



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

PUBLIC RECORD

Application for
a review of
anti-dumping measures

APPLICATION UNDER SECTION 269ZA OF THE *CUSTOMS ACT 1901* FOR A REVIEW OF ANTI-DUMPING MEASURES

In accordance with section 269ZA of the *Customs Act 1901* (the Act), I request that the Anti-Dumping Commissioner initiate a review of anti-dumping measures in respect of the goods the subject of this application to:

1. ☐ **revise the level of the measures** because one or more of the variable factors relevant to the taking of measures have changed (a variable factors review)

In this case the factors that I consider have changed are:

- ☒ normal value
- ☒ export price
- ☐ non injurious price
- ☐ subsidy

The variable factors review is in relation to:

- ☒ a particular exporter (**Kuiburi Fruit Canning Co., Ltd (KFC)/ Cup Co., Ltd (KFCup)**)
- ☐ exporters generally

or

2. ☐ **revoke the measures** because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- ☐ the dumping duty notice
- ☐ the countervailing duty notice
- ☐ the undertaking

The revocation review is in relation to:

- ☐ a particular exporter (*if so provide name and country details*)
- ☐ exporters generally

NOTE

Where seeking variable factors review as well as a revocation review, indicate this in *both* 1 and 2 above.

DECLARATION

I believe that the information contained in this application:

- provides reasonable grounds for review of the anti-dumping measure; and
- is complete and correct to the best of my knowledge and belief.

Signature:



Name: Mr. Chuang Jongsuebchoke

Position: Managing Director

Company: Kuiburi Fruit Canning Co., Ltd.

ABN:

Date: 27th SEPTEMBER 2017

Signature requirements

Where the application is made:

By a company - the application must be signed by a director, servant or agent acting with the authority of the body corporate.

By a joint venture - a director, employee, agent of each joint venturer must sign the application. Where a joint venturer is not a company, the principal of that joint venturer must sign the application form.

On behalf of a trust - a trustee of the trust must sign the application.

By a sole trader - the sole trader must sign the application.

In any other case - contact the Commission's client support section for advice.

Assistance with the application

The Anti-Dumping Commission has published guidelines to assist applicants with the completion of this application. Please refer to the '*Instructions and Guidelines for applicants: Application for review or revocation of measures*' on the Commission's website.

The Commission's client support section can provide information about dumping and countervailing procedures and the information required by the application form. Contact the team on:

Phone: 13 28 46 or +61 2 6213 6000 (outside Australia)

Fax: (03) 8539 2499 or +61 3 8539 2499 (outside Australia)

Email: clientsupport@adcommission.gov.au

Other information is available from the Commission's website at www.adcommission.gov.au.

Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the Department of Industry, Innovation and Science's International Trade Remedies Advisory (ITRA) Service. For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267.

Required information

1. Provide details of the name, street and postal address, of the applicant seeking the continuation.
2. Provide details of the name of a contact person, including their position, telephone number and facsimile number, and e-mail address.
3. Name other parties supporting this application.
4. Describe your interest as an affected party (eg are you concerned with the exportation of the goods, the importation of the goods, or part of the Australian industry, or acting on behalf of the Government of an exporting country).
5. Provide details of the current anti-dumping measure(s) the subject of this review application, including:
 - tariff classification
 - the countries or companies

	<ul style="list-style-type: none"> - specified date of publication of the measure
Applications for review of variable factors	<p>6. Provide the names, addresses, telephone numbers and facsimile numbers of other parties likely to have an interest in this matter e.g. Australian manufacturers, importers, exporters and/or users.</p> <p>If you are applying for a variable factors review (in box 1 above) provide a detailed statement setting out your reasons. Include information about:</p> <ul style="list-style-type: none"> • the factor(s) you wish to have reviewed; • the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and • in your opinion the causes of the change and whether these causes are likely to persist.
Application for a revocation review	<p>If you are applying for a revocation review (in box 2 above), provide a detailed statement setting out your reasons.</p> <p>Include evidence in support of your view that there are reasonable grounds for asserting that the measures are no longer warranted. Refer to the "Guidelines for Preparing an Application for Review of Measures" as part of preparing your response. If you consider anti-dumping measures are no longer warranted because of:</p> <ul style="list-style-type: none"> • <i>no dumping or no subsidisation</i>: provide evidence that there is no dumping, or no subsidy, and why dumping or subsidisation is unlikely to recur if measures were revoked. • <i>no injury</i>: provide evidence that there is no current injury, and there is unlikely to be a recurrence of injury if the measures were to be revoked.
Lodgement of the application	<p>This application, together with the supporting evidence, must be lodged in the manner approved by the Commissioner under subsection 269SMS(2) of the Act. The Commissioner has approved lodgement of this application by either:</p> <ul style="list-style-type: none"> • preferably, email, using the email address clientsupport@adcommission.gov.au, or • post to: The Commissioner of the Anti-Dumping Commission GPO Box 2013 Canberra ACT 2601, or • facsimile, using the number (03) 8539 2499 or +61 3 8539 2499 (outside Australia)
Public Record	<p>During an investigation all interested parties are given the opportunity to defend their interests, by making a submission. The Commission maintains a public record of these submissions. The public record is available on the Commission's website at www.adcommission.gov.au.</p> <p>At the time of making the application both a confidential version (for official use only) and non-confidential version (public record) of the application <u>must</u> be submitted. Please ensure each page of the application is clearly marked "FOR OFFICIAL USE ONLY" or "PUBLIC RECORD". The non-confidential application should enable a reasonable understanding of the substance of</p>

the information submitted in confidence, clearly showing the reasons for seeking the review, or, if those reasons cannot be summarised, a statement of reasons why summarisation is not possible. If you cannot provide a non-confidential version, contact the Commission's client support section for advice.

