

**APPLICATION FOR REVIEW OF A
DECISION BY THE MINISTER FOLLOWING A
REVIEW INQUIRY**

Anti-Dumping Review Panel
c/o Legal Services Branch
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INFORMATION FOR APPLICANTS

WHAT DECISIONS ARE REVIEWABLE BY THE ANTI-DUMPING REVIEW PANEL?

The role of the Anti-Dumping Review Panel (the ADRP) is to review certain decisions made by the Minister responsible for the Department of Industry and Science, or by the Anti-Dumping Commissioner (the Commissioner).

The ADRP may review decisions made by the Commissioner:

- 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 ADRP may review decisions made by the Minister, as follows:

Investigations

- to publish a dumping duty notice
- to publish a countervailing duty notice
- not to publish a dumping duty notice
- not to publish a countervailing duty notice

Review inquiries

- to alter or revoke a dumping duty notice following a review inquiry
- to alter or revoke a countervailing duty notice following a review inquiry
- not to alter a dumping duty notice following a review inquiry
- not to alter a countervailing duty notice following a review inquiry
- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking.

Continuation inquiries

- to secure the continuation of dumping measures following a continuation inquiry
- to secure the continuation of countervailing measures following a continuation inquiry
- not to secure the continuation of dumping measures following a continuation inquiry
- not to secure the continuation of countervailing measures following a

continuation inquiry

Anti-circumvention inquiries

- to alter a dumping duty notice following an anti-circumvention inquiry
- to alter a countervailing duty notice following an anti-circumvention inquiry
- not to alter a dumping duty notice following an anti-circumvention inquiry, and
- not to alter a countervailing duty notice following an anti-circumvention inquiry.

Before making a recommendation to the Minister, the ADRP may require the Commissioner to:

- reinvestigate a specific finding or findings that formed the basis of the reviewable decision, and
- report the result of the reinvestigation to the ADRP within a specified time period.

The ADRP only has the power to make **recommendations** to the Minister to affirm the reviewable decision or to revoke the reviewable decision and substitute with a new decision. The ADRP has no power to revoke the Minister's decision or substitute another decision for the Minister's decision.

WHICH APPLICATION FORM SHOULD BE USED?

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

Division 9 of Part XVB of the Act deals with reviews by the ADRP. Intending applicants should familiarise themselves with the relevant sections of the Act, and should also examine the explanatory brochure (available at www.adreviewpanel.gov.au).

There are separate application forms for each category of reviewable decision made by the Commissioner, 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 an ADRP review of a decision of the Minister under s 269ZDB, following a review inquiry. It is approved by the Commissioner pursuant to s.269ZY of the Act.

WHO MAY APPLY FOR REVIEW OF A DECISION FOLLOWING A REVIEW INQUIRY?

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

- if an application was made which led to the reviewable decision, the applicant
- a person representing the industry, or a portion of the industry, which produces the goods which are the subject of the reviewable decision
- a person directly concerned with the importation or exportation to Australia of the goods
- a person 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 of origin or of export of the subject goods.

Intending applicants should refer to the definition of “interested party” in 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 is 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 ADRP after it has been properly made in accordance with the instructions under 'Where and how should the application be made?' (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 ADRP that the Minister's decision should be reviewed. It is not sufficient simply to request that a decision be reviewed.

The application should include a statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.

The application must contain a full description of the goods to which the application relates and a statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision (s 269ZZE).

PUBLIC RECORD

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 will be rejected by the ADRP unless an appropriate summary statement has been prepared and accompanies the application.

If the applicant seeks to bring confidential information to the ADRP's attention (either in their application or subsequently), the applicant must prepare a summary statement which contains sufficient detail to allow the ADRP 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 269ZZY).

