

Commonwealth of Australia

Instrument of approval

Customs Act 1901

**Review of certain decisions concerning dumping or
countervailing duties – approved forms**

I, Stephen Skehill, Acting Trade Measures Review Officer, pursuant to section 269ZXA(1) of the *Customs Act 1901*, hereby approve the attached forms for the purposes of sections 269ZZE (review of Ministerial decisions) and 269ZZQ (review of CEO's decisions) of that Act.

The attached forms are approved for use on and from the time at which the attached forms become available to the public on the www.tmro.gov.au website. The attached forms are taken as revocation of all previous forms (if any) issued pursuant to section 269ZXA(1) relating to the subject matter with which the forms deal.

Dated this tenth day of April 2012

Stephen Skehill

Acting Trade Measures Review Officer



Australian Government
Trade Measures Review Officer

TRADE MEASURES REVIEW OFFICER

G/O AUSTRALIAN GOVERNMENT SOLICITOR

GPO BOX 2727, SYDNEY NSW 2000

P 02 9581 7640 | F 02 9581 7732

REVIEWOFFICER@TMRO.GOV.AU

APPLICATION FOR REVIEW OF A DECISION IN RESPECT OF ASSESSMENT OF THE AMOUNT OF DUMPING OR COUNTERVAILING DUTY PAYABLE

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE TMRO?

The role of the Trade Measures Review Officer (the TMRO) is to review certain decisions made by the Minister responsible for Customs and Border Protection, or by the Chief Executive Officer of the Australian Customs and Border Protection Service (the CEO).

The TMRO may review decisions made by the CEO:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The TMRO may review decisions made by the Minister:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice; and
- not to publish a countervailing duty notice.

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The TMRO does not have any discretion to accept an invalidly made or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the TMRO. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure produced by the Trade Measures Review Secretariat (available at www.tmro.gov.au).

WHICH APPLICATION FORM SHOULD BE USED?

There are separate application forms for each category of reviewable decision made by the CEO, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for TMRO review of a decision of the CEO in respect of an assessment of the amount of dumping or countervailing duty payable. It is approved by the TMRO pursuant to s 269ZXA(1) of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION IN RESPECT OF AN ASSESSMENT OF THE AMOUNT OF DUMPING OR COUNTERVAILING DUTY PAYABLE?

If the Minister signs a dumping or countervailing duty notice, importers are required to pay interim dumping or countervailing duty. If an importer considers that the amount of interim duty paid exceeds the actual duty payable, the importer can request that the CEO assess the duty payable. If the CEO undertakes that assessment, and under s 269X(6)(b) or (c) makes a decision that is less favourable to the applicant than what the applicant contended for, this is referred to as a *negative preliminary decision* (s 269T(1)).

Only the party which lodged the application for the assessment of duty may apply to the TMRO for review of that assessment.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after the applicant was notified of the CEO's assessment.

The application is taken as being made on the date upon which it is received by the TMRO after it has been properly lodged in accordance with the instructions under 'Where and how should the application be lodged?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the TMRO that the CEO's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The TMRO does not have any investigative function, and **must** take account only of information which was before the CEO when the CEO made the reviewable decision. The TMRO will disregard any information in applications and submissions that was not available to the CEO (s 269ZZU(3)).

HOW LONG WILL THE REVIEW TAKE?

The TMRO must make a decision within 60 days of the receipt of the application for review (s 269ZZU(4)). In special circumstances, however, the Minister may allow the TMRO a longer period for completion of the review.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The TMRO must either affirm the CEO's decision or revoke it and substitute a new decision (s 269ZZU(1)). If the TMRO revokes and substitutes a new decision, the TMRO will recommend to the Minister to give effect to that decision (s 269ZZU(2)).

The TMRO's report is then made to the Minister and the Minister will determine the amount of duty payable, having regard to the terms of the TMRO's report (s 269Y(1)).

