



INSTRUCTIONS AND GUIDELINES

ANTI-DUMPING COMMISSION

Pre-lodgement documentation check guidelines

December 2015

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| Subject: | Pre-lodgement documentation check guidelines |
| Purpose: | To outline the principles and procedures for pre-lodgement documentation check of a draft application for dumping and/or countervailing duties |
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Summary of main points

This Instruction and Guideline outlines the purpose, information needed, assessment of a draft application, principles (documentation check), procedure and an example Pre-lodgement Documentation Check Response related to a pre-lodgement documentation check.

This I & G applies to staff in:

- Anti-Dumping Commission

Introduction

This *Instruction and Guideline – Pre-lodgement documentation check guidelines*

(Guidelines) provide guidance to Anti-Dumping Commission officers involved in a pre-lodgement documentation check of a draft dumping and/or countervailing application

The Guidelines are also publicly available to inform applicants about the pre-lodgement documentation check processes. Applicants should read the Guidelines in conjunction with other publicly available documents available on the Anti-Dumping Commission website.

Instructions and Guidelines

The Guidelines are divided into the following sections:

- Purpose
- Information needed;
- Assessment of a draft application;
- Principles (documentation check);
- Procedure; and
- Attachment 1 – Example Pre-lodgement Documentation Check Response

Related Policies and References

Other Instructions and Guidelines:

- Dumping and Subsidy Manual

Approval

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| Approved on | 1 December 2015 |
| By | Paul Sexton General Manager Anti-Dumping Commission |
| Review period | Annually |

Pre-lodgement – documentation check

1. Purpose of guidelines

This paper describes the principles and procedures for the pre-lodgement documentation check of a draft application for dumping and/or countervailing duties.

The pre-lodgement documentation check is a service provided by the Anti-Dumping Commission to advise applicants about the documentary completeness of an application before it is formally lodged in accordance with s. 269TB(1) of the *Customs Act 1901* (the Act).

The pre-lodgement documentation check aims to assist potential applicants by minimising requests by Anti-Dumping Commission for further information once an application is formally lodged. The documentation check also aims to reduce the potential for a formally lodged application to be rejected on the grounds that the information necessary for the assessment of the merits of an application is missing, inconsistent or unclear.

While these guidelines are written to assist Anti-Dumping Commission officers involved in a pre-lodgement documentation check of a draft application, they also inform applicants about the pre-lodgement documentation check processes.

2. Information needed

Australian legislation and the World Trade Organization agreements relating to anti-dumping and countervailing duties require the submission of a significant amount of information in a formally lodged application. The information is needed to satisfy the Commissioner of Anti-Dumping Commission that:

- the application complies with subsection 269TB(4);
- there is, or is likely to be established an Australian industry in respect of the goods;
- there appear to be reasonable grounds for the publication of a dumping and/or countervailing duty notice, within the terms set out in s. 269TC(1)(c).

‘Reasonable grounds’ is a reference to evidence of:

- dumping and/or subsidisation; and
- injury to an Australian industry caused or threatened by the dumping and/or subsidisation.

However, Anti-Dumping Commission is not required to have before it evidence of the quality and kind necessary to support a preliminary or final determination.

3. Assessment of a draft application

A draft application can be assessed by the Anti-Dumping Commission for its documentary completeness. This is known as a pre-lodgement documentation check.

The Anti-Dumping Commission cannot consider whether a formally lodged application has established 'reasonable grounds' unless there is sufficient information to do so. Where information is incomplete, unclear or inconsistent it creates doubt about whether reasonable grounds exist. To assist applicants with meeting information requirements, the Anti-Dumping Commission has staff available on request to check a draft of an application for documentary completeness.

Following the pre-lodgement documentation check, the Anti-Dumping Commission will offer suggestions to an applicant about whether the standard of information provided could be improved so that when a formal application is lodged any requests for additional information are minimised.

This paper contains the principles and procedures for the pre-lodgement documentation check of a draft application. This stage is voluntary. There is no requirement for an applicant to submit a draft prior to formal lodgement.

Once an application is formally lodged, the Anti-Dumping Commission will assess the merits of the application in accordance with s. 269TC(1) of the Act.

4. Principles (documentation check)

Principle 1: The Anti-Dumping Commission cannot supply information to make or support an application on behalf of an Australian industry.

- Anti-Dumping Commission's assistance, in the form of a pre-lodgement documentation check, will be in response to material prepared by a potential applicant.
- Anti-Dumping Commission's response to the submission of a draft may include suggestions about how an application may be improved, including potential information sources.

