



Statement of Principles

Requests for extension of time under section 269ZHI of the *Customs Act 1901*¹

Background

Under subsection 269ZHI(1), the Commissioner of the Anti-Dumping Commission (the Commissioner) may request an extension of time to publish a Statement of Essential Facts (SEF); provide a final report to the Minister in relation to an investigation, a review of anti-dumping measures, an anti-circumvention inquiry, a continuation inquiry; or make a recommendation to the Minister in relation to a duty assessment.

The Minister may approve or refuse a request for an extension under subsection 269ZHI(3).

The Parliamentary Secretary to the Minister for Industry, Innovation and Science, the Assistant Minister for Industry, Innovation and Science (the Parliamentary Secretary)² and the Commissioner have delegated their respective powers and functions under section 269ZHI.³

This means that a written request for an extension of time under subsection 269ZHI(1) (extension request), including reasons for the extension request under subsection 269ZHI(2), can now be made by General Managers of the Anti-Dumping Commission (General Managers). In addition, under the delegation, the Commissioner can approve or refuse an extension request.

Introduction

Under subsection 269ZHI(3), the Commissioner may approve an extension request if the Commissioner considers that it is reasonable to do so. In administrative decision making, for a decision to be considered 'reasonable' it must have been made only having regard to relevant matters and not be arbitrary or capricious.

All decisions made under administrative legislation (including the *Customs Act 1901*) are bound by the reasonableness principle. This principle expresses the logical relationship that must exist between discretionary decisions and the evaluation of public and private interests relevant to the decision.

¹ All legislative references in this statement are to the *Customs Act 1901* (Cth).

² On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry Innovation and Science. For the purposes of this delegation the Minister is the Parliamentary Secretary to the Minister for Industry, Innovation and Science.

³ Delegation by the Commissioner of the Anti-Dumping Commission of certain powers and functions of the Commissioner under Part XVB of the *Customs Act 1901*, 15 December 2016, and Anti-Dumping Delegation 2017, 14 January 2017. Anti-Dumping Notice No. 2017/10 refers.

This statement sets out factors that may be relevant to the Commissioner's consideration of an extension request. The purpose of this statement is to provide guidance to Commission staff and other interested parties on what factors may be relevant to the Commissioner's consideration of an extension request.

To note, this statement is not intended to be an exhaustive list of factors. Further, not all factors will be relevant to each extension request; all extension requests will be considered on a case by case basis.

The Commissioner may grant a shorter extension of time than that requested by the General Manager if the Commissioner considers it is reasonable to do so.

An extension of time may not always be granted. Where the Commissioner has not approved an extension, the time period specified in the relevant provision of the *Customs Act 1901* will apply.

Relevant factors

Factors that may be relevant to the Commissioner in deciding the length of time needed to adequately complete a case, and hence, the length of any extension granted, include, but are not limited to the factors listed below.

1. Case characteristics

The particular characteristics of the case may be relevant to the Commissioner's consideration of an extension request. These characteristics include:

- number of countries of export
- number of exporters
- existence of complex relationships between interested parties
- claims by the applicant of a particular market situation
- number of Australian industry participants producing like goods
- the case involves both subsidy and dumping allegations.

2. Evidence and analysis

The complexity of the evidence and analysis required in a case may be relevant to the Commissioner when considering an extension request. The factors relevant to evidence and analysis include:

- difficulties in identifying and obtaining evidence due to the nature of the goods
- difficulties in identifying and obtaining evidence for goods traded in complex markets
- a large volume of submissions received during the case
- submissions raising novel issues and/or highly complex issues
- the extent to which material facts are in contention and more extensive than usual evidence-gathering or analysis is required to make findings about those facts
- need to identify and obtain external advice, information and/or data
- need to seek follow-up information via questionnaires or submissions from interested parties, and where relevant, undertake additional verification activities.