Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (ADRP) on or after 2 March 2016 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party[2] 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

You or your representative may be asked to attend a conference with the Panel Member appointed to consider your application before the Panel gives public notice of its intention to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. The Panel may also call a conference after public notice of an intention to conduct a review is given on the ADRP website. Conferences are held between 10.00am and 4.00pm (AEST) on Tuesdays or Thursdays. You will be given five (5) business days' notice of the conference date and time. See the ADRP website for more information.

[1] By the Acting Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Further application information

You or your representative may be asked by the Panel Member to provide further information to the Panel Member in relation to your answers provided to questions 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 following the withdrawal process set out on the ADRP website.

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: GP Marketing International Pty Limited ACN 363 015 232 ("GPMI")

Address: Level 4, 160 Pacific Highway, North Sydney NSW 2060

Type of entity (trade union, corporation, government etc.): Corporation

2. **Contact person for applicant**

Full name: Mark Pedruco

Position: Director

Email address: gpmi@gpmi.com.au

Telephone number: 02 9925 0755

Please note that all communications in relation to this application are requested to take place with and through GPMI's legal representatives. For contact details please refer to Part E of this application.

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

Pursuant to Section 269ZZC of the *Customs Act* 1901 ("the Act"), a person who is an interested party in relation to a reviewable decision may apply for a review of that decision. An *"interested party"* is defined under Section 269T of the Act as including, amongst others, any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods. GPMI is an importer of the goods to which the decision relates, namely certain hollow structural sections, and is thus an *"interested party"* for the purposes of the Act and this application.

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

According to *Final Report No 291 - Anti-Circumvention Inquiry – Hollow Structural Sections Exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan* ("Report 291"), being the report that contained the recommendations of the Commissioner of the Anti-Dumping Commission that were accepted by the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science ("the Minister") in the making of the reviewable decision, the goods which were the subject of the reviewable decision, referred to in that report as the "circumvention goods", were:

> *Certain electric resistance welded pipe and tube made of alloy steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.*

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

The goods are classified under the following tariff subheadings:

- 7306.50.00 (statistical code 45) – OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL - Other, welded, of circular cross-section, of other alloy steel; and
- 7306.61.00 (statistical code 90) – OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL - of square or rectangular cross-section - of iron or non-alloy steel – other.

8. **Provide the Anti-Dumping Notice (ADN) number of the reviewable decision**

If your application relates to only part of a decision made in an ADN, this must be made clear in Part C of this form.

2016/24.

The grounds of this application do not relate to only part of the decision. To clarify, if the Review Panel agrees with the applicant's first ground of review, then no "circumvention activity" can be found to have taken place in respect of any exporter from any country. In that case the Review Panel must recommend that the Minister revoke the reviewable decision and make a new decision not to alter the original notice. Similarly, if the Review Panel does not agree with the applicant's first ground of review, but does agree to the revocation of the reviewable decision and the making of a new decision only in relation to the backdating of the date of effect of the alteration to the original notice, then in the applicant's opinion the date of effect as recommended by the Review Panel would apply to any and all exporters.

9. **Provide the date the notice of the reviewable decision was published**

The reviewable decision was dated 17 March 2016 but was not published until the next day, 18 March 2016. The Anti-Dumping Commission website evidences that publication took place on 18 March 2016 as follows (see "Date Loaded"):

EPR 291

Hollow Structural Sections Exported from China, Korea and Malaysia

No.	Type	Title	Date Loaded
038	Notice	ADN 2016/24 - Findings in relation to an Anti-Circumvention Inquiry (PDF 459KB)	18 March 2016
037	Report	Final Report - REP 291 (PDF 2.5MB)	18 March 2016

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

See Attachment A

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 grounds 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.

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: ☐

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

First ground – the "circumvention activity" relied upon by the Commissioner in making his recommendations to the Minister, and accepted by the Minister in making her decision, did not exist.