WHERE AND HOW SHOULD THE APPLICATION BE LODGED?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

**Level 42 MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 SYDNEY**

- OR emailed to (**BOTH**):

**Kristy.Alexander@ags.gov.au AND
reviewofficer@tmro.gov.au**

- OR sent by facsimile to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
+61 2 9581 7732**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

Further information about **reviews by the TMRO** can be obtained at the TMRO website (www.tmro.gov.au) or from:

Trade Measures Review Secretariat
Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA

Telephone: +61 2 9581 7640
Facsimile: +61 2 9581 7732

Inquiries and requests for **general information about dumping matters** should be directed to:

Director, Quality Assurance and Operational Support
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: +61 2 6275 6066
Facsimile: +61 2 6275 6990

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the TMRO written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – on 1 March 2012 this equates to \$2200).

**APPLICATION FOR REVIEW OF
DECISION OF THE CEO IN RESPECT OF AN ASSESSMENT OF THE AMOUNT
OF DUMPING OR COUNTERVAILING DUTY PAYABLE**

Under s 269ZZO of the *Customs Act 1901* (Cth), I hereby request that the Trade Measures Review Officer review a decision by the Chief Executive Officer of the Australian Customs and Border Protection Service in respect of an assessment of:

☐ dumping duty; and/or

☐ countervailing duty

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

☐ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☐ Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.

☐ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

☐ Full description of the imported goods to which the application relates.

☐ The tariff classification/statistical code of the imported goods.

☐ A copy of the written advice from the CEO of the decision to terminate the investigation.

☐ Date of notification of the reviewable decision and the method of the notification.

☐ A detailed statement setting out the grounds upon which the Review Officer is being asked to review a decision by the CEO in respect of the assessment of the amount of dumping or countervailing duty payable.

Signature:

Name:

Position:

Applicant Company/Entity:

.....

Date: / /



Australian Government

Trade Measures Review Officer

TRADE MEASURES REVIEW OFFICER

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REVIEWOFFICER@TMRO.GOV.AU

APPLICATION FOR REVIEW OF A DECISION WHETHER TO PUBLISH A DUMPING DUTY NOTICE OR A COUNTERVAILING DUTY NOTICE

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE TMRO?

The role of the Trade Measures Review Officer (the TMRO) is to review certain decisions made by the Minister responsible for Customs and Border Protection, or by the Chief Executive Officer of the Australian Customs and Border Protection Service (the CEO).

The TMRO may review decisions made by the CEO:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The TMRO may review decisions made by the Minister:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice; and
- not to publish a countervailing duty notice.

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The TMRO does not have any discretion to accept an invalidly made or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the TMRO. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure produced by the Trade Measures Review Secretariat (available at www.tmro.gov.au).

The TMRO only has the power to make **recommendations** to the Minister to affirm the reviewable decision or to direct the CEO of the Australian Customs and Border Protection Service to reinvestigate a finding or findings that formed the basis of the reviewable decision. The TMRO has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

There are separate application forms for each category of reviewable decision made by the CEO, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for TMRO review of a decision of the Minister whether to publish a dumping duty notice or countervailing duty

notice (or both). It is approved by the TMRO pursuant to s 269ZXA(1) of the Act.

WHO MAY APPLY FOR REVIEW OF A MINISTERIAL DECISION?

Any interested party may lodge an application for review to the TMRO of a review of a ministerial decision. An “interested party” may be:

- the original applicant for dumping or countervailing measures;
- a party representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision;
- a party directly concerned with the importation or exportation to Australia of the goods;
- a party directly concerned with the production or manufacture of the goods;
- a trade association, the majority of whose members are directly concerned with the production or manufacture, or the import or export of the goods to Australia; or
- the government of the country from which the goods originated or were exported.

Intending applicants should refer to s 269ZX of the Act to establish whether they are eligible to apply.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after a public notice of the reviewable decision was first published in a national Australian newspaper (s 269ZZD).

The application is taken as being made on the date upon which it is received by the Trade Measures Review Officer after it has been properly lodged in accordance with the instructions under 'Where and how should the application be lodged?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

Any applicant applying for review must establish, to the satisfaction of the TMRO, that, on the basis of the particulars contained in the application, there are reasonable grounds to warrant a re-investigation of a finding or findings identified in the application (s 269ZZF).

An application must clearly and comprehensively set out the grounds on which a review is sought, and provide sufficient particulars concerning the challenged finding or findings to satisfy the TMRO that a reinvestigation of these could lead to a change to the reviewable decision to which the application relates. The TMRO may reject an application on the basis that insufficient particulars have been included in the application. It is not sufficient simply to request that a decision be reviewed.

