



Australian Government
Department of Industry,
Innovation and Science

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

**CONSIDERATION REPORT
NOS. 453 AND 455**

**Consideration of two applications for
reviews of anti-dumping measures applying to**

**Consumer pineapple exported to Australia from
the Kingdom of Thailand by**

**Kuiburi Fruit Canning Co., Ltd
and Kuiburi Fruit Cup Co., Ltd (as joint applicants)**

and

Prime Products Industry Co., Ltd.

20 November 2017

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ABBREVIATIONS

Abbreviation	Full title
ABF	Australian Border Force
ACDN	Australian Customs Dumping Notice
ADN	Anti-Dumping Notice
ACBPS	Australian Customs and Border Protection Service
the Act	the <i>Customs Act 1901</i>
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
consumer pineapple	Pineapple fruit - consumer
CTMS	Cost to make and sell
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
FSI	Food service and industrial
GCL	Golden Circle Limited
the goods	Pineapple fruit - consumer
IDD	interim dumping duty
KFC	Kuiburi Fruit Canning Co., Ltd
KFCup	Kuiburi Fruit Cup Co., Ltd
MSP	Malee Sampran Public Co
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science ¹
PPI	Prime Products Industry Co., Ltd
REP 41	Trade Measures Report No. 41
REP 110	Trade Measures Report No. 110
REP 111	Trade Measures Report No. 111
REP 171c	Trade Measures Report No. 171c
REP 171d	Trade Measures Report No. 171d
REP 296	Anti-Dumping Commission Final Report No. 296
REP 333	Anti-Dumping Commission Report No. 333
review period (existing measures)	1 January 2015 to 31 December 2015
review period (this review)	1 October 2016 to 30 September 2017
SG&A	selling, general and administrative
Thailand	The Kingdom of Thailand
TPC	Thai Pineapple Canning Industry Corp Ltd

¹ 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 these reviews, the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

1 SUMMARY AND RECOMMENDATION

1.1 Background

This report provides the results of the Anti-Dumping Commission's (the Commission's) consideration of two separate applications, one lodged by Prime Products Industry Co., Ltd (PPI), and the second lodged jointly by Kuiburi Fruit Canning Co., Ltd. (KFC) and Kuiburi Fruit Cup Co., Ltd. (KFCup) (as joint applicants), for reviews in respect of the anti-dumping measures (in the form of a dumping duty notice) relevant to their respective exports of consumer pineapple to Australia from the Kingdom of Thailand (Thailand).

The applicants consider it appropriate to review the anti-dumping measures because one or more of the variable factors relevant to the taking of the anti-dumping measures have changed. The variable factors that have allegedly changed are the export price and the normal value.

The Commission has examined each application separately, however for administrative convenience has published this combined consideration report.

1.2 Legislative background

Division 5 of Part XVB of the *Customs Act 1901* (the Act)² sets out, among other things, the procedures to be followed by the Commissioner of the Anti-Dumping Commission (the Commissioner) in assessing an application for a review of anti-dumping measures.

Division 5 empowers the Commissioner to reject or not reject an application for review of anti-dumping measures. If the Commissioner does not reject an application, he is required to publish a notice indicating that he is proposing to review the anti-dumping measures covered by the application.

1.3 Findings and conclusions

The Commission is satisfied that, in relation to each application for a change in the variable factors:

- the applications comply with subsections 269ZB(1) and (2); and
- there appears to be reasonable grounds for asserting that the variable factors relevant to the taking of anti-dumping measures have changed.

² All references are to the *Customs Act 1901*, unless otherwise stated.

1.4 Recommendation

The Commission recommends that the Commissioner not reject the applications for a review of the variable factors for the reasons outlined at sections 1.3 and 3.4 of this report.

2 BACKGROUND

2.1 History of the existing anti-dumping measures

Since 2009, the Commission has conducted numerous investigations, reviews and inquiries relating to consumer pineapple exported to Australia from Thailand. Full details can be found on the Commission's electronic public record at www.adcommission.gov.au. The matters relevant to the applications are summarised below.

On 8 January 2001, Golden Circle Limited (GCL) lodged an application requesting that the then Minister for Justice and Customs publish dumping duty notices in respect of certain pineapple products exported to Australia from Thailand. The then Minister accepted the recommendations in *Trade Measures Report No. 41* (REP 41) and published dumping duty notices for consumer and food service and industrial (FSI) pineapple exported to Australia from Thailand with the exception of FSI pineapple exported by Malee Sampran Public Co (MSP).

On 26 February 2006, following consideration of applications by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. On 28 September 2006, the then Minister for Justice and Customs accepted the recommendations contained in *Trade Measures Branch Report Nos 110 and 111* (REP 110 and REP 111) to continue the anti-dumping measures applying to both consumer and FSI pineapple for a further five years and fix different variable factors in relation to the anti-dumping measures.

On 4 April 2008, the Federal Court set aside the then Minister for Justice and Customs' decision to continue measures in relation to exports of consumer pineapple from Thai Pineapple Canning Industry Corp Ltd (TPC).

On 15 April 2011, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The then Minister for Home Affairs, accepted the recommendations contained in *Trade Measures Branch Report Nos 171c and 171d* (REP 171c) and (REP 171d), to continue the anti-dumping measures for a further five years from 18 October 2011.

On 9 March 2016, following consideration of an application for the continuation of measures by GCL, continuation inquiries and reviews of measures were initiated in relation to the anti-dumping measures imposed on consumer and FSI pineapple. The Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science³ (the Parliamentary Secretary), accepted the recommendations contained in Report No. 333 (REP 333),

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.

to continue the anti-dumping measures for a further five years from 17 October 2016 with the exception of consumer pineapple exported by TPC

2.2 Accelerated reviews relating to the applicants

2.2.1 PPI

On 3 May 2015, PPI lodged an application for an accelerated review of the measures applicable to consumer pineapple exported from Thailand. The outcome of the accelerated review was published in Anti-Dumping Notice (ADN) No. 2015/111 and the Commonwealth Gazette on 8 September 2015. As a result of this accelerated review the Commissioner was not satisfied that there was sufficient and relevant information to calculate exporter specific variable factors and accordingly recommended that the original dumping duty notice remain unaltered. The reasons for the findings of the accelerated review are contained in *Final Report No. 296* (REP 296).

The effect of this finding was that PPI remained subject to the “all other exporters” rate.

2.2.2 KFC and KFCup

On 8 June 2012, KFC lodged an application for an accelerated review of the measures applicable to consumer pineapple exported from Thailand. The outcome of the accelerated review was published in Australian Customs Dumping Notice (ACDN) No. 2012/49 and the Commonwealth Gazette on 10 October 2012. As a result of this accelerated review no interim duty was to be payable unless the export price was below the relevant normal value. The reasons of the findings of the accelerated review are contained in *International Trade Remedies Report No. 191* (REP 191).

On 16 February 2017, KFCup lodged an application for an accelerated review of the dumping measures applying to consumer pineapple exported to Australia from Thailand. The outcome of the review was published in ADN No. 2017/69 on 29 May 2017. The Commissioner found that KFCup was not eligible to apply for an accelerated review because the circumstances in which an accelerated review could be sought under subsection 269ZE(1) had not been satisfied. In particular, a declaration that applied to KFCup had already been made under subsection 269ZG(3)(b) because KFCup and KFC are joint exporters of the goods and a declaration has already been made under subsection 269ZG(3)(b) in respect of KFC. The reasons for the findings of the accelerated review are contained in *Final Report No. 397* (REP 397).

The effect of this finding was that KFCup and KFC remain subject to the “all other exporters” rate.

2.3 The current applications

The Commission received the following two applications for a review of the measures applying to consumer pineapple exported to Australia from Thailand:

- on 31 October 2017, an application was lodged by PPI; and
- on 1 November 2017, a joint application was lodged by KFC and KFCup.

Both applications claim that there has been a change in the variable factors relevant to each of the particular applicants' circumstances. The current variable factors of export price and normal value applicable to the applicants were established in Continuation Inquiry No. 333. Continuation Inquiry No. 333 examined a period of 1 January 2015 to 31 December 2015 (review period for existing measures).

The applications are not prevented by subsection 269ZA(2), which requires that an application for review of anti-dumping measures must not be made earlier than 12 months after the publication of a dumping duty notice or a notice declaring the outcome of the last review of the dumping duty notice.

Pursuant to subsection 269ZC(1), the Commissioner must examine the applications and, within 20 days after receiving them, decide whether to reject the applications.

As such, the decision to reject the applications must be made for:

- PPI no later than 20 November 2017; and
- KFC and KFCup no later than 21 November 2017.

If the Commissioner is not satisfied, having regard to an application and to any other information that he considers relevant, of one or more of the matters referred to in subsection 269ZC(2), the Commissioner must reject the application.

2.4 The goods subject to the anti-dumping measures

The goods the subject of the current anti-dumping measures (the goods) are:

Pineapple prepared or preserved in containers not exceeding one litre.

Glaze and/or dehydrated pineapple are excluded from the measures

2.5 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

3 CONSIDERATION OF THE APPLICATIONS

3.1 Legislative background

Subsection 269ZB(1) requires that an application be in writing, be in a form approved by the Commissioner for the purposes of this section, contain such information as the form requires, be signed in the manner indicated by the form and be lodged in a manner approved under section 269SMS.

Without otherwise limiting the matters that can be required by the form, subsection 269ZB(2) provides that an application must include:

- a description of the kind of goods to which the anti-dumping measures the subject of the application relate; and
- a description of the anti-dumping measures the subject of the application; and
- if the application is based on a change in variable factors, a statement of the opinion of the applicant concerning:
 - the variable factors relevant to the taking of the anti-dumping measures that have changed; and
 - the amount by which each such factor has changed; and
 - the information that establishes that amount;
- if the application is based on circumstances that in the applicant's view indicate that anti-dumping measures are no longer warranted, evidence (in accordance with the form) of the circumstances.

Subsection 269ZC(2) specifies the matters which must be considered in making a decision whether to reject an application. These matters are:

- that the application complies with section 269ZB; and
- that there appear to be reasonable grounds for asserting either, or both, of the following:
 - that the variable factors relevant to the taking of anti-dumping measures have changed;
 - that the anti-dumping measures are no longer warranted.

3.2 Assessment of the applications - compliance with section 269ZB

When considering the requirements of subsections 269ZB(1) and (2), the Commission notes that each of the applications for a review of the variable factors submitted:

- are in writing;
- are in the approved form (*Form B602 – Application for a review of measures*) and contain such information as the form requires (including evidence in support of the amount by which the variable factors have changed since last ascertained and information on the causes of the change to the variable factors and whether these causes are likely to persist);

- are signed in the manner required by the form;
- were lodged in a manner approved under section 269SMS, being by email to the Commission's nominated email address (as nominated in the Commissioner's instrument made under section 269SMS);
- provide a description of the kind of goods to which the anti-dumping measures the subject of the applications relate;
- provide a description of the anti-dumping measures the subject of the applications; and
- include a statement of the opinion of the applicant concerning the variable factors relevant to the taking of the anti-dumping measures have changed; the amount by which the variable factors have changed; and information that establishes that amount.

As a result of the above, the Commission is satisfied that each of the applicants has satisfied the requirements of subsections 269ZB(1) and (2).

3.3 Variable factors

The applicants' variable factors are those currently applicable to 'all other exporters'. As such, the applicants are subject to a combined fixed interim dumping duty (IDD) and a variable component of IDD where the actual export price is below the ascertained export price.

The following sections will address each applicants' claims that there has been a change in variable factors.

3.3.1 PPI

Ascertained export price

In its application, PPI notes that it did not have exports to Australia during the period of the previous review (REP 333) and as such its export prices were determined in accordance with subsection 269TAB(3), using all relevant information. Specifically the export price was ascertained based on the weighted average free on board (FOB) export price for Thailand from the Australian Border Force (ABF) import database.

PPI seeks a review on the grounds that, since the completion of the previous review, it has exported consumer pineapple to Australia. PPI provided as part of its application commercial sales invoices relating to its export sales to Australia. PPI relied upon these commercial documents to calculate a weighted average export price over the period 1 October 2016 to 30 September 2017 in accordance with subsection 269TAB(1)(a), and the amount by which the export price has changed since anti-dumping measures were last imposed.

Ascertained normal value

In its application, PPI notes that it did not have domestic sales of consumer pineapple during the period of the previous review (REP 333) and as such its normal

value was determined in accordance with subsection 269TAC(6), using all relevant information. Specifically the normal value was ascertained based on the weighted average normal value determined for Dole Philippines, excluding any part of that price that related to post exportation charges.

