



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

CONSIDERATION REPORT NO. 397

**APPLICATION FOR AN ACCELERATED REVIEW OF A
DUMPING DUTY NOTICE APPLYING TO**

**CERTAIN CONSUMER PINEAPPLE EXPORTED FROM THE
KINGDOM OF THAILAND**

BY KUIBURI FRUIT CUP CO., LTD.

March 2017

Table of contents

CONTENTS	2
ABBREVIATIONS	3
1 SUMMARY AND RECOMMENDATION	4
1.1 Recommendation	4
1.2 Application of law to facts	4
1.3 Findings and conclusions	4
2 BACKGROUND	5
2.1 Existing measures	5
2.2 The goods the subject of the application	5
2.3 Consideration of the application for accelerated review	5
2.4 Public record	6
3 APPLICATION FOR ACCELERATED REVIEW - COMPLIANCE WITH SECTION 269ZF OF THE ACT	7
3.1 Legislative Background	7
3.2 Assessment of the application – compliance with section 269ZF	7
3.3 Lodgement date	7
4 CIRCUMSTANCES IN WHICH AN ACCELERATED REVIEW MAY BE SOUGHT – COMPLIANCE WITH SECTION 269ZE	8
4.1 Background	8
4.2 Status as a new exporter	8
4.3 Cooperation in regards to the application for a dumping duty notice and countervailing duty notice	9
4.4 Relationships with selected exporters	9
4.5 Summary of findings	9
5 CONCLUSION	10
6 SECURITIES	11
7 APPENDICES AND ATTACHMENTS	12

Abbreviations

the Act	<i>the Customs Act 1901</i>
ADN	Anti-Dumping Notice
the applicant	Kuiburi Fruit Cup Co., Ltd.
consumer	Consumer pineapple
the Commission	Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
DIBP	Department of Immigration and Border Protection
GCL	Golden Circle Limited
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC) consumer pineapple
the original notice	Australian Customs Dumping Notice (ACDN) 2001/
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
USP	Unsuppressed Selling Price

1 Summary and recommendation

This report provides the results of the assessment by the Anti-Dumping Commission (the Commission) and consideration by the Commissioner of the Anti-Dumping Commission (the Commissioner) of an application lodged by Kuiburi Fruit Cup Co., Ltd (KFCup or the applicant) on 16 February 2017. KFCup is seeking an accelerated review of the dumping duty notice issued in respect of consumer pineapple exported to Australia from the Kingdom of Thailand (Thailand).

1.1 Recommendation

The Commission recommends that the Commissioner not reject the application for the reasons outlined in chapters 3 and 4 of this report.

1.2 Application of law to facts

Division 6 of Part XVB of the Customs Act 1901 (the Act)¹ sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for an accelerated review of a dumping duty notice by certain exporters of goods covered by the notice.

1.3 Findings and conclusions

The Commission has examined the application and is satisfied that:

- the application satisfies the requirements of subsection 269ZF(1);
- the conditions for rejection under subsection 269ZE(2) were not met; and
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied.

The Commission concludes that the applicant is eligible to apply for, and has lodged a valid application for an accelerated review and accordingly recommends that the Commissioner not reject the application.

¹ Unless stated otherwise, all legislative references in this report are to the *Customs Act 1901*.

2 Background

2.1 The goods the subject of the application

2.1.1 Description

The goods the subject of the application (the goods) are:

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

Glace and/or dehydrated pineapple are excluded from measures

Consumer pineapple imported from Thailand is not subject to Customs duty.

2.1.2 Tariff classification

The goods are classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff	Statistical code	Description
2008.20.00	26	Pineapples – Canned, in containers not exceeding one litre
2008.20.00	28	Pineapples – Other

Table 1: Tariff classification for consumer pineapple

2.2 Existing measures

The original measures with respect to the goods exported from Thailand were published in *Commonwealth of Australia Gazette No. GN 41* dated 17 October 2001. Since that time, the measures have been continued three times, with the most recent decision published in *Anti-Dumping Notice No. 2016/82* (ADN 2016/82) on 12 September 2016, for measures on consumer pineapple exported from Thailand to continue for a further five years until 17 October 2021².

2.3 Consideration of the application for accelerated review

On 16 February 2017, KFCup lodged an application for an accelerated review of the dumping duty notice that applies to consumer pineapple exported to Australia from Thailand in so far as the notice affects the applicant.

