



## Trade Measures Review Secretariat

# Understanding the Trade Measures Review Process

---

---

## Trade Measures Review Officer

On 24 February 1998 the Australian Government announced changes to Australia's anti-dumping and countervailing administration. The changes took effect from 24 July 1998. The Australian Customs Service (Customs) is now the sole agency responsible for anti-dumping and countervailing investigations, and a new independent administrative appeal mechanism was created with the establishment of the Trade Measures Review Officer (the Review Officer).

**The Review Officer** is a statutory appointment made by the Minister responsible for Customs (the Minister), and supported by the Trade Measures Review Secretariat (the Secretariat). The Review Officer's function is to review, upon application, certain decisions made by the Minister or by the Chief Executive Officer of the Australian Customs Service (the CEO).

The **legislative provisions** relating to anti-dumping are contained in Part XVB of the *Customs Act 1901* (the Act). Provisions prescribing the work of the Review Officer are set out in Divisions 8 and 9 of Part XVB of the Act. Customs Regulations 180 and 181, and the *Customs Tariff (Anti-Dumping) Act 1975*, are also pertinent to this area.

Australia is obliged, as a signatory to the World Trade Organisation Uruguay Round Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures, to ensure that its anti-dumping legislation and procedures comply with those Agreements.

## Reviewable Decisions

The Review Officer has the power only to make recommendations to the Minister, and may not revoke the Minister's decision or substitute another decision.

**Decisions made by the Minister** which are reviewable:

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

**Decisions made by the CEO** which are reviewable:

- to reject an application for dumping or countervailing measures (a negative *prima facie* decision);
- to terminate an investigation (a termination decision); and
- to recommend to the Minister the refund of an amount of interim duty less than the amount contended (a negative preliminary decision).

**Decisions not reviewable** by this process include:

- A decision by the Minister to accept an undertaking in respect of a dumping or subsidy matter;
- A decision by the Minister to vary the amount of the ascertained normal value, export price and non-injurious price imposed by an existing notice;

- A decision by the Minister to continue or not to continue dumping or countervailing measures;
- A decision by the CEO not to initiate a review of the amount of interim dumping duty; and
- A decision made by the Minister as a consequence of a review by the Review Officer.

## Application for Review

Intending applicants should refer to section 269ZX of the Act to establish whether they are eligible to apply. With regard to a **decision by the Minister**, any interested party may lodge an application for a review. The Act defines an interested party as:

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

With regard to a **decision by the CEO**, only the party which lodged the relevant application for the publication of a dumping duty notice or a countervailing notice, or for the assessment of duty, may seek a review.

An **application for a review** of a Ministerial decision must be received by the Review Officer within 30 days after the public notice of the reviewable decision was first published in a national Australian newspaper. In the case of a reviewable decision by the CEO, an application to the Review Officer must be made within 30 days after being notified of that decision.

It is essential that an application be submitted using the **approved form**. An application must clearly and comprehensively set out the grounds on which a review is sought, and provide sufficient particulars concerning the challenged finding or findings to satisfy the Review Officer that a reinvestigation of these could lead to a change to the reviewable decision to which the application relates. It is not sufficient simply to request that a decision be reviewed. In assessing whether sufficient grounds exist for a review, an intending applicant should familiarise themselves with Division 9 of Part XVB of the Act.

If the application contains material which is **confidential or commercially sensitive** (ie information the publication of which would adversely affect a person's business or commercial interests) a summary of that information must be provided to the Review Officer in a non-confidential version. The summary must contain sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward, without breaching confidentiality or adversely affecting the interests concerned. Applications will be rejected unless accompanied by a non-confidential version which adequately reflects the reasons for seeking review of a decision. If those reasons cannot be summarised, a statement of reasons why summarisation is not possible must be provided.

Application forms can be obtained from the Secretariat, or downloaded from its Internet site at <http://www.law.gov.au/tmro>.

## Review Process

A review will only be undertaken if the Review Officer is satisfied that **sufficient particulars** have been provided which would warrant such a review. The Review Officer must reject an application unless satisfied that the applicant has provided sufficient particulars, including particulars concerning the finding or findings to which the application relates, within the 30 day period allowed for the making of applications to the Review Officer. In circumstances where additional information is required the Review Officer may seek

further particulars from an applicant within that 30 day period.

All applications will be assessed as soon as is practicable. It is therefore in an applicant's best interest to ensure that applications are lodged as soon as possible **within the 30 day statutory period.**

The review process differs according to whether a decision of the Minister or the CEO is being reviewed.

Once an application to review a decision by the Minister has been accepted by the Review Officer, a **notice will be published** in at least one national newspaper advising that a review will be undertaken and calling for submissions. In addition, the Review Officer may write to all known interested parties informing them of the review.

Reviews of negative *prima facie*, termination and negative preliminary decisions of the CEO are not notified in the press as the applicant is deemed to be the only party adversely affected by such decisions. Other parties will have an opportunity to contribute to consideration of these issues if the decision is revoked by the Review Officer.

The Review Officer is required to make a **decision within 60 days.** In special circumstances the Minister may allow the Review Officer a longer period for completion of a review.

