



# Customs (Extensions of Time and Non-cooperation) Direction 2015

*Customs Act 1901*

I, CHRISTOPHER PYNE, Minister for Industry, Innovation and Science, make this direction under subsection 269TA(1) of the *Customs Act 1901*.

Dated 30 October 2015

CHRISTOPHER PYNE

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CHRISTOPHER PYNE

Minister for Industry, Innovation and Science

## PART 1 - PRELIMINARY

### 1. Name of instrument

This Direction is the *Customs (Extensions of Time and Non-cooperation) Direction 2015*.

### 2. Authority

- a) This Direction is made under subsection 269TA(1) of the Act.
- b) This Direction has the purpose of directing the Commissioner in relation to:
  - i. granting extensions of time under section 269SMG, and subsections 269TC(6) and 269TC(9) of the Act; and
  - ii. making determinations about:
    1. uncooperative exporters under subsection 269T(1) of the Act; or
    2. non-cooperation by entities under section 269TAACA of the Act.

### 3. Commencement

This Direction commences on commencement of Schedule 1 of the *Customs Amendment (Anti-Dumping Measures) Act (No.1) 2015*.

### 4. Definitions

In this Direction:

*Act* means the *Customs Act 1901*.

*case* means an investigation, review or inquiry under Part XVB of the Act.

*Commissioner* means the Commissioner of the Anti-Dumping Commission.

*entity or entities* have the same meaning as ‘entities’ (in the singular for entity) given under subsection 269TAACA(2) of the Act.

*interested party* has the same meaning as ‘interested party’ under subsection 269T(1) of the Act.

*key aspect* means the making, by the Commissioner, of a preliminary affirmative determination, a statement of essential facts, a report relating to the termination of a case, or a report to the Minister.

***legislated period*** means a timeframe specified, determined or prescribed for submitting any kind of response relating to any case, including the period specified in the Commissioner's notice or other correspondence to an interested party in any case.

***non-cooperative entity*** means an entity that the Commissioner is satisfied has either not provided information the Commissioner considers relevant to a case within a period the Commissioner considers reasonable, or has significantly impeded the case.

***response*** means any document or thing provided to the Commissioner in relation to any case, including submissions, information or answers to the questions in questionnaires.

***uncooperative exporter*** has the same meaning as 'uncooperative exporter' under section 269T of the Act.

## **PART 2 - DIRECTIONS**

### **5. Extensions of time – sections 269TC and 269SMG**

a) When the Commissioner is:

- i. deciding if a longer period is reasonably required or practicable under subsections 269TC(6) and 269TC(9); or
- ii. considering whether to allow any interested party a longer period to give any response (including under section 269SMG);

the Commissioner must:

1. take into account the responsibility to conduct cases in a timely and efficient manner;
2. reject a request for a longer period if the request has not been made before the legislated period has ended; and
3. in considering any reasons provided to support the request by any interested party, have regard to the matters specified at 5(b).

b) When the Commissioner is considering any reasons provided to support the request by any interested parties under 5(a)(i)(3) or (ii)(3), the Commissioner must have regard to whether:

- i. an interested party has provided reasons why it could not provide its response within the whole legislated period and not only the period remaining between the request and the end of the legislated period;
- ii. the reasons provided are acceptable, taking into account ordinary business practices or ordinary commercial principles;

- iii. the reasons provided are consistent with the Commissioner's understanding of the relevant industry; and
- iv. the reasons provided are consistent with previous correspondence from the party, previous dealings with the party, or information provided by other interested parties,

## **6. Insufficient responses – section 296SMG**

a) If:

- i. an interested party has provided a response within the legislated period;
- ii. that response has deficiencies that could, in the Commissioner's view, be quickly and easily rectified in a further response; and
- iii. the Commissioner considers a further response may be relevant to the case or necessary to the proper conduct of the case,

then the Commissioner should notify that party of the deficiencies and request that they be addressed in a further response within a reasonable timeframe specified by the Commissioner.

b) If:

- i. an interested party has provided a response within the legislated period;
- ii. that response has deficiencies that could not, in the Commissioner's view, be rectified quickly and easily in a further response; and
- iii. the Commissioner considers a further response is relevant to the case or necessary to the proper conduct of the case,

then the Commissioner will notify the party of this view as soon as practicable.

Note: In these circumstances the Commissioner is not, required to provide the interested party with any further extension of time and is not precluded from being satisfied that the party has significantly impeded an investigation for the purposes of subsection 269T(1) or section 269TAACA.

## **7. Considering late responses**

- a) If a response has been received by the Commissioner outside the legislated period, the Commissioner must, when determining whether to have regard to that response, consider if taking the response into account would delay a key aspect of the case.
- b) If taking the response into account would delay a key aspect of the case, the Commissioner must consider:
  - i. the time remaining before the deadline for the next key aspect of the case – including making a preliminary affirmative determination or publishing a statement of essential facts;

- ii. if data is provided in the submission, the quality and quantity of that data and the level of resources required to adequately consider it;
- iii. if assertions or proposals are provided in the submission, the seriousness, nature and timing of those assertions in relation to the case and the resources required to adequately address or substantiate them; and
- iv. any reasons provided by the party to explain why the submission is late, taking into account the above directions in relation to granting extensions.

## **8. Relevant information – section 269T**

- a) When determining if an exporter is an uncooperative exporter, the Commissioner must consider the legislated period for providing a response to be a reasonable period
- b) The Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter:
  - i. fails, within the legislated period, to:
    - a. provide a response; or
    - b. request a longer period to provide a response; or
  - ii. provides a response within the legislated period that the Commissioner considers did not provide information relevant to the case.

## **9. Relevant information – section 269TAACA**

- a) When determining if an entity is a non-cooperative entity for the purposes of section 269TAACA, the Commissioner must consider the legislated period for providing a response to be a reasonable period.
- b) The Commissioner must determine an entity to be a non-cooperative entity for the purposes of section 269TAACA, on the basis that no relevant information was provided in a reasonable period, if that entity:
  - i. Fails, within the legislated period, to:
    - a. provide a response; or
    - b. request a longer period to provide a response; or
  - ii. provides a response within the legislated period that the Commissioner considers did not provide information relevant to the case.

## **10. Significantly impeded – sections 269T and 269TAACA**

In determining whether or not an exporter or entity has significantly impeded a case, the Commissioner must take into account:

- a) any response provided by the exporter or entity to the Commissioner, the timing of the response and any information omitted from the response;
- b) the actions or omissions of the exporter or entity during the conduct of this case and the reasonable or likely impacts of those actions or omissions, regardless of intention; and
- c) any evidence which reasonably demonstrates an intention on the part of the exporter or entity to significantly obstruct or delay the case.

## **11. General powers – section 269SMG**

In undertaking any assessment or consideration of the actions, omissions, or responses of any interested parties in relation to a case, before making any determination, the Commissioner must take into account:

- a) ordinary business practices;
- b) ordinary commercial principles; and
- c) the relevant industry and the way it operates.