



**Review 455**

**REVIEW OF ANTI-DUMPING MEASURES ON  
CONSUMER PINEAPPLE EXPORTED FROM THE  
KINGDOM OF THAILAND**

**VISIT REPORT – EXPORTER (JOINT)**

**KUIBURI FRUIT CANNING COMPANY LIMITED  
AND KUIBURI FRUIT CUP COMPANY LIMITED**

THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED THEREIN  
WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND MAY NOT REFLECT  
THE FINAL POSITION OF THE ANTI-DUMPING COMMISSION

**May 2018**

<b>CONTENTS</b>
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<b>CONTENTS.....</b>		<b>2</b>
<b>1 BACKGROUND.....</b>		<b>3</b>
1.1 THIS REVIEW.....		3
1.2 JOINT EXPORTER DETERMINATION .....		3
1.3 APPLICATION OF THIRD COUNTRY SALES TO DETERMINE EXPORT SALES .....		3
<b>2 THE GOODS AND LIKE GOODS.....</b>		<b>5</b>
2.1 THE GOODS EXPORTED TO AUSTRALIA .....		5
2.2 EXPORT SALES TO THIRD COUNTRIES .....		5
2.3 LIKE GOODS SOLD ON THE DOMESTIC MARKET .....		5
2.4 MODEL MATCHING .....		5
2.5 LIKE GOODS – PRELIMINARY ASSESSMENT.....		6
<b>3 VERIFICATION OF EXPORT SALES.....</b>		<b>7</b>
3.1 VERIFICATION OF AUSTRALIAN SALES .....		7
3.2 VERIFICATION OF THIRD COUNTRY SALES TO AUDITED FINANCIAL STATEMENTS .....		7
3.3 VERIFICATION OF THIRD COUNTRY SALES TO SOURCE DOCUMENTS .....		7
3.4 THE EXPORTER .....		7
3.5 THE IMPORTER .....		7
3.6 RELATED PARTY CUSTOMERS.....		8
3.7 ARM’S LENGTH.....		8
3.8 APPROPRIATE THIRD COUNTRY .....		8
3.9 EXPORT PRICE – PRELIMINARY ASSESSMENT .....		8
<b>4 COST TO MAKE AND SELL.....</b>		<b>10</b>
4.1 VERIFICATION OF COSTS TO AUDITED FINANCIAL STATEMENTS.....		10
4.2 VERIFICATION OF COSTS TO SOURCE DOCUMENTS.....		10
4.3 RELATED PARTY PURCHASES.....		10
4.4 COST TO MAKE AND SELL – SUMMARY .....		10
<b>5 VERIFICATION OF DOMESTIC SALES .....</b>		<b>11</b>
5.1 VERIFICATION OF DOMESTIC SALES TO AUDITED FINANCIAL STATEMENTS .....		11
5.2 VERIFICATION OF DOMESTIC SALES TO SOURCE DOCUMENTS .....		11
5.3 RELATED PARTY SALES .....		11
5.4 ARM’S LENGTH.....		11
5.5 ORDINARY COURSE OF TRADE.....	<b>ERROR! BOOKMARK NOT DEFINED.</b>	
5.6 SUITABILITY OF DOMESTIC SALES .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>	
5.7 PROFIT.....		12
5.8 DOMESTIC SALES – SUMMARY .....		12
<b>6 ADJUSTMENTS .....</b>		<b>13</b>
6.1 HANDLING CHARGES .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>	
6.2 INLAND TRANSPORT.....		13
6.3 COMMISSIONS .....		13
6.4 PACKAGING .....		13
6.5 ADJUSTMENTS – CONCLUSION .....		14
<b>7 NORMAL VALUE – ASSESSMENT .....</b>		<b>15</b>
<b>8 DUMPING MARGIN.....</b>		<b>16</b>
<b>9 APPENDICES AND ATTACHMENTS.....</b>		<b>17</b>

## 1 BACKGROUND

### 1.1 This review

On 1 November 2017 Kuiburi Fruit Canning Company Limited (KFC) and its subsidiary Kuiburi Fruit Cup Company Limited (KFCup) jointly applied for a review of the anti-dumping measures applying to pineapple fruit – consumer (hereafter referred to as consumer pineapple or the goods) exported to Australia from the Kingdom of Thailand (Thailand) by KFC and KFCup.

