



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

**Anti-Dumping
Commission**

How to apply for an exemption

Anti-Dumping Commission

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Contents

Contents	2
Purpose	3
Introduction	3
Grounds for an exemption.....	3
When to apply?	4
How to apply?	4
Application letter	6
Non confidential version.....	7
Pre-lodgement documentation check	7
How to 'formally' lodge the application?	7
Timeframes.....	7
Date of effect	8
The assessment process	8
Possible outcomes.....	8
Rights of review	9
Find out more.....	9
Attachment A	10
Template: Application letter to the Commission seeking an exemption.....	10

Purpose

This guide outlines the steps involved in applying to the Anti-Dumping Commission (Commission) for an exemption from anti-dumping measures.

Specifically, this guide sets out:

- grounds for an exemption
- when to apply
- how to apply
- date of effect, and
- what to expect during the assessment process.

Introduction

The Minister **may** exempt goods from anti-dumping measures if the Minister is satisfied certain criteria have been met.

The Commission conducts an exemption inquiry and provides a report to the Minister recommending whether or not to grant an exemption.

If the Minister grants an exemption, it is applicable to all importations of the exempted goods, regardless of the importer or exporter or country of export.

Exemptions are subject to review and revocation by the Minister.

Grounds for an exemption

There are five grounds for applying for an exemption (see the [Customs Tariff \(Anti-Dumping\) Act 1975](#)). They are:

- One – that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.
- Two – there is a Tariff Concession Order (TCO) in respect of the goods in force. Exemptions which are granted on the basis of a Tariff Concession Order (TCO) being in force will be revoked once the TCO is no longer in force.
- Three – a Customs by-law applies to the goods and suitably equivalent goods produced or manufactured in Australia are not reasonably available.
- Four – either the duty payable on the goods is zero, or the rate payable is equivalent to a special concessional rate applicable to the goods and suitably

equivalent goods produced or manufactured in Australia are not reasonably available.

- Five – the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

The most commonly used are grounds One and Two.

When to apply?

Applicants can apply for an exemption:

- during the course of an investigation, or
- following the implementation of measures.

How to apply?

Ground One exemption

Under the Ground One exemption, the Minister may grant an exemption if like or directly competitive goods are not offered for sale in Australia. If like or directly competitive goods *are* offered for sale in Australia then the Minister may grant an exemption if the goods are *not* offered to all purchasers on equal terms under like conditions.

Step 1. Contact all known Australian producers, in writing, and ask whether they can manufacture and supply the goods in question and if so, the terms of supply. You may also wish to consider asking Australian producers whether they would provide support for your exemption application.

Step 2. Collect responses from Australian producers and consider whether the Minister can be satisfied that:

- like or directly competitive goods are not offered for sale by the Australian industry, ie. there is no Australian industry producing and supplying goods that are like or directly competitive to the goods in question; or
- goods offered for sale by the Australian industry are *not* offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Chapter 2 of the *Dumping and Subsidy Manual* sets out the Commission's established policy and practice in relation to like goods. Where two goods are identical, they are automatically regarded as like goods. Where two goods are not alike in all respects, the Commission will assess whether they have characteristics closely resembling each other. This assessment will include assessing their physical, commercial, functional, and production likeness.

The phrase 'directly competitive' is taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degrees, and the goods will not merely remotely or indirectly compete.

When considering what is 'custom or trade usage' it is considered that:

- Custom or usage is established mercantile usage or professional practice; and
- Evidence of actual market practices is crucial to the existence of a custom or usage. However, universal acceptance is not necessary.

Step 3. Complete the application letter to the Commission and prepare a confidential (if required) and non-confidential version. Clearly mark each version as 'CONFIDENTIAL' or 'PUBLIC'.

Step 4. Forward the confidential and non-confidential application letters and supporting documentation to the Commission. Clearly mark any supporting documentation as 'CONFIDENTIAL' or 'PUBLIC'. Further guidance is available at [provision of a non-confidential summary](#).

Ground Two exemption

Step 1. Confirm that there is a TCO in place. Review the [list of TCOs](#) on the Australian Border Force (ABF) website.

If there is no TCO in place, you can consider applying for a TCO. Information about [applying for a TCO](#) is also on the ABF website.

Step 2. Once a TCO is in place, complete the application letter to the Commission and prepare a confidential (if required) and non-confidential version. Clearly mark each version as 'CONFIDENTIAL' or 'PUBLIC'

Step 3. Forward the confidential and non-confidential application letters and supporting documentation to the Commission. Clearly mark any supporting documentation as 'CONFIDENTIAL' or 'PUBLIC'.

Application letter

There is no prescribed application form for an exemption inquiry.

The application must be in writing and should contain:

- the applicant's details including
 - name
 - street address
 - postal address
- the contact person's details including
 - position
 - telephone number
 - email address
- a description of the applicant's interests as an affected party
 - e.g. importer or end user/supplier
- details of other parties likely to have an interest in this exemption application
 - name
 - address
 - what their interest may be (e.g. known importers and Australian producers)
- details on which grounds the exemption is being sought
 - see section above on Grounds for an exemption
- evidence that all known Australian producers have been
 - contacted in writing
 - asked whether they can manufacture and supply the goods, the terms of supply and their view of the exemption application [*Note: you are not required to have support from Australian producers, however, it may assist your application*]
- details of the current investigation or anti-dumping measures applying to the goods the subject of your application, including:
 - a description of the goods covered by the investigation or measure and their tariff classification
 - the countries specified
- a detailed statement setting out the reasons for seeking an exemption, including:
 - a detailed description of the goods on which the exemption is sought (including, where applicable, technical specifications, chemical composition tables, drawings, or any other document which outlines the relevant characteristics of the goods on which the exemption is sought)
 - the conditions that exist that provide grounds to make an exemption, and

- whether an attempt has been made to purchase the product for which the exemption is being made, or a substitute product, from Australian producers.