While both the confidential information and the summary statement must be provided to the ADRP, only the summary statement will be lodged on the public record maintained by the ADRP (s 269ZZX). The ADRP is obliged to maintain a public record for review of decisions made by the Minister, and for termination decisions of the Commissioner. The public record contains a copy of any application for review of a termination decision made to the ADRP, as well as any information given to the ADRP 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 ADRP does not have any investigative function, and **must** take account only of information which was before the Minister when the Minister made the reviewable decision (s 269ZZ). The ADRP will disregard any information in applications and submissions that was not available to the Minister.

HOW LONG WILL THE REVIEW TAKE?

The timeframes for a review by the ADRP will be dependent on whether the ADRP requests the Commissioner to reinvestigate specific findings or findings that formed the basis of the reviewable decision.

If reinvestigation is not required

Unless the ADRP requests the Commissioner to reinvestigate a specific finding or findings, the ADRP must make a report to the Minister:

- at least 30 days after the public notification of the review
- but no later than 60 days after that notification.

In special circumstances the Minister may allow the Review Panel a longer period for completion of the review (s 269ZZK(3)).

If reinvestigation is required

If the ADRP requests the Commissioner to reinvestigate a specific findings or findings, the Commissioner must report the results of the reinvestigation to the ADRP within a specified period.

Upon receipt of the Commissioner's reinvestigation report, the ADRP must make a report to the Minister within 30 days.

WHAT WILL BE THE OUTCOME OF THE REVIEW?

At the conclusion of a review, the ADRP must make a report to the Minister, recommending that the:

- Minister affirm the reviewable decision (s 269ZZK(1)(a)), or
- Minister revoke the reviewable decision and substitute a specified new decision (s 269ZZK(1)(b)).

After receiving the report from the ADRP the Minister must:

- affirm his/her original decision, or
- revoke his/her original decision and substitute a new decision.

The Minister has 30 days to make a decision after receiving the ADRP's report, unless there are special circumstances which prevent the decision being made within that period. The Minister must publish a notice if a longer period for making a decision is required (s 269ZZM).

WHERE AND HOW SHOULD THE APPLICATION BE MADE?

Applications must be EITHER:

- lodged with, or mailed by prepaid post to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA**

- OR emailed to:

ADRP@industry.gov.au

- OR sent by facsimile to:

**Anti-Dumping Review Panel
c/o Legal Services Branch
+61 2 6213 6821**

WHERE CAN FURTHER INFORMATION BE OBTAINED?

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

Anti-Dumping Review Panel
c/o Legal Services Branch
Department of Industry and Science
10 Binara Street
Canberra City ACT 2601
AUSTRALIA

Telephone: +61 2 6276 1781

Facsimile: +61 2 6213 6821

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

Anti-Dumping Commission
Department of Industry and Science
Ground Floor Customs House
1010 Latrobe Street
MELBOURNE 3008

Telephone: 1300 884 159

Facsimile: 1300 882 506

Email: clientsupport@adcommission.gov.au

FALSE OR MISLEADING INFORMATION

It is an offence for a person to give the ADRP written information that the person knows to be false or misleading in a material particular.

(Penalty: 20 penalty units – this equates to \$3400).

PRIVACY STATEMENT

The collection of this information is authorised under section 269ZZE of the *Customs Act 1901*. The information is collected to enable the ADRP to assess your application for the review of a decision of the Minister under s 269ZDB of the *Customs Act 1901* following a review inquiry.

**APPLICATION FOR REVIEW OF A DECISION OF THE MINISTER
FOLLOWING A REVIEW INQUIRY**

Under s 269ZZE of the *Customs Act 1901* (Cth), I hereby request that the Anti-Dumping Review Panel reviews a decision by the Minister responsible for Australian Customs and Border Protection Service:

To alter:

- a dumping duty notice(s) following a review inquiry
- a countervailing duty notice(s) following a review inquiry.

OR

To revoke:

- a dumping duty notice(s) following a review inquiry, and/or
- a countervailing duty notice(s) following a review inquiry.

OR

Not to alter:

- a dumping duty notice(s) following a review inquiry, and/or
- a countervailing duty notice(s) following a review inquiry.

