



## INSTRUCTIONS AND GUIDELINES

### INTERNATIONAL TRADE REMEDIES BRANCH

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

October 2011

**These Instructions and Guidelines refer to Practice Statement:  
PS2009/25: Administration of Australia's Anti-Dumping and  
Countervailing System**

**Published date:** 21 October 2011

**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  
International Trade Remedies 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 are the current Instructions and Guidelines.*

**BCS CLASSIFICATION:** TDFC\_Policy

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### **Summary of main points**

These Instructions and Guidelines provide guidance to applicants to assist them in completing the application form for review / revocation of measures.

### **These Instructions and Guidelines apply to staff in:**

- International Trade Remedies Branch, Trade and Compliance Division

### **Introduction**

These *Instructions and Guidelines – Application for review / revocation of measures: Guidelines for applicants* (Guidelines) is 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, International Trade Remedies Branch, has responsibility for ensuring the implementation and maintenance of these Instructions and Guidelines.
- These Instructions and Guidelines apply to all staff in the International Trade Remedies Branch.

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**Approval**

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|----------------------|---|--|
| APPROVED ON          | 20 OCTOBER 2011   |  |
| BY                   | SHARON NYAKUENGAMA<br>A/G NATIONAL DIRECTOR<br>TRADE AND COMPLIANCE<br>DIVISION |  |
| <b>Review Period</b> | Annually  |  |

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# **Guidelines for Preparing an Application for Review of Measures**

## **GUIDELINES FOR APPLICANTS**

## BACKGROUND

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 concern changes to the normal value, export price, non-injurious price, or the amount of the countervailable duty. This is called a 'variable factors review' in the application form. Changes affect the amount of interim duty imposed, or the undertaking.

The review application may also seek revocation of the measure. This is called a 'revocation review' in the application form.

A review application may not be lodged earlier than 12 months after publication of either the notice implementing the original measure or the notice declaring the outcome of the last review<sup>1</sup>.

The Minister may initiate a review at any time.

A review application must be in writing and meet the requirements of the approved form. Whether you are seeking a variable factors review, or a revocation review, the application form asks you to provide evidence in support.

A review will commence where Customs and Border Protection decides that the application establishes reasonable grounds to do so. Accordingly, it is in the interests of applicants to provide as much relevant, accurate and comprehensive evidence in support of an application as possible.

Note that the scope of what may be examined in a review is not limited to the matters raised in your review application. For example, while an application may seek review of particular exporters, Customs and Border Protection may recommend that the Minister broaden the review to include additional exporters.

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<sup>1</sup> Two other restrictions concern the time a review may be lodged: (1) *TMRO reviews*: 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; and (2) *Accelerated reviews*: Where a person has sought an accelerated review under s. 269ZE(1) of the *Customs Act 1901* – a review application may not be lodged by that person within 12 months of publication of the notice declaring the outcome of that accelerated review.

**Assistance with the Application**

International Trade Remedies Branch in Customs and Border Protection administers the dumping and subsidy provisions.

Please contact the Quality Assurance and Operational Support section of the Branch if you have questions about preparing your application:

- telephone: (02) 6275 6066
- fax: (02) 6275 6888
- email: [tmliaison@customs.gov.au](mailto:tmliaison@customs.gov.au)

The application form itself provides details of where you must lodge your application.

## THE INQUIRY PROCESS

Customs and Border Protection has 20 days to examine your application and decide whether there appear to be reasonable grounds for your claims.

If an application is accepted the commencement of the review is published in a newspaper and interested parties are invited to make submissions. Submissions in relation to the review 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

The public notice will also indicate whether the review application concerns revocation or a review of variable factors. If the latter, the notice will invite affected parties to apply for the review to be extended to include a revocation review within 40 days of that notice - a separate application form, 'Application to extend the review of measures – B12151', is used for that purpose.

The Minister may also expand a review examining variable factors to cover revocation (within 40 days of the initiation notice). In either situation a second notice will be published advising interested parties that the review will examine revocation. Revocation as a result of a review is only possible if a revocation review notice has been published.

Customs and Border Protection will contact known interested parties inviting them to participate in the review. The review findings and recommendations are reported to the Minister within 155 days of publication of the notice commencing the review, although extensions are possible.

Submissions in relation to the review 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 essential facts on which it intends to base its review recommendations to the Minister. 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.

The review report is required to be made to the Minister within 155 days of publication of the notice commencing the review, although extensions are possible.

In addition to inquiries in Australia, the review may include verification of information provided by parties overseas.

## REASONS FOR A REVIEW & SUPPORTING EVIDENCE

The form asks you to nominate the type of review you are seeking. You may seek:

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- A variable factors review – where you consider the normal value, export price, non-injurious price, or subsidy level as originally determined has now changed; or
- A revocation review – where you consider that anti-dumping measures are no longer warranted.

If you are seeking both a variable factor review *and* a revocation review you must indicate this intention in the application form by ticking the relevant boxes. The WTO standard concerning reviews is that the party seeking the review should submit “*positive evidence substantiating the need for a review*”. The application form for review of measures requires a detailed statement setting out your reasons, supported by evidence.

### **Changed Variable Factors**

Evidence of changed normal values may be current price lists for domestic sales; quotations or invoices relating to domestic sales; or published information on the domestic selling prices. Or, where a normal value had been based on domestic costs and profit an estimate may be made of the changes that have occurred in the cost to make and sell the goods sold in the exporter’s domestic market (plus any profit).

Evidence of changed export prices can be current price lists or sales invoices for export sales, or published information. If this information is unavailable the current free on board (FOB) export price could be estimated by deducting the relevant expenses and an amount for profit from the current selling price in Australia. If you need more information please contact Customs and Border Protection.

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

### **Anti-Dumping Measures are No Longer Warranted**

If you are seeking a review on the grounds that the measures are no longer warranted, the application form asks you to provide a detailed statement setting out the reasons.

Relevant evidence will be:

- evidence that there is no current dumping or subsidisation;
- evidence that any current dumping or subsidisation is not causing injury;
- evidence that the measures are having no effect and there is no current injury; and
- an assessment of why a recurrence or continuation of the dumping and subsidisation and of the injury is unlikely were the measures to be revoked (while there may be no current dumping or subsidisation this does not, of itself, mean that the measure must be revoked).

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Evidence could examine why the Australian industry was no longer suffering material injury or why there was no causal link between the dumping or the subsidisation and the material injury. Evidence that there is no longer an Australian industry represents, of course, the simplest case for revocation.

You should be aware that if Customs and Border Protection is not satisfied that there appear to be reasonable grounds for your assertions then the application must be rejected. The supporting evidence in support of your review request should show what are the changed circumstances since the time the last notice was published or undertaking accepted.

Please note that your responses should be made as accurately and as comprehensively as possible. Supporting evidence should be attached as it will not be sufficient to simply assert that circumstances have changed. Your application may be rejected if it is not adequately supported by evidence.