



ANTI-DUMPING NOTICE NO. 2013/108

Updates to Anti-dumping System - January 2014

Purpose

The purpose of this Anti-Dumping Notice (ADN) is to provide an overview of a number of legislative reforms that commence on 1 January 2014. This ADN also outlines the process for revisions to the Dumping and Subsidy Manual related to these and other reforms.

Background

In June 2013, the *Customs Amendment (Anti-Dumping Measures) Act 2013* and the *Customs Tariff (Anti-Dumping) Amendment Act 2013* received Royal Assent. These Acts commence on 1 January 2014.

The key reforms enacted by this legislation are:

- removal, in certain circumstances, of the need for the Minister to consider the lesser duty rule;
- clarification of the application of retrospective duties provisions; and
- introduction of a new type of anti-circumvention inquiry to address 'sales at a loss' cases.

Overview of reforms

Removal, in certain circumstances, of the need for the Minister to consider the lesser duty rule when imposing anti-dumping and countervailing measures

As of 1 January 2014 the Minister will, in certain circumstances, no longer be required to consider the desirability of fixing a lesser duty, and the Minister will have the discretion to impose the maximum permitted duties. The circumstances where consideration of the lesser duty rule is no longer required are:

- in dumping cases, where there is a finding of a particular market situation for the goods in the country of export;
- in subsidy cases, where the country of export has not complied with World Trade Organization (WTO) obligations to notify subsidies; and
- in dumping and/or subsidy cases, where the Australian industry producing like goods consists of at least two small-medium enterprises – whether or not that industry consists of other enterprises.

Clarification of the application of existing retrospective duties provisions

Section 269TN of the *Customs Act 1901* has been amended to align more closely with the relevant WTO agreements. Improvements have also been made to the structure of the section to clarify the operation of these provisions and facilitate the application of retrospective measures in appropriate cases.

Introduction of a new type of anti-circumvention inquiry to address ‘sales at a loss’ cases

As of 1 January 2014, a new anti-circumvention inquiry into avoidance of the intended effect of duty will be available.

A circumvention activity “avoidance of the intended effect of duty” may take place where goods which incur dumping or countervailing duties are exported to Australia and the importer sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the goods.

Applying for the new anti-circumvention inquiry

An application can be made by a person representing, or representing a portion of, the Australian industry producing like goods. The Minister can also request that an inquiry be initiated.

An application must be made by lodging an approved application form. An accompanying document - *Application for an anti-circumvention inquiry into avoidance of the intended effect of duty: Guidelines for applicants* - is available to assist in the preparation of an application for this anti-circumvention inquiry.

The application form and Guidelines are available on the Anti-Dumping Commission website at www.adcommission.gov.au.

Potential applicants are encouraged to contact the Commission’s Client Engagement and Business Support Section for advice in preparing an anti-circumvention application on the following contact details:

Telephone: 1300 884 159
Facsimile: 1300 882 506
Email: clientsupport@adcommission.gov.au

The process for the new anti-circumvention inquiry

The new anti-circumvention inquiry will be conducted in 100 days, rather than 155 days as provided for inquiries into other circumvention activities. As this timeframe is shorter, there will be no Statement of Essential Facts undertaken for these inquiries.

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

Dumping and Subsidy Manual

As advised in Australian Customs Dumping Notice 2013/45, a program of Dumping and Subsidy Manual updates has been developed to manage amendments to the Manual resulting from recent legislative and policy reforms to the anti-dumping system. This program seeks to provide sufficient time to undertake stakeholder consultation on proposed Manual amendments.

The most recent phase of manual updates, the consultation period for which closed on 13 December 2013, has been completed. The revised Manual is available on the Commission's website: www.adcommission.gov.au/reference-material/manual/default.asp.

The next Manual update is scheduled for the first half of 2014. In preparation, material relating to the key reforms from the June 2013 legislative amendments has been drafted for incorporation into the manual relating to:

- the arrangements in relation to the Minister's consideration of the lesser duty rule;
- the anti-circumvention inquiry in relation to the circumvention of avoidance of the intended effect of duty; and
- the application of retrospective notices.

These draft chapters for the manual are accessible on the Anti-Dumping Commission website at www.adcommission.gov.au/reference-material/manual/default.asp. Interested parties are invited to provide submissions on the draft by COB Friday 28 February 2014.

