



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

**Anti-Dumping
Commission**

**ANTI-DUMPING COMMISSION
REPORT TO THE ANTI-DUMPING REVIEW PANEL**

**REINVESTIGATION OF CERTAIN FINDINGS
CONCERNING FOOD SERVICE AND INDUSTRIAL PINEAPPLE
EXPORTED BY KUIBURI FRUIT CANNING CO. LTD
FROM THAILAND**

REPORT NO. 389

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ABBREVIATIONS

the Act	the <i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AUD	Australian Dollars
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
EQR	exporter questionnaire response
FSI	food service and industrial
inquiry period	1 January 2015 to 31 December 2015
Kuiburi	Kuiburi Fruit Canning Co., Ltd
the Manual	<i>Dumping and Subsidy Manual</i>
MSP	Malee Sampran Public Co
the Parliamentary Secretary	the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
REP 334	<i>Final Report No. 334</i>
Thailand	the Kingdom of Thailand
THB	Thai Baht
USD	United States Dollars
WACTMS	weighted average cost to make and sell

1 INTRODUCTION AND FINDINGS

1.1 Introduction

This report provides the results of a reinvestigation by the Commissioner of the Anti-Dumping Commission (the Commissioner) of findings relating to Kuiburi Fruit Canning Co., Ltd (Kuiburi) in *Final Report No. 334* (REP 334) which recommended the continuation of anti-dumping measures in respect of certain food service and industrial (FSI) pineapple exported to Australia by all exporters, except Malee Sampran Public Co (MSP), from the Kingdom of Thailand (Thailand) for a further five years.

Following an application for review to the Anti-Dumping Review Panel (ADRP), the Commissioner provided, as part of a submission to the ADRP, a revised dumping margin calculation for Kuiburi. Should the ADRP accept the revised dumping margin calculation, Kuiburi's dumping margin for the inquiry period (1 January 2015 to 31 December 2015) will change from 7.9 per cent to negative 1.6 per cent.

As a result of the revised dumping margin calculation, the ADRP has requested that the Commissioner reinvestigate whether he considers that there is a likelihood that Kuiburi would resume dumping, and thereby contribute to the material injury sustained by the local industry, notwithstanding the negative dumping margin in relation to Kuiburi for the inquiry period.

1.2 Summary of findings

Whilst the Commissioner considers it entirely 'possible' that Kuiburi might resume dumping should the anti-dumping measures be removed, he does not consider it 'likely' in the sense that it is more probable than not.

On the assumption that the ADRP accepts the revised dumping margin calculation for Kuiburi, the Commissioner would not be satisfied that the expiration of the anti-dumping measures in relation to Kuiburi would lead, or would be likely to lead, to a continuation of, or recurrence of, the dumping that the anti-dumping measures are intended to prevent. Therefore the Commissioner would not be satisfied that Kuiburi would contribute to the material injury (through dumping) sustained by the local industry.

2 BACKGROUND

2.1 Background

In 2001, the Minister for Justice and Customs published a notice imposing anti-dumping measures (in the form of a dumping duty notice) in respect of FSI pineapple exported to Australia from Thailand. The anti-dumping measures apply to all exporters from Thailand (with the exception of MSP). The anti-dumping measures were continued for five years on two separate occasions in 2006 and 2011. The anti-dumping measures were again due to expire on 17 October 2016.

On 2 December 2015, in accordance with subsection 269ZHB(1) of the *Customs Act 1901* (the Act)¹, Anti-Dumping Notice (ADN) No. 2015/136 was published on the Commission's website (www.adcommission.gov.au) inviting certain persons to apply to the Commissioner for the continuation of the anti-dumping measures.

On 29 January 2016, Golden Circle Limited, a member of the Australian industry producing FSI pineapple, lodged an application for the continuation of the anti-dumping measures within the applicable legislative timeframes.

