



AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE PRACTICE STATEMENT

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Title:	Tariff Reviews
Purpose:	To set out the processes undertaken for an internal review of a tariff classification decision.
Owner:	National Director Trade and Compliance
Category:	Operational Procedures
Contact:	Director Tariff Policy 02 6275 5046

Summary of main points

Customs and Border Protection Practice Statements are endorsed policy and must be followed by all Customs and Border Protection employees. This Practice Statement outlines:

- what matters a Tariff Review can consider;
- how and by who a review can be initiated;
- why internal reviews are conducted;
- the documentation of reviews; and
- how an external recipient of a review decision may proceed to an external review.

The electronic version published on the intranet is the current Practice Statement.

Introduction Statement

The Tariff Review System is designed to give an avenue of appeal against decisions made by primary decision makers on tariff matters within Australian Customs and Border Protection Service and to provide a secondary decision making mechanism where a check of a primary decision is requested.

The normal primary decision makers in Customs and Border Protection on tariff matters are officers involved in issuing Tariff Advices, conducting audits and assessing refunds and entries that have been subject to the redline process. Reviews can be requested by the areas making the primary decision or by people who receive a decision from a one of the primary decision makers.

The system is implemented through administrative policy and designed to be consistent with Australia's commitments under the revised International Convention on the Simplification and Harmonization of Customs procedures (the revised Kyoto Convention).

Definitions:

Voided

In relation to Tariff Advices, "voided" is the term traditionally used for Tariff Advices that have been revoked. In recent times, it was considered that "voided" may be an unclear term to use and "cancelled" was used in its place in some documents. Voided, cancelled and revoked all refer to the same processes of cancelling a tariff advice so that it may not be used.

Tariff Advice (TA) / Tariff Advice Notice (TAN)

The full title of the written advice given by Customs and Border Protection in relation to a Tariff Advice Application is a "Tariff Advice Notice" with the acronym "TAN". In general use, this is often shorted to "Tariff Advice" or the acronym "TA". Tariff Advice and Tariff Advice Notice are used interchangeably.

Illustrative Descriptive Material (Acronym – IDM)

IDM refers to descriptive material that provides information about a particular good in order for that good to be identified and classified. It can include any material which provides relevant information upon the goods. For example schematics, brochures, photographs, specification sheets, process descriptions, chemical formulae and video footage are all examples of IDM. Samples are also included under the broad term IDM.

Scope

This is an outline of the Tariff Review System. The purpose is to give an understanding of why we have an internal review process and the policy and broad processes that the system works within.

Detailed process statements are to be found in the associated instructions and guidelines.

This Practice Statement applies to staff in the following areas:

- Tariff Policy
- Tariff Operations
- Regional Tariff Sections
- Compliance Assurance
- Customs Information and Support Centre
- Regional Client Service Sections

This Practice Statement does not cover reviews of Schedule 4 Concessions (other than reviews of eligibility for a TCO).

It is also outside of the scope of this practice statement to cover the practices of classification or eligibility determination. These matters are legislated and are the subject of technical training.

Policy Statement

What Matters May a Tariff Review Consider?

Tariff Reviews are limited to decisions on:

- classification within Schedule 3 of the *Customs Tariff Act 1995* (the Act); or
- eligibility of goods for a Tariff Concession Order.

Initiating a Tariff Review

There are three mechanisms by which an internal review may be initiated.

- A request may be made by an importer, or their agent, to review a decision.
- A request may be received by Tariff Review from another area within Customs and Border Protection to review a decision.
- A review may be self-initiated by the Tariff Review area.

Reviews may be requested by an importer, or their agent, by applying in writing (letter, email or fax) to the Tariff Review Section. The review request needs to set out:

- a clear record of the decision being appealed (the Tariff Advice number, copy of the audit decision etc);
- the reasons the applicant believes the decision to be incorrect;
- clear information (Illustrative Descriptive Material) on the goods involved; and
- contact details of the applicant.

Requests for a review of a decision from areas within Customs and Border Protection will normally occur when the matter is subject to external dispute, for example a disputed audit decision, or when there are differing interpretations of a tariff issue between areas. Reviews are requested by internal applicants by writing to the Tariff Review Section (minute or email) giving full details of the decision, goods and reason for the review request.

Reviews may be internally initiated by the Tariff Review Section where required. These reviews will normally be undertaken where an inconsistency or a possible error has been noted or where a change in legislation or a change in interpretation by the judiciary or Customs and Border Protection has occurred.

Why We Conduct Internal Reviews

The principles of good public administration require that individuals and groups within the community receive fair and equitable treatment. Customs and Border Protection is committed to ensuring procedural fairness and maintaining the community's confidence in the way we go about performing our role.

Part of ensuring fair treatment is that we ensure that administrative decisions are correct, in the sense that they are made according to the law (and any guidelines and directions deriving from it). Factors such as the complexity of legislation and the volume of decision making will mean that some decisions made will inevitably be incorrect. The process of internal review is designed to enable errors to be corrected.

Where the review finds the primary decision maker's decision to be correct, we endeavour to clearly explain the reasons for this, including addressing issues raised by the applicant in the review request. This aims to provide transparency in decision making by explaining the reasons why we have affirmed the decision.

The review process not only allows us to correct errors when they have occurred and to provide greater transparency of decision making, it also enables us to improve the

way decisions are made and to engender public confidence in the integrity of our administration.

How is a Tariff Review Documented?

The layout, length and areas addressed in a tariff review document will vary dependent on the complexity of the issue, the matters raised and current administrative practices. However, all review documents will include the following as a minimum within their content.

- A description of the goods under review.
- The original decision.
- The issues addressed in the review (e.g. classification of the goods, eligibility of the goods for a TCO).
- Consideration of the case put forward against the original decision.
- An explanation of the basis for the review decision.
- The review decision.

How Can an External Recipient of a Review Decision Proceed To An External Review?

External review can be undertaken by the Administrative Appeals Tribunal (AAT) which will conduct a merit based review. There is no right of appeal against a Tariff Advice decision to the AAT set out in Section 273GA of the *Customs Act 1901*. Therefore, in order to have the matter heard by the AAT it is necessary to lodge an Import Declaration for the imported goods and pay the duty under protest to enable the matter to be heard under Section 167. The AAT then reviews the dispute over the duty paid. The AAT can vary, uphold, overturn or require Customs and Border Protection to reconsider a Customs and Border Protection decision. Fees apply when appealing to the AAT.

From the AAT, either Customs and Border Protection or the importer can appeal to the Federal Court if it can be shown that the AAT decision was incorrect on a point of law.

Related Instructions and Guidelines

- Tariff Advices: Instructions and Guidelines

Related policies and references

Customs Practice Statements:

- Tariff Advices

Key roles and responsibilities

The Policy Owner for this Practice Statement is the National Director, Trade and Compliance

Consultation

External Consultation

Not Required

Internal Consultation

The following internal stakeholders have been consulted in the development of this Practice Statement:

- Tariff Review Section
- Tariff Policy Section

Approval

Approved on	24 July 2009	(signature)
By	Sue Pitman ND Trade and Compliance	
Endorsed on	24 July 2009	(signature)
By	Neil Mann DCEO Passenger and Trade Facilitation	