

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*.

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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.

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PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Fujian Minfa Aluminium Inc. (Minfa)
Address: Nanmei Comprehensive development Zone, Nanan, Fujian, China, 362300
Type of entity (trade union, corporation, government etc.): Company, manufacturer and exporter

2. Contact person for applicant

Full name: Jacky Chen
Position: International Marketing Manager
Email address: minfa@minfa.com
Telephone number: (00)86-595-86279728

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

<p>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; any person who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods and any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that subject of the application or of like goods that have been, or are likely to be, exported to Australia.</p> <p>Minfa is a manufacturer and exporter of the goods to which the decision relates, namely aluminium extrusions, and is thus an "interested party" for the purposes of the Act and this application.</p>

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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.****

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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:

Aluminium extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminium Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness or diameter greater than 0.5mm, with a maximum weight per metre of 27 kilograms and a profile or cross-section which fits within a circle having a diameter of 421mm.

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

7604.10.00 (statistical code 06)
7604.21.00 (statistical code 07,08)
7604.29.00 (statistical code 09,10)
7608.10.00 (statistical code 09)
7608.20.00 (statistical code 10)
7610.10.00 (statistical code 12)
7610.90.00 (statistical code 13)

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8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: ADN 2019/044
Date ADN was published: 09/05/2019

****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:

Minfa, because it was classed by the ADA as a residual exporter, was made subject to a dumping margin of 29.5% . A margin of this magnitude will have a serious adverse effect on Minfa.

In the review Minfa indicated it was willing to cooperate and prepared a detailed submission. Minfa wanted its own individual rate in this review. The ADC did not agree to this request - it considered that it was unable to examine the exporters individual circumstances due to the workload of the review. The ADC decided to make the exporter subject to a residual rate of duty as determined in the review.

This revised residual rate of duty is considerably higher than the rate that previously applied. Also, it does not reflect the information available in the exporters submission.

Minfa, as a cooperative exporter, considers that the ADC could have examined the veracity of the information it had provided in other ways - for example by comparing it to

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the exporters that were examined. This would have allowed Minfa to obtain a individually reviewed rate.

As an alternative, Minfa offered to enter into a price undertaking. This would have also had the effect of allowing Minfa to have a reviewed rate reflecting its own circumstances.

The Commission advised its view that the *Customs Act 1901* permits the Minister to accept an undertaking by an exporter, **prior** to publishing any notice with respect to the goods it exports that would otherwise become subject to any notice at the conclusion of a dumping and/or subsidy investigation.

The Commission advised that with respect to aluminium extrusions exported to Australia from China, dumping and countervailing duty notices have been published and therefore the Commission claims the Minister is unable to accept the offer of this price undertaking.

The reviewable decision is the Minister's decision, following recommendations of the ADC, to not apply an individual rate to the cooperative exporter Minfa. That the ADC did not visit the exporters premises to verify information does not mean that its own circumstances could not have been examined by the ADC

Also, the reviewable decision is the ADC's advice that the Minister is unable to implement an undertaking in a Division 5 review.

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:

Minfa is of the opinion that it is entitled to its individual rate in the review as it was cooperative. The preferable decision is that even though the ADC did not visit the exporters premises it could have examined the data provided in the context of other information verified and, having done so, accord Minfa its individual rate.

As noted by the Commission, Minfa has shown considerable co-operation with the Commission with the review, even to the extent of providing data the ADC was prepared to use via a request from the Commission for information relevant to an application for a duty assessment application by another exporter lodged on 23 October 2018.

Concerning the question of the undertaking, which as noted was offered by Minfa in order to achieve some individual treatment (as the ADC had indicated its proposed recommendation to apply a residual rate), Minfa considers that the ADC incorrectly limited the Minister's powers. Minfa considers that the Minister does have sufficient

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discretions under the Act so as to be able to to accept a price undertaking in a Division 5 review.

Section 269ZDB of the Act concerns 'Powers of the Minister in relation to review of Anti-Dumping measures'.

Anti-Dumping measures are defined to be dumping and countervailing duty notices and undertakings - see Section 269T.

In Sub-sections 269ZDB (1)(b) (I)(II), (III), and (iv) there are provisions where, in a review, the Minister may retain an undertaking, vary an undertaking, replace an undertaking with a dumping or countervailing duty notice, or release a person from an undertaking.

Given these review powers, and the purpose of the review provision, it would seem too strained, in Minfa's view, to have to interpret the provision to mean that the Minister can replace a undertaking with a dumping or countervailing duty notice, but that it cannot operate in the reverse i.e. to mean that the Minister is unable, in a review, to replace a notice with an undertaking.

Further, sub-sections 269ZDB (1) (b) (4) and (5) refer to undertakings. Subsection (5) states: "Nothing in this section is to be taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter or person giving an undertaking".

This refers to the giving of an undertaking - nothing in the section is to imply that the Minister cannot make the same declaration to more than one person giving an undertaking. Minfa has offered an undertaking but the offer has not been put before the Minister, because the ADC considers that the Minister is prevented from entering into an undertaking with Minfa because it had previously been subject to a dumping notice {IS THIS TRUE}.

Minfa considers that an undertaking can be considered in the circumstances of this review. However, in the event that the ADRP should take a view that the undertaking offer could not have been considered by the Minister, Minfa still considers it could have been afforded individual treatment as a cooperative exporter in setting its own notice for the reasons that have been set out above.

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

The acceptance of an undertaking would result in Minfa being accepted as an exporter not subject to dumping measures as its exports would be non dumped, at arms length and in the ordinary course of trade.

12. Set out the reasons why the proposed decision provided in response to question 10 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.

The decision not to recommend a price undertaking to the Minister is different in that Minfa would not be liable to measures as its exports would be undumped based on Minfa's cost to make and sell plus a profit being sales to Australia would be undumped, at arms length and in the ordinary course of trade

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

ACN 2019/44

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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; 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:

Jacky

Name:

Jacky chen

Position:

International Marketing Manager

Organisation:

Date: 2019 / 6 / 6

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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: John McDermott
Organisation: John McDermott & Associates Pty Ltd
Address: PO Box 3414 Belconnen DC Canberra ACT 2617
Email address: Jmcd49@optusnet.com.au
Telephone number: 0412 543 792

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: *Jacky*
(Applicant's authorised officer)
Name: *Jacky Chen*
Position: *International Marketing Manager*
Organisation:
Date: *2019 / 6 / 6*