



Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved¹ form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 20 May 2019 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application for review to the ADRP of a review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

Time

Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences

The ADRP may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application or the review. The conference may be requested any time after the ADRP receives the application for review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the ADRP website for more information.

Further application information

You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s269ZZG(1)). See the ADRP website for more information.

Withdrawal

You may withdraw your application at any time, by completing the withdrawal form on the ADRP website.

¹ By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.

² As defined in section 269ZX *Customs Act 1901*.

Contact

If you have any questions about what is required in an application refer to the ADRP website. You can also call the ADRP Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Paracella Pty Limited ACN 626 034 008, trading as 'Abbott Storage Systems' ABN 33 525 899 077 (Abbott)
Address: 203 Dundas Rd, High Wycombe WA 6057
Type of entity (trade union, corporation, government etc.): A privately owned proprietary limited company

2. Contact person for applicant

Full name: Kelvin Flintoff
Position: Director
Email address: kflintoff@abbott-group.com.au
Telephone number: 0488 034 250

3. Set out the basis on which the applicant considers it is an interested party:

Abbott is an importer of steel pallet racking and Abbott's product is referred to directly within the Final Report (REP 441) upon which the reviewable decision is based.

4. Is the applicant represented?

Yes No

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

****It is the applicant's responsibility to notify the ADRP Secretariat if the nominated representative changes or if the applicant become self-represented during a review.****

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

Subsection 269TK(1) or (2) – decision of the Minister to publish a third country countervailing duty notice

Subsection 269TL(1) – decision of the Minister not to publish duty notice

Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

6. Provide a full description of the goods which were the subject of the reviewable decision:

The “*description of goods*” subject of the reviewable decision is as defined in the Anti-Dumping Notice (ADN) 2019/45, following from investigation number 441 into steel pallet racking, as follows:

“Steel pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12m) and brace (with or without nuts and bolts).”

7. Provide the tariff classifications/statistical codes of the imported goods:

The Final Report (REP 441) indicates the goods subject to investigation 441 are generally, but not exclusively, classified to the following tariff classification/statistical codes pursuant to Schedule 3 of the *Customs Tariff Act 1995* (Cth):

a) Tariff Code: 7308.90.00

b) Statistical Code: 58

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2019/45

Date ADN was published: 8 May 2019

****Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application****

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so:

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Abbott submits that the reviewable decision is not the correct or preferable decision for the following reasons:

- a) In refusing to meet with representatives of Abbott to undertake an inspection and demonstration of the limitation of the goods imported by Abbott, despite multiple requests made by Abbott for this to occur, there was a denial of natural justice in connection with the making of the reviewable decision.
- b) The making of the reviewable decision was an improper exercise of the power conferred by the *Customs Tariff (Anti-Dumping) Act 1975* in pursuance of which it was purported to be made, in that the Minister failed to take a relevant consideration into account in the exercise of power. Specifically, in the Final Report REP 441, it states:

“The Commissioner also notes that Abbott Storage’s overseas supplier of steel pallet racking participated in this investigation and identified the goods exported to Australia and purchased by Abbott Storage as goods subject to the application. This exporter submitted a response to the exporter questionnaire, in which it was asked to identify goods it exported to Australia that met the goods description in the application, and identify the customers in Australia that it sold these goods to. The exporter submitted a list of its export sales to Australia during the investigation period and this included the goods purchased by Abbott Storage. The sales to Abbott Storage were subject to verification and included in the export price for the particular exporter.”

The Final Report fails to give proper (or any) regard to the more recent participation of the same supplier in the investigation (submission 094), in which the supplier reviewed its position and concluded that the goods subject to the application do not exist and are not able to be produced.

Other participants to the investigation that provided verification initially, have since also reviewed their position and concluded similarly.

The remaining participants to the investigation, including the applicant, make or align themselves to claim(s) that include steel pallet racking within the scope of the description presented in part (f) below.

- c) The goods which fall within the “*description of goods*” as detailed in item 6 above:
 - (i) do not presently exist in the Australian market; and
 - (ii) are not currently able to be manufactured.

- d) The steel pallet racking imported, produced and supplied by Abbott does not fall within the “*description of goods*” as detailed in item 6 above, in particular it is not “*of dimensions that can be adjusted as required*”, for the following reasons:
 - (i) the steel pallet racking is adjustable to only limited premanufactured fixed adjustment points of one component only in one single axis direction; and
 - (ii) the engineering limitations pertaining to permissible loads and safety as prescribed by the Australian Standard AS4084-2012 prevent a user of the goods to adjust the system “*as required*”.