On 24 November 2017, the Commissioner of the Anti-Dumping Commission decided to not reject the application and gave public notice of his decision to initiate a review of anti-dumping measures applying consumer pineapple exported to Australia from Thailand by KFC and KFCup.<sup>1</sup> The review period was set to be from 1 October 2016 to 30 September 2017.

The Anti-Dumping Commission (the Commission) sought KFC and KFCup's cooperation through the completion of exporter questionnaires regarding the goods. KFC and KFCup provided complete exporter questionnaire responses and relevant attachments for the review period.

### 1.2 Joint exporter determination

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.

With reference to this finding the verification team has assessed the exporter questionnaires submitted by KFC and KFCup jointly, and calculated a joint dumping margin for the two entities. **See Chapter 3 for determination of the exporter.**

### 1.3 Application of third country sales to determine export sales

The joint review application by KFC and KFCup stated that neither of the two entities had exported to Australia in the review period.

If the Assistant Minister for Science, Jobs and Innovation (the Assistant Minister) determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of the goods to Australia by an exporter subject to a

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<sup>1</sup> Anti-Dumping Notice No. 2017/171 refers.

## PUBLIC RECORD

review of measures, subsection 269TAB(2A)<sup>2</sup> of the *Customs Act 1901*<sup>3</sup> provides for the Assistant Minister to determine the export price under subsection 269TAB(2B) having regard to the following:

- (i) previous volumes of exports of those goods to Australia by that exporter;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

For the purposes of subsection (2A), the export price of those goods is the price determined by the Assistant Minister to be the export price, having regard to, amongst other things, the price paid or payable for like goods sold by the exporter in arm's length transactions for exportation from the country of export to a third country determined by the Assistant Minister to be an appropriate third country.

Accordingly the Commission amended the standard exporter questionnaire for KFC and KFCup to seek export sales data for three sampled countries. This provides the verification team scope to determine the most appropriate country for export price to be used in the dumping margin calculation. The three countries are United States of America (US), Canada and the Republic of France (France).

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<sup>2</sup> *Customs Amendment [Anti-Dumping Measures] Act 2017* commenced on 31 October 2017 refers.

<sup>3</sup> References to any section or subsection in this report relate to provisions of the *Customs Act 1901*, unless specifically stated otherwise.

## 2 THE GOODS AND LIKE GOODS

### 2.1 The goods exported to Australia

KFC and KFCup did not export the goods to Australia during the review period.

### 2.2 Export sales to third countries

KFC exported goods to – amongst other countries – the US, Canada and France during the review period.

The models exported to the US, Canada and France included pineapple in chunks, slices, tidbits and crushed pineapple, canned in either light syrup, heavy syrup or natural juice. All models were in metal tins, some models with traditional lid and some models with easy opening lid.

KFCup exported the goods to US only during the review period. KFCup sold two models to its US customers being tidbits in light syrup in plastic cups and tidbits in natural juice in plastic cups.

The verification team considers that the goods exported to US, Canada and France are similar to the goods that KFC and KFCup may export to Australia in the future.

### 2.3 Like goods sold on the domestic market

During the review period, KFC sold very small quantities of like goods to domestic customers in Thailand, whereas KFCup did not. The models sold on the domestic market by KFC included slices and chunks in heavy syrup only in cans with and without easy opening lids.

The verification team considers that the goods manufactured for domestic consumption by KFC are identical to, or have characteristics closely resembling, the goods exported US, Canada and France, as they:

- are not distinguished from the exported goods during production (the exported goods and goods sold on the domestic market are produced in the same way, subject to individual customer specifications, and the costs of production are the same);
- are processed at the same facility, using the same raw material inputs and manufacturing processes; and
- can be considered functionally and commercially alike, as they have similar end uses.

### 2.4 Model matching

As there were insufficient domestic sales of like goods (see section 5.5 below), the verification team constructed normal values based on costs. KFC and KFCup provided cost data by its internal product code which enabled the verification team to compare the normal value to export price by matching the product code. **See Chapter 8 for normal value calculation.**

## **2.5 Like goods – preliminary assessment**

The verification team considers that the goods produced by KFC for domestic sale have characteristics closely resembling those of the goods that may be exported to Australia and are therefore 'like goods' in accordance with subsection 269T(1) of the Act.