In Report 291, the Commissioner recommended that the Parliamentary Secretary declare that the original notices be altered to specify that different goods exported by the specified exporters or supplied by the specified suppliers are to be the subject of the original notices. In this respect, the "original notices" applied to the following goods:

> *Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections in galvanised and non-galvanised finishes.* [underlining supplied]

We can refer to these goods generically as "non-alloy HSS". In accepting the Commissioner's recommendation, the Minister decided to alter the original notices so that they extended to goods that can generically be referred to as "alloy HSS". As stated in Report 291, alloy HSS is classified to the following tariff subheadings:

- 7306.50.00 (statistical code 45) – circular; and
- 7306.61.00 (statistical code 90) – rectangular/square.

In order to alter the original notices in this way, it was necessary for the Commissioner to report to the Minister in the terms set out in Section 269ZDBG(1)(d)(i) of the Act. Those terms are that *"the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred"*. Such a circumvention activity can occur, according to Section 269ZDBB(6) of the Act, *"in the circumstances prescribed by the regulations for the purposes of this subsection"*.

The relevant circumstance that the Commissioner relied upon in making his recommendation to the Minister that the original notice be altered was that referred to in Regulation 48(2) of the *Customs (International Obligations) Regulation* 2015. That Regulation provides that the circumstance is that all of the following apply:

> *(a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;*
>
> *(b) before that export, the circumvention goods are slightly modified;*
>
> *(c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;*
>
> *(d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;*
>
> *(e) section 8 or 10 of the Customs Tariff (Anti-Dumping) Act 1975, as the case requires, does not apply to the export of the circumvention goods to Australia.*

The ground on which the applicant believes that the reviewable decision is not correct is that subparagraph (b) does not apply and cannot be said to apply to the situation that was identified by the Commissioner in Report 291.

The order of analysis that underlies this proposition is that the *"circumvention goods"* are alloy HSS, being the goods referred to in subparagraph (e) as goods to which Section 8 or 10 *"does not apply"*. However subparagraph (b) requires that before their export, the circumvention goods are slightly modified. Axiomatically, alloy HSS was not slightly modified before it was exported. Alloy HSS is made from alloy hot-rolled coil ("HRC"). Non-alloy HSS is made from non-alloy HRC.

The applicant wishes to point out, for the benefit of the Review Panel, that the argument underpinning the applicant's first ground is not the argument as characterised by the Commissioner at 5.1.1 of Report 291. There, the Commissioner states that:

> *Dalian Steelforce, Steelforce Trading and an unnamed importer contend that the alloyed HSS is not a slightly modified good of non-alloyed HSS. It is submitted that it is not the non-alloyed HSS itself that is modified but it is the HRC that is different between the non-alloyed and alloyed HSS manufacture.*

The applicant's position as stated herein is not that *"alloyed HSS is not a slightly modified good of non-alloyed HSS"*. The applicant's position is that the circumvention goods are the goods referred to in subparagraphs (a) and (e) of Regulation 48(2), being alloy HSS, and that alloy HSS was not slightly modified before it was exported.

Second ground – if the circumvention activity did exist, which is not admitted nor accepted by the applicant, the Minister should not have exercised her discretion to backdate the alteration to the original notice to 11 May 2015.

At 7.7 of Report 291, the Commissioner makes the following comments and recommendation:

> *The Commissioner notes that the legislation (outlined at section 7.2) indicates that, if the Parliamentary Secretary declares that a notice is to be altered, that declaration must indicate the date of effect of those alterations. The Commissioner notes that the earliest date available to her is the date of publication of the public notice of initiation of an anti-circumvention inquiry.*
>
> *The Commissioner considers that the application of the anti-dumping measures from the date of initiation of these inquiries provides the most effective remedy to the Australian industry available under the terms of the legislation.*
>
> *Accordingly, the Commissioner recommends that the alteration of the original notices*

referred to above have effect from the date of initiation of the inquiry being 11 May 2015.