PUBLIC RECORD

APPLICATION FOR REVIEW of MEASURES Kuiburi Fruit Canning Co., Ltd (KFC)/ Kuiburi Fruit Cup Co., Ltd. (KFCup)

REQUIRED INFORMATION

1. Applicant:

Kuiburi Fruit Canning Co., Ltd (KFC) / Kuiburi Fruit Cup Co., Ltd (KFCup)

2. Head Office:

Name: Doungkamon Jongsuebchoke

Position in the company: Deputy Managing Director (Administrative)

Address: Kuiburi Fruit Canning Co., Ltd (KFC) / Kuiburi Fruit Cup Co., Ltd (KFCup)

1 Moo 7 Tambol Kuiburi, Amphur Kuiburi, Prachuap Khiri Khan

77150 Thailand

Telephone: (66-32) 681-578-9

Facsimile number: (66-32) 681-580

E-mail address of contact person: doungkamonjo@kuiburifruit.co.th

Factory:

Address: Kuiburi Fruit Canning Co., Ltd (KFC) / Kuiburi Fruit Cup Co., Ltd (KFCup)

1 Moo 7 Tambol Kuiburi, Amphur Kuiburi, Prachuap Khiri Khan

77150 Thailand

Telephone: (66-32) 681-578-9

Facsimile number: (66-32) 681-580

E-mail address of contact person: doungkamonjo@kuiburifruit.co.th

3. Representative of the company for the purpose of investigation

If you wish to appoint a representative to assist you in this investigation, provide the following details:

Name: John McDermott & Associates Pty Ltd.

Address: PO Box 3414 Belconnen Canberra ACT2617

Telephone: 0412543792

E-mail address of contact person: jmcd49@optusnet.com.au

4. Other parties supporting this application:

Not applicable.

PUBLIC RECORD

5. Applicant's interest:

KFC/KFCup is the producer and exporter of consumer pineapple.

6. Details of current Anti-Dumping measures:

The goods subject to measures (the goods) are:

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

The goods subject to measures are classified to the following tariff classifications in Schedule 3 to the Customs Tariff Act 1995:

2008.20.00 Pineapples

2008.20.00/26 Canned, in containers not exceeding one litre

2008.20.00/28 Other

Country subject to the Notice:

Thailand

Date of publication of the Notice

On 12 September 2016 the assistant Minister for Industry, Innovation and Science as Parliamentary secretary to the Minister for Industry, Innovation and Science published dumping duty notice No.2016/82 applying a dumping duty rate of 9.2% for all Thai exporters (except TPC)

7. Grounds for Review

KFC/KFCup is requesting a review of the following variable factors based on a change to:

Ascertained normal value, and

Ascertained export price

ASCERTAINED NORMAL VALUE

Basis for current ascertained normal values

A review of measures in 2012 on exports of consumer pineapples from Thailand found that exports of consumer pineapple were dumped by all exporters other than Thai Pineapple Canning Industry Corp., Ltd, TPC and Kuiburi Fruit Canning Co., Limited.

In report 333, the Commission found that as there were no exports from Thai exporters, and there was not sufficient data available to enable the Commission to determine normal value for Thai exporters. Accordingly, normal value has been determined pursuant to subsection 269TAC(6), having regard to all available information. Specifically, the weighted average normal value determined for Philippines exporter Dole, as there were no exports from Thai exporters.

PUBLIC RECORD

As KFC/KFCup has never exported consumer pineapple to Australia, it applied for an accelerated review, Refer REP 397. Unbeknown to current management, KFC had sought an accelerated review for consumer pineapple exported from Thailand in 2012. The then Minister for Home Affairs accepted the recommendations contained in International Trade Remedies Branch Report No. 191 (REP 191) and altered the notice so as to apply to KFC as if different variable factors had been fixed. Public notice of that decision was published in Commonwealth of Australia Gazette No. 40 (GN 40) published 10 October 2012.

In REP 397, the Commission found that KFC/KFCup was not eligible to apply for an accelerated review because the circumstances in which an accelerated review can be sought under subsection 269ZE(1) of the Act have not been satisfied. In particular, a declaration that applies to the applicant, Kuiburi Fruit Cup Co., Ltd (KFCup), has already been made under subsection 269ZG(3)(b) of the Act because the applicant and Kuiburi Fruit Canning Co., Ltd (KFC) are joint exporters of the goods and a declaration has already been made under subsection 269ZG(3)(b) in respect of KFC.