## 3 VERIFICATION OF EXPORT SALES

### 3.1 Verification of Australian sales

The verification team has reviewed the total sales of the goods by KFC and KFCup during the review period and verified that neither KFC nor KFCup exported consumer pineapple to Australia during the review period.

### 3.2 Verification of third country sales to audited financial statements

The verification team verified the completeness and relevance of KFC and KFCup's sales listings for the US, France and Canada by reconciling them to audited financial statements in accordance with ADN. No 2016/30. The verification team did not identify any issues during this process.

Details of the verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

### 3.3 Verification of third country sales to source documents

The verification team verified the accuracy of KFC and KFCup's third country sales listing by reconciling it to source documents in accordance with ADN No. 2016/30. The verification team did not identify any issues during this process.

Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

### 3.4 The exporter

For all export sales to the US, France and Canada during the review period, the verification team considers KFC and KFCup to be the exporter of the goods.<sup>4</sup> KFC and KFCup manufacture the goods that is exported to third countries and arranges delivery of the goods from its factory to the port.

### 3.5 The importer

In relation to the goods exported by KFC and KFCup to US, France and Canada during the review period, the verification team considers KFC and KFCup's customers in the US, France and Canada respectively to be the beneficial owners of the goods at the time of importation, and therefore the importers of the goods.

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<sup>4</sup> The Commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

### **3.6 Related party customers**

The verification team has not found any evidence that would suggest that any of KFC or KFCup's customers were related party customers.

### **3.7 Arm's length**

In respect of export sales of the goods made by KFC and KFCup to its customers in the US, France and Canada during the review period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>5</sup>

The verification team therefore considers that all export sales to the US, Canada and France made by KFC and KFCup during the review period were arm's length transactions.

### **3.8 Appropriate third country**

The verification team, after its verification of the sales data for the US, France and Canada respectively, has determined that the US is the most appropriate third country for the determination of the export price. The reasons for the determination are:

1. Whilst KFC had exported the goods to all three countries during the review period, KFCup only exported the goods to the US;
2. It was found that all French sales were to one customer, being a chain of supermarkets; and
3. The US is the only country that has a domestic industry for the goods.

### **3.9 Export price – preliminary assessment**

The verification team is satisfied that:

- The goods have been exported to the customers in the US, France and Canada otherwise than by the importer; and
- The purchases of the goods were arm's length transactions.

The verification team therefore considers that the export price should be determined under subsection 269TAB(2B)(b) being the price paid or payable for like goods sold by

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<sup>5</sup> Section 269TAA of the Act refers.



## **PUBLIC RECORD**

the exporter in arm's length transactions for exportation from Thailand to the US. The verification team has calculated the export prices at free-on-board (FOB) terms.

The verification team's preliminary export price calculations are at **Confidential Appendix 1**.

## 4 COST TO MAKE AND SELL

### 4.1 Verification of costs to audited financial statements

The verification team verified the completeness and relevance of KFC and KFCup's cost to make and sell (CTMS) spreadsheets by reconciling each to audited financial statements in accordance with ADN No. 2016/30. The verification team did not identify any issues.

Details of this verification process are contained in the verification work program, and its relevant attachments, at **Confidential Attachment 1**.

### 4.2 Verification of costs to source documents

The verification team was able to verify the accuracy of KFC and KFCup's CTMS spreadsheet to source documents in accordance with ADN No. 2016/30.

Details of the verification process are contained in the verification work program, and relevant attachments, at **Confidential Attachment 1**.

#### 4.2.1 Selling general & administration costs

The verification team noted that the selling, general and administration costs (SG&A) for KFCup appeared to be understated for the review period. KFCup explained that a contingent liability relating to events in 2015 had been reversed during the review period and entered as a credit to its SG&A.

The verification team considers that as the credit was not related to the manufacture or sale of the goods during the review period, it should be excluded from the SG&A calculation. Therefore, KFCup revised its SG&A costs for the review period and provided an updated CTMS spreadsheet. The revision of SG&A costs by KFCup increased the SG&A costs incurred by them during the review period.

