



Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

¹ By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

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Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by following the withdrawal process set out on the ADRP website.

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Kuiburi Fruit Canning Co., Ltd.

Address: 288, 290 Krung Thon Muang Kaew Bldg., Sirindhorn Rd.,
Bangplad, Bangkok 10700 Thailand

Type of entity (trade union, corporation, government etc.):

Company, manufacturer and exporter

2. Contact person for applicant

Full name: John McDermott

Position: Consultant

Email address: jmcd49@optusnet.com.au

Telephone number: 0412 543 792

3. Set out the basis on which the applicant considers it is an interested party

Pursuant to Section 269ZZC of the Customs Act1901 ("the Act") a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. An "interested party" is defined under Section 269T of the Act as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that subject of the application or of like goods that have been, or are likely to be, exported to Australia.

Kuiburi Fruit Canning Co., Ltd is a manufacturer and exporter of the goods to which the decision relates, namely FSI Pineapples, and is thus an "interested party" for the purposes of the Act and this application.

4. Is the applicant represented?

Yes

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

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****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

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PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision

Pineapple prepared or preserved in containers exceeding one litre (Food service and Industrial pineapple)

7. Provide the tariff classifications/statistical codes of the imported goods

2008.20.00/27

8. Provide the Anti-Dumping Notice (ADN) number of the reviewable decision

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

ADN 2016/84

9. Provide the date the notice of the reviewable decision was published

12/09/2016

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

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PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the grounds that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

10. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision.

(1) The decision to apply a rate of profit to a constructed normal value was incorrect

The normal value for exports of the goods by Kuiburi was determined using a constructed method under subsection 269TAC(2)(c). A rate of profit was determined under subsection 45(2) of the Regulations. The Commission originally excluded pineapple puree in its calculation of a profit margin for the constructed normal value, as it considered puree not to be "like goods" to the goods under consideration. Following Kuiburi's submission to the SEF, the Commission agreed that pineapple puree was a like product and recalculated the amount of profit to be used in Kuiburi's constructed normal value. However the Commission have not included the sales of pineapple puree that were at a loss in quarter 3.

The ADC manual states as follows:

"If, under Step 1, it was found that the sales at a loss were in substantial quantities, another calculation is required. For those sales found to be sold at a loss and in substantial quantities, the selling price of each individual sale is compared to the weighted average cost to make and sell (WACTMS) calculated for that model during the investigation period.

If the loss making price is less than the WACTMS that sales price is held to have failed to provide for cost recovery. The Commission has an administrative rule that 'a reasonable period' referred to in the sections of the Act cited above is normally the investigation period.

The outcome of Steps 1 and Step 2 is that where the sales at a loss are equal to or greater than 20% the only sales that may be included in the determination of normal value are those sales that are initially profitable and those loss making sales that provide for recovery of costs."

The ADC spreadsheet (**Confidential** copy of CTMS- Kuiburi attached) shows the WACTMS of Puree to be THB **confidential**/kg (full year 2015) which is the actual weighted cost to make and sell for the whole year production. The Commission has not used this WACTMS in it's

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recalculation of profit. If the correct WACTMS of THB **confidential**/kg is applied, the domestic selling price of puree is greater than the WACTMS and therefore in the ordinary course of trade over that period of time. Accordingly, under ADC procedures, all sales of puree should have been used to arrive at a profit margin to be allocated to the constructed normal value. Such allocation results in a negative dumping margin of minus 2 per cent.

(2) The acceptance of a profit rate applicable to another market to arrive at an USP and NIP is flawed.

To arrive at an unsuppressed selling price (USP), the Commission has used the profit achieved by sales of consumer pineapple by Golden Circle and, when challenged by Kuiburi, claims this is justified of as it considers the consumer pineapple category to be a similar category of goods as FSI pineapple. Applying the profit from a high volume market to a low volume market could, respectfully in Kuiburi's opinion, not be substantiated as normally the FSI's profit achieved is less than the consumer's profit because the use purpose is different. This point is also highlighted by the Commission's decision to separate the original review into two categories (consumer and FSI).