- e) Goods that do not fall within the “*description of goods*” (including those imported by Abbott) do not injure the Australian steel pallet racking industry, materially or otherwise, and should be exempt from the Customs Tariff (Anti-Dumping) Act 1975 Notice issued by the Minister on 6 May 2019 in respect of steel pallet racking exported from China and Malaysia

f) Steel Pallet Racking including that imported, produced and supplied by Abbott is described as follows:

Steel pallet racking storage system comprising upright frames perpendicular to the aisles and independently adjustable, positive locking pallet beams parallel to the aisles, spanning between the upright frames, and designed to support unit load actions.

The system and/or the parts of the system (whether assembled or unassembled) are not of dimensions that can be adjusted as required.

Any adjustment capacity of the system is distinctly restricted from being adjusted “as required” by incremental limitation, engineering limitation, other physical limitation and/or applicable standards.

Every required adjustment that does not exactly match the incremental limitation of the system and fall within the engineering and physical limitations of the system (and fall within the criteria of any applicable standard that may form part of the requirement) cannot be performed or cannot be performed without remanufacture.

In support of item (c) above, Abbott notes that the following interested parties have made submissions to the Commissioner, wherein each has concluded with the same view, including in respect of goods which they import/export:

094 – JRacking Group
096 – Instant Racking
099 – Modular Storage Systems
100 – Industor Pty Ltd
101 – Tong Li Logistic Co., Ltd
116 – Central Storage Systems Int. Group Pty Ltd

In addition, other interested parties have made submissions of a similar nature to those described in item (c) above, including:

092 – BHD Storage Solutions Pty Ltd:

“...steel pallet racking cannot exactly match the description “of dimensions that can be adjusted as required...”

098 – Global Industrial:

“...the goods as described are not able to be produced...”

120 – Global Industrial

“...The pallet racking described in the ADC Notice [2018/87], to our knowledge, does not exist.”

106 – One Stop:

“...the very wording of the description of goods does not actually match the imported products they [ADC] are trying to impose tariffs on...”

113 – Dexion Australia and Dexion China:

“...We refer to the submissions made by Dexion Liverpool as well as submissions made by other importers, exporters and Bunnings. We are instructed that Dexion Australia and Dexion Shanghai wish to express their support for those submissions and reiterate the position that the description of the GUC does not accurately represent the steel pallet racking that is in fact available in the Australian market or that is produced by the Australian industry.”

Abbott refers the Review Panel to the following numbered submissions made by Abbott to the Commissioner in relation to this subject matter and in support of why Abbott is of the view that the reviewable decision is not the correct or preferable decision:

Electronic public record number: 070, 071, 072, 078, 088, 105, 115, 118 and 123

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Abbott submits that, based on the grounds raised in item 9 above, the preferable decision ought to be either of the following:

- 1) goods which fall with the "*description of goods*" do not exist and therefore no dumping duty can or should be imposed"; or
- 2) further Ministerial Exemption Instruments need to be implemented, which specifically exclude types of products/brands (including those imported by Abbott) to assist importers undertake the assessment or other self-assessment process in a proper and accurate manner.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds raised in answer to question 9 include that the decision is not supported by relevant evidence from suppliers and that the reviewable decision is not practical or pragmatic, because the goods described within the 'description of goods' do not exist. Importers undertaking self assessment are bending and extending the scope of the description of goods in order to *make* certain goods fit and are taking this overly cautious (but wrong) approach for fear of otherwise incurring penalties.

Additionally, the tenor of the term "*can be adjusted as required*" which forms part of the description of goods subject to investigation 441 undermines core mandatory safety requirements for the prevention of serious injury and death associated with the end use of steel pallet racking as established and recognised by the industry, Australian Standard AS4084-2012 and other globally recognised standards. Use of the term "can be adjusted as required" in connection with steel pallet racking is notably avoided, other than in the description of goods subject to investigation 441.

The proposed correct or preferable decision set out in answer to question 10 will:

- (a) eliminate ambiguity which now exists in the industry, in particular with importers, as to the products and goods which are being imported and fall within the "*description of goods*";
- (b) specify with particularity which products/goods are subject to the tariff as a result of the Anti-Dumping Notice 2019/45;

- (c) allow for the self-assessment process to be accurately implemented by importers; and
- (d) be consistent with the standards imposed on these products by Australian Standards AS4084-2012.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision(s) provided in response to question 10, unlike the reviewable decision, will make provision for actual goods, which are not effecting competition in the local Australian market, to be dissociated from the description of goods.

13. Please list all attachments provided in support of this application:

Investigation 441 EPR documents: 070, 071, 072, 078, 088, 092, 094, 096, 098, 099, 100, 101, 105, 106, 113, 115, 116, 118, 120, 123, 126, 127 & 128

PART D: DECLARATION

The applicant declares that:

- The applicant understands that the Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the ADRP is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: Kelvin Flintoff

Position: Director

Organisation: Abbott Storage Systems

Date: 05 / 06 / 2019

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative:
Organisation:
Address:
Email address:
Telephone number:

Representative's authority to act

****A separate letter of authority may be attached in lieu of the applicant signing this section****

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /