



Australian Government
**Department of Industry,
Innovation and Science**

**Anti-Dumping
Commission**

INSTRUCTIONS AND GUIDELINES

ANTI-DUMPING COMMISSION
INSTRUCTIONS AND GUIDELINES FOR APPLICANTS
on the
Application for an anti-circumvention inquiry
December 2015

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Introduction

These Instructions and Guidelines provide guidance to applicants to assist them completing the application form for an anti-circumvention inquiry.

Applicants should read these Guidelines in conjunction with other publicly available documents on the Anti-Dumping Commission website.

Instructions and Guidelines

The Guidelines cover the following topics:

- background and scope of anti-circumvention inquiries;
- assistance with the application;
- the inquiry process;
- provision of non-confidential information; and
- information required by the application form.

Related Policies and References

Other Instructions and Guidelines:

- Dumping and Subsidy Manual.

Key Roles and Responsibilities

- The Commissioner of the Anti-Dumping Commission has responsibility for ensuring the implementation and maintenance of this Instruction and Guideline.
- This Instruction and Guideline applies to all staff in the Anti-Dumping Commission.

Approval

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

GUIDELINES FOR APPLICANTS

1. BACKGROUND

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 Minister¹ may also request the Anti-Dumping Commissioner (the Commissioner) to conduct an inquiry.

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

What is circumvention activity?

Section 269ZDBB of the *Customs Act 1901* (the Act) sets out when circumvention activity, in relation to a notice published under subsections 269TG(2) or 269TJ(2) of the Act² occurs. Circumvention activities prescribed by the Act only relate to circumvention activities to avoid a dumping 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;
- assembly of parts in third country;
- export of goods through one or more third countries;
- arrangements between exporters; and
- any additional circumstances prescribed by regulation.

These activities are described in more detail later in these Guidelines (pages 4 to 5 refer).

What is not circumvention activity³?

The following activities would not generally be considered to be circumvention activities:

- activities (as described above) that relate to goods that are subject to a notice published under subsections 269TG(1) or 269TJ(1) of the Act⁴; and
- goods that have not attracted the intended dumping or countervailing duty due to false and misleading statements provided by importers on Import Declarations (i.e. where incorrect country codes (and country of export), tariff classifications / statistical codes or exemption types are knowingly used by importers).

Notwithstanding that the above activities may not be prescribed circumvention activities, if

¹ Referring to the Minister for Home Affairs.

² This notice refers to an original notice under subsections 269TG(2) or 269TJ(2) of the Act following an investigation.

³ As prescribed by the Act.

⁴ These notices are retrospective dumping duty notices that convert dumping securities applicable to the goods the subject of an investigation into interim dumping duty.

identified you may still refer them to the Commission. These activities subsequently may be investigated by the Commission where they involve potential non-compliance with the Act.

2. ASSISTANCE WITH THE APPLICATION

The Commission's client support section can provide information about dumping and countervailing procedures and the information required by the application form. Contact the team on:

Phone: 13 28 46
Fax: (03) 8539 2499
Email: clientsupport@adcommission.gov.au

Other information is available from the Commission website at www.adcommission.gov.au

Small and medium enterprises (i.e., those with up to 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the Department of Industry, Innovation and Science's International Trade Remedies Advisory (ITRA) Service. For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267.

3. THE INQUIRY PROCESS

A summary of the anti-circumvention inquiry process is provided below.

The Act

The anti-circumvention inquiry process is prescribed in Division 5A, Part XVB of the Act.

Consideration of applications and requests

An application for an anti-circumvention inquiry may be made by a person representing, or representing a portion of, the Australian industry producing like goods. Also, the Minister may request the Commissioner to conduct an anti-circumvention inquiry.

The Commissioner must decide whether or not to reject the application within 20 days of lodgement of an application. The Commissioner must reject the application if not satisfied that the requirements of the application form have been met and that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred. The various 'circumvention activities' are described later in these Guidelines (pages 5 to 10 refer).

