



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 6 July 2021 for a review of a reviewable decision of the Minister (or his or her Parliamentary Secretary).

Any interested party² may lodge an application to the ADRP for 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 (s 269ZZG(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.

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.

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*.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: InfraBuild (Newcastle) Pty Ltd
Address: Level 27, 8 Chifley Square SYDNEY NSW 2000
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 is an interested party within the meaning of section 269ZX of the *Customs Act 1901*,³ specifically pursuant to paragraph (ab) as the applicant in relation to an application under section 269ZHB that led to the making of the reviewable decision.

³ All legislative references in this application are to the *Customs Act 1901* unless otherwise specified.

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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

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed.**

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods which were the subject of the reviewable decision are described as:

Hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process.

The goods include all steel reinforcing bar meeting the above description regardless of the particular grade, alloy content or coating.

Goods excluded from the current anti-dumping measures are plain round bar, stainless steel and reinforcing mesh.

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

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Description
7213		BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF IRON OR NON-ALLOY STEEL
7213.10.00	42	Containing indentations, ribs, grooves or other deformations produced during the rolling process
7214		OTHER BARS AND RODS OF IRON OR NON- ALLOY STEEL, NOT FURTHER WORKED THAN FORGED, HOT-ROLLED, HOT-DRAWN OR HOT- EXTRUDED, BUT INCLUDING THOSE TWISTED AFTER ROLLING
7214.20.00	47	Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling
7227		BARS AND RODS, HOT-ROLLED, IN IRREGULARLY WOUND COILS, OF OTHER ALLOY STEEL
7227.90		Other
7227.90.10	69	Goods, as follows: a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(l) to Chapter 72
7227.90.90	01	Containing indentations, ribs, grooves or other deformations produced during the rolling process
	02	Of circular cross-section measuring less than 14 mm in diameter
	04	Other

Tariff Subheading	Statistical Code	Description
7228		OTHER BARS AND RODS OF OTHER ALLOY STEEL; ANGLES, SHAPES AND SECTIONS, OF OTHER ALLOY STEEL; HOLLOW DRILL BARS AND RODS, OF ALLOY OR NON-ALLOY STEEL
7228.30		Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded
7228.30.10	70	Goods, as follows: a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72
7228.30.90	40	Containing indentations, ribs, grooves or other deformations produced during the rolling process
7228.60		Other bars and rods
7228.60.10	72	Goods, as follows: a. of high alloy steel; b. "flattened circles" and "modified rectangles" as defined in Note 1(m) to Chapter 72

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8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2023/004
Date ADN was published: 21 February 2023

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

A copy of ADN No. 2023/004 is attached and forms 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 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 **highlighted in yellow**, and the document 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:

To the extent that the Minister's decision constituted a determination under subparagraph 269ZHG(4)(a)(ii), it was not the correct or preferable decision because the provision only permits the Minister to determine that the dumping duty notice "*ceases to apply in relation to a particular exporter or to a particular kind of goods*", but not to "*exporters generally*" as the Minister purports to have decided here with respect to "*exporters of the goods from Thailand*".

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 ought to be a determination by the Minister that in accordance with subparagraph 269ZHG(4)(a)(ii) that the dumping duty notice continues in force after 7 March 2023 (the specified expiry day) but that, after that day, the notice ceases to apply in relation to a *particular* exporter, namely Millcon Steel Public Company Limited (**Millcon**) of Thailand, *only*, and not to exporters *generally* of the goods from Thailand.

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Alternatively, the correct or preferable decision ought to be a determination by the Minister either in accordance with subparagraphs 269ZHG(4)(a)(i) *or* (iii), that being either a determination that:

- the dumping duty notice continues in force after the specified expiry day (under subparagraph (i)), *or*
- the dumping duty notice continues in force after the specified expiry day but that, after that day, the notice has effect, in relation to **“a particular exporter”** or to **“exporters generally”**, as if the Minister had fixed different specified variable factors in relation to that exporter or to exporters generally, relevant to the determination of duty (under subparagraph (iii)).

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

Pursuant to paragraph 269ZZA(1)(d) a decision by the Minister under subsection 269ZHG(1) is a reviewable decision.

A decision by the Minister under subsection 269ZHG(1) may be either the Minister publishing a notice to :

- (a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; *or*
- (b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

However, subsection 269ZHG(1) must be read in conjunction with subsections (3) and (4). Of relevance to the reviewable decision at issue here, having declared under paragraph 269ZHG(1)(b) his decision to *...secure the continuation of the anti-dumping measures*, the Minister then determined under subparagraph 269ZHG(4)(a)(ii) that:

...the dumping duty notice continues in force after 7 March 2023 (the specified expiry day) but that, after that day, the notice ceases to apply to exporters of the goods from Thailand.⁴

However, the extent to which a determination under subparagraph 269ZHG(4)(a)(ii) permits the Minister to decide that the dumping duty notice “ceases to apply ...after the specified expiry date” is limited “in relation to”:

⁴ Anti-dumping Notice No. 2023/004 (20 February 2023), p. 1.

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- “a particular exporter”, *or*
- “a particular kind of goods”.

Applied here, the reviewable decision does not make the determination to cease to apply the dumping duty notice “in relation to a particular exporter”, but to “*exporters of the goods from Thailand*”, in other words “*exporters generally*”.