(3) The recurrence of material injury from dumped goods fails to recognise the fact that the average selling price of Kuiburi sales to Australia increased approx. 25% in 2015 over 2014

Kuiburi in its submission to the SEF commented on the evidence supplied by Golden Circle claiming that it lost sales to import prices that were lower than previous contracts and at a price point that it was unable to profitably complete with. The fact that Kuiburi's average selling price of its sales to Australia increased by approx. 25% in 2015 over 2014 should be an indication that sales by Kuiburi were not the cause of any injury suffered by the Australian industry

(4) The Decision to recommend the continuation of measures for 20 Years

Pursuant to subsection 269ZHE(2) the Commissioner must be satisfied the expiration of measures would lead to a continuation of material injury. Golden Circle has higher prices than un-dumped imports from Thailand which can mainly be attributed to lower labour and raw material costs. The fact that Golden Circle has to import raw material to produce must also contribute to greater costs. These facts and other issues such as selling prices to Australia increasing by approx. 25% do not substantiate a result of measures warranted to alleviate any injury caused by exports by Kuiburi.

(5) Form of measures

The SEF recognised that market prices increased significantly in the review period due to the shortfall of raw pineapple. With the expected future fall in market prices of raw pineapple, the use of the combination of fixed and variable method of exports from Thailand, the landed costs would be significantly higher than the flawed USP of Golden Circle with the amount of dumping duty being higher than what is necessary to prevent injury. It should

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also be recognised the combination method creates a situation that results in significant adverse effects on downstream industries, which is against policy guideline.

11. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 10.

- (1) The correct or preferable decision ought to be that the Commission concludes that the amount of profit attributed to the constructed normal value for Kuiburi included all sales of FSI pineapple by Kuiburi on the domestic market.
- (2) The non-injurious price (NIP) should be based on an unsuppressed selling price (USP) calculated as Golden Circle's cost to make and sell (CTMS) and an amount for profit based on sales of FSI pineapple.
- (3) Increased selling prices by such a large percentage over the investigation period reveal an absence of causal link of injury
- (4) The continuation of measures should not be attributed to export of goods under consideration by Kuiburi
- (5) If dumping duties are to be imposed policy guidelines should be adhered to and the ad valorem method applied.

12. Set out the reasons why the proposed decision provided in response to question 11 is materially different from the reviewable decision.

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

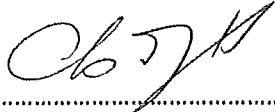
- (1) The proposed decision is materially different from the reviewable decision in that if the amount of profit achieved by the total sales by Kuiburi of FSI pineapple on the Thai domestic market were used to allocate a profit margin to the constructed normal value, it would result in a negative dumping margin rather than a positive dumping margin.
- (2) The proposed decision is materially different from the reviewable decision in that the calculation of the non-injurious price (NIP) would be based on an unsuppressed selling price (USP) at which Golden Circle might reasonably sell FSI pineapple unaffected by dumping. The result would be a correctly calculated USP being ascertained by using Golden Circle's (CTMS) and an amount for profit based on Golden Circles sales of FSI pineapple, being the goods under consideration.
- (3) The proposed decision is materially different from the reviewable decision in that any injury caused to Golden Circle by exports of FSI pineapple by Kuiburi could not be attributed to dumping by Kuiburi.
- (4) The proposed decision is materially different from the reviewable decision in that the continuation of measures would not apply to Kuiburi.

- (5) The proposed decision is materially different from the reviewable decision in that if dumping is found to have occurred the ad valorem method would be applied rather than the combination of fixed and variable duty method and adverse effects on downstream industries would be avoided.

PART D: DECLARATION

The applicant/the applicant's authorised representative [*delete inapplicable*] declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected;
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.



Signature:.....

Name: Mr. Chuang Jongsuebchoke

Position: Managing Director

Organisation: Kuiburi Fruit Canning Co., Ltd.

Date: 30/09/2016

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative

Full name of representative: John McDermott

Organisation: John McDermott & Associates Pty Ltd

Address: PO Box 3414 Belconnen DC Canberra ACT 2617

Email address: jmcd49@optusnet.com.au

Telephone number: 0412 543 792

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:.....

(Applicant's authorised officer)

Name: Mr. Chuang Jongsuebchoke

Position: Managing Director

Organisation: Kuiburi Fruit Canning Co., Ltd.

Date: 30/09/2016