If the Commissioner does not reject the application, or if the Minister requests an inquiry, a notice must be published indicating that an inquiry is to be conducted. The applicant will also be notified of the Commissioner's decision.

Submissions

The Commission will contact known interested parties inviting them to participate and lodge a submission to the inquiry. The deadline for submissions is 40 days after publication of the notice. The Commissioner is not obliged to have regard to a submission received after 40 days, if to do so would prevent the timely placement of the statement of essential facts (SEF) on the public record.

Non-confidential versions of submissions should be prepared for placement on the public record. Please see 'provision of non-confidential information' section (pages 4 to 5 refers).

Verification of information

On-site visits may be conducted to verify information submitted by interested parties. Where on-site visits do not occur, desk audits may also be completed. Verification visit and desk audit reports will be prepared by the Commission and non-confidential versions of these reports are placed on the public record.

Statement of essential facts

Within 110 days from the initiation of an inquiry, a SEF must be placed on the public record. The Minister may extend the SEF deadline, following a request for the extension of time by the Commissioner.

The SEF contains the facts on which the Commissioner proposes to base a recommendation to the Minister in relation to the occurrence of a circumvention activity (which will also include recommendations for altering the original notice).

Interested parties may lodge responses to the SEF within 20 days from placement of the SEF on the public record. The Commissioner is not obliged to have regard to a submission received after this period, if to do so would prevent the timely preparation of the report to the Minister.

Report on anti-circumvention inquiry

The Commissioner must give the Minister a report within 155 days recommending whether the original notice should be altered, and if so, the alterations to be made. The Minister may extend the report deadline.

The report must include a statement of the Commissioner 's reasons that sets out the material findings of fact on which that recommendation is based and provides particulars of the evidence relied on to support those findings.

Minister's powers

The Minister must, within 30 days of receiving the report, declare by notice in the *Gazette* and a nationally circulated newspaper, whether the original notice should be altered, and if so, the alterations to be made. If the Minister considers special circumstances exist, a longer period may be taken to make the declaration. The Minister must give public notice of the longer period.

Details of the kinds of alterations that may be made to the original notice are discussed later in these Guidelines (page 10 refers).

If the Minister's declaration affects an exporter, that exporter must be informed of the declaration and alterations. The Minister's declaration may cover more than one exporter.

Review of the Minister's decision

The Minister's decision to alter or not alter the original notice is reviewable by the Anti-Dumping Review Panel. An interested party as defined by the Act can apply for a review within 30 days from the publication of the Minister's decision.

4. THE PUBLIC RECORD

Section 269ZJ of the Act requires that a public record is maintained for investigations, review inquiries, continuation inquiries and anti-circumvention inquiries. Australian Customs Dumping Notice (ACDN) No. 2012/42 details the procedures for providing information for the public record, including non-confidential summaries. ACDN 2013/17 also provides information in relation to making submissions to investigations. These ACDNs are available on the Commission's website.

Please refer to this ACDN when preparing the required non-confidential version of your application. This ACDN should also be referred to when preparing submissions to an anti-circumvention inquiry.

5. INFORMATION REQUIRED BY THE APPLICATION FORM

Questions 6 and 7 of the application form require information about circumvention activities and proposed alterations to the original notice. Supporting evidence must be provided with the application to substantiate your claims. Please see 'supporting evidence' section (pages 10 to 11 refer). The following material may assist in preparing your responses.

Guidance to Question 6 - Provide a description of the circumvention activities in relation to the original notice that the applicant considers have occurred

Circumvention activities

As specified previously, section 269ZDBB of the Act sets out when circumvention activity, in relation to a notice published under subsections 269TG(2) or 269TJ(2) of the Act, occurs.

Circumvention activities described in the Act are:

- assembly of parts in Australia;
- assembly of parts in third country;
- export of goods through one or more third countries;
- arrangements between exporters; and
- any additional circumstances prescribed by regulation.

