



AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2013/46

New anti-circumvention inquiry process

Purpose

The purpose of this Australian Customs Dumping Notice (ACDN) is to provide an overview of the new anti-circumvention inquiry process in relation to anti-dumping measures.

Background

A central component of the package of improvements to Australia's anti-dumping system, entitled "*Streamlining Australia's anti-dumping system*" announced by the Government in June 2011, is to ensure stronger compliance mechanisms in respect of trade remedies, including introducing a framework to prevent or disrupt the circumvention of dumping and countervailing duties.

Circumvention is a trade strategy used by exporters and importers of certain products to avoid the full payment of dumping and countervailing duties. Circumvention activities take various forms and exploit different aspects of the anti-dumping system. The outcome of these activities is that they ensure that the relevant goods do not attract the intended dumping or countervailing duty.

The new legislative provisions for conducting an anti-circumvention inquiry under section 269ZDBC of the *Customs Act 1901* (the Act) commence on **11 June 2013**.

Anti-circumvention inquiries will address circumvention behaviour of exporters of goods that are subject to dumping / countervailing duty notices to circumvent these notices. This will increase the effectiveness of anti-dumping measures by enhancing the intended trade remedy for the Australian industry.

What is circumvention behaviour (under the new legislative provisions)?

Section 269ZDBB of the Act sets out prescribed circumvention activities in relation to a dumping and / or countervailing duty notice. These prescribed circumvention activities only relate to activities to avoid a dumping and / or countervailing duty notice and are not illegal or necessarily indicative of criminal behaviour.

Circumvention activities prescribed in the Act are:

- *assembly of parts in Australia*;
 - where parts of the goods subject a dumping and / or countervailing duty notice are exported to Australia by an exporter subject to a notice, and those parts once imported into Australia are assembled into the goods which would have been subject to a notice; and
 - where the parts that were exported to Australia represent a significant proportion of the value of the assembled goods;
- *assembly of parts in third country*;
 - where parts of the goods subject to a dumping and / or countervailing duty notice are exported by an exporter subject to a notice to a third country, and those parts once imported into the third country are assembled into the goods by a third country exporter, which would have been subject to a notice, and are subsequently exported to Australia; and
 - where the parts that were exported to a third country represent a significant proportion of the value of the Customs value of the goods (as defined at section 159 of the Act);

- *export of goods through one or more third countries;*
 - where the goods subject to a dumping and / or countervailing duty notice are exported by an exporter subject to a notice to Australia through a third country or third countries; and
 - where the third country or third countries are not subject to the notice;
- arrangements between exporters;
 - where the goods subject to a dumping and / or countervailing duty notice are exported by an exporter subject to a notice to Australia through another exporter/s in that originating country, that are also subject a notice; and
 - where the other exporter is subject to a lesser dumping / countervailing duty rate or is exempt from duty; and
- any additional circumstances prescribed by regulation;
 - as at June 2013, no additional circumstances have been prescribed in regulations.

Who can apply for an anti-circumvention inquiry?

An application for an anti-circumvention inquiry can be made by a person representing, or representing a portion of, the Australian industry producing like goods.

The Minister for Home Affairs (Minister) may also request the Chief Executive Officer (CEO) of ACBPS to conduct an anti-circumvention inquiry.

How can an application be lodged?

An application for an anti-circumvention inquiry must be made by lodging an approved application form. Confidential (i.e. "For Official Use Only") and non-confidential versions of the application form must be provided.

Instructions and Guidelines – Application for an anti-circumvention inquiry: Guidelines for applicants (Guidelines) are available to assist applicants prepare an application for an anti-circumvention inquiry.

Both the application form and the Guidelines are available on the ACBPS website at <http://www.customs.gov.au/anti-dumping/forms.asp>.

Potential applicants are encouraged to contact the ACBPS for advice in preparing anti-circumvention applications on the contact details provided at the "*ACBPS contact*" section.

What is the anti-circumvention inquiry process?