PPI seeks a review on the grounds that, since the completion of the previous review, it has made domestic sales of consumer pineapple. PPI provided as part of its application commercial sales invoices relating to its domestic sales. PPI relied upon these commercial documents to calculate a weighted average normal value over the period 1 October 2016 to 30 September 2017 in accordance with subsection 269TAC(1), and the amount by which the normal value has changed since anti-dumping measures were last imposed.

PPI further noted that the primary cause of the change in normal values is the decrease in local fresh pineapple farm gate prices. PPI provided fresh pineapple farm price data sourced from the Bank of Thailand for the period January 2015 to August 2017 to support this assertion.

The Commission's assessment

On the basis of the information provided by PPI the Commission considers that there appears to be reasonable grounds for PPI to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being the ascertained export price and ascertained normal value, have changed.

Therefore, the Commission is satisfied that, in respect of the variable factors, PPI's application complies with section 269ZB.

3.3.2 KFC and KFCup

Ascertained export price

In its joint application, KFC and KFCup note that for the purposes of the previous review (REP 333) export prices were determined in accordance with subsection 269TAB(3), using all relevant information. Specifically the export price was ascertained based on the weighted average FOB export price for Thailand from the ABF import database.

KFC and KFCup assert that the export price has changed. KFC and KFCup note in the joint application that neither have as yet exported consumer pineapple to Australia, however assert that the export price for consumer pineapple exported to Australia would be comparable to the export price applicable to sales to the United States of America. KFC and KFCup have provided evidence of the value of export sales to the USA (as well as all other export destinations) for the period 1 January 2017 to 31 August 2017. KFC and KFCup have relied upon this information to calculate a weighted average export price over that period, in accordance with

subsection 269TAB(3),⁴ and the amount by which the export price has changed since anti-dumping measures were last reviewed.

Ascertained normal value

In its application, KFC and KFCup note that for the purposes of the previous review (REP 333) normal values were determined in accordance with subsection 269TAC(6), using all relevant information. Specifically the normal value was ascertained based on the weighted average normal value determined for Dole Philippines, excluding any part of that price that related to post exportation charges.

In its joint application, KFC and KFCup contend that the determination of variable factors would be more appropriately based on its own sales, cost and financial information.

KFC and KFCup have provided a statement of its opinion concerning the determination of a normal value pursuant to subsection 269TAC(2)(c). In support of the statement of opinion in relation to normal value, KFC and KFCup have provided cost to make and sell (CTMS) and profit information in relation to five models manufactured during the period 1 January 2017 to 31 August 2017. KFC and KFCup have relied upon the CTMS of the highest cost model to calculate a normal value over that period, and the amount by which the normal value has changed since anti-dumping measures were last imposed.

The Commission's assessment

On the basis of the information provided by KFC and KFCup the Commission is satisfied that there appears to be reasonable grounds for KFC and KFCup to assert that one or more of the variable factors relevant to the taking of anti-dumping measures, being the ascertained export price and ascertained normal value, have changed.

Therefore, the Commission is satisfied that, in respect of the variable factors, KFC and KFCup's joint application complies with section 269ZB.

3.4 Assessment of applications – section 269ZC

Based on the Commission's analysis in section 3.3, there appear to be reasonable grounds in respect of each application for asserting, under subsection 269ZC(2)(b)(i), that the variable factors relevant to the taking of anti-dumping measures have changed.

Based on this assessment, the Commission recommends that the Commissioner not reject the applications in relation to a change in variable factors pursuant to

⁴ The Commission notes that, on 30 October 2017, the *Customs Amendment (Anti-Dumping Measures) Bill 2017* received royal assent and new subsections 269TAB(2A) to (2G) were inserted into the Act. These provisions provide for alternative methodologies to determine an export price during a review of measures for those exporters who have not exported goods, or exported low volumes of goods to Australia.

subsection 269ZC(1) as it is satisfied of the matters referred to in subsection 269ZC(2) in respect of each application.

3.5 Conclusions and recommendations

The Commission has considered each application for a change in variable factors in accordance with sections 269ZB and 269ZC. The Commission is satisfied, on the basis of the information provided in the applications and other relevant information, that for each application relating to a change in the variable factors:

- the applications comply with section 269ZB; and
- there appear to be reasonable grounds for asserting that the variable factors relevant to the taking of the anti-dumping measures have changed.

The Commission recommends that the Commissioner:

- not reject the applications for a review of the variable factors; and
- set the review period for both reviews as 1 October 2016 to 30 September 2017.