The TMRO may also request additional information seeking further particulars from the applicant within the 30 day period after a public notice of the reviewable decision was first published (s 269ZZG).

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application **must** be rejected by the TMRO, **unless** an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the TMRO's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the TMRO to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZH).

While both the confidential information and the summary statement must be provided to the TMRO, only the summary statement will be lodged on the public record maintained by the TMRO.

Documents containing confidential information should be clearly marked "Confidential" and documents containing the summary statement of that confidential information should be clearly marked "Non-confidential public record version", or similar.

The TMRO does not have any investigative function, and **must** take account only of information to which the CEO had regard, or was required to have regard, when making recommendations to the Minister. The TMRO will disregard any information in applications and submissions which was not available to the CEO (s 269ZZK(4)).

Interested parties may also make a submission to the TMRO within 30 days of the publication of the notice of the application for review of the decision (s 269ZZJ).

HOW LONG WILL THE REVIEW TAKE?

The TMRO will make a recommendation to the Minister within 60 days of the public notification of the review – but not sooner than 30 days from the publication of the notice. In special circumstances the Minister may allow the TMRO a longer period for completion of the review (s 269ZZK(3)).

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The TMRO will either recommend affirmation of the Minister's decision, or recommend that the CEO reinvestigate a finding/findings that formed the basis of the decision (s 269ZZK(1)).

Once the report from the TMRO is received by the Minister, the Minister will make a decision to affirm her/his original decision or the Minister will order a reinvestigation of a finding or findings made by the CEO (s 269ZZL(1)). The Minister ordinarily has 30 days to consider the recommendation made by the TMRO (s 269ZZL(2A)). The Minister will publish notice of her/his decision in either case. The CEO is obliged to conduct any reinvestigation in accordance with the terms given by the Minister (s 269ZZL(3)). A report will then be produced by the CEO. Once that subsequent report is received, the Minister will either affirm her/his original decision, or revoke that decision and substitute a new decision (s 269ZZM). The Minister will ordinarily do this within 30 days after receipt of the CEO's subsequent report, and there will be public notice of her/his decision.

WHERE AND HOW SHOULD THE APPLICATION BE LODGED?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

**Level 42 MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 SYDNEY**

- OR emailed to (**BOTH**):

**Kristy.Alexander@ags.gov.au AND
reviewofficer@tmro.gov.au**

- OR sent by facsimile to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
+61 2 9581 7732**

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Inquiries and requests for **general information about dumping matters** should be directed to:

Director, Quality Assurance and Operational Support
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: +61 2 6275 6066
Facsimile: +61 2 6275 6990

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the TMRO written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – on 1 March 2012 this equates to \$2200).

**APPLICATION FOR REVIEW OF
DECISION OF THE MINISTER WHETHER TO PUBLISH A DUMPING DUTY
NOTICE OR COUNTERVAILING DUTY NOTICE**

Under s 269ZZC of the *Customs Act 1901* (Cth), I hereby request that the Trade Measures Review Officer review a decision by the Minister responsible for Customs and Border Protection:

to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

OR

not to publish : ☐ a dumping duty notice(s), and/or

☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds to warrant the reinvestigation of the finding or findings that formed the basis of the reviewable decision that are specified in the application; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

☐ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).

☐ Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.

☐ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.

☐ Full description of the imported goods to which the application relates.

☐ The tariff classification/statistical code of the imported goods.

☐ Date of notification of the reviewable decision and the method of the notification.

☐ The finding or findings in that report that the Review Officer is being asked to review, (such as like goods, Australian industry, export prices, normal values, dumping, material injury, causal link, threat of material injury, non-injurious price).

☐ A detailed statement setting out the ground or grounds which would, in the applicant's view, warrant the reinvestigation of the finding or findings which formed the basis of the decision by the Minister whether to publish a dumping duty notice or a countervailing duty notice. Such a statement must accompany each claim in an application for review.

☐ If the application contains material that is confidential or commercially sensitive, an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward, must also be provided or the application will not be accepted.

Signature:.....

Name:.....

Position:.....

Applicant Company/Entity:

.....

Date: / /



Australian Government
Trade Measures Review Officer

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APPLICATION FOR REVIEW OF A DECISION TO REJECT AN APPLICATION FOR DUTY ASSESSMENT

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE TMRO?