The following sections examine each of the prescribed circumvention activities.

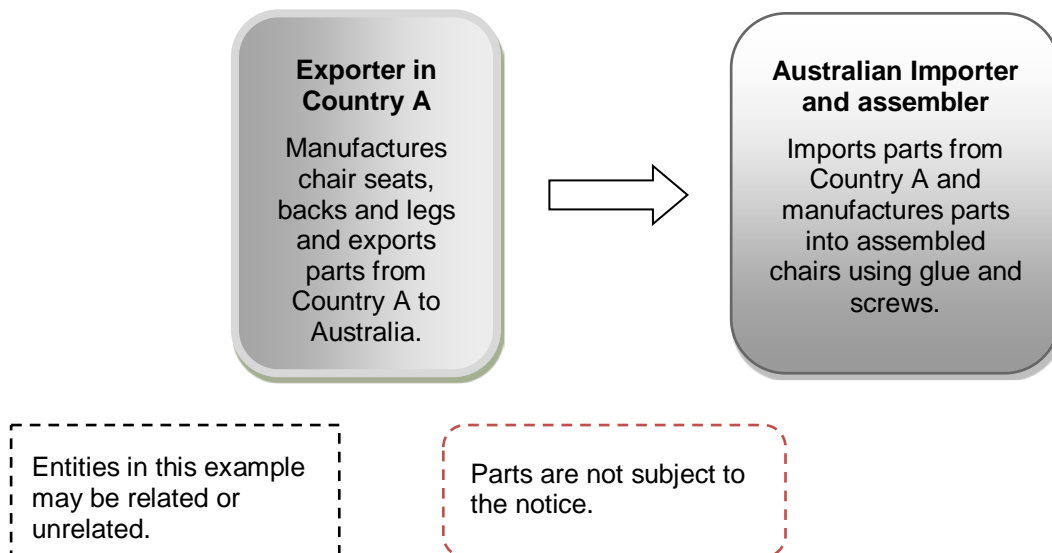
Assembly of parts in Australia

Circumvention activity in the form of ‘assembly of parts in Australia’ occurs if the following apply:

- a) *goods in the form of individual parts (the **circumvention goods**) are exported to Australia;*
- b) *those parts are manufactured in a foreign country in respect of which the notice applies;*
- c) *those parts are assembled in Australia, whether or not with other parts, to create goods (the assembled goods) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;*
- d) *the total value of the parts manufactured in that foreign country is a significant proportion of the value of the assembled goods;*
- e) *section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.*

This activity captures circumstances where parts representing a significant value of the assembled goods are manufactured in a country subject to the notice and exported to Australia as parts, which do not attract interim dumping or countervailing duty. The parts are then used in the manufacture of the assembled goods in Australia that would have been subject to interim dumping or countervailing duty had they been exported to Australia in the assembled state. The parts may be assembled in Australia with or without addition parts (regardless of whether these parts are sourced from Australia or other countries). In this circumstance the assembly process in Australia would be considered minor and insignificant. Example 1 below illustrates this type of circumvention activity.

Example 1 – Goods covered by notice are assembled chairs from Country A



In Example 1, the exporter in Country A is the exporter undertaking the circumvention activity. The Australian importer and assembler may or may not be aware of the circumvention activity. Also, the Australian importer may not be the assembler and may on-sell the imported parts to the Australian assembler. This type of activity would also be considered ‘assembly of parts in Australia’ (i.e. the circumvention activity).