The applicant requests the Review Panel to review the decision to backdate the alteration to the original notice to 11 May 2015, being the date of initiation of the anti-circumvention inquiry to which the decision relates. The applicant contends that the decision to backdate the alteration to 11 May 2015 was not the preferable decision.

In this regard the applicant wishes to adopt, for the purposes of this application, the argumentation set out in B of the letter submitted by Moulis Legal to the Commission dated 25 November 2015. There does not appear to have been any consideration of that argumentation by the Commissioner, or at least no consideration of it is reflected in Report 291.

For the Commission's convenience that argumentation is set out in full below:

B The effect of the alterations should not be backdated

Amendments to Australia's anti-dumping legislation to introduce "circumvention activities" as "actionable" activities – in the sense that the proof of one or other of those activities could adversely affect the rights of a party involved in them – became law on 11 June 2013. On and from that date the Parliamentary Secretary was empowered, following investigation and report from the Commission, to find that a circumvention activity had occurred and to take action in respect of it. The circumvention activity constituted by "slight modification" is an exception to this. It came into effect on 1 April 2015. The first set of circumvention activities were enacted by way of amendments to the Act, and the "slight modification" circumvention activity became law by way of regulation.

The power to take action that was bestowed on the Parliamentary Secretary was to make a declaration to alter the notice, and as part of that declaration to impose dumping measures under the altered notice with effect on a day specified in the declaration. To that end Sub-section 269ZDBH(1) provides as follows:

> (1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (9), that for the purposes of this Act and the Dumping Duty Act:
>
> (a) the original notice is to remain unaltered; or
>
> (b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

A limitation was placed on the retrospective effect of such an altered notice, to the effect that the back-dating could not be before the Commission's notice of initiation of the inquiry.

On behalf of our client we make the following submissions by way of strong objection to the proposal to back-date the altered notices to the date of initiation of this inquiry. The key points of our submissions are these:

- *Backdating of an alteration should be considered to be an exceptional use of the discretion in that it adversely affects the interests of a party at a time before a "liability" for behaviour has been determined.*

- *It follows that a decision to backdate an alteration to the maximum degree is the most severe exercise of the discretion, to be exercised in exceptional circumstances.*

- *Determining whether and how the discretion should be exercised requires a consideration of a multitude of facts, circumstances, interests and policies.*

- *In our respectful opinion, the circumstances of this "slight modification" circumvention activity, in this case and at this time, do not at all justify a decision to backdate the alteration in a way which most severely affects the interests of importers such as our client. [Footnote in original - Our submissions in this regard are not intended to detract from our client's position as explained in A above.]*

1 *The exercise of the discretion must take into account different factors in relation to the different circumvention activities. The exercise of any discretion, when it relates to different legal conditions, and different facts and circumstances, must itself be variable. The selection of the maximum period of backdating, as is proposed in this case, is the most extreme exercise of the discretion that can be contemplated. In that context it is worthwhile to consider how the discretion should be guided, and to look at the circumstances for the exercise of the discretion.*

In relation to the former, the debate leading up to the enactment of the anti-circumvention laws focused on the alleged "unlawfulness" of behaviour by exporters and importers in evading dumping duties that might otherwise be payable, and on practices that although not unlawful might be frowned upon in some way or other, in the sense that the overall objective of the dumping duties were not being met. An assessment of behaviour that is "right" and "wrong" and of the moral conditions attaching to such behaviour is very difficult to make in circumstances where the "practice " of dumping is not itself illegal or unlawful in the first place. However it seems to us that the discretion to backdate duties itself needs to have some compass by which to guide it, however difficult it might be to describe that compass.

