



INSTRUCTIONS AND GUIDELINES

TRADE MEASURES BRANCH

Application for review / revocation 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 review / revocation of measures: Guidelines for applicants

Purpose: To provide guidance to applicants preparing the application form for review / revocation of measures

Owner: National Director Trade and Compliance Division

Category: Operational Procedures (OP)

Contact: Mail to:
National Manager
Trade Measures Branch
Customs and Border Protection
5 Constitution Avenue
Canberra ACT 2601 AUSTRALIA

Phone: (+ 61 2) 6275 6547
Facsimile: (+61 2) 6275 6888

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 review / revocation of measures.

This I&G applies to staff in:

- Trade Measures Branch, Trade and Compliance Division

Introduction

These *Instruction and Guidelines – Application for review / revocation of measures: Guidelines for applicants* (Guidelines) are available to assist applicants prepare an application for review / revocation 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; and
- Reasons for seeking a review (including changed variable factors and grounds for anti-dumping measures no longer existing).

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 Review of Measures

B602 (7/98)

**BACKGROUN
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GUIDELINES FOR APPLICANTS

An affected party may seek review of an ‘anti-dumping measure’ (a term defined as meaning a dumping duty notice, or a countervailing duty notice, or an undertaking).

An ‘affected party’ includes a person directly concerned with the exportation or importation of the goods to which the measures relate; a person representing all or part of the Australian industry producing like goods; or the Government of a country from which like goods have been exported to Australia.

The review application may seek review of any of the ‘variable factors’ specified in a notice – these are the normal value, export price, or the non-injurious price. Alternatively, the application may seek revocation of the measure. Changed variable factors would affect the amount of interim dumping duty imposed, or require amendment of the terms of an undertaking.

A review application may not be lodged earlier than 12 months after publication of the notice implementing the measure, or of the last review notice. Another limitation occurs where a person has sought an accelerated review of an anti-dumping measure under s. 269ZE(1) of the *Customs Act 1901* (the Act) – a review application may not be lodged by that person within 12 months of publication of the declaration under s. 269ZG(3) of the Act of the outcome of that accelerated review.

The Act provides that the Minister responsible for Customs and Border Protection (Minister) may institute a review at any time.

Where the Minister varies or substitutes a notice following review by the Trade Measures Review Officer, the 12 month period after which an applicant has the right to seek review applies from the date the original notice was published.

A review application must be in writing and must meet the requirements of an “approved form”. Where the application seeks a review on the basis that one or more of the ‘variable factors’ has changed, the application must include a statement of the opinion of the applicant concerning the amount by which the factor has changed and the ‘information that establishes’ that amount.

Likewise, if a review applicant considers that the Minister could not now take anti-dumping measures against goods currently subject to measures (because the grounds that need to be present for the imposition of measures no longer exist), the applicant must show reasons why the measure should be revoked.

THE INQUIRY PROCESS

Customs and Border Protection's inquiry is not limited to the matters raised in an application. For example, while an application may seek review of particular exporters, Customs and Border Protection may recommend that the Minister agree to broaden the review to include additional exporters. In addition, Customs and Border Protection may have regard to any other matter considered relevant to the review.

A review will commence only where Customs and Border Protection decides that the application has established reasonable grounds. Accordingly, it is in the interests of applicants to apply as accurately and as comprehensively as possible, and include supporting evidence where possible.

Customs and Border Protection has 20 days to decide whether the application form has been properly completed, and whether reasonable grounds have been demonstrated.

Once an application has been accepted, Customs and Border Protection must hold an inquiry and report to the Minister within 155 days from the date of publication of notice of the review. The review will be publicised in a newspaper, and submissions invited from interested parties. Customs and Border Protection will also contact known interested parties.

Submissions must be received within 40 days of the date of publication of the notice. Customs and Border Protection is not obliged to have regard to submissions received after that period if doing so would prevent the timely placement of the statement of essential facts on the public record.

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 statement of facts on which it intends to base its recommendations to the Minister concerning the measures under review. Interested parties will be invited to make submissions within the following 20 days. Customs and Border Protection is not obliged to have regard to submissions received after that period if to do so would prevent the timely preparation of the report to the Minister.

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

REASONS FOR SEEKING A REVIEW

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 form requires that the applicant set out reasons for seeking the review. The applicant may seek review because:

- One or more of the variable factors (which are the ascertained normal value, the ascertained export price, or the non-injurious price) have changed; or
- Anti-dumping measures could not now be taken against goods currently subject to measures (because the grounds that need to be present for the imposition of measures no longer exist).

Changed Variable Factors

Examples of the type of information relevant to changed normal values are updated price lists for domestic sales, quotations or invoices relating to domestic sales, published material providing information on the domestic selling prices, or estimates of the changes in costs to make and sell the goods sold in the exporter's domestic market (plus any profit amount).

Likewise, relevant information showing changed export prices would include updated price lists, actual sales invoices, or estimates based upon changed selling prices in Australia.

Changed non-injurious prices (normally expressed at the Free On Board (FOB) level) would be demonstrated by evidence of changes in the unsuppressed selling price in Australia; or to the various charges and expenses incurred upon importation and subsequent sale in Australia.

Grounds for Anti-Dumping Measures No Longer Existing

The supporting evidence would be expected to establish reasonable grounds that:

- either there was no longer any dumping or subsidisation occurring and that there was no threat of a recurrence in the foreseeable future; or
- the Australian industry was no longer suffering material injury; or
- there was no causal link between the dumping or the subsidisation and the material injury; or
- there was no longer an Australian industry.

The onus is upon the applicant to demonstrate that a review inquiry is justified. The supporting evidence should point to the changed circumstances since the time the notice was published or undertaking accepted.

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 circumstances have changed. Applications relying primarily upon unsubstantiated allegations, or assertion, may be rejected.