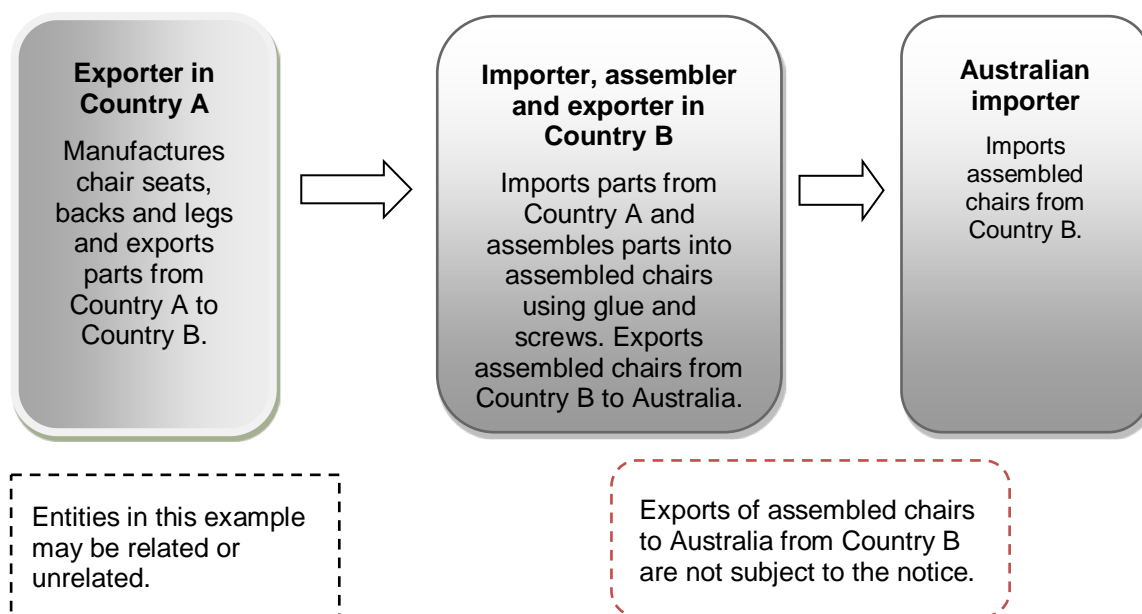
Assembly of parts in a third country

Circumvention activity in the form of ‘assembly of parts in a third country’ occurs if the following apply:

- a) *goods in the form of individual parts are manufactured in a foreign country (the original country) in respect of which the notice applies;*
- b) *those parts are assembled in a foreign country in respect of which the notice does not apply, whether or not with other parts, to create goods (the circumvention goods) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;*
- c) *the circumvention goods are exported to Australia;*
- d) *the total value of the parts manufactured in the original country is a significant proportion of the customs value (within the meaning of section 159) of the circumvention goods;*
- e) *section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.*

This activity is similar to the ‘assembly of parts in Australia’ activity; however for this activity the assembly of the goods that would have been subject to the notice occurs in a third country. This third country is not subject to a dumping or countervailing duty notice. The goods are subsequently exported to Australia from the third country in their assembled state and do not attract interim dumping or countervailing duty. In this circumstance the assembly process in the third country would be considered minor and insignificant. Example 2 below illustrates this type of circumvention activity.

Example 2 – Goods covered by notice are assembled chairs from country A



In Example 2, the exporter in Country A is the exporter undertaking the circumvention activity. The assembler and exporter in the third country and the Australian importer may or may not be aware of the circumvention activity.