The effect of this finding is that the applicant is now subject to the "all other exporters rate" as published in the current notice (No. 2016/82) for consumer pineapple exported from Thailand.

Grounds for review of ascertained normal value.

Recent Report 333 states that a response to the exporter questionnaire for consumer pineapple was received from only one exporter from Thailand, Prime Products Industry Co. Ltd (Prime Products).

The report further states that whilst the Commissioner is satisfied that exporter Prime Products cooperated with the inquiry for Thailand, sufficient data was not available to enable the Commission to determine export price and normal value for Prime Products and, therefore, the Commission was unable to determine a dumping margin. The Commission has determined an export price pursuant to subsection 269TAB(3) and has determined normal value pursuant to subsection 269TAC(6), having regard to all available information. Specifically, it has used a weighted average export price for Thailand from the ABF import database at FOB terms and the weighted average normal value determined for Dole Philippines, as there were no exports from Thai exporters.

KFC/KFCup understands the current AEP is set at [REDACTED]/kg with a dumping margin of [REDACTED]%. Using this information, KFC/KFCup has calculated the current normal value to be [REDACTED] plus [REDACTED]% which equals [REDACTED]/kg.

KFC/KFCup is of the opinion the normal value has changed to [REDACTED], a reduction of [REDACTED].

The information relied on that establishes the amount of change can be found in the CTMS information detailed in KFC/KFCup 2017 workbook attached, which contains five domestic CTMS spreadsheets. The CTMS figures in the five spreadsheets reveals the CTMS of the five models to be between [REDACTED] baht/kg and [REDACTED] baht/kg with an average of [REDACTED] baht/kg for the five different models listed. We have used the [REDACTED] Baht/kg to demonstrate the change.

As required when constructing a normal value under subsection 269TAC(2)(c)(ii), a profit on the sale is required. To determine a rate of profit KFC/KFCup has used the export price to [REDACTED] baht/kg (refer to third country sales spreadsheet in the attached workbook) as it's market is similar to any proposed sales to Australia. This reveals a profit margin of [REDACTED] on the CTMS of [REDACTED] baht/kg. KFC/KFCup considers this to be a reasonable profit margin to be applied to a constructed normal value.

PUBLIC RECORD

KFC/FYCu considers the sale to [REDACTED] of [REDACTED] baht/kg, being the CTMS of [REDACTED] plus [REDACTED] profit is sufficient evidence for the normal value to be ascertained under subsection 269TAC(2) which, when converted to A\$ using an exchange rate of .039 baht to the A\$, results in a normal value of [REDACTED]/kg which is the claimed change in the normal value from [REDACTED]/kg

Ascertained Export price

In Report 333, the Commission has determined an export price pursuant to subsection 269TAB(3) having regard to all available information. Specifically, as there were no exports from Thai exporters, there was not sufficient data available to enable the Commission to determine export price.

Accordingly, export price was calculated pursuant to subsection 269TAB(3) using the weighted average export price for Thailand from the ABF import database at FOB terms. As stated above, KFC/KFCu understands the current AEP is set at [REDACTED] kg

Grounds for review of ascertained export price

Recent Report 333 states that a response to the exporter questionnaire for consumer pineapple was received from only one exporter from Thailand, Prime Products Industry Co. Ltd (Prime Products).

The report further states that whilst the Commissioner is satisfied that exporter Prime Products cooperated with the inquiry for Thailand, sufficient data was not available to enable the Commission to determine export price and normal value for Prime Products and, therefore, the Commission was unable to determine a dumping margin.

The Commission has determined an export price pursuant to subsection 269TAB(3) having regard to all available information. Specifically, it has used a weighted average export price for Thailand from the ABF import database at FOB terms as there were no exports from Thai exporters. KFC/KFCu understands the current AEP is set [REDACTED]/kg.

As there are no exports to Australia by KFC/KFCu, it has provided details of exports to third countries being exports that are at arms length and in the ordinary course of trade, (refer spreadsheet third country sales in 2017 workbook attached). The future export price to Australia by KFC/KFCu are claimed to be similar to its current export price to [REDACTED] being [REDACTED] baht/kg. Accordingly these exports have been used to provide evidence to enable an export price to be determined under subsection 269TAB(3).

KFC/KFCu considers the submitted evidence supports the view that the export price has changed to the export price to [REDACTED] being [REDACTED] baht/kg or A\$ [REDACTED]/kg, at an exchange rate of .039 baht to the A\$ which reveals a reduction from the current export price of A\$ [REDACTED] by A\$ [REDACTED]/kg

In conclusion, KFC/KFCu is providing sufficient data to enable the Commission to determine export price and normal value for its future exports to Australia by reference to the confidential costing information provided.

Given the methods used to determine the ascertained variable factors for non-cooperating exporters in Report 333, KFC/KFCu requests that the determination of ascertained variable factors would be more appropriately based on its own sales, costs and financial information.

PUBLIC RECORD

As demonstrated in the 2016 inquiry on FSI pineapple, KFC/KFCup is prepared to co-operate fully with the Commission for any further required information.

Yours Sincerely

John McDermott