



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 11 July 2018 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 and/or 11 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: AUSTUBE MILLS PTY LTD
Address: INDUSTRIAL DRIVE, MAYFIELD NSW 2304
Type of entity (trade union, corporation, government etc.): CORPORATION

2. Contact person for applicant

Full name: [REDACTED]
Position: [REDACTED]
Email address: [REDACTED]
Telephone number: [REDACTED]

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

The applicant for review is a person representing a portion of the industry producing like goods in Australia.
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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 goods subject to the anti-dumping measures and therefore the subject of the reviewable decision are:

Certain electric resistance welded pipe and tube made of steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes, whether or not including alloys. The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include pre-galvanised, hot-dipped galvanised (HDG), and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 mm up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 950.0 mm. CHS with other than plain ends (such as threaded, swaged and shouldered) are also included within the goods coverage.

The following goods are excluded from the anti-dumping measures:

- conveyor tube made for high speed idler rolls on conveyor systems, with inner and outer fin protrusions removed by scarfing (not exceeding 0.1mm on outer surface and 0.25mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6mm in order to maintain vibration free rotation and minimum wind noise during operation);
- precision RHS with a nominal thickness of less than 1.6 mm (i.e. not used in structural applications); and
- stainless steel CHS and RHS sections.

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

The goods are currently classified to the following tariff subheadings and statistical codes in Schedule 3 to the *Customs Tariff Act 1995*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 25)
- 7306.69.00 (statistical code 10)

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number:

ADN 2018/88 (a copy of the notice of the reviewable decision is attached as Appendix A to this application).

Date ADN was published:

27 June 2018

****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:

Summary of grounds:

The reviewable decision was not the correct or preferable decision because the Minister's determination of the ascertained normal value for the exporter, Thai Premium Pipe Co Ltd, did not include an adjustment to account for physical differences between exported goods and the like goods.

Reasons in support:

In summary, this issue arises because the normal value calculated under s.269TAC(1) of the *Customs Act 1901* (**the Act**) was based on prices of domestic sales of HSS by Thai Premium Pipe Co Ltd (**Thai Premium**) which were not identical to the goods exported to Australia during the review period.

In its submission to the Commission dated 4 May 2018³, the applicant for review provided the following evidence:

...the product manufactured for sale into the Thailand domestic market by Thai Premium is almost exclusively unpainted product. By contrast Austube Mills is aware that the majority of product exported to Australia by Thai Premium was painted product. According to the model matching hierarchy^[4] provided to the Commission by Austube Mills, the second most important characteristic (of the seven identified) to match when comparing domestic sales to export sales is the type of coating. Further Austube Mills stated in its exporter briefing document that:

³ EPR Folio No. 445/021 (7 May 2018)

⁴ Original footnote 2: EPR 445/10 p. 18

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Painted product unlikely to be sold domestically so adjustment required to compare with export sales^[5]

In the absence of domestic sales of an equivalent model with the same unpainted, painted or galvanised coating, the Commission should either upwardly adjust the normal value in order to account for comparison with that export price, or where evidence of price comparability between painted and unpainted product sold in the domestic market is not available, then determine the normal value using a constructed methodology which includes the cost of painting.⁶

It is important to observe here that the Commission did not perform on-site verification of the exporter, Thai Premium's financial information, and was not able to physically satisfy itself of these matters. On the other hand, the applicant for review provided the Commission with evidence of the improbability that the exporter produced for sale into the Thai domestic like goods with a painted finish in sufficient quantities in the ordinary course of trade with details of the exporter's production process for goods exported to Australia:

This issue is particularly important for Thai Premium as during the investigation period Austube Mills understands that the painting of product exported to Australia was undertaken by Thai Metal Trade^[7] a business located 112km from the EXW point of the Thai Premium manufacturing facility.

The following map highlights the likely route taken in transporting the export product from Thai Premium Pipe to the painting factory.⁸

During the inquiry, Austube Mills clearly demonstrated to the Commission that whether HSS is painted or unpainted is a factor that affects price comparability. Indeed the Commission in fact reached this conclusion in the case of another exporter⁹ of the goods:

The Commission applied a specification adjustment with regard to two models of black HSS sold on the domestic market by Pacific Pipe.^[31] The specification adjustments were based on the verified cost to make difference between the black and painted models. Following its analysis of Pacific Pipe's sales information, the Commission is satisfied that whether HSS is black or painted is a factor that affects price comparability. The Commission is satisfied, therefore, that it is appropriate to make an adjustment for this factor to ensure the normal value is properly comparable [to] the export price.¹⁰

Therefore, given that it is unlikely that Thai Premium in fact sold sufficient volumes of painted HSS into the Thai domestic market in the ordinary course of trade, then when comparing the unpainted HSS likely sold in Thailand to the painted goods exported to Australia, an adjustment for such differences should have been made.

⁵ Original footnote 3: EPR 445/10 p. 18

⁶ EPR Folio No. 445/021, p. 1.

⁷ Original footnote 4: <http://www.thaimetaltrade.com/2010/> (accessed 3 May 2018)

⁸ EPR Folio No. 445/021, p. 2.

⁹ Pacific Pipe Public Company Limited

¹⁰ Report No. 445 – Hollow Structural Sections – Thailand, pp. 19 – 20.

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The adjustment may be quantified by reference to the approach applied in calculating the relevant specification adjustment for Pacific Pipe.¹¹

However, Report No. 445 rejected Austube Mills claim:

The Commission found that there were sufficient sales of painted like goods on the domestic market by Thai Premium, at arms length, to be able to determine normal value pursuant to subsection 269TAC(1), without the need for an adjustment.¹²

The applicant for review asserts that this is not the correct or preferable decision, and that the Commission's finding of "*sufficient sales of painted like goods on the domestic market by Thai Premium*" is incorrect.

The products are clearly not identical and have consistent cost and price differences. Section 269TAC(8) of the Act provides:

Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:

- (a) relate to sales occurring at different times; or
- (b) are not in respect of identical goods; or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

We submit that the differences between the domestic sales of like goods and the goods exported to Australia were clearly established by the Commission. Such differences must be adjusted so as to not affect the comparison of the export price and the corresponding normal value.

We ask the Review Panel to recommend to the Minister that such adjustment must be quantified and applied based on the differences between the prices for painted and unpainted HSS sold domestically. [REDACTED]

It is neither correct nor preferable for adjustment to be denied. In this regard, we note that the sales data of Pacific Pipe provided was accepted by the Commission as relevant and reliable data in the determination of the price variances for painted and unpainted HSS sold on the domestic market in Thailand by Pacific Pipe. This data may be applied to Thai Premium to calculate the necessary adjustment to its ascertained normal value under s.269TAC(8)(b).

¹¹ *Ibid.*, p. 20.

¹² *Ibid.*, p. 28.

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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:

The correct or preferable decision is that, for the purpose of dumping margin calculation, the ascertained normal value for Thai Premium be adjusted to account for the physical differences between the like goods and the goods exported to Australia during the review period.

11. Set out the reasons why the proposed decision provided in response to question 0 is materially different from the reviewable decision:

Do not answer question 11 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Based on Austube Mill's estimation, the making of the correct or preferable decision referred to under question 10 above would result in a decision that is materially different from the reviewable decision, because it would result in a change to the ascertained normal value for Thai Premium, and an increase to the dumping margin with respect to the exported goods calculated for that exporter.

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:



Position:



Organisation: Austube Mills Pty Ltd

Date: 27/07/2018

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: / /