The role of the Trade Measures Review Officer (the TMRO) is to review certain decisions made by the Minister responsible for Customs and Border Protection, or by the Chief Executive Officer of the Australian Customs and Border Protection Service (the CEO).

The TMRO may review decisions made by the CEO:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The TMRO may review decisions made by the Minister:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice; and
- not to publish a countervailing duty notice.

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The TMRO does not have any discretion to accept an invalidly made or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the TMRO. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure produced by the Trade Measures Review Secretariat (available at www.tmro.gov.au).

WHICH APPLICATION FORM SHOULD BE USED?

There are separate application forms for each category of reviewable decision made by the CEO, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for TMRO review of a decision of the CEO to reject or terminate examination of an application for duty assessment. It is approved by the TMRO pursuant to s 269ZXA(1) of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION TO REJECT AN APPLICATION FOR DUTY ASSESSMENT?

An importer of goods who makes an application for duty assessment under s 269V of the Act may have their application rejected by the CEO if it does not conform with the manner of making applications for duty assessments (s 269W). The CEO may also terminate an examination of an application if there is insufficient evidence for the CEO to make the correct calculation for duty assessment under s 269X. Both of these types of decisions are reviewable by the TMRO. A decision by the CEO to reject an application for duty assessment is referred to as a *rejection decision* (s 269ZZN).

Only the person who made the application rejected by the CEO may apply to the TMRO for review of that decision.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after the applicant was notified of the CEO's decision to reject the application (s 269ZZP).

The application is taken as being made on the date upon which it is received by the TMRO after it has been properly lodged in accordance with the instructions under 'Where and how should the application be lodged?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application must clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the TMRO that the CEO's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The TMRO does not have any investigative function, and **must** take account only of information which was before the CEO when the CEO made the reviewable decision. The TMRO will disregard any information in applications and submissions that was not available to the CEO (s 269ZZUA(5)).

HOW LONG WILL THE REVIEW TAKE?

The TMRO must make a decision within 60 days of the receipt of the application for review (s 269ZZUA(6)). In special circumstances the Minister may allow the TMRO a longer period for completion of the review.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The TMRO will either affirm or revoke the CEO's rejection decision (s 269ZZUA(1)). The TMRO will provide a statement of reasons to the CEO and

the applicant identifying why the decision was affirmed or revoked.
If the TMRO revokes a rejection decision, the CEO must resume the examination of the original application for duty assessment and complete the process for duty assessment calculation under s 269X within 110 days (s 269ZZUA(3)).

Alternatively, if the CEO has accepted an application but terminated the examination of it, and the TMRO orders a revocation of that decision, the CEO must calculate the duty assessment under s 269X within 110 days of being informed of the revocation (s 269ZZUA(4)).

WHERE AND HOW SHOULD THE APPLICATION BE LODGED?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

**Level 42 MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 SYDNEY**

- OR emailed to (**BOTH**):

**Kristy.Alexander@ags.gov.au AND
reviewofficer@tmro.gov.au**

- OR sent by facsimile to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
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Telephone: +61 2 6275 6066
Facsimile: +61 2 6275 6990

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the TMRO written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – on 1 March 2012 this equates to \$2200).

**APPLICATION FOR REVIEW OF
DECISION OF THE CEO TO REJECT AN APPLICATION FOR DUTY
ASSESSMENT**

Under s 269ZZO of the *Customs Act 1901* (Cth), I hereby request that the Trade Measures Review Officer review a decision by the Chief Executive Officer of the Australian Customs and Border Protection Service to reject an application for the calculation of duty assessment in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

- ☐ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☐ Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.
- ☐ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☐ Full description of the imported goods to which the application relates.
- ☐ The tariff classification/statistical code of the imported goods.
- ☐ A copy of the written advice from the CEO of the decision to reject the application for duty assessment.
- ☐ Date of notification of the reviewable decision and the method of the notification.
- ☐ A detailed statement setting out the grounds upon which the Review Officer is being asked to review a decision by the CEO to reject an application for duty assessment.

Signature:

Name:

Position:

Applicant Company/Entity:

.....

Date: / /



Australian Government
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APPLICATION FOR REVIEW OF A DECISION TO REJECT AN APPLICATION FOR THE PUBLICATION OF A DUMPING DUTY NOTICE OR A COUNTERVAILING DUTY NOTICE

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE TMRO?