If the Commissioner does not reject the application or terminate the accelerated review, pursuant to subsections 269ZG(1) and (2) the Commissioner must, no later than 100 days after the application is lodged, provide the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science (Parliamentary Secretary)³ with a report recommending:

- a) that the dumping duty notice the subject of the application remain unaltered; or

² For further information on the current measures in relation to the goods please refer to the Dumping Commodity Register on the Commission's website.

³ On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science. For the purposes of this accelerated review the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

- b) that the dumping duty notice the subject of the application be altered so as to apply to the applicant as if different variable factors had been fixed;

and set out the Commissioner's reasons for so recommending.

In relation to this application, this report must be made no later than **27 May 2017**⁴.

2.4 Public record

There is no legislative requirement for the Commissioner to maintain a public file for accelerated reviews. However, in the interests of ensuring the process is conducted in an open and transparent manner, a public file will be maintained.

This Consideration Report, along with a non-confidential version of the application and response to the exporter questionnaire, will be published on the Electronic Public Record, available at www.adcommission.gov.au.

Given the expedited nature of accelerated reviews and the shortened timeframe for the Commissioner to produce a final report, any submissions by interested parties should be lodged by **13 April 2017**.

⁴ If a due date in this report falls on a weekend or public holiday in Victoria, the effective due date will be the following business day. In this case, the next business day is Monday 29 May 2017.

3 Application for an accelerated review – compliance with section 269ZF

3.1 Legislative Background

Section 269ZF requires that an application for an accelerated review must:

- be in writing and be lodged in a manner approved under section 269SMS⁵ (subsection 269ZF(1));
- contain a description of the goods to which the dumping duty notice relates (subsection 269ZF(1)(a)); and
- contain a statement of the basis on which the exporter considers that the particular notice is inappropriate in so far as the exporter is concerned (subsection 269ZF(1)(b)).

3.2 Assessment of the application – compliance with section 269ZF

The application made by the applicant was in writing, lodged in a manner approved under subsection 269SMS (subsection 269ZF(1)) and it contained a description of the goods to which the dumping duty notice relates (subsection 269ZF(1)(a)).

In accordance with the requirements of subsection 269ZF(1)(b), the application also contained a statement from KFCup that outlines the reasons why the company believes the current dumping duty notice is inappropriate in so far as the notice affects it. Specifically, KFCup listed:

- it has not previously been investigated or refused to cooperate with the original investigation; and
- as a new exporter, it is subject to the current uncooperative exporter rate of consumer pineapple exported from Thailand.

The Commissioner is satisfied that the application complies with subsection 269ZF(1).

3.3 Lodgement date

Subsection 269ZF(2) provides that an application for an accelerated review is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated reviews. Further, subsection 269ZF(3) provides that the day on which an application is taken to be lodged must be recorded on the application.

On 16 February 2017, KFCup lodged an application for an accelerated review. A copy of its application is at **Attachment 1**. A non-confidential version of the application is available on the public record. On receipt of the application, the Commission recorded the date on which the application was received as 16 February 2017 in accordance with subsection 269ZF(3).

⁵ The Commissioner has approved the manner for lodging applications made under Part XVB of the *Customs Act 1901*. The Commissioner's approval is provided in an instrument made under section 269SMS, which can be found on the Commission's website at www.adcommission.gov.au.

4 Circumstances in which an accelerated review may be sought – compliance with section 269ZE

4.1 Background

Section 269ZE sets out the circumstances in which an accelerated review may be sought.

The conclusions in this section are made on the basis of all currently available information. If, during the accelerated review, evidence becomes available that satisfies the Commissioner that the requirements of subsection 269ZE(3) have been met, the Commissioner may terminate the accelerated review.

4.2 Status as a new exporter

4.2.1 Background

Subsection 269ZE(1) sets out that only a “new exporter” may apply for an accelerated review. A new exporter is defined in subsection 269T(1) as, in relation to goods the subject of an application for a dumping duty notice or countervailing duty notice or like goods, an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

Subsection 269ZE(1) also provides that a new exporter can apply for an accelerated review if a dumping duty or countervailing duty notice has been published in respect of goods exported from a particular country of export or in respect of goods exported by new exporters from a particular country of export, provided a declaration has not already been made in respect of that exporter under subsection 269ZG(3)(b).

Subsection 269T(1) defines “application” in relation to a dumping duty notice or a countervailing duty notice as meaning an application for the publication of such a notice.

4.2.2 New exporter period

To fall within the definition of a new exporter in subsection 269T(1), the period within which the applicant must not have exported to Australia (the new exporter period) is from 1 January 2000 to 31 December 2000 (the investigation period for the application for publication of the dumping duty notice in respect of the goods).