On 13 September 2016, following an inquiry by the Commissioner, the Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary),² having accepted the findings of law and fact in REP 334, published a notice under subsection 269ZH(1)(b) securing the continuation of anti-dumping measures applying to FSI pineapple exported to Australia from Thailand (with the exception of MSP) for a further five years. Further details can be found in REP 334 and ADN 2016/84, available on the Commission's website.³

2.2 Review by the ADRP

Division 9 of Part XVB sets out procedures for review by the ADRP of certain decisions made by the Parliamentary Secretary or the Commissioner.

Interested parties can apply to the ADRP to review certain decisions (reviewable decisions)⁴ in relation to anti-dumping matters.⁵ If an application for review of a decision of the Parliamentary Secretary is not rejected, the ADRP must make a report to the Parliamentary Secretary on the application recommending that the Parliamentary Secretary either affirm the reviewable decision or revoke the reviewable decision and substitute a specified new decision.⁶ The ADRP may, by written notice, require the

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

² 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 review the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

³ www.adcommission.gov.au

⁴ As defined in subsection 269ZZA(1).

⁵ Section 269ZZC.

⁶ Subsection 269ZZK(1).

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Commissioner to reinvestigate specific findings that formed the basis of the reviewable decision, and report the result of his reinvestigation to the ADRP within a specified period.⁷

By notice published on 18 November 2016, the ADRP announced that it had received applications from Kuiburi (dated 7 October 2016), Prime Products Industrial Co., Ltd (dated 12 October 2016) and Dole Philippines Incorporated (dated 13 October 2016) seeking a review of the Parliamentary Secretary's decision on a range of grounds. The notice advised that the ADRP would conduct such a review.⁸

2.3 Kuiburi's application

In REP 334, Kuiburi was assessed as having a dumping margin of 7.9 per cent over the inquiry period. In its application to the ADRP, Kuiburi claimed that, in REP 334, the Commission incorrectly determined that certain domestic sales of like goods were not in the ordinary course of trade.

The basis of Kuiburi's claim was that the Commission incorrectly calculated the weighted average cost to make and sell (WACTMS) of like goods when determining whether the like goods were likely to have recovered the cost of such goods within a reasonable period for the purposes of subsection 269TAAD(1)(b).

In a submission to the ADRP dated 16 December 2016, the Commissioner advised the ADRP that the WACTMS should have been calculated using the method provided in Kuiburi's application for review. The revised WACTMS impacted Kuiburi's dumping margin which the Commission reassessed as being negative 1.6 per cent over the inquiry period.

In its application for review, Kuiburi also sought a review of the recommendation to continue the anti-dumping measures as it does not believe that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or recurrence of, the dumping and the material injury that the anti-dumping measures are intended to prevent.

2.4 Request for reinvestigation by the ADRP

In a letter to the Commissioner dated 9 January 2017, the ADRP required the Commissioner to reinvestigate whether he considered that there is a likelihood that Kuiburi would resume dumping, and thereby contribute to the material injury sustained by the local industry, notwithstanding the negative dumping margin over the inquiry period in relation to Kuiburi.

The Commission's reinvestigation report was due to be provided to the ADRP by 15 February 2017. On 13 February 2017, following a request by the Commissioner on the same day, the ADRP extended the reinvestigation report due date to 22 February 2017.

⁷ Subsection 269ZZL(1).

⁸ Non-confidential versions of all documents associated with the ADRP's review of the decision are published on the ADRP's website at www.adreviewpanel.gov.au.

2.5 Legislative framework of a continuation inquiry

Division 6A of Part XVB sets out, among other things, the procedures to be followed by the Commissioner in dealing with an application for the continuation of anti-dumping measures and in preparing a report for the Parliamentary Secretary.

Subsection 269ZHF(1) requires that the Commissioner, after conducting an inquiry into the continuation of anti-dumping measures, within 155 days or such longer period as the Parliamentary Secretary allows, give the Parliamentary Secretary a report recommending:

- that the notice remain unaltered; or
- that the notice cease to apply to a particular exporter or to a particular kind of goods; or
- that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
- that the notice expire on the specified expiry day.