### 4.3 Related party purchases

The verification team found no evidence of related party purchases for the review period.

### 4.4 Cost to make and sell – summary

Having verified KFC and KFCup's CTMS spreadsheets to audited financial statements and source documents, the verification team is satisfied that the CTMS spreadsheets are complete, relevant and accurate.

The CTMS spreadsheets are at **Confidential Appendix 2**.

## 5 VERIFICATION OF DOMESTIC SALES

### 5.1 Verification of domestic sales to audited financial statements

KFC reported a small number of domestic sales transactions for the review period, whilst KFCup reported no domestic sales.

The verification team verified the completeness and relevance of KFC and KFCup's respective domestic sales listings by reconciling each to audited financial statements in accordance with ADN No. 2016/30.

Details of the verification process are contained in the verification work program, and relevant attachments, at **Confidential Attachment 1**.

#### 5.1.1 Removal of possible export sale from the domestic sales listing

The verification team queried whether one domestic sale transaction may in fact be destined for export as the purchaser is a trading company. The KFC representative stated that the sale was of a full container load of unlabelled cans made to a trader. The sale was sold at ex-works and no final destination was listed on the sales order. KFC stated that in these circumstances, they are usually provided the destination of the goods by the trader however, for this particular sale they did not have the paperwork that confirmed the goods had been exported by the trader. For this reason, KFC reported this sale as a domestic transaction. After verifying the sale documents and discussions with KFC, the verification team is satisfied that this sale of the goods should not be considered as a domestic transaction and has been removed from the domestic sales listing provided by KFC.

### 5.2 Verification of domestic sales to source documents

The verification team verified the accuracy of KFC's domestic sales listing by reconciling it to source documents in accordance with ADN No. 2016/30. No issues were identified.

Details of the verification process are contained in the verification work program, and relevant attachments, at **Confidential Attachment 1**.

### 5.3 Related party sales

The verification team found no evidence to suggest that KFC's domestic customers were related party customers.

### 5.4 Arm's length

In respect of domestic sales of the goods made by KFC to its customers during the review period, the verification team found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

## PUBLIC RECORD

- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The verification team therefore considers that all domestic sales made by KFC during the review period were arm's length transactions.

### 5.5 Ordinary course of trade and suitability of sales

Section 269TAAD of the Act provides that if like goods are sold in the country of export at a price less than the cost of such goods, and are unrecoverable within a reasonable period, then they are taken not to have been sold in the ordinary course of trade.

The verification team compared the net revenue for each of KFC's domestic sales to the corresponding quarterly domestic CTMS to test whether those sales were profitable and found that none of the domestic sales were profitable. The verification team then tested the recoverability of the sales by comparing the revenue for each transaction to the corresponding weighted average CTMS over the review period and found that none of the sales were recoverable.

Subparagraph 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export. Low volume is defined by subsection 269TAC(14) as the domestic sales of like goods being less than 5% of the total volume of exports of the goods. The verification team conducted sufficiency tests for KFC's domestic sales and found that there were insufficient quantities of domestic sales of like goods sold in the ordinary course of trade. Therefore, the verification team constructed the normal value under subsection 269TAC(2)(c). The verification team notes that there were no domestic sales made by KFCup.

### 5.6 Profit

As discussed in sections 2.4 and 5.5, the verification team has constructed normal values. In constructing the normal value, the verification was unable to calculate profit based on domestic sales of like goods made in the ordinary course of trade under section 45(2) of the *Customs (International Obligations) Regulation 2015* (the Regulation). Instead, profit has been calculated pursuant to section 45(3)(c) of the Regulation based on the net profit realised by KFC and KFCup respectively during the review period. The verification team considers this a reasonable method having had regard to all relevant information, including benchmarking the profit achieved by KFC and KFCup against the verified profits achieved by other exporters during the most recent review of measures.

### 5.7 Domestic sales – summary

The verification team is satisfied that the domestic sales listing is complete, relevant and accurate. However, the verification team found that there are domestic insufficient sales to calculate normal values under subsection 269TAC(1).