OR

- that the terms of an undertaking are to remain unaltered
- that the terms of an undertaking are to be varied
- that an investigation is to be resumed
- that a person is to be released from the terms of an undertaking

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
- provides reasonable grounds for the decision not being the correct or preferable decision, and
- is complete and correct to the best of my knowledge and belief.

I have included the following information 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.

PUBLIC RECORD

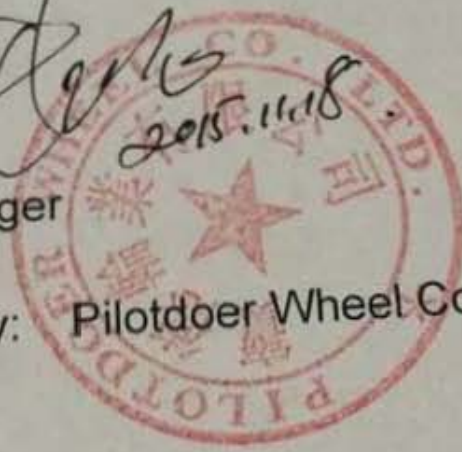
- A copy of the reviewable decision.
- Date of notification of the reviewable decision and the method of the notification.
- A detailed statement setting out the applicant's reasons for believing that the reviewable decision is not the correct or preferable decision.
- A statement identifying what the applicant considers the correct or preferable decision should be, that may result from the grounds the applicant has raised in the application. There may be more than one such correct or preferable decision that should be identified, depending on the grounds that have been raised.
- [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.

Signature:

Name: You Feijun

Position: General Manager

Applicant Company/Entity: Pilotdoer Wheel Co., Ltd.



Date: 18 / 11 / 2015

**APPLICATION FOR REVIEW OF THE DECISION TO PUBLISH A
DUMPING DUTY NOTICE ON EXPORTS OF ALUMINIUM ROAD
WHEELS BY PILOTDOER FROM THE PEOPLES REPUBLIC OF
CHINA**

1、 APPLICANT

Name: Pilotdoer Wheel Co.,Ltd.

Address: Dajiahe Industrial Zone, Ninghai, Zhejiang Province, China

Entity: Company

Here referred to jointly throughout the application as “Pilotdoer”.

2、 APPLICANT’S CONTACT DETAILS

Name: You Feijun

Position: General Manager

Tel: +86-0574-65153333

Fax: +86-0574-65153399

Email: yfj@pdwheel.com

APPLICANT’S REPRESENTATIVE

Name: Paul Chao

Company: Yingke Law Firm

Address: Layer 60 Building International Runhua, 1188-2 Road West Taihu, Binhu District of Wuxi, China

Tel: 86-18610713714

Email: Paul_Chaoo@163.com

3、 DESCRIPTION OF THE IMPORTED GOODS

The Anti-Dumping Commission’s (the Commission) Final Report No. 263 describes the goods as follows:

The goods the subject of the current anti-dumping measures (the goods), as defined in the previous investigation, are:

Aluminium road wheels for passenger motor vehicles, including wheels used for caravans and trailers, in diameters ranging from 13 inches to 22 inches.

For clarification, the goods include finished or semi-finished ARWs whether unpainted, painted, chrome plated, forged or with tyres and exclude aluminium wheels for go-carts and All-Terrain Vehicles.

4、 TARIFF CLASSIFICATION OF THE IMPORTED GOODS

The goods are classified to the following tariff subheadings in Schedule 3 of the Customs Tariff Act 1995:

- 8708.70.91 (statistical code 78)
- 8708.70.99 (statistical code 80)
- 8716.90.00 (statistical code 39)

5、 DATE AND METHOD OF NOTIFICATION OF THE REVIEWABLE DECISION

Public notification of the reviewable decision was made on 22 October 2015 and was published in The Australian newspaper and the Gazette (enclosed) on that day.