Pursuant to subsection 269ZHF(2), in order to recommend that the Parliamentary Secretary take steps to secure the continuation of the anti-dumping measures, the Commissioner must be satisfied that the expiration of the anti-dumping measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

As acknowledged by the ADRP in its letter dated 9 January 2017, and as discussed in the *Dumping and Subsidy Manual* (the Manual) at page 154 in a similar context in relation to revocation reviews, a current finding of no dumping or subsidisation does not, of itself, mean that anti-dumping measures must be revoked or not continued. In conducting a continuation inquiry, the Commission conducts a prospective examination of the likelihood of future dumping and material injury.

In doing so, the Commission will have regard to relevant case law and WTO jurisprudence. For example, in *Siam Polyethylene Co Ltd v Minister for Home Affairs* (No. 2) [2009] FCA 838 at [49] the word “likely” in subsection 269ZHF(2) was taken to mean “more probable than not”.

3 REINVESTIGATION IN RELATION TO KUIBURI

3.1 Likelihood of dumping recurring

As discussed on page 162 and 163 of the Manual, in relation to continuation inquiries, the Commissioner has regard to a number of factors in assessing the likelihood of dumping continuing or recurring. Relevant considerations of the Commissioner are outlined below.

3.1.1 Patterns of exports

Export volumes

Kuiburi's exports were not individually examined as part of the original investigation in 2001 and the 2006 continuation inquiry. During a verification visit in relation to the 2011 continuation inquiry and review, Kuiburi explained that it had exported to Australia for a period of approximately five years and that it planned to increase its imports due to the establishment of a commercial relationship with an importer.

During the inquiry period, Kuiburi was a major exporter of FSI pineapple to Australia and the largest exporter from Thailand, exporting ██████████ kg of FSI pineapple to Australia with a net invoice value of \$ ██████████ United States Dollars (USD).⁹

The following graph shows the Commission's estimates of Kuiburi's export volumes to Australia from 2010 to 2015.

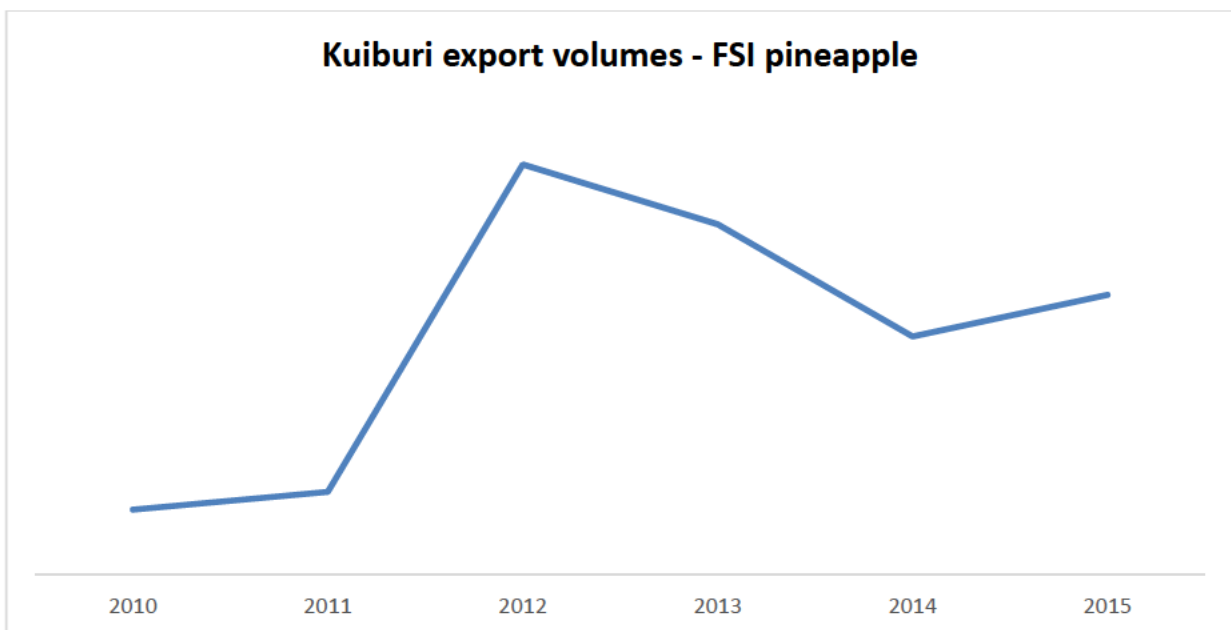


Figure 1 – Kuiburi's exports of FSI pineapple to Australia (kg)¹⁰

⁹ Confidential Attachment 1, 'Income Statement' and 'Australian Sales'.