The role of the Trade Measures Review Officer (the TMRO) is to review certain decisions made by the Minister responsible for Customs and Border Protection, or by the Chief Executive Officer of the Australian Customs and Border Protection Service (the CEO).

The TMRO may review decisions made by the CEO:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The TMRO may review decisions made by the Minister:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice; and
- not to publish a countervailing duty notice.

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The TMRO does not have any discretion to accept an invalidly made or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the TMRO. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure produced by the Trade Measures Review Secretariat (available at www.tmro.gov.au).

WHICH APPLICATION FORM SHOULD BE USED?

There are separate application forms for each category of reviewable decision made by the CEO, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for TMRO review of a decision of the CEO to reject an application for the publication of a dumping duty

notice or a countervailing duty notice. It is approved by the TMRO pursuant to s 269ZXA(1) of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION TO REJECT AN APPLICATION FOR ANTI-DUMPING MEASURES?

On receipt of an application for the publication of a dumping duty notice or a countervailing duty notice, the CEO must reject an application within 20 days if the CEO is not satisfied that there appear to be reasonable grounds for the publication of the requested notice, or the application does not comply with certain formal requirements. A decision by the CEO to reject an application under s 269TB(1) or (2), or s 269TC(1) or (2) is referred to as a *negative prima facie decision* (s 269ZZN).

Only the person who made the application rejected by the CEO may apply to the TMRO for review of that decision.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be made within 30 days after the applicant was notified of the CEO's decision to reject the application for the publication of a dumping duty notice or a countervailing duty notice (s 269ZZP).

The application is taken as being made on the date upon which it is received by the TMRO after it has been properly lodged in accordance with the instructions under 'Where and how should the application be lodged?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application must clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the TMRO that the CEO's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The TMRO does not have any investigative function, and **must** take account only of information which was before the CEO when the CEO made the reviewable decision. The TMRO will disregard any information in applications and submissions that was not available to the CEO (s 269ZZS(3)).

HOW LONG WILL THE REVIEW TAKE?

The TMRO must make a decision within 60 days of the receipt of the application for review (s 269ZZS(4)). In special circumstances, however, the Minister may allow the Review Officer a longer period for completion of the review.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The TMRO will either affirm the CEO's decision or revoke it and substitute a new decision accepting the application in question (s 269ZZS(1)).

The TMRO will provide a statement of reasons to the CEO and the applicant identifying why the decision was affirmed or revoked.

If the TMRO revokes the CEO's decision, the CEO must publish a public notice which (see s 269TC(4)):

- sets out the particulars of goods the subject of the application;
- sets out the identity of the applicant;
- sets out the countries of export known to be involved;
- (if the application is for a countervailing duty notice) - sets out the countries from which countervailable subsidisation is alleged to have been received;
- sets a date or estimated date as the date of initiation for the investigation (this should be the date of the public notice)
- indicates the basis on which dumping or countervailable subsidisation is alleged to have occurred;
- summarises the factors on which the allegation of injury or hindrance to the establishment of an industry is based;
- indicates that a report will be made to the Minister within specified timeframes;
- invites interested parties to lodge submissions concerning the notice within specified timeframes;
- states that provisional measures may be applied (such as the taking of securities) in the event that the CEO makes a preliminary affirmative determination in relation to the application;
- states that a statement of essential facts will be placed on the public record in line with a specified timeframe.

WHERE AND HOW SHOULD THE APPLICATION BE LODGED?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander**

**Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

**Level 42 MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 SYDNEY**

- OR emailed to (**BOTH**):

**Kristy.Alexander@ags.gov.au AND
reviewofficer@tmro.gov.au**

- OR sent by facsimile to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
+61 2 9581 7732**

WHERE CAN FURTHER INFORMATION BE OBTAINED

Further information about **reviews by the TMRO** can be obtained at the TMRO website (www.tmro.gov.au) or from:

Trade Measures Review Secretariat
Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA

Telephone:	+61 2 9581 7640
Facsimile:	+61 2 9581 7732

Inquiries and requests for **general information about dumping matters** should be directed to:

Director, Quality Assurance and Operational Support
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: +61 2 6275 6066
Facsimile: +61 2 6275 6990

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the TMRO written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – on 1 March 2012 this equates to \$2200).