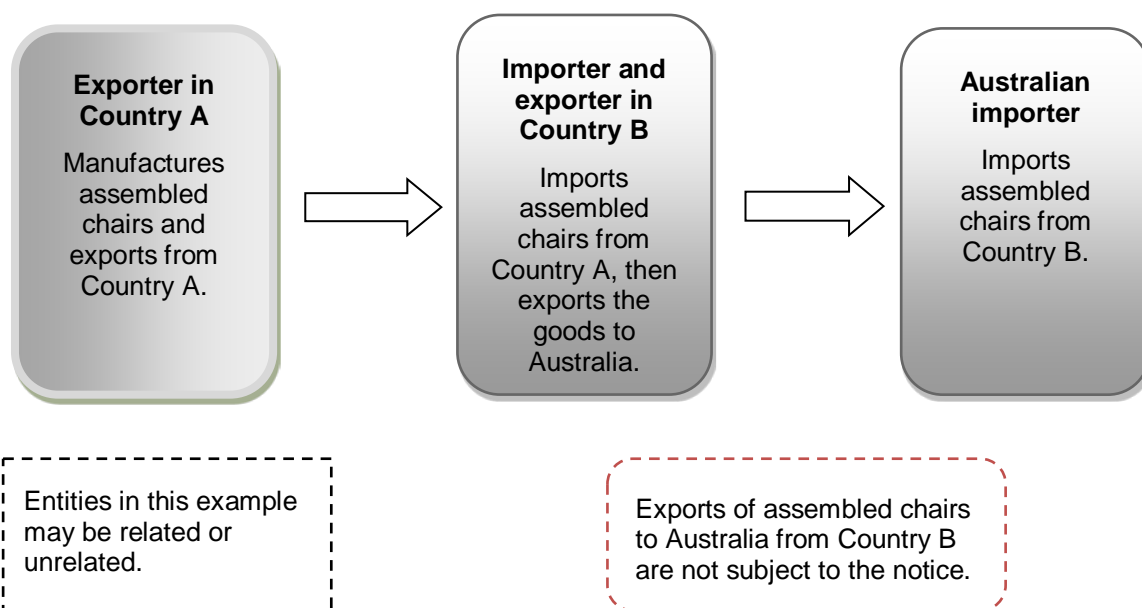
Export of goods through one or more third countries

Circumvention activity in the form of ‘export of goods through one or more third countries’ occurs if the following apply:

- a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice does not apply;
- b) before that export, there were one or more other exports of the goods from a foreign country to another foreign country;
- c) the first of those other exports was from a foreign country in respect of which the notice applies;
- d) the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
- e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

This activity covers circumstances where goods would have been subject to the notice had they been exported directly from their originating country that is subject to a notice. Instead, the goods are exported through one or more third countries that are not subject to the notice. These goods therefore do not attract interim dumping and / or countervailing duties. Example 3 below illustrates this type of circumvention activity.

Example 3 – Goods covered by notice are assembled chairs from country A



In Example 3, the exporter in Country A is the exporter undertaking the circumvention activity. The exporter in the third country (or countries) and the Australian importer may or may not be aware of the circumvention activity.

Arrangements between exporters

Circumvention activity in the form of ‘arrangements between exporters’ occurs if the following apply:

- a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;