Attachment A is an example of an application letter to the Commission seeking an exemption inquiry.

Non confidential version

The Commission requires the applicant to provide a non-confidential version of the application, including supporting evidence. The Commission will place a copy of this version on the Public Record.

Applicants should ensure that the non-confidential version clearly shows the applicant's grounds for seeking an exemption from anti-dumping measures.

Pre-lodgement documentation check

The Commission provides a free of charge document check, prior to formal lodgement. This check helps importers know that their proposed application meets the requirements of a properly documented application.

If you would like a pre-lodgement check, email the application plus relevant documents to clientsupport@adcommission.gov.au

Clearly state in the email that you are requesting a pre-lodgement check.

How to 'formally' lodge the application?

For timely receipt of your application, it is better to email applications to clientsupport@adcommission.gov.au

Timeframes

There is no legislated timeframe for the Commission to conduct exemption inquiries.

Date of effect

If the Minister grants an exemption based on an application, the date of effect is the date specified in the notice signed by the Minister. The date of effect cannot be earlier than the date of the application. For this reason, it is recommended that you lodge the completed exemption application as soon as possible. Please note, a request for a pre-lodgement documentation check is **not** considered as lodging an application.

The assessment process

When the Commission receives an application, it will confirm receipt and consider if it contains the required information to conduct an inquiry.

If the required information has been provided, the Commission will publish an Anti-Dumping Notice (ADN) stating that it has initiated an exemption inquiry and inviting [submissions](#) from interested parties.

The Commission may also write to the Australian industry members seeking their views. This is usually in the form of an industry questionnaire. The applicant and any other interested party may make further submissions in response.

At the conclusion of an exemption inquiry, the Commission will provide the Minister with a report recommending whether or not the Minister should grant an exemption.

The Commission may not conduct an inquiry where the necessary information has not been provided.

Possible outcomes

The decision to grant an exemption is at the discretion of the Minister.

At the conclusion of an inquiry, the Commission will give the Minister a report recommending whether or not to exempt the goods in your application from anti-dumping measures.

Once the Minister has made a decision, the Commission will

- publish an ADN with details of the outcome of the inquiry, and
- publish the inquiry report.

Rights of review

Decisions relating to exemptions are not eligible for appeal to the Anti-Dumping Review Panel. The only avenue of appeal is to the Federal Court of Australia.

Find out more

- Find out about accessing Australia's [anti-dumping system](#)
- Research the [Dumping Commodity Register](#)
- Small-medium enterprises can seek assistance from the [ITRA Service](#) by email itra@industry.gov.au or the ITRA Hotline (02) 6213 7267
- Contact the Anti-Dumping Commission by email clientsupport@adcommission.gov.au or by business.gov.au on 13 28 46

Attachment A

Template: Application letter to the Commission seeking an exemption

Set out below is a suggested letter you can send to the Commission

Instructions

1. Applicant to enter details into the square brackets “[]”.
2. The italicised text in the round brackets “()” is guidance material for the applicant. Delete this guidance material prior to sending the letter to the Commission.
3. The guidance material below includes references to the Dumping Commodity Register (DCR). To access the relevant DCR select the imported good/commodity from the left hand side of the Commission’s [Measures](#) page.

The Commissioner of the Anti-Dumping Commission
By email: clientsupport@adcommission.gov.au

Dear Commissioner of the Anti-Dumping Commission

Application seeking an exemption from anti-dumping measures

[Company name] would like to seek an exemption from anti-dumping measures that apply to certain [goods]. Our details are as follows:

[Full company name]
[Street address]
[Postal address]

The details for the contact person for this application are as follows:

[Contact person name]
[Contact person position]
[Telephone number]
[Email address]

The exemption goods

(Insert details of the goods for which you are seeking an exemption)

The exemption goods are generally classified to the following tariff classifications and statistical codes:

[List]

Applicant's interest as an affected party

[Company name] is an importer (and manufacturer/supplier) of [product name] and uses the exemption goods because [....].

Details of other parties likely to have an interest in this exemption application and their interests in this application

(Insert details, e.g. Company B is also an importer of the goods).

Grounds on which we are seeking the exemption

(Delete the following grounds that do not apply.)

Ground One – Like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade

Ground Two – A Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force

Ground Three – a Customs by-law applies to the goods and suitably equivalent goods produced or manufactured in Australia are not reasonably available.

Ground Four – either the duty payable on the goods is zero, or the rate payable is equivalent to a special concessional rate applicable to the goods and suitably equivalent goods produced or manufactured in Australia are not reasonably available.

Ground Five – The goods, being articles of merchandise, are for use as samples for the sale of similar goods

Evidence that all known Australian producers have been contacted in writing and asked whether, or not, they can manufacture and supply goods, the terms of supply

(Provide details and attach relevant correspondence.)

Details of the current investigation or the anti-dumping and countervailing measures applying to the goods

The goods subject to measures are: / The goods under investigation are: (delete as appropriate.)

(Insert the goods description at Question 2 of the relevant [Dumping Commodity Register](#) (DCR) or from the initiation notice of the current investigation.)

The countries subject to measures are [country names].

CONFIDENTIAL / PUBLIC (delete as appropriate)

(Insert the countries listed on page 1 of the relevant [DCR](#) or initiation notice.)

Detailed statement setting out reasons for seeking an exemption

(Provide details on why you believe one or more of the grounds to grant an exemption have been met. Attach any supporting evidence)

Yours sincerely

[Name]

[Position in Company]

[Email]

[Phone]

[dd/mm/yyyy]