**APPLICATION FOR REVIEW OF
DECISION OF THE CEO TO REJECT AN APPLICATION FOR THE
PUBLICATION OF A DUMPING DUTY NOTICE OR A
COUNTERVAILING DUTY NOTICE**

Under s 269ZZO of the *Customs Act 1901* (Cth), I hereby request that the Trade Measures Review Officer review a decision by the Chief Executive Officer of the Australian Customs and Border Protection Service to reject an application for the publication of:

- ☐ a dumping notice(s); and/or
☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in attachments to this application:

- ☐ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☐ Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.
- ☐ Name of consultant/adviser (if any) representing the applicant and copy of the authorisation for the consultant/adviser.
- ☐ Full description of the imported goods to which the application relates.
- ☐ The tariff classification/statistical code of the imported goods.
- ☐ A copy of the written advice from the CEO of the decision to terminate the investigation.
- ☐ Date of notification of the reviewable decision and the method of the notification.

- ☐ A detailed statement setting out the grounds upon which the TMRO is being asked to review a decision by the CEO to reject an application for the publication of a dumping duty notice or a countervailing duty notice.

Signature:.....

Name:.....

Position:.....

Applicant Company/Entity:

.....

Date: / /



Australian Government
Trade Measures Review Officer

TRADE MEASURES REVIEW OFFICER

G/O AUSTRALIAN GOVERNMENT SOLICITOR

GPO BOX 2727, SYDNEY NSW 2000

P 02 9581 7640 | F 02 9581 7732

REVIEWOFFICER@TMRO.GOV.AU

APPLICATION FOR REVIEW OF A DECISION TO TERMINATE AN INVESTIGATION

INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE TMRO?

The role of the Trade Measures Review Officer (the TMRO) is to review certain decisions made by the Minister responsible for Customs and Border Protection, or by the Chief Executive Officer of the Australian Customs and Border Protection Service (the CEO).

The TMRO may review decisions made by the CEO:

- to reject an application for dumping or countervailing measures;
- to terminate an investigation into an application for dumping or countervailing measures;
- to reject or terminate examination of an application for duty assessment; and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended in an application for duty assessment, or waiver of an amount over the amount of interim duty paid.

The TMRO may review decisions made by the Minister:

- to publish a dumping duty notice;
- to publish a countervailing duty notice;
- not to publish a dumping duty notice; and
- not to publish a countervailing duty notice.

It is essential that applications for review be lodged in accordance with the requirements of the *Customs Act 1901* (the Act). The TMRO does not have any discretion to accept an invalidly made or late-lodged application.

Division 9 of Part XVB of the Act deals with reviews by the TMRO. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure produced by the Trade Measures Review Secretariat (available at www.tmro.gov.au).

WHICH APPLICATION FORM SHOULD BE USED?

There are separate application forms for each category of reviewable decision made by the CEO, and for decisions made by the Minister. It is important for intending applicants to ensure that they use the correct form.

This is the form to be used when applying for TMRO review of a decision of the CEO to terminate an investigation into an application for dumping or countervailing measures. It is approved by the TMRO pursuant to s 269ZXA(1) of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION TO TERMINATE AN INVESTIGATION?

Only the person who lodged the application for the publication of a dumping duty notice and/or a countervailing notice may apply to the TMRO for review of the CEO's decision to terminate an investigation into that application.

WHEN MUST AN APPLICATION BE LODGED?

An application for a review must be received within 30 days after the applicant was notified of the CEO's decision to terminate the investigation (s 269ZZP).

The application is taken as being made on the date upon which it is received by the TMRO after it has been properly lodged in accordance with the instructions under 'Where and how should the application be lodged?' (below).

WHAT INFORMATION MUST AN APPLICATION CONTAIN?

An application should clearly and comprehensively set out the grounds on which the review is sought, and provide sufficient particulars to satisfy the TMRO that the CEO's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

If an application contains information which is confidential, or if publication of information contained in the application would adversely affect a person's business or commercial interest, the application must be rejected by the TMRO unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the TMRO's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the TMRO to reasonably understand the substance of the information, but the summary must not breach the confidentiality or adversely affect a person's business or commercial interest (s 269ZZR).