Submissions should be addressed to:

Director – Strategic Policy
Anti-Dumping Commission
Ground Floor, Customs House
1010 La Trobe Street
Docklands VIC 3008
Or by email: policy@adcommission.gov.au

Further draft amendments to the manual, addressing other legislative and policy issues, will be released for comment early in 2014.

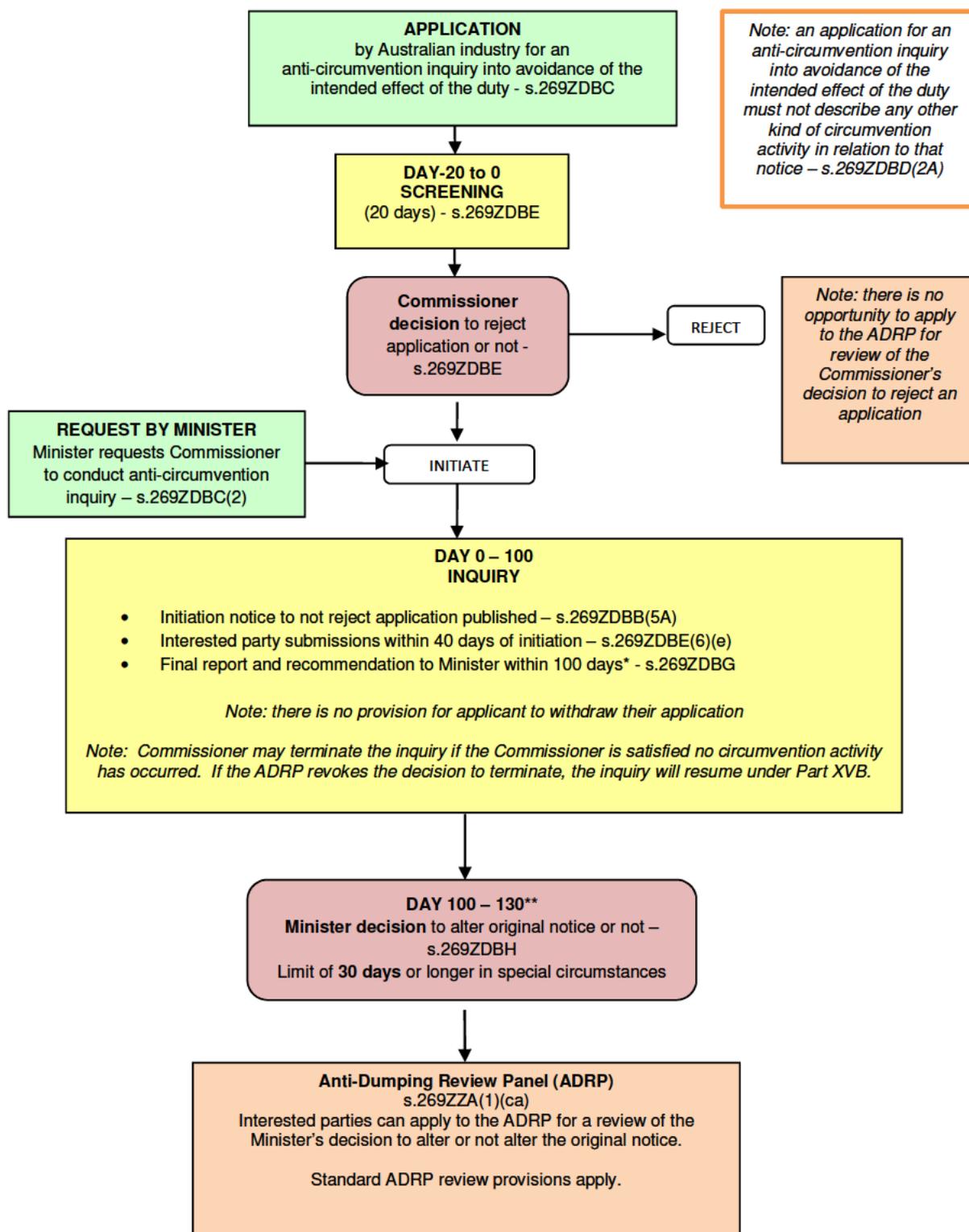
Anti-Dumping Commission contact

If you require advice, or have any enquiries concerning this ADN, please contact the Client Engagement and Business Support Section on the details above.

Kim Farrant
National Manager – Policy and Assistance
Anti-Dumping Commission

20 December 2013

Anti-circumvention inquiry relating to avoidance of the intended effect of the duty



* Minister may extend final report timeframe beyond 100 days.

** Except where extended.