Similar to the legislative timeframes for other dumping investigations and inquiries; anti-circumvention inquiries are subject to a 155 day legislative timeframe. Once an anti-circumvention inquiry is initiated, a statement of essential facts must be published by day 110 of the inquiry, unless the timeframe is extended by the Minister. The inquiry process is a transparent process and is subject to public record requirements. A public notice will be issued when an inquiry is initiated that will invite interested parties to make submissions in response to the claims made in the application and to the initiation of the inquiry.

The Minister has 30 days upon receipt of a final report, to make a decision in respect of the anti-circumvention inquiry. Following the publication of the Minister's decision, the original applicant for the anti-circumvention inquiry can apply for a review of the decision by the Anti-Dumping Review Panel.

A diagram of the anti-circumvention inquiry process is at **Attachment A**.

What are the outcomes from an anti-circumvention inquiry?

Following an anti-circumvention inquiry the Minister must declare that:

- the original notice remain unaltered; or

- the original notice be altered (and the Minister must specify these alterations).

The kinds of alterations that may be made to the original notice by the Minister include:

- the specification of different goods that are to be the subject of the original notice;
- the specification of different foreign countries that are to be the subject of the original notice;
- the specification of different exporters that are to be the subject of the original notice;
- the specification of different variable factors in respect of existing exporters subject of the original notice; and
- the specification of variable factors in relation to the different exporters that are to be the subject of the original notice.

The alterations to the notice can be applied to a retrospective date, but can be no earlier than the date of publication of the CEO's notification of an initiation of the anti-circumvention inquiry.

Dumping and Subsidy Manual

As advised in ACDN No. 2013/45, a program of Dumping and Subsidy Manual (the Manual) updates has been developed to manage Manual updates resulting from recent extensive and complex legislative and policy reforms to the anti-dumping system. This program will also provide sufficient time to undertake a stakeholder consultation process on proposed Manual amendments. The first Manual update is scheduled for the second half of 2013.

In preparation for the first Manual update, a draft "*Anti-circumvention inquiry*" chapter has been developed, that provides an overview of the legislative context, policy and practice for conducting anti-circumvention inquiries. This draft chapter is accessible on the ACBPS website at www.customs.gov.au (following the "anti-dumping" and "reference" hyperlinks).

Interested parties are invited to provide submissions on the draft "Anti-circumvention inquiry" chapter by **COB 30 July 2013**. Submissions should be addressed to:

Director – Policy and Legal Section
International Trade Remedies Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

Or by email: itrpolicy@customs.gov.au

Anti-Dumping Commission and Anti-Dumping Commissioner

From 1 July 2013, the Anti-Dumping Commission (Commission) will commence operations and will be responsible for the administration of Australia's anti-dumping system. This function is currently undertaken by the International Trade Remedies Branch within the ACBPS. The Commission will be a separate Division within the ACBPS.

The Commission will be headed by a statutory Anti-Dumping Commissioner (Commissioner) who will report to the Minister on anti-dumping decisions and to the CEO in relation to financial, recruitment and other administrative matters.

The *Customs Amendment (Anti-Dumping Commission) Act 2013*, which was passed by the Parliament on 14 March 2013, amends the Act to create the Commissioner's role and establishes that the Commissioner will be responsible for the decision-making and anti-dumping related matters that currently reside with the CEO. Any references to the CEO in the new legislative provisions for the anti-circumvention inquiry process will be replaced with the Commissioner from 1 July 2013.

ACBPS contact

Enquiries regarding the application form and application process

The ACBPS can provide advice on the information required in an application for an anti-circumvention inquiry. Please contact the ACBPS on telephone number (02) 6275 6066, fax (02) 6275 6888 or email at itr@customs.gov.au for further assistance.

Enquiries regarding this ACDN

Enquiries concerning this ACDN may be directed to the Anti-Dumping Reform Implementation team on telephone number (02) 6275 5965, fax number (02) 6275 6990 or email at itr.liaison@customs.gov.au.

Kim Farrant
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International Trade Remedies Branch
CANBERRA ACT

7 June 2013

Attachment A – Anti-circumvention inquiry process