The domestic sales listing is at **Confidential Appendix 3**.

## **6 ADJUSTMENTS**

The verification team made the following adjustments to the normal value in accordance with subsection 269TAC(9) to ensure that the normal value is comparable to the export price of goods that may be exported to Australia.

### **6.1 Inland transport**

The verification team verified the inland transport for export sales and was satisfied that the amounts provided in the sales listings are accurate.

As the constructed normal values are based on Ex-works costs, the verification team considers that an upwards adjustment to the normal value for export inland transport is necessary to ensure a fair comparison to the FOB export price.

The verification team has applied an upwards adjustment based on the actual cost per kilogram for these expenses over the review period.

### **6.2 Handling charges**

The verification team has verified the export handling charges against the contract between KFC and KFCup and its freight forwarder.

As the constructed normal values are based on Ex-works costs, the verification team considers that an upwards adjustment to the normal value for export handling charges is necessary to ensure a fair comparison to the FOB export price.

The verification team has applied an upwards adjustment to the normal value based on the weighted average export handling charges.

### **6.3 Commissions**

The verification team has verified the commissions paid by KFC and KFCup to various trading companies that performs export sales functions on behalf of KFC and KFCup.

The verification team has applied an upwards adjustment to the normal value based on the actual cost per kilogram for the commissions over the review period.

### **6.4 Packaging**

The verification team verified packaging costs as well as sighting the packaging process during a tour of the production facility. The verification team found that the costs of the containers (cans and ends for KFC and plastic cups and film for KFCup) were included in the CTMS.

However, the verification team noted that there were additional export packaging costs for cans consisting of labels and cartons. Similarly, the packaging costs for cups contains additional packaging costs in the form of cardboard slips and cartons and additional 'filling material'. The companies explained that these additional packaging costs only occur for export sales and was listed as a selling expense.

## PUBLIC RECORD

As these additional export specific packaging expenses were excluded from domestic SG&A, the verification team considers that an upwards adjustment to the normal value for export packaging expenses is necessary to ensure a fair comparison to the FOB export price.

### 6.5 Adjustments – conclusion

The verification team is satisfied that there is sufficient and reliable information to justify the following adjustments. The verification team considers these adjustments are necessary to ensure a fair comparison of normal values and export prices.

<b>Adjustment Type</b>	<b>Deduction/addition</b>
Export inland transport	<b>Add</b> the cost of export inland transport
Handling charges	<b>Add</b> the cost of export handling charges
Commission	<b>Add</b> the cost of export commission
Packaging	<b>Add</b> the cost of export packaging

## 7 NORMAL VALUE – ASSESSMENT

As discussed in section 5.5, the verification team found insufficient domestic sales of like goods sold in the ordinary course of trade. As a result, the verification team have constructed normal values under subsection 269TAC(2)(c) using:

- The cost to make the goods determined under section 43(2) of the Regulation; plus
- SG&A on the assumption that the goods have been sold for home consumption in the ordinary course of trade under section 44(2) of the Regulation; plus
- rates of profit based on the net profit realised by KFC and KFCup respectively during the review period under section 45(3)(c) of the Regulation.

In constructing a normal value, the verification has made adjustment under subsection 269TAC(9) to ensure that the normal value is comparable the export price, as outlined in Chapter 6 above.

Details of the normal value calculation are at **Confidential Appendix 4**.

## **8 DUMPING MARGIN**

The dumping margin has been assessed by comparing the weighted average third country export prices to the corresponding constructed weighted average normal values for the review period, in accordance with paragraph 269TACB(2)(a) of the Act.

The dumping margin in respect of the goods exported to Australia by KFC and KFCup for the review period is **-9.7%**.

Details of the preliminary dumping margin calculation are at **Confidential Appendix 5**.



**9 APPENDICES AND ATTACHMENTS**

<b>Confidential Appendix 1</b>	Third country export sales (US)
<b>Confidential Appendix 2</b>	CTMS
<b>Confidential Appendix 3</b>	Domestic sales
<b>Confidential Appendix 4</b>	Normal value
<b>Confidential Appendix 5</b>	Dumping margin
<b>Confidential Attachment 1</b>	Verification work program, with attachments