Principle 2: The pre-lodgement documentation check is informal.

- For clarity and transparency purposes, responses by the Anti-Dumping Commission will be documented and recorded. **Attachment A** provides an example of the Pre-lodgement Documentation Check Response.
- Because the pre-lodgement documentation check is informal, responses are not definitive. They take the form of suggestions and guidance.

INTERNAL AND EXTERNAL

Principle 3: The pre-lodgement procedure only addresses the information requirements of making an application.

- Usually, a pre-lodgement documentation check will result in suggestions for the provision of additional information or clarification of information.
- A pre-lodgement documentation check cannot assess the accuracy of the evidence in a draft application. The merits of the claims made in a draft application are not assessed at this stage.
- The Anti-Dumping Commission cannot determine the reliability of information in a draft application during a pre-lodgement documentation check. This task is undertaken during the application examination phase, once the application has been formally lodged in accordance with s. 269TB(1) of the Act.

Principle 4: The Anti-Dumping Commission cannot guarantee that addressing all the issues raised in the Pre-lodgement Documentation Check Response will result in an investigation being initiated.

- If supplied, the additional information itself may be inconsistent or unclear, or highlight that other information is still missing.
- Potential applicants should rely on their own inquiries or obtain additional advice in finalising their applications, to ensure that the information provided is as complete as possible and presents the strongest possible case for imposition of measures.
- Where an application has undergone a pre-lodgement documentation check, and is later submitted for formal consideration, the comments made on the draft application by the Anti-Dumping Commission, as set out in the Pre-lodgement Documentation Check Response, will be forwarded to those officers who will carry out the formal examination of the application under s. 269TC of the Act.

5. Procedure

The potential applicant will be advised of:

- the date the document is received;
- the name of the contact officer in the Anti-Dumping Commission; and
- the expected date that the outcomes of the documentation check will be provided, normally within 10 days of receipt.

The documentation check will be about whether responses to questions in the application form are complete, clear and consistent. At this stage in the process the Anti-Dumping Commission will not examine or provide advice about whether the application satisfies the tests of 'reasonable grounds' for the publication of a dumping duty or countervailing duty notice.

Wherever possible, the Anti-Dumping Commission will make suggestions about how an application may be improved. The response will be along the lines of Attachment A and will specify if the information is missing, inconsistent or unclear.

Pre-lodgement Documentation Check Response

| Question | Issue ¹ | Would be improved by... |
|---|--------------------|---|
| B-2 2 (example) | Missing | <p>If sales terms are unknown, you can improve your application with a statement about why it is unreasonable to obtain this information.</p> <ul style="list-style-type: none"> • NB It is not necessary that the sales terms be exactly known. The expected terms or conditions of export sales in the country of export may be estimated, provided that the estimation is reasonably based using terms and conditions that may be reasonably anticipated for a transaction of this type. • Some basis to support the estimation would assist its evaluation <p>Information about terms and conditions of export sales is needed to assess whether the export price and normal value are comparable.</p> |
| Appendix A4 | Missing | <p>Rebate and discount information is missing from appendix A4. If this is not applicable this must be specified in the application form. All rebates and discounts need to be shown and explained so Anti-Dumping Commission can establish net selling prices to be used in injury analysis.</p> |
| Appendix A4 Appendix A6.1 (example) | Inconsistent | <p>Appendix A4 data (domestic sales) does not reconcile to sales information in Appendix A6.1 (cost to make and sell for domestic sales).</p> <ul style="list-style-type: none"> • Both appendices require information about the same accounting events (i.e. domestic sales) • Anti-Dumping Commission expects that information in an application should be internally consistent. • Inconsistencies indicate there may be an error(s) in reporting <p>You can improve your application by reconciling inconsistent data, or explaining how differences have arisen (e.g. reports may be derived from different components of the accounting system, timing differences, inventory recording systems, etc.)</p> |
| A-5 8 (example) | Unclear | <p>Although information about the price reductions has been included in your application, their commercial operation is unclear. To avoid the need for follow up questions by the Anti-Dumping Commission (which may delay the initiation of an investigation) the following should be provided, e.g.:</p> <ul style="list-style-type: none"> • Rebates seem to operate differently from discounts. Please provide further information. • Commissions are not paid on all sales to x. Please provide information about how exceptions apply. • Etc. <p>Information about price reductions is needed to assess the application because net sales prices are required for the injury analysis.</p> |

¹ Issues are classified into three groups; unclear, inconsistent or missing.