



INSTRUCTIONS AND GUIDELINES

TRADE MEASURES BRANCH

Application for continuation of measures: Guidelines for applicants

July 2009

**This Instruction and Guideline refers to Practice Statement: PS2009/25:
Administration of Australia's Anti-Dumping and Countervailing System**

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Availability: Internal and external
Subject: Application for continuation of measures: Guidelines for applicants
Purpose: To provide guidance to applicants preparing the application form for continuation of measures
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Category: Operational Procedures (OP)
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The electronic version published on the intranet is the current Instruction and Guideline.

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Summary of main points

This Instruction and Guideline provides guidance to applicants to assist them completing the application form for continuation of measures.

This I&G applies to staff in:

- Trade Measures Branch, Trade and Compliance Division

Introduction

These *Instruction and Guidelines – Application for continuation of measures: Guidelines for applicants* (Guidelines) are available to assist applicants prepare an application for continuation of measures.

Applicants should read these Guidelines in conjunction with other publicly available documents on the Customs and Border Protection website.

Instructions and Guidelines

The Guidelines cover the following topics:

- Background;
- The inquiry process;
- Reasons for continuation (including will the dumping and subsidisation continue or recur; and will the material injury recur).

Related Policies and References

Practice Statements:

- PS2009/25: Administration of Australia's Anti-Dumping and Countervailing System.

Other Instructions and Guidelines:

- Dumping and Subsidy Manual.

Key Roles and Responsibilities

- The National Manager, Trade Measures Branch, has responsibility for ensuring the implementation and maintenance of this Instruction and Guideline.
- This Instruction and Guideline applies to all staff in the Trade Measures Branch.

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INTERNAL AND EXTERNAL

Approval

APPROVED ON	6 AUGUST 2009	
BY	SUE PITMAN NATIONAL DIRECTOR TRADE AND COMPLIANCE DIVISION	
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Guidelines for Preparing an Application for Continuation of Measures

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GUIDELINES FOR APPLICANTS

BACKGROUND

Anti-dumping measures expire five years after the date on which they were published. 'Anti-dumping measures' are defined to be a dumping duty notice, or a countervailing duty notice, or an undertaking.

The *Customs and Border Protection Act 1901* (the Act) provides an opportunity for interested parties to seek continuation of the anti-dumping measure. Customs and Border Protection is required to advertise the expiry date of the measure in a national newspaper, and invite interested parties to apply for continuation of the measure. The notice must appear not later than 9 months before the expiry date.

Applications for continuation of the anti-dumping measure may be made by any interested party. If no application is received within the 60 day period allowed, the anti-dumping measure automatically expires.

An application must be in writing and must meet the requirements of an "approved form". Customs and Border Protection must not recommend continuation unless it is satisfied that expiration of the anti-dumping measure would lead to a continuation, or recurrence, of the dumping or subsidisation, and of the material injury.

If the Minister responsible for Customs and Border Protection (Minister) decides, after consideration of the report, to continue the anti-dumping measure, the measure will continue for another 5 years after the specified expiry date, unless otherwise determined.

THE INQUIRY PROCESS

Where an application demonstrates reasonable grounds for continuation of a measure, Customs and Border Protection must hold an inquiry and report to the Minister within 155 days from the date the original initiation notice was published.

Once an application has been accepted a notice will be published in the newspaper advising that an inquiry will be undertaken and inviting submissions. Customs and Border Protection will also contact known interested parties.

Submission are required to be received within 40 days of the date of publication of the notice. Customs and Border Protection may not have regard to submissions received after that period if doing so would prevent the timely preparation of a statement of essential facts (SEF).

Copies of the non-confidential application and non-confidential submissions will be placed on the public record. Interested parties will be able to access this record and take copies.

At or before day 110 of the inquiry, Customs and Border Protection must prepare a SEF on which it intends to base its recommendations to the Minister. Interested parties will be invited to make submissions within the following 20 days. Customs and Border Protection may consider submissions received after that period provided timely preparation of the report to the Minister is not prevented.

In addition to inquiries in Australia, the inquiry may include investigation and verification of information provided by overseas parties, including discussions with foreign governments.

Assistance with the application

The Operational Support section of the Trade Measures Branch in Customs and Border Protection is available to provide advice on dumping matters to all interested parties. Prospective applicants are encouraged to contact Operational Support for clarification of any issues that may arise in the preparation of an application.

Information booklets and pamphlets on the legislative provisions as well as the policy and investigation procedures for dumping are also available from Operational Support.

The contact telephone number for the Operational Support section in Canberra is **(02) 6275 6066**.

Alternatively, the fax number is (02) 6275 6888.

The application form seeks reasons for justifying continuation of a measure. An application must establish reasonable grounds for asserting that expiration of the anti-dumping measure might lead, or be likely to lead, to recurrence of the material injury that the measure is intended to prevent.

(i) Will the dumping or subsidisation continue, or recur?

Reasons must be given as to why dumping, or subsidisation, would be expected to continue were the anti-dumping measure to expire. When addressing continuation of dumping, relevant information may be:

- anti-dumping actions by other countries
- relevant evidence as to the current normal values in the exporting country
- whether exports have continued following imposition of the measure and estimates of export price
- whether the exporter has retained distribution links in Australia
- whether the exporter retains an excess capacity that may be directed to Australia

Where exports have ceased after imposition of an anti-dumping measure, demonstrating why dumping is likely to recur is more difficult to establish – some of the factors listed above may be relevant.

(ii) Will the material injury recur?

Applicants must provide evidence that in the absence of the measures, the dumped or subsidised goods would cause, or be likely to cause, material injury to the Australian industry producing the goods in question. In considering this question applicants should provide information on key indicators such as profitability, price trends, and market share. The application should provide:

- Information on market trends for the goods in question for the last three years, addressing in particular:
 - volume and value of imports and sources of imports
 - sales and market shares of all suppliers
 - performance of the local industry, showing key indicators such as profits, price trends, investment, and employment.
- Information addressing the likelihood of material injury in the absence of the anti-dumping measures. Alternative sources of export supply that may have arisen following imposition of the measure, or production capacity in the country concerned, may be relevant.

Responses should be made as accurately and as comprehensively as possible. Supporting evidence should be attached wherever possible. It will not be sufficient to simply assert that the measure should remain in force. Applications relying primarily upon unsubstantiated allegations, or assertion, may be rejected

