industry. In respect of FSI pineapples exported from the Philippines and Thailand, should the measures be allowed to expire, the Assistant Minister has correctly concluded that the Australian industry would again suffer material injury from the dumped exports from the Philippines and Thailand. The Assistant Minister has correctly concluded that the measures should not be allowed to expire and has continued the measures for a further five year period.

6. Conclusion

- 6.1 The Commission's recommendation to the Assistant Minister concerning the profit included in Kuiburi's normal value, the level of profit applied to the USP, the assessment of material injury and the decision to continue the anti-dumping measures represent the correct and preferred decision of the Assistant Minister. Kuiburi's claims that the Assistant Minister has erred in his findings cannot be substantiated and the Assistant Minister's decision should be affirmed by the Anti-Dumping Review Panel.
- 6.2 If you have any questions concerning this submission, please do not hesitate to contact the writer.

Yours sincerely



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Dear Mr O'Connor

**ADRP Review – Consumer pineapple exported from the Philippines and Thailand –
Application for review of decision – Prime Products Industrial Co., Ltd**

- 1.1 On 29 January 2016 Golden Circle Limited (**GCL**) made an application for the continuation of anti-dumping measures on consumer pineapple exported from the Philippines and Thailand. Following an investigation and report by the Anti-Dumping Commission to the Assistant Minister for Industry, Innovation and Science, a decision of the Assistant Minister was published on 13 September 2016 continuing the anti-dumping measures on exporters of consumer pineapple from the Philippines and Thailand at revised variable factors (refer Report No. 333).
- 1.2 On 12 October 2016, a Thai exporter of consumer pineapple, Prime Products Industrial Co., Ltd (**PPI**) made an application for review of the decision of the Assistant Minister claiming that the Commission had erred in its determination of export price for Prime.
- 1.3 GCL submits that the Commission has not erred in its assessment of export price for Prime applicable to consumer pineapple exported from Thailand and that the decision of the Assistant Minister is the correct and preferred decision.

2. The Commission has erred in its assessment of PPI's export price

- 2.1 PPI was considered a cooperative exporter for the purposes of Investigation No. 333. It is not contested that PPI did not have any exports of consumer pineapple to Australia during the review period. There is, therefore, an absence of export prices by PPI during the period that could have been used by the Commission to determine export prices for PPI.
- 2.2 GCL notes PPI's attempts to link the Division 5 review of measures (and continuation) inquiry No. 333 to the circumstances of an accelerated review inquiry. It is argued by PPI that the accelerated review provisions "are equally relevant" to a review of measures inquiry, as both involve the review of variable factors. As such, PPI submits:

“...that the Act permits the Commission to continue to apply its current policy and practice of ascertaining an export price equal to PPI’s normal value or equal to the normal value of other sellers.”

- 2.3 What PPI is seeking is an outcome in the review of measures inquiry No. 333 that is consistent with an accelerated review outcome (based upon the Commission’s recent approaches in accelerated review investigations).
- 2.4 GCL disagrees with this simple inference. An accelerated review investigation involves an application by an exporter that did not export the subject goods to Australia during the investigation period. PPI did not make an application for accelerated review prior to the initiation of Investigation No. 333 and hence PPI is the subject of the legislative provisions that applies to a Division 5 review. Had PPI applied for an accelerated review prior to the commencement of Investigation No. 333, PPI *may* have received an outcome that PPI has referenced is recent policy for exporters the subject of an accelerated review.
- 2.5 Report No. 333 contains the following comments of the Commission concerning the outcomes (i.e. applicable variable factors) determined for PPI:

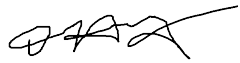
“The Commission notes that Prime Products is entitled to apply for an accelerated review, or review under Division 5 after a period of 12 months of the change of the notice, should its circumstances change. In addition, importers of goods from prime Products can also apply for a duty assessment if the relevant legislative requirements are met.”

- 2.6 In order to achieve the outcome PPI is seeking (i.e. alignment of export price with normal value for a zero interim dumping duty), the exporter must seek an accelerated review to secure a separate normal value and ascertained export price determination.
- 2.7 GCL concurs with PPI’s acceptance that “it is entirely understandable that the Commission would consider that export price information from the Australian Border Force (‘ABF’) import database to be relevant and appropriate for determining export prices for non-cooperative exporters.” It is also appropriate that in the context of a continuation and review inquiry for all exporters that where a cooperative exporter has not previously exported the goods to Australia, then the “best available information” on export prices for the goods exported to Australia from Thailand is that derived from the ABF database.
- 2.8 As Investigation No. 333 was not an accelerated review inquiry the Commission has relied upon the best information available to it. In this instance the best available information on consumer pineapple export prices from Thailand during the investigation period is that derived from the ABF database.

3. Conclusion

- 3.1 The Commission’s recommendation to the Assistant Minister to base PPI’s export prices upon the weighted-average export prices (sourced from the ABF database) for Thai consumer pineapple exported to Australia during the investigation period is the correct and preferred decision and should be affirmed by the Anti-Dumping Review Panel.
- 3.2 If you have any questions concerning this submission, please do not hesitate to contact the writer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Hickey', with a long horizontal stroke extending to the right.

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