4.2.3 Evidence of exports during the new exporter period

A search of the Department of Immigration and Border Protection (DIBP) import database did not identify exports of the goods by KFCup during the new exporter period.

Based on information from the DIBP import database and other information resulting from the Commission's inquiries on consumer pineapple exported from Thailand since 2001, the Commissioner is satisfied that KFCup should be considered as a new exporter for the purposes of its application for an accelerated review.

4.2.4 Declaration under subsection 269ZG(3)(b)

Pursuant to subsection 269ZE(1)(b), a new exporter cannot apply for an accelerated review if it had previously applied for an accelerated review that resulted in a declaration being made in respect of that exporter under subsection 269ZG(3)(b).

A declaration under subsection 269ZG(3)(b) has not been made in respect of the applicant and subject to further enquiries, it appears the applicant has not previously applied for an accelerated review.

4.3 Cooperation in regards to the application for a dumping duty notice and countervailing duty notice

Subsection 269ZE(2)(a) provides that, if the Commissioner is satisfied that, because the exporter refused to cooperate in relation to the application for publication of a dumping duty notice or a countervailing duty notice, the exportations from that exporter were not investigated (in the original investigation), the Commissioner may reject the application.

Noting the above finding that there is no evidence of exports of consumer pineapple to Australia by KFCup during the new exporter period, KFCup's cooperation would not have been sought during the original investigation. A review of the information from the original investigation reveals that the company was not identified as an exporter, which confirms that its cooperation was not sought.

The Commissioner considers that there are no grounds for rejection in terms of subsection 269ZE(2)(a).

4.4 Relationships with selected exporters

Subsection 269ZE(2)(b) of the Act provides that, if the Commissioner is satisfied that the exporter (i.e. the applicant for an accelerated review) is related to an exporter that had its exports examined in relation to the application for the publication of a dumping duty notice, the Commissioner may reject the application.

The Commission performed desktop research, analysis of DIBP data and reviewed prior investigations and inquiries in relation to consumer pineapple. As this information did not identify KFCup to be related to an exporter whose exports were examined under the original notice, the Commissioner considers that at this time, there do not appear grounds for rejection in terms of subsection 269ZE(2)(b).

4.5 Summary of findings

In accordance with section 269ZE, on review of the application and all information currently available, the following findings have been made about whether the circumstances exist in which accelerated reviews may be sought:

- the applicant did not export consumer pineapple during the period for which new exporters cannot have exported (new exporter period) and is not an exporter in respect of whom a declaration has been made under subsection 269ZG(3)(b). Consequently, the applicant meets the definition of a new exporter and satisfies the requirements for requesting an accelerated review under subsection 269ZE(1);
- the applicant did not refuse to cooperate in relation to the application for the publication of the dumping duty notice in relation to consumer pineapple, and the application should not be rejected under subsection 269ZE(2)(a); and
- the applicant does not appear to be related to any exporter that had its exports examined in the original investigation and therefore the application should not be rejected under subsection 269ZE(2)(b).

5 Conclusion

The Commission has considered the application made by KFCup to determine if it satisfied the requirements of sections 269ZE and 269ZF.

The Commission concludes, on the basis of currently available information, that:

- the application satisfies the requirements of subsection 269ZF(1);
- the conditions for rejection under subsection 269ZE(2) are not met; and
- the circumstances in which an accelerated review can be sought under subsection 269ZE(1) have been satisfied.

Accordingly, the Commission is satisfied that KFCup is eligible to apply for, and has lodged a valid application for, an accelerated review.

The Commission recommends that the Commissioner:

- not reject the application for an accelerated review of the dumping duty notice applying to consumer pineapple exported to Australia from Thailand in so far as the notice affects the applicant and continue with the accelerated review; and
- set the review period as 1 January 2016 to 31 December 2016.

6 Securities

When an application for an accelerated review of a dumping duty is lodged, subsection 269ZH(a) provides that no interim duty can be collected in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the accelerated review.

However, pursuant to subsection 269ZH(b), the Commonwealth may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim dumping duty that may be payable.

The Commission recommends that the Commissioner take securities in respect of exports by KFCup until completion of this accelerated review.

A table outlining the variable factors relevant to calculating the amount of securities is provided at **Confidential Attachment 2**.

7 Appendices and attachments

Reference	Status	Description
Attachment 1	Non-confidential	Application for an accelerated review – Kuiburi Fruit Cup Co., Ltd
Attachment 2	Confidential	Variable factors relevant to calculation of securities