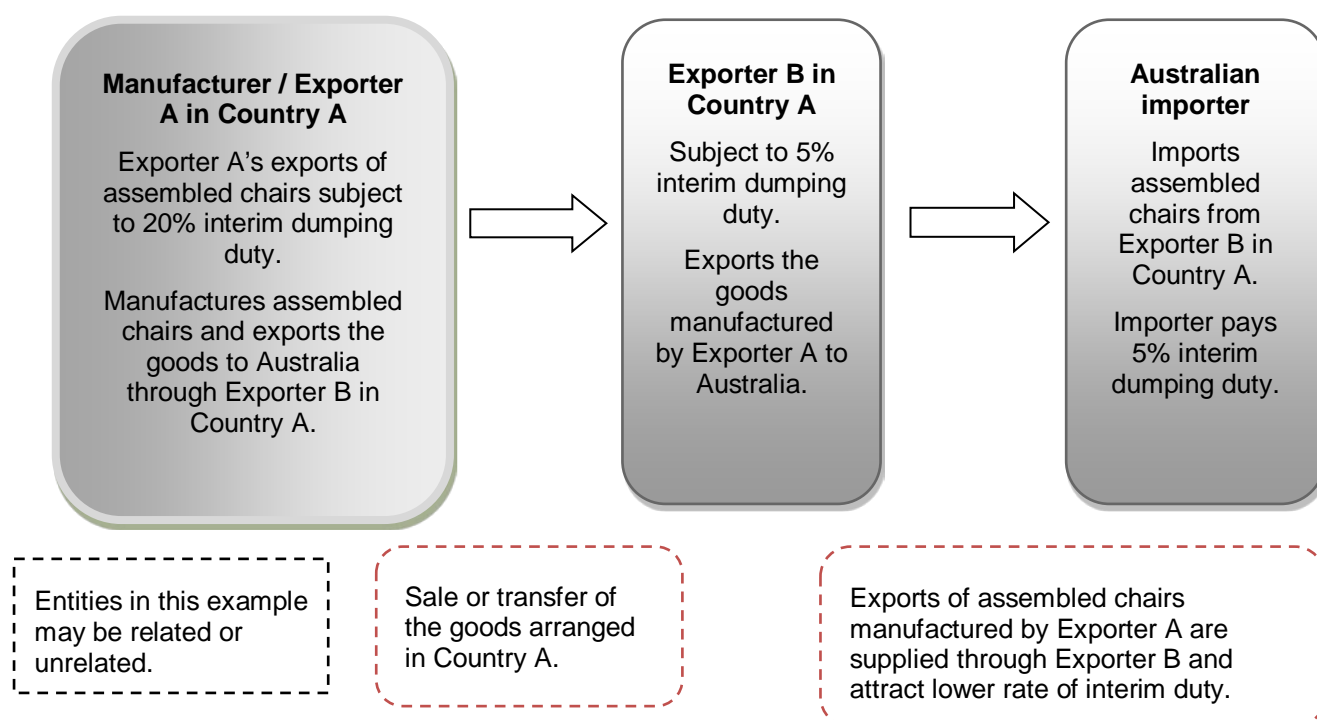
INTERNAL AND EXTERNAL

- b) *the exporter exported the circumvention goods under an arrangement with another exporter from that foreign country;*
 - c) *the other exporter is an exporter in respect of which the notice applies;*
 - d) *the circumvention goods would be the subject of the notice if they were exported to Australia by the other exporter;*
- either:*

- (i) *section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia; or*
- (ii) *section 8 or 10 of the Dumping Duty Act, as the case requires, applies to the export of the circumvention goods to Australia, but the interim duty payable in relation to that export is less than the interim duty that would have been payable if the other exporter had exported the goods to Australia*

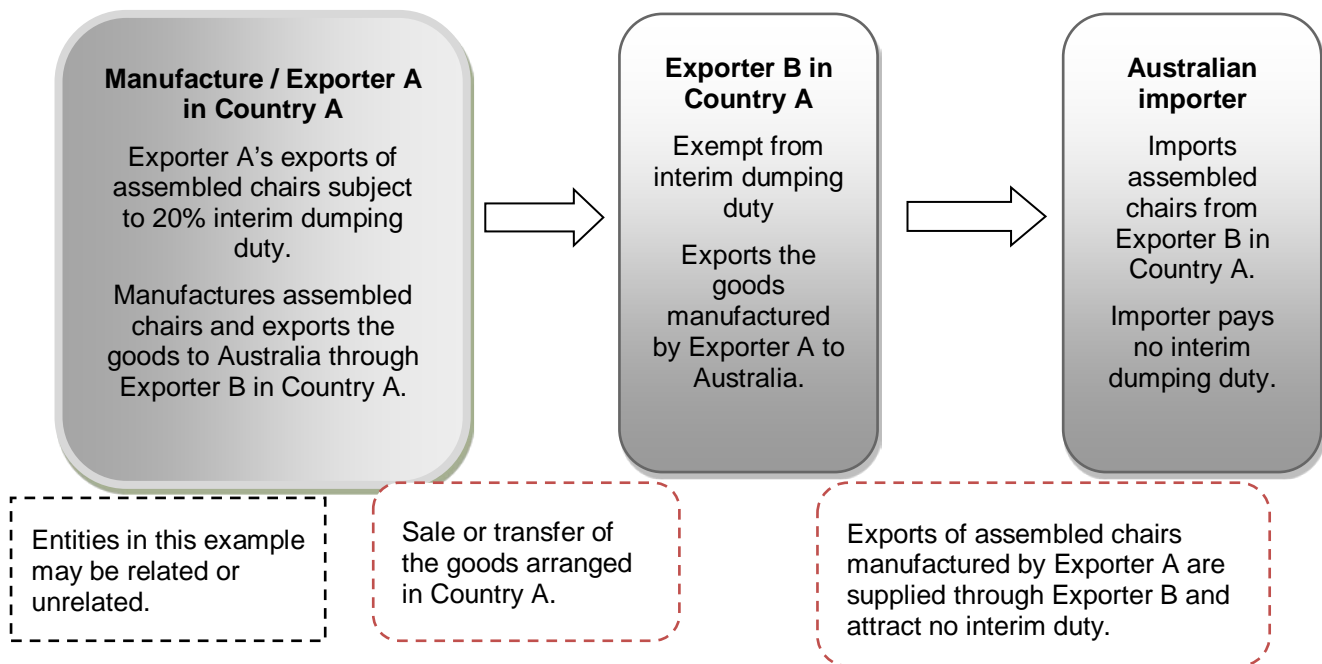
This activity covers circumstances where goods that are the subject of a notice are exported to Australia from the original exporter through another exporter in that originating country that is subject to a lesser rate of duty or is exempt from the notice. In this circumstance either a lesser amount or no dumping or countervailing duty is applicable to the goods. Examples 4 and 5 below illustrate this type of circumvention activity.