We would also submit that the discretion is not all "one way". It is true that the objective of dumping duties is to protect an industry against prices that, in a previous period, were deemed to be too low and to have caused material injury to that industry thereby. At the same time, the Federal Court has made it clear that the protection of Australian industry is not the only objective of Australia's anti-dumping laws, and that a balance must be struck. As per Nicholas J in the Panasia case:

> Further, I do not agree with [the Australian industry] that the purpose of Part XVB of the Act is "to protect Australian industry". The purpose of Part XVB is far more complicated. It is apparent from the scheme of Part XVB that the legislature has sought to strike a balance, as the relevant international agreements no doubt seek to do, between various interests including not only those of Australian industries but also other WTO members and their own domestic industries, Australian consumers (in the broadest sense of that word) who may have an interest in acquiring imported goods at the lowest available prices and Australian exporters that supply their goods to other countries that are also members of the WTO. [Footnote in original - *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, at para 148]

Part of that balance, it seems to us, is that the lawful conduct of commerce should not be interfered with simply because an Australian industry does not like the practice from the perspective of its own self-interest. There are wider considerations that must be taken into account. The rights of other Australians – not only those of the Australian industry – are equally important.

The power to backdate the alteration of a notice exists within that landscape of law and policy. It permits, in its most severe application, the backdating of an alteration to a time at which the behaviour concerned had not yet been demonstrated to have occurred or to have been "punishable". We use that word advisedly, but even if "punish" is not the correct expression to use it is at least true to say that by reason of backdating an alteration to a notice in that way a person's interests are adversely affected to a greater degree than would be the case if the notice was not backdated. The ordinary case or "default position" would seem to us to be that the alteration of a notice should only have effect from the time at which the decision that found that there a circumvention practice had occurred is actually made, and not before. In our view there needs to be a justification for backdating, being a justification which is aligned to the policies and other considerations that were relevant to the enactment of the laws and to the place that the anti-dumping system holds in national policy (as explained by Nicholas J in the extract we have quoted from the Panasia case) and that do not depart from accepted precepts of administrative fairness and reasonableness.

2 *In that context the first comment we would make is to acknowledge that a justification is offered in SEF 291 for the proposal to adopt the most extreme form of backdating allowable (namely, to the date of initiation of the inquiry). That justification is stated as follows:*

> To ensure any alteration to the original notice provides an effective remedy to the injurious effects caused by circumvention behaviour, it is necessary to alter the original notices in such a way that the changes are applied both retrospectively and prospectively.
>
> The Commission proposes to recommend that the original notices be altered so as to have effect from the date of initiation of this inquiry, 11 May 2015.

This justification appears to have been arrived at without considering any other factors which are relevant to the exercise of the discretion. [Footnote in original - We note that although this justification is stated we see no factual analysis in SEF 291 which would support it.] With respect, it is blinkered and one-sided. The question we would like to pose, in order to test whether this justification is sufficient to support the intended recommendation, is whether the Commission has given full enough consideration to the range of factors that ought to be taken into account before "penalising" or "punishing" parties who, at the time of the backdating, were going about their lawful business.

3 *We draw the Commission's attention to the fact that there are a number of circumvention activities that are described in the relevant provisions of the Act. Those activities can be ranked from those which could be considered to result in the outright evasion of dumping duties otherwise payable, to those that are fully legal at the time they occur and are defensible as being normal commercial behaviour (whether or not the legislature has decided to refer to all of the activities, somewhat pejoratively, as "circumvention activities").*

In that ranking we would think it to be unarguable that arrangements between exporters whereby one exporter's products are exported by another exporter with a lower dumping duty rate are entirely evasionary and indefensible. For example, we assume that such a practice would involve material misrepresentations being made in entry documentation about the corporate origin of the goods. Transhipping goods originally manufactured in and exported from a country that is subject to dumping duties, and claiming on importation into Australia that they are exports of the transhipment country that is not subject to dumping duties, could also validly be considered to be a sharp practice that should not be tolerated. In cases where these activities are proven, the Parliamentary Secretary might properly consider herself to be fully justified in applying backdating to the maximum extent.