While both the confidential information and the summary statement must be provided to the TMRO, only the summary statement will be lodged on the public record maintained by the TMRO (s 269ZZX). The TMRO is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the CEO. The public record contains a copy of any application for review of a termination decision made to the TMRO, as well as any information given to the TMRO after

an application has been made. Information contained in the public record is accessible to interested parties upon request.

Documents containing confidential information should be clearly marked “Confidential” and documents containing the summary statement of that confidential information should be clearly marked “Non-confidential public record version”, or similar.

The TMRO does not have any investigative function, and **must** take account only of information which was before the CEO when the CEO made the reviewable decision (s 269ZZT(4)). The TMRO will disregard any information in applications and submissions that was not available to the CEO.

HOW LONG WILL THE REVIEW TAKE?

The TMRO must make a decision within 60 days of the receipt of the application for review. In special circumstances the Minister may allow the TMRO a longer period for completion of the review (s 269ZZT(5)).

The Review Officer will publish a notice of the decision in a national Australian newspaper and a copy of the decision through www.tmro.gov.au.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

The TMRO will either affirm the CEO's decision or revoke it (s 269ZZT(1)). The TMRO will provide a statement of reasons to the CEO and the applicant identifying why the decision was affirmed or revoked.

If the TMRO revokes the CEO's decision, the CEO must publish a statement of essential facts in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review (s 269ZZT(2)). The investigation then resumes once that statement is published (s 269ZZT(3)).

WHERE AND HOW SHOULD THE APPLICATION BE LODGED?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

**Level 42 MLC Centre
19 Martin Place
SYDNEY NSW 2000
DX 44 SYDNEY**

- OR emailed to (**BOTH**):

**Kristy.Alexander@ags.gov.au AND
reviewofficer@tmro.gov.au**

- OR sent by facsimile to:

**Trade Measures Review Officer
c/o Ms Kristy Alexander
+61 2 9581 7732**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

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**Trade Measures Review Secretariat
Ms Kristy Alexander
Australian Government Solicitor
GPO Box 2727
SYDNEY NSW 2000
AUSTRALIA**

Telephone: +61 2 9581 7640
Facsimile: +61 2 9581 7732

Inquiries and requests for **general information about dumping matters** should be directed to:

Director, Quality Assurance and Operational Support
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA CITY ACT 2601

Telephone: +61 2 6275 6066
Facsimile: +61 2 6275 6990

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the TMRO written information that the person knows to be false or misleading in a material particular (Penalty: 20 penalty units – on 1 March 2012 this equates to \$2200).

**APPLICATION FOR REVIEW OF
DECISION OF THE CEO TO TERMINATE AN INVESTIGATION**

Under s 269ZZO of the *Customs Act 1901* (Cth), I hereby request that the Trade Measures Review Officer review a decision by the Chief Executive Officer of the Australian Customs and Border Protection Service to terminate an investigation into whether the Minister should publish:

- ☐ a dumping notice(s); and/or
☐ a countervailing duty notice(s)

in respect of the goods which are the subject of this application.

I believe that the information contained in the application:

- provides reasonable grounds for a review to be undertaken; and
- is complete and correct to the best of my knowledge and belief.

I have included the following formation in an attachment to this application:

- ☐ Name, street and postal address, and form of business of the applicant (for example, company, partnership, sole trader).
- ☐ Name; title/position; telephone and facsimile numbers; and e-mail address of a contact within the organisation.
- ☐ Name of consultant/adviser (if any) representing the applicant and a copy of the authorisation for the consultant/adviser.
- ☐ Full description of the imported goods to which the application relates.
- ☐ The tariff classification/statistical code of the imported goods.
- ☐ A copy of the written advice from the CEO of the decision to terminate the investigation.
- ☐ Date of notification of the reviewable decision and the method of the notification.
- ☐ A detailed statement setting out the grounds upon which the Review Officer is being asked to review a decision by the CEO to terminate an investigation into whether a dumping duty notice or countervailing duty notice should be published.

- ☐ If the application contains material that is confidential or commercially sensitive, an additional non-confidential version, containing sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward, must also be provided or the application will not be accepted.

Signature:.....

Name:.....

Position:.....

Applicant Company/Entity:

.....

Date: / /