¹⁰ All references to years in this report are to calendar years (e.g. January to December). Data for years 2010 and 2015 were verified during the 2011 and 2016 continuation inquiries. Data for years 2011 to 2014 is sourced from the Australian Border Force import database, tariff subheading 2008.20.00. Filters were applied for statistical codes 27 and 28 where there is no dumping duty exemption and the dumping security number matches those applicable to Kuiburi.

Figure 1 shows that in 2010 Kuiburi exported a relatively low volume of FSI pineapple to Australia. However, in 2012 Kuiburi substantially increased its export volumes to Australia. Despite a decrease in export volumes in 2013 and 2014, Kuiburi's export volumes increased again in 2015 and was at levels considerably higher than those in 2010.

Export strategy

The Commission notes that Kuiburi is an export-oriented business with over [REDACTED] per cent of its sales of FSI pineapple (by volume and value) made on the export market during the inquiry period.¹¹

Kuiburi's sales of FSI pineapple contributed a significant proportion of its gross sales, representing almost [REDACTED] per cent of total company sales during the inquiry period.¹²

Production capacity

Based on its exporter questionnaire response (EQR), Kuiburi has significant available production capacity. During the inquiry period, Kuiburi was operating at [REDACTED] per cent of its total production capacity. This was comparable to the year prior to the inquiry period where it was operating at [REDACTED] per cent of its total production capacity. Notably, Kuiburi had the capacity to produce an additional [REDACTED] Tonnes of FSI pineapple during the inquiry period.¹³

3.1.2 Export prices

Kuiburi's export prices

In its application, Kuiburi stated that its average selling price to Australia increased by approximately 25 per cent in 2015 over 2014 and that this should be an indication that sales by Kuiburi were not the cause of any injury suffered by the Australian industry. The underlying data for Kuiburi's claims was not provided to the ADRP in its application.

Figure 2 shows that, by the Commission's estimates, Kuiburi's weighted average export price did in fact increase from 2014 to 2015. However, noting that Kuiburi's exports to Australia are predominately in USD terms, the increase in weighted average export prices from 2014 to 2015 should be measured in USD terms, which showed an increase of [REDACTED] per cent. If the weighted average export price was to be measured in Australian Dollar (AUD) terms it would be higher due to the decline in the value of the AUD relative to the USD from 2014 to 2015.

¹¹ Confidential Attachment 1, 'Turnover'

¹² Confidential Attachment 1, 'Income Statement'

¹³ Confidential Attachment 1, 'Production'.

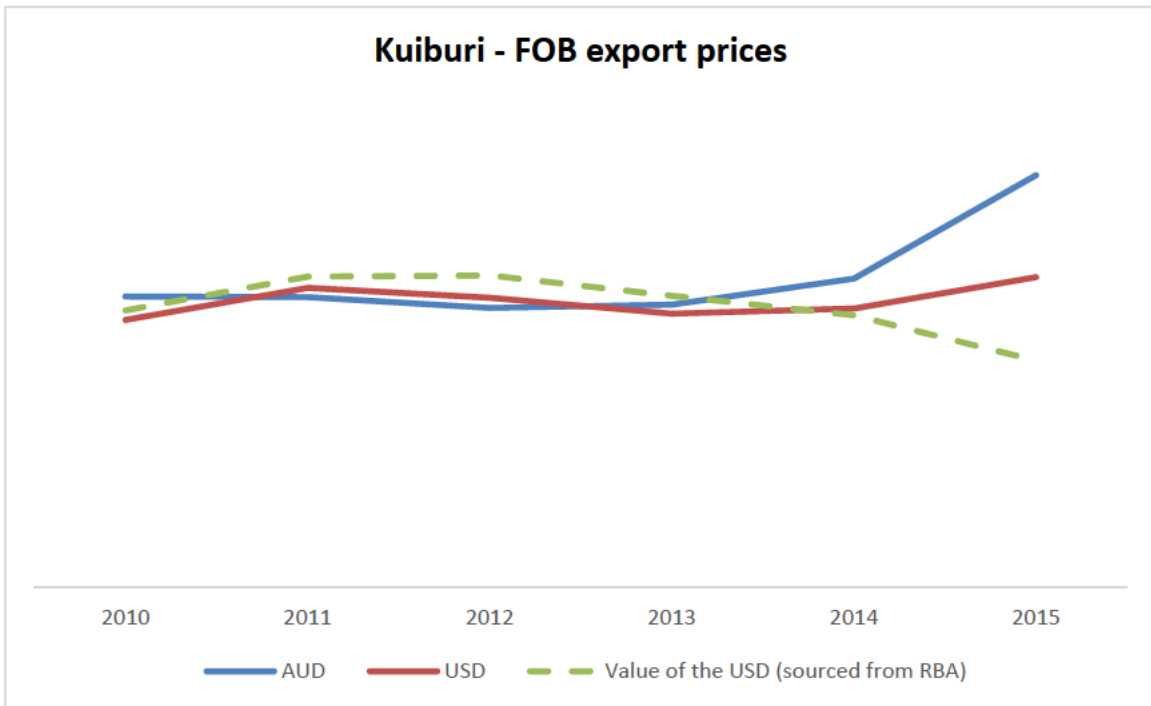


Figure 2 – Kuiburi export prices¹⁴

Whilst Figure 2 supports Kuiburi’s claims that its weighted average export price increased from 2014 to 2015, the Commission adds that this could, in part, be due to other factors including variations in product mix. For example, Kuiburi’s exports to Australia varied from \$ [REDACTED] USD per kilogram for ‘ [REDACTED] ’ and [REDACTED] to \$ [REDACTED] USD per kilogram for [REDACTED] in the inquiry period. Changes in product mix are therefore likely to have some impact on weighted average selling prices.

It is relevant to note that Kuiburi’s normal value of [REDACTED] THB in the inquiry period also increased from the normal values ascertained in the 2012 review ([REDACTED] THB) and 2011 continuation inquiry and review ([REDACTED] Thai Baht).

The increase in export price and normal value for the inquiry period, is possibly a reflection of higher raw material costs following raw pineapple shortages in recent times, which was noted in REP 334. In the Commission’s view, it does not necessarily follow that an increase in Kuiburi’s weighted average export price, in isolation, as per Kuiburi’s claims, proves that dumping would not likely recur in the future.

Comparison to undumped exports

The Commission attempted to compare Kuiburi’s export prices to those of other undumped exports to Australia from 2010 to 2015 and notes that

[REDACTED]. Therefore, the Commission was unable to carry out a meaningful comparison of export prices to other undumped exports in this instance.

¹⁴ As per footnote 12.

3.1.3 Third country sales

During the inquiry period Kuiburi sold FSI pineapple to [REDACTED] other countries.

In terms of its sales to other countries¹⁵, the FOB export prices ranged between [REDACTED] THB and [REDACTED] THB and the weighted average selling price was [REDACTED] THB. In comparison, Kuiburi's export price to Australia was higher, with a weighted average selling price of [REDACTED] THB. It is difficult to draw definitive conclusions from this comparison because the data pertaining to Kuiburi's third country sales is at an aggregated level, meaning that the selling prices may have been impacted by other factors such variations in product mix.

It is noted that Kuiburi's sales of FSI pineapple during the inquiry period were profitable, with a net profit ratio of [REDACTED] per cent. This indicates that Kuiburi is striving to make money on its export sales of FSI pineapple. To the Commission's knowledge, no other jurisdiction has found Kuiburi to have dumped goods on other markets in recent years.

3.1.4 Historical dumping margins

As outlined previously, Kuiburi's exports were first examined as part of 2011 continuation inquiry and review, where it was found to be dumping at a margin of 3.2 per cent for the period 1 January 2010 to 31 December 2010.

In the 2012 review, Kuiburi did not dump the goods for the review period of 1 October 2011 to 30 September 2012, where the margin of dumping was negative 2.5 per cent.

As outlined at section 2.3, the Commission's revised calculations indicate that Kuiburi did not dump the goods over the inquiry period.

The relative volumes of dumped vs undumped goods by Kuiburi for the periods examined by the Commission between 2010 and 2015 are as follows:

Period	Volume
1 January 2010 to 31 December 2010 (dumped)	[REDACTED]
1 October 2011 to 30 September 2011 (undumped)	[REDACTED]
1 January 2015 to 31 December 2015 (undumped)	[REDACTED]

The volume of undumped goods from these three periods exceeds that of the dumped goods.

3.1.5 Effectiveness of the anti-dumping measures

In continuation inquiries, the Commission will evaluate the effectiveness of the existing anti-dumping measures. One of the ways this can be achieved, given the anti-dumping form of measures involves the combination duty method, is by comparing the actual export prices of an exporter to the ascertained export price. The Commission notes that in this instance, this comparison could also be impacted by variations in product mix.

¹⁵ Confidential Attachment 1, 'Third Country Sales'.

However it is relevant to note that Kuiburi's ascertained export price for the 2012 review was set as \$ [REDACTED] in AUD. It is not Commission practice to set the ascertained export price in a currency [REDACTED] to the currency export sales are made in, which [REDACTED], as outlined in the Manual at page 145. Given the fluctuation in the value of the AUD relative to the [REDACTED] since the 2012 review, Kuiburi's actual export prices in AUD have been impacted by exchange rate fluctuations. Given the [REDACTED] in the AUD, Kuiburi's export prices in AUD [REDACTED] than otherwise would be the case. In effect,

[REDACTED] this has not occurred. This is not indicative of an aggressive export pricing strategy to Australia.

3.2 Commissioner's finding

The Commissioner considers that due to Kuiburi's pattern of export volumes, its export-oriented focus and its available production capacity, Kuiburi is likely to continue exporting FSI pineapple to Australia in substantial volumes and it is also possible that Kuiburi could increase its export volumes to Australia in the future should anti-dumping measures be removed.

Notwithstanding the negative dumping margin over the inquiry period, the Commissioner considers it entirely 'possible' that Kuiburi could resume dumping should the anti-dumping measures be removed.

However, given:

- Kuiburi's historically low or negative dumping margins in the three periods examined between 2010 and 2015;
- the lower volume of Kuiburi's dumped exports compared to the much higher volume of undumped exports of FSI pineapple to Australia in the three periods examined between 2010 and 2015;
- that Kuiburi were profitable on its sales of FSI pineapple in the inquiry period;
- to the Commission's knowledge, no other jurisdiction has found Kuiburi to have dumped goods to other markets in recent years; and
- Kuiburi's export prices since the 2012 review (as outlined at 3.1.5),

Kuiburi do not appear to be pursuing an aggressive export pricing strategy to Australia and have not shown a propensity to dump FSI pineapple into the Australian market in recent years. The Commissioner is of the view that Kuiburi's past export conduct is a reliable indicator of its likely future conduct¹⁶ and that this does not support a finding that dumping is likely to recur, in the sense that it is more probable than not.

Therefore, on balance, and on the assumption that the ADRP accepts the revised dumping margin calculation for Kuiburi, the Commissioner would not be satisfied that the expiration of the anti-dumping measures in relation to Kuiburi would lead, or would be

¹⁶ The Commission notes the ADRP took a similar view of the relevancy of past conduct to a continuation inquiry in ADRP Report No. 44.

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likely to lead, to a continuation of, or recurrence of, the dumping that the anti-dumping measures are intended to prevent. Therefore, the Commissioner would not be satisfied that Kuiburi would contribute to the material injury (from dumped goods) sustained by the local industry.

4 ATTACHMENTS

Confidential Attachment 1	Kuiburi's EQR spreadsheets
Confidential Attachment 2	Analysis of Kuiburi's export prices and export volumes