4 *The other types of circumvention activities do not fall into the same category of severity as the two we have already mentioned. Thus, the choice of an exporter to assemble goods in a third country, or even in Australia, from parts of the goods that were originally exported and found to have been dumped from the country subject to the notice, would be less clearly a circumvention activity that the Parliamentary Secretary would seek to treat with the maximum harshness. Questions as to what is a significant proportion of the parts from the country originally subject to the notice would only be answerable in the course of an inquiry to establish whether the circumvention activity had occurred. The complexity of the assembly may also affect the exercise of the discretion to backdate, in that the anti-dumping system has a heavy focus, of course, on prices and costs. Such prices and costs can be expected to be substantially different in the case of such a radical reorientation of an exporter's manufacturing activities.*

5 *In making these comments we wish to stress that we are not challenging or seeking to ignore the anti-circumvention laws themselves. The exercise we are here undertaking is to evaluate the exercise of the discretion to backdate the date of effect of an altered notice. We do not doubt that the legislature has labelled each of the six circumvention activities purposefully and under the same umbrella, and that proof of one or other of them will have the consequence of allowing the relevant notice to be altered. Our focus is on the exercise of the discretion to backdate, which is a decision that will adversely affect interested parties to a greater degree than a decision only to impose duties from the time that the Parliamentary Secretary has made her final decision. This discretion must be exercised in a way which has regard to the policy factors we have mentioned, and which is administratively reasonable and fair. The power is not untrammelled and we would suggest that it cannot be exercised on every occasion in the most extreme way simply because of a concern about injury to the Australian industry. That would be an all too unsophisticated appreciation of the power and its implications for those who will potentially be affected by its exercise.*

6 *We move on now to the circumvention activity referred to as the avoidance of the intended effect of the duty. This, it seems to us, is also an activity which would inherently have a lesser requirement for backdating than others. Competition policy promotes competition in markets, except where it is "predatory". Thus backdating any alteration to a notice to have effect at a time before the final decision has been made would seem to us to be needlessly discriminatory against importers and extremely unreasonable, except perhaps where there is strong evidence that an exporter and/or importer's prices are not market driven.*

7 Moving now to the circumvention activity referred to as slight modification, we make these comments:

(a) Unlike the circumvention activities having to do with transhipment and arrangements with exporters, slightly modified goods have not at any time been goods subject to the original notices. On this basis alone we can see that the slight modification of goods is not an unlawful or evasionary practice at any time from the time it occurs until the Parliamentary Secretary properly concludes that it has occurred. Transhipment and arrangements with exporters relate to the very goods that are subject to the original notices, and for that reason a heavier-handed exercise of the discretion could be expected in respect of them.

(b) Consistent with the comments in (a) above, nothing that any importer has done in relation to the importation of alloy HSS has been illegal. For its part our client has properly entered the goods, and properly cleared them after having paid the duties that apply to them. There is no facility for an importer to pay duties such as dumping duties to a Collector if those duties are not legally payable, and it is unfair to expect an importer to conduct its business by charging higher prices which include a contingency for an uncertain event – backdating of an alteration to a notice- that may or may not occur in the future.

(c) The scope of the goods against which dumping duties were originally imposed was defined by the Australian industry itself. Our recollection is that this was done very clearly and very deliberately by OneSteel. A decision by importers to purchase goods that are not subject to the notices, and to sell them alongside the goods that are subject to the duties, is competitive conduct that was not challenged by the Australian industry. It may be that the Australian industry made an error in how it described the goods in its original application, however the sins of that error should not now be visited on the importers themselves. Certainly, as indicated by the legislature, the circumvention activity of slight modification can lead to the alteration of notices to encompass them, and to the imposition of the same duties on them as are imposed on the goods already subject to the notices. However the backdating of the alteration to a time before it had been decided that the goods were slightly modified is a different matter and, in our view, is not administratively fair. To the contrary, it is heavy-handed. As we have already emphasised, backdating the alteration of notices to the maximum extent should be reserved for those cases where the circumstances are at their most offensive in a legal or policy sense. Slight modification is not illegal and neither our client nor any other importers of alloy HSS have evaded the payment of dumping duties. They simply made commercial decisions to import goods that were not subject to the notices.