6、 REASONS FOR BELIEVING THAT THE REVIEWABLE DECISION IS NOT THE CORRECT OR PREFERABLE DECISION

Pilotdoer contends that the findings in Final Report 263 are not correct or preferable due to:

Ascertained normal values were unfair and unreasonable by using the average net profit from domestic sales made in OCOT by other selected exporters when the Commission calculated Pilotdoer's profit to construct normal values, and it gave rise to determining an incorrect dumping margin for Pilotdoer.

The REP 263 states that:

*The Commission has disregarded Pilotdoer's domestic sales data for the purpose of determining Pilotdoer's profit rate, because Pilotdoer did not meet the ordinary course of trade (OCOT) test discussed above. Subsection 269TAAD(2) of the Act requires that for domestic sales of like goods to be considered in OCOT, they must represent at least 20 per cent of the **total volume of export sales** during the relevant period (the review period in this instance). Accordingly, the Commission had not recommended that Pilotdoer's profit be calculated under subsection 45(2) of the International Obligations Regulation. The Commission considers that it was similarly unable to establish Pilotdoer's rate of profit under subsection 45(3)(a) of the International Obligations Regulation, using the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market. This was because the company did not reach the required level of domestic sales of goods from the same general category as ARWs to be considered in the OCOT pursuant to subsection 269TAAD(2).*

The Commission was further unable to determine profit under subsection 45(3)(b) of the International Obligations Regulation, which enables the Commission to identify the weighted average profit for other selected exporters, because the Commission was unable to identify a profit rate for all other selected exporters, due to the unreliability of Zhejiang Yueling's data.

The Commission has calculated Pilotdoer's profit under subsection 45(3)(c) of the International Obligations Regulation with reference to all relevant information. This involved using the average net profit from domestic sales made in OCOT by other selected exporters, except Zhejiang Yueling.

Pilotdoer considers that there is a failure in the ordinary course of trade (OCOT) test. Because the Commission took an incorrect and unreasonable practice to evaluate Pilotdoer's domestic sales whether meet the OCOT test under the Subsection 269TAAD(2) of the Act.

PUBLIC RECORD

Pursuant to subsection 269TAAD(2) of the Act, and along with s.269TAC(5B) and 269TAC (2)(c)(ii) and 269TAC(4)(e)(ii) of the Act, it requires that for domestic sales of like goods to be considered in OCOT, they must represent at least 20 per cent of the total volume of domestic sales, but not export sales during the relevant period (the review period in this instance). But the Commission calculated the proportion using the total volume of export sales as above stated in the report. Hence, Pilotdoer submits that the Commission has not complied with its own policy and its manual under the subsection 269TAAD(2) of the Act to evaluate and assess Pilotdoer's domestic sales whether meet the OCOT test.

In accordance with the Commission's dumping and subsidy manual and the approach the Commission used in other selected exporters, Pilotdoer takes an OCOT test in the **Appendix 1 [Confidential information including domestic sales and CTMS data, which cannot be provided in the non-confidential summary]** as a reference.

It is abundantly clear from the Appendix 1 above that domestic sales of like goods in ordinary course of trade represent at 70 per cent of the total volume of domestic sales, and that adequately demonstrates Pilotdoer's domestic sales meet the OCOT test, the Commission should recommend that Pilotdoer's profit be calculated under subsection 45(2) of the International Obligations Regulation. The Commission should establish Pilotdoer's rate of profit under subsection 45(3)(a) of the International Obligations Regulation, using the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market.

As such, Pilotdoer also works out the profit rate under subsection 45(2) of the International Obligations Regulation and in accordance with the section 7.3 of the Commission's dumping and subsidy manual in the **Appendix 1 [Confidential information including domestic sales and CTMS data, which cannot be provided in the non-confidential summary]** as a reference.

In conclusion, Pilotdoer contends that the ADRP should request the Commission to undertake an objective and correct examination of the practice in determining Pilotdoer's profit to construct normal values, and accordingly recalculate Pilotdoer's dumping margin.

Yours sincerely