Example 4 – Goods covered by notice are assembled chairs from Country A



In Example 4, Exporter A in Country A is the exporter undertaking the circumvention activity. Exporter B in Country A may also knowingly be participating in the circumvention activity. The Australian importer may or may not be aware of the circumvention activity.

Example 5 – Goods covered by notice are assembled chairs from Country A



In Example 5, Exporter A in Country A is the exporter undertaking the circumvention activity. Exporter B in Country A may also knowingly be participating in the circumvention activity. The Australian importer may or may not be aware of the circumvention activity.

Additional circumstances prescribed by regulation

The Act provides for additional circumstances of circumvention behaviour in respect of the notice to be prescribed in the regulations. No additional circumstances have been prescribed in the regulations at the date of publishing these Guidelines.

Guidance to Question 7 - A description of the alterations to the original notice that the applicant considers should be made

Subsection 269ZDBH(2) of the Act outlines the kinds of alterations that may be made to the original notice by the Minister including:

- 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;
- the specification of variable factors in relation to the different exporters that are to be the subject of the original notice.

Variable factors are export price, normal value, non-injurious price and the countervailable subsidy in respect of the goods (if relevant).

In the application you need to provide a description of the alterations to the original notice that you consider should be made in order to address the circumvention activity.

Supporting evidence must be provided to support your claims. Please see 'supporting evidence' section below.

SUPPORTING EVIDENCE

If you are seeking an anti-circumvention inquiry based on one or more circumvention activities you must indicate this intention in the application form by ticking the relevant box(es).

The application form requires you to provide a detailed statement setting out the reasons, supported by evidence. Please note that your responses should be made as accurately and as comprehensively as possible. Supporting evidence should be attached as it will not be sufficient to simply claim that circumvention activity has occurred. Your application may be rejected if it is not adequately supported by evidence.

Relevant evidence is required to support your claims that there one or more circumvention activities has occurred.

Relevant evidence may include market intelligence (not just mere assertions), commercial documentation (including sales negotiation evidence, quotes, invoices, manufacturing certificates, Bills of Lading) obtained from exporters and importers (and assemblers).

You should also provide in your application a description of the alterations to the original notice that should be made.

You should be aware that if the Commission is not satisfied that there appear to be reasonable grounds for your assertions, or that they are sufficiently supported, then the application must be rejected.

Please contact the client support section on the contact details provided in this form for further assistance regarding the evidence necessary to support your application.