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August 14, 2006

Senate Finance Committee
Dirksen Senate Office Building
Washington, DC 20510

Re: Statement in Support of S. 3137 and S. 3138

Dear Mr. Chairman:

This statement is provided on behalf of UniPro Foodservice, Inc. (UniPro) in support of S. 3137 and S. 3138. These bills, which are under consideration for inclusion in the proposed miscellaneous tariff bill, provide for the reliquidation of certain entries of canned pineapple fruit that were imported into the United States between July 1, 1996 and June 30, 1998. Approval of this legislation **would correct an improper and illegal liquidation of the subject entries by U.S. Customs and Border Protection (CBP)**, and provides an equitable remedy for U.S. business.

Imports of canned pineapple fruit (CPF) from Thailand have been subject to an antidumping duty order since July 1995. The United States determines the actual amount of antidumping duties owed on imports subject to an order through retroactive "administrative reviews." Because these reviews occur after importation, importers are required to post a security in the form of a cash deposit to cover an estimated amount of antidumping duties owed. The Department of Commerce establishes company-specific cash deposit rates for each foreign exporter that it analyzes during the initial antidumping investigation. Imports from any other foreign exporter that are not specifically investigated are subject to an "all others" deposit rate.

Between July 1996 and June 1998, UniPro was the importer-of-record for 94 entries of CPF exported from Thailand by Siam Food Canning (1988) Co., Ltd. (SIFCO). Because Commerce had not investigated SIFCO's exports during the initial antidumping investigation or at the time of these entries, UniPro was required to pay a cash deposit for estimated dumping duties at the "all others" rate of 24.64 percent established in the underlying administrative investigation. UniPro duly complied with this requirement. (Under U.S. law, the importer-of-record is liable for payment of deposits and antidumping duties.)

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SIFCO was subject to the second administrative review of the subject antidumping duty order, which covered sales of the subject merchandise in the U.S. between July 1, 1996 and June 30, 1997 (period of review, or POR, 2). In the final results of that review, the U.S. Department of Commerce determined that a weighted-average dumping margin of 5.41 percent *ad valorem* existed for entries from SIFCO made during POR 2.

SIFCO was also subject to the third administrative review of the subject antidumping duty order, which covered sales of the subject merchandise in the U.S. between July 1, 1997 and June 30, 1998. (period of review, or POR, 3) In the final results of that review, the U.S. Department of Commerce determined that a weighted-average dumping margin of 3.32 percent *ad valorem* existed for entries from SIFCO made during POR 3.

Because the dumping margins that Commerce calculated in these administrative reviews for SIFCO (5.41 and 3.32 percent) were so much lower than the cash deposit UniPro had paid on the relevant entries (24.64 percent), UniPro reasonably expected that under the controlling law, it would receive a refund of approximately \$440,000, representing the difference between the cash deposit rate of 24.64 percent and the administrative review rates of 5.41 percent and 3.32 percent.

Instead, on July 30, 2004 - more than four years after the completion of the administrative reviews - the entries subject to these bills were liquidated at the 24.64 percent cash deposit rate.

Because SIFCO was a reviewed and cooperative producer/exporter for purposes of the second and third administrative review periods, the subject entries should not be liquidated at the “all others” cash deposit rate. Indeed, under U.S. law, the applicable dumping margin for a specifically investigated and cooperative foreign producer/exporter in an administrative review *cannot* be equal to the cash deposit rate. Under the controlling law, there is no way that imports from a foreign producer that cooperated in an administrative review can be subject to the “all others” cash deposit rate. The liquidation by Customs at the cash deposit rate was a substantial and very costly error to UniPro.

Since the subject entries should not have been liquidated under U.S. law at the cash deposit rate, and since the Department of Commerce did not calculate a separate, importer-specific dumping margin for the SIFCO/UniPro combination regarding entries made during the second and third administrative review periods, the entries should have been liquidated by Customs at the weighted-average dumping margin calculated for SIFCO for those two administrative review periods (5.41 percent *ad valorem* with respect to POR 2; 3.32 percent *ad valorem* with respect to POR 3).

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On behalf of UniPro, we respectfully submit that fair and equitable administration of this nation's antidumping statute requires that antidumping duties be assessed in accordance with law and well-established precedent. To do otherwise – particularly when the aggrieved party is a U.S. company that has fully complied with controlling law and has done everything required of it under that law – vitiates the very basis and credibility of our trading system.

For these reasons, we express our strong support for S. 3137 and S. 3138, and urge expeditious passage of these bills.

Respectfully submitted,

Jeffrey S. Levin
Schmeltzer, Aptaker & Shepard, P.C.

Counsel to UniPro Foodservice, Inc.



Maui Pineapple Company, Ltd.

Brian C. Nishida
President

August 2, 2006

VIA FACSIMILE

The Honorable Daniel K. Inouye
United States Senate
Hart Office Building #722
Washington, D.C. 20510

Dear Senator Inouye:


On behalf of Maui Pineapple Company, Ltd. ("MPC") a division of Maui Land & Pineapple Company, with production facilities in Kahului, Maui, I urge you to oppose S. 3137 and S. 3138 (copies attached), bills introduced by Sen. Chambliss as part of the "miscellaneous tariff legislation" on behalf of an unknown importer(s) of canned pineapple from Thailand. Bills S. 3137 and 3138 provide for the "liquidation or reliquidation of certain entries of canned pineapple fruit" made between July 1997 and June 1998 (S. 3137) and July 1996 and June 1997 (S. 3138).

Imports of canned pineapple fruit from Thailand are subject to antidumping duties imposed by the Commerce Department in 1996. Bills S. 3137 and 3138 essentially will allow the importer to pay antidumping duties rates that are *lower* than the specific assessment rates determined by the Commerce Department on these entries, as calculated in accordance with the statute and international rules during a year-long administrative review process. Importantly, the "liquidation or re-liquidation" of these entries at the lower rate provided for in S. 3137 and S. 3138 will deprive MPC of the funds properly owed on these entries, which are distributed to MPC under the Continued Dumping & Subsidy Offset Act of 2000.

These bills effectively undermine the trade remedy provided for under U.S. law by allowing the importer to lower its antidumping duty liability from that specifically calculated by the Commerce Department. Consequently, I urge you to contact the Senate Finance Committee to oppose inclusion of S. 3137 and S. 3138 in the miscellaneous tariff package currently under review, and hope that you will file a written objection with the Committee.

Thank you for your consideration of our concerns with this legislation.

Sincerely,



Brian C. Nishida, President & CEO
Maui Pineapple Company, Ltd.

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