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**Committee on Anti-Dumping Practices
Informal Group on Anti-Circumvention**

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**COMMITTEE ON ANTI-DUMPING PRACTICES
INFORMAL GROUP ON ANTI-CIRCUMVENTION**

MEETING ON WEDNESDAY, 1 MAY 2019

Paper from Australia

**Comité des pratiques antidumping
Groupe informel de l'anticonournement**

DOCUMENT DE SÉANCE NON OFFICIEL¹

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**Comité de Prácticas Antidumping
Grupo Informal sobre las Medidas contra la Elusión**

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* In Original language only/En langue originale seulement/En el idioma original solamente.

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AUSTRALIA'S ANTI-CIRCUMVENTION FRAMEWORK

Overview of approach

- The Anti-Dumping Commission administers Australia's anti-dumping and countervailing system including by undertaking anti-circumvention inquiries.
- Australia's customs authority (the Australian Border Force) is responsible for enforcement of measures including by investigating duty evasion and fraud.
- Cooperation between agencies allows for an effective anti-circumvention framework.

History of policy development

- Australia's anti-circumvention framework commenced in June 2013.
- Four types of circumvention activity were included in 2013.
- Another two types of circumvention activity were added in 2014 and 2015.
- New types of circumvention can be added by legislation (approved by parliament) or regulation (approved by the Minister).

Types of circumvention behaviour

1. Assembly of parts in Australia
2. Assembly of parts in a third country
3. Export of goods through one or more third countries
4. Arrangements between exporters
5. Avoidance of the intended effect of duty
6. Slight modification of goods

Timeline of an Anti-Circumvention Inquiry

1. Australian industry members may apply. (An inquiry may also be initiated by the Minister.)
2. 20 day application screening period to accept or reject the application.
3. Public notice made that an inquiry will take place.
4. Interested parties have 37 days to lodge written questionnaires/submissions.
5. 110 days* to prepare a statement of essential facts.
6. Interested parties have 20 days to lodge written questionnaires/submissions in response.
7. 155 days* to complete the inquiry.
8. The Minister has 30 days* to consider the final report.
9. The Minister may alter the dumping/countervailing notice if circumvention has occurred.

* These timeframes can be extended.

Other features

Generally the same investigative procedures and evidence requirements that apply to anti-dumping investigations also apply to anti-circumvention inquiries.

- Transparency: An Electronic Public Record, organised by product then case type, is maintained for the inquiry to the same standard of other anti-dumping investigations.
- Termination: If the Anti-Dumping Commissioner decides that no circumvention activity has occurred, the inquiry may be terminated.
- Review: Parties may apply for decisions to be (merits/administrative) reviewed by the Anti-Dumping Review Panel (ADRP) or the Australian Federal Court.

Outcomes

The Minister may declare that the notice imposing duties remain unaltered or should be altered to address any circumvention activity that has been identified. The legislation does not limit what alterations could be made, but provides a non-exhaustive list of alterations which may be of the following kind:

1. specifying that duties should apply to circumvention goods;
2. specifying that duties should apply to different countries involved in circumvention activity;
3. specifying that duties should apply to different exporters involved in circumvention activity (and to specify dumping margins that will apply to those exporters); and
4. if a circumventing exporter was already subject to duties, to specify a different dumping margin to address any circumvention activity.

The changed measures take effect either on the date the Minister's decision is published or from the date of initiation of the circumvention inquiry.

Case Study

Background

- Eight circumvention inquiries have been conducted since the framework was established. Of these, two involved the *avoidance of the intended effect of duty*, one involved the *export of goods through one or more third countries* and five involved the *slight modification of goods*.
- Six out of eight inquiries found circumvention. One remains in progress.
- Three previous cases (#290, #291 and #298) all related to the *slight modification of goods*. While initiated at different times they were run concurrently as they involved the same "slight modification", being the addition of small amounts of boron to zinc coated (galvanised) steel and hollow structural sections (HSS) of steel.
- Boron has practical effects on the chemistry and physical properties of steel at differing concentrations, but the relevant tariff code recognises a change from non-alloyed steel to alloyed steel when boron is present in concentrations of at least 8 parts per million.
- At the time of the original investigations the Australian market was predominantly purchasing non-alloyed HSS or galvanised steel, hence the goods description (and the investigations) were focused on non-alloyed goods.
- Following the imposition of measures, Australian industry identified that an unanticipated switch had occurred in the market, and that some importers had begun trading in alloyed goods. They alleged this was for no purpose other than avoiding the measures.

Consideration

- Based on analysis of Customs data, we identified behaviour change by particular importers/exporters. The analysis also showed that some trade in alloyed goods had existed for a long time (albeit in much smaller volumes than non-alloyed goods).
- The three inquiries invited importers and exporters to respond to a questionnaire that was based on our usual questionnaire format, but included questions about the apparent differences in costs/prices between the alloyed and non-alloyed goods, the rationale for any switch in their patterns of trade and so on.
- These questions were intended to enable the Commission to assess whether the goods were "slightly" modified, in the context Section 48 of the *Customs (International Obligations) Regulation 2015* which sets out a list of factors that may be relevant for the purpose of comparing the goods subject to the original notice with the circumvention goods:
 - a) each good's general physical characteristics;
 - b) each good's end use;
 - c) the interchangeability of each good;
 - d) differences in the processes used to produce each good;
 - e) differences in the cost to produce each good;
 - f) the cost of modification;
 - g) customer preferences and expectations relating to each goods;
 - h) the way in which each good is marketed;
 - i) channels of trade and distribution for each good;
 - j) patterns of trade for each good;
 - k) changes in the pricing of each good;
 - l) changes in the export volumes for each good;
 - m) tariff classifications and statistical codes for each good.
- Interested parties were invited to make submissions.

Outcome

- The *Statement of Essential Facts No. 290 and 298* (galvanised steel) and *Statement of Essential Facts No. 291* (HSS) were published on 5 November 2015. These prompted a number of submissions in response, which took more time to work through. The final reports and the Minister's decisions were published on 18 March 2016.
 - The decisions were the subject of reviews by the ADRP, which ultimately affirmed those decisions.
 - The Minister decided that the goods description would be expanded for those exporters found to be circumventing the measures as of the relevant date of initiation (i.e. May 2015).
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