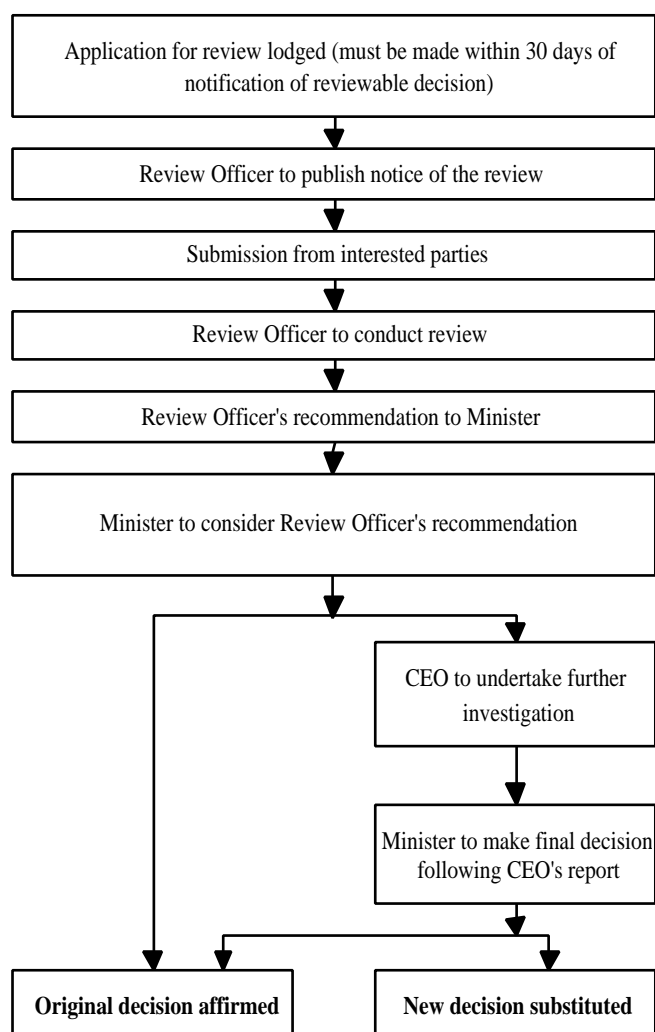
In the case of Ministerial decisions, the Review Officer is required to recommend to the Minister within 60 days of the public notification of the review - but not sooner than 30 days from the publication of the notice - that the reviewable decision be affirmed, or that the CEO be directed to reinvestigate the finding or findings which formed the basis of the reviewable decision. In the case of review of CEO decisions the Review Officer must make a decision within 60 days of the receipt of the application for review.

The Review Officer **does not have any investigative function**, and must take account only of information to which the CEO had regard, or was required to have regard, when making findings in relation to the decision under review. The Review Officer will disregard any information in applications and submissions which was not available to the CEO.

When the Review Officer is reviewing a decision by the Minister, or a decision by the CEO to terminate an inquiry, copies of the non-confidential version of the application and any submissions are placed on a public file, which is held at the Secretariat. Interested parties can inspect the public file and obtain copies of relevant material held on it. Information on **access to the public file** can be obtained from the Secretariat. (Contact details for the Secretariat are provided at the end of this paper.)

## Review of Ministerial Decision

The following diagram outlines the procedural steps involved in the conduct of a review of a Ministerial decision by the Review Officer:



## Outcomes of a Review

The table below outlines the steps to be followed as a consequence of a review by the Review Officer:

Type of Review	Outcome	Effect
Decision by the Minister	Decision affirmed	The Minister must, by public notice, affirm the original decision.
	Recommendation to the Minister that the finding be reinvestigated	If the Minister accepts the Review Officer's recommendation, the Minister shall require the CEO to reinvestigate a finding or findings, and publish a notice to that effect.
		If the Minister does not accept the Review Officer's recommendation the Minister shall, by public notice, affirm the original decision.
Negative <i>prima facie</i> decision by the CEO	CEO's decision affirmed	The matter ends. The applicant may lodge a fresh application with Customs or seek redress under administrative law.
	CEO's decision revoked	Customs is required to accept the original application, and to initiate an anti-dumping inquiry.
Decision by the CEO to terminate an inquiry	CEO's decision affirmed	The decision to terminate the inquiry stands. The applicant may seek redress under administrative law.
	CEO's decision revoked	The CEO must, as soon as possible, issue a Statement of Essential Facts and recommence the investigation.
Negative preliminary decision by the CEO	CEO's decision affirmed	The refund determined by Customs stands.
	CEO's decision revoked	Within 7 days of reaching a decision the Review Officer must recommend that the Minister give effect to the new decision.

## Further Information

Information about **reviews by the Trade Measures Review Officer** can be obtained from:

Trade Measures Review Secretariat  
Robert Garran Offices  
National Circuit  
BARTON ACT 2601

Telephone: +61 2 6250 6220  
Facsimile: +61 2 6250 5914

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

Director, Dumping Liaison Unit  
Australian Customs Service  
Customs House  
5 Constitution Avenue  
CANBERRA CITY ACT 2601

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