That paragraph 269ZHG(4)(a) intends to give a precise meaning to the expression “a particular exporter”, and to “*exporters generally*” is found in subparagraph (iii), where both references are used to distinguish changes to the dumping duty notice with respect to a named, “particular exporter”, and unnamed, “exporters generally”, colloquially known as “all other exporters”. This approach is consistent with the principles necessary to the accurate reading of legislation, outlined by former Justice of the High Court of Australia, Michael Kirby.⁵ This broadly required an examination of the sentence, often the paragraph, and preferably the immediately surrounding provisions (if not a wider review of the entire statutory context) to identify the meaning of the words in the context in which they are used.

Applied here, the reviewable decision is not supported by the Minister’s power under subparagraph 269ZHG(4)(a)(ii) to make such a decision, as it does not operate to determine that the dumping duty “*notice ceases to apply in relation to a particular exporter or to a particular kind of goods*” [emphasis added], but to “*exporters generally*”, as envisaged under subparagraph (iii), which is not within the Minister’s power to decide under subparagraph (ii).

As to another potential named, “particular exporter” of the goods from Thailand, we note that the Commission has identified an entity known as Tata Steel Manufacturing (Thailand) Public Company Limited (**TSMT**), and considers it a “successor” to two previously named exporters, Siam Construction Steel Co. Ltd (**SCSC**) and NTS Steel Group Public Company Limited (**NTS**) which prior to, the specified expiry day, 7 March 2023, were subject to a floor price following *Accelerated Reviews 471 and 472*.⁶ The industry applicant for review contends that TSMT cannot be considered a “successor” to SCSC and NTS as it constitutes a new entity, following, what the Commissioner acknowledges in *Report No. 601*, was “a corporate restructure” of SCSC and NTS.⁷

⁵ The Hon. Michael Kirby, ‘Statutory Interpretation: The Meaning of Meaning’ [2011] MelbULawRw 3; (2011) 35(1) Melbourne University Law Review 113, 116.

⁶ Refer ADN Nos. 2018/108 and 2018/109, respectively (published 3 August 2018).

⁷ Report No. 601, refer footnote 15, p. 10.

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Therefore, TSMT is a new exporter, and the Commissioner found that there have been no exports from TSMT.⁸ As such, TSMT may not be named “a particular exporter” for the purpose of the Minister’s decision under sub-paragraph (ii), and belongs to the category envisaged under sub-paragraph (iii) of unnamed, “exporters generally”.

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 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

The *reviewable decision* purports to determine that the dumping duty notice ceases to apply to all exporters of the goods from Thailand after the specified expiry day.

The *proposed decision* is materially different from the reviewable decision in so far, as the dumping duty notice ceases to apply to a *particular exporter* of the goods from Thailand after the specified expiry date; namely Millcon; but will continue to apply to *exporters generally*, including *exporters generally* from Thailand.

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

ATTACHMENT A: ADN No. 2023/004

⁸ Report No. 601, p. 10.

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: **[sgd]**

Name: **[REDACTED]**

Position: **[REDACTED]**

Organisation: InfraBuild

Date: 17 / 03 / 2023

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: / /



Australian Government
Department of Industry,
Science and Resources

Anti-Dumping
Commission

ANTI-DUMPING NOTICE NO. 2023/004

Customs Act 1901 – Part XV B

Steel reinforcing bar

Exported to Australia from the Hellenic Republic, the Republic of Indonesia, the Kingdom of Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand

Findings of Continuation Inquiry No. 601

Notice under section 269ZHG(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed an inquiry, which commenced on 28 March 2022, into whether the continuation of the anti-dumping measures applying to steel reinforcing bar (rebar or the goods) exported to Australia is justified. The anti-dumping measures are in the form of a dumping duty notice for rebar exported to Australia from the Hellenic Republic, the Republic of Indonesia¹, the Kingdom of Spain (by Nervacero S.A), Taiwan (by Power Steel Co. Ltd) and the Kingdom of Thailand (Thailand).

The Commissioner's recommendations resulting from that inquiry, reasons for the recommendations, and material findings of fact and law in relation to the inquiry are contained in *Anti-Dumping Commission Report No. 601* (REP 601).

I, ED HUSIC, Minister for Industry and Science, have considered REP 601 and have decided to accept the recommendation and reasons for the recommendation, including all the material findings of fact and law set out in REP 601.

Under section 269ZHG(1)(b) of the *Customs Act 1901* (the Act), I **declare** that I have decided to secure the continuation of the anti-dumping measures.

Under section 269ZHG(4)(a)(ii) of the Act, I **determine** that the dumping duty notice continues in force after 7 March 2023 (the specified expiry day) but that, after that day, the notice ceases to apply to exporters of the goods from Thailand.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the

¹ Excluding PT Ispat Panca Putera and PT Putra Baja Deli who are exempt from the measures.

requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

REP 601 has been placed on the public record, available at www.adcommission.gov.au

Enquiries about this notice may be directed to the Case Manager by phone on +61 3 8539 2554 or by email investigations3@adcommission.gov.au

Dated this 20 day of FEBRUARY 2023

A handwritten signature in black ink, appearing to read 'ED HUSIC', with a long horizontal stroke extending to the right.

ED HUSIC
Minister for Industry and Science