(d) We also note that the law and administrative precedent in this area is entirely new. Future importers will be much better informed as to what the Commission considers a "slight modification" to be. Indeed we have already expressed our view that there is no slight modification as prescribed by law in this case. This is only the first or second (in parallel) "slight modification" inquiry that the Commission has conducted. Setting down opinions in the form of SEF 190 and the final Report, which of course has not even been published yet, will allow

interested parties to have a much better understanding of what is considered to be a slight modification and what is not. Punishing importers who have not had the benefit of that education and that precedent by not only imposing duties on them but also backdating those duties would be, with respect, quite mercenary and unfairly punitive. It is not only the self-interest of the Australian industry that is important here, and it is unfair for the Commission to be swayed only by the lobby groups who have demonised the exporter/importer business community in their clamour for ever-greater levels of protection. Altering the notices and backdating them over the very long (the maximum) period allowed under the Act is not a fair and balanced exercise of the discretion.

(e) Another factor that the Commission is asked to take into account in the particular circumstances of this case is that the "slight modification" law only came into force on 1 April 2015. The proposal to backdate would take the alteration of the notices back to 11 May 2015. Importers such as our client had supply networks for alloy HSS in place at that time, with forward orders in place and with understandings about anticipated future volume offtakes also in place with its suppliers. At all relevant times those networks and commercial arrangements have been fully legitimate. It is simply not possible to cut off these networks or dishonour future supply arrangements over short periods of time, and our client cannot go back in time to change them.

(f) Moreover, the Commission's assessment of whether goods were slightly modified and exported to Australia is referable to the period 1 July 2010 to 31 March 2015. At no time during this period was the "slight modification" circumvention activity a part of the law of Australia or known to our client. It was not law and simply did not exist. Thus, the Commission has based its findings on facts and circumstances that were in existence at a time that the laws proscribing them were not. We submit that the exercise of the discretion to backdate should take into account the fact that the slight modification was not known to be a practice that was exposed to such action at any time during which it was taking place. [Footnote in original - We make this submission without detracting from the proposition that it may not be lawful for the Parliamentary Secretary to arrive at prejudicial findings against our client in respect of commercial practices that were not known to have the potential to attract an outcome that would be commercially prejudicial to them.]

11. 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 10.

In relation to the first ground, the correct decision ought to have been that there was no *"circumvention activity"* within the terms of Regulation 48(2) of the *Customs (International Obligations) Regulation* 2015; that the reviewable decision be revoked *ab initio*; and that a new decision be substituted to the effect that the original notice not be altered.

In relation to the second ground, the preferable decision ought to have been that the date of effect of the reviewable decision was the date on which it was made, and that accordingly that aspect of the reviewable decision be revoked and that a new decision be substituted to the effect that its date of effect was the date on which it was made, namely 18 March 2016 and not

earlier.

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

    <u>Do not</u> answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

In relation to the first ground, the proposed decision provided by the applicant in response to question 11 is materially different from the reviewable decision because it would exclude imports of alloy HSS from liability to dumping duties and countervailing duties entirely.

In relation to the second ground, the proposed decision provided by the applicant in response to question 11 is materially different from the reviewable decision because it would exclude from liability to dumping duties and countervailing duties any alloy HSS imported from 11 May 2015 to 18 March 2016.

PART D: DECLARATION

The applicant/the applicant's authorised representative *[delete inapplicable]* 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;

- 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: Daniel Moulis

Position: Principal Partner

Organisation: Moulis Legal

Date: 18 April 2016

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: Daniel Moulis

Organisation: Moulis Legal

Address: 6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory
Australia 2609

Email address: daniel.moulis@moulislegal.com

Telephone number: +61 2 6163 1000

Representative's authority to act

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

See Attachment B.

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: / /