

ANNEXURE

***Detailed statement regarding the circumvention activities in relation to the original notice that have occurred.***

**1. LEGISLATIVE PROVISIONS – SLIGHT MODIFICATION OF GOODS**

As this application concerns the slight modification of goods, subsection 48(2) of the *Customs (International Obligations) Regulation 2015*<sup>1</sup> is relevant. It prescribes the circumstances which must apply for there to be a circumvention activity. It requires each of the following criteria be satisfied:

- a) goods (**the circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;
- b) before that export, the circumvention goods are slightly modified;
- c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and
- e) section 8 of the *Dumping Duty Act*<sup>2</sup> does not apply to the export of the circumvention goods to Australia.

Subsection 48(3) provides that, for the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:

- 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 good
- h) the way in which each good is marketed
- i) channels of trade and distribution for each good

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<sup>1</sup> References to legislative provisions, are references to provisions of the *Customs (International Obligations) Regulation 2015* (**the Regulation**) unless expressly stated.

<sup>2</sup> *Customs Tariff (Anti-dumping) Act 1975* (**Dumping Duty Act**)

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- 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.

Each of these factors are examined below.

### 2. ASSESSMENT OF CIRCUMSTANCES IN SUBSECTION 48(2)

This section examines whether the circumstances of the Regulation have been satisfied.

#### 2.1 Are circumvention goods 'exported to Australia from a foreign country in respect of which the notice applies'?

The circumstances in paragraph 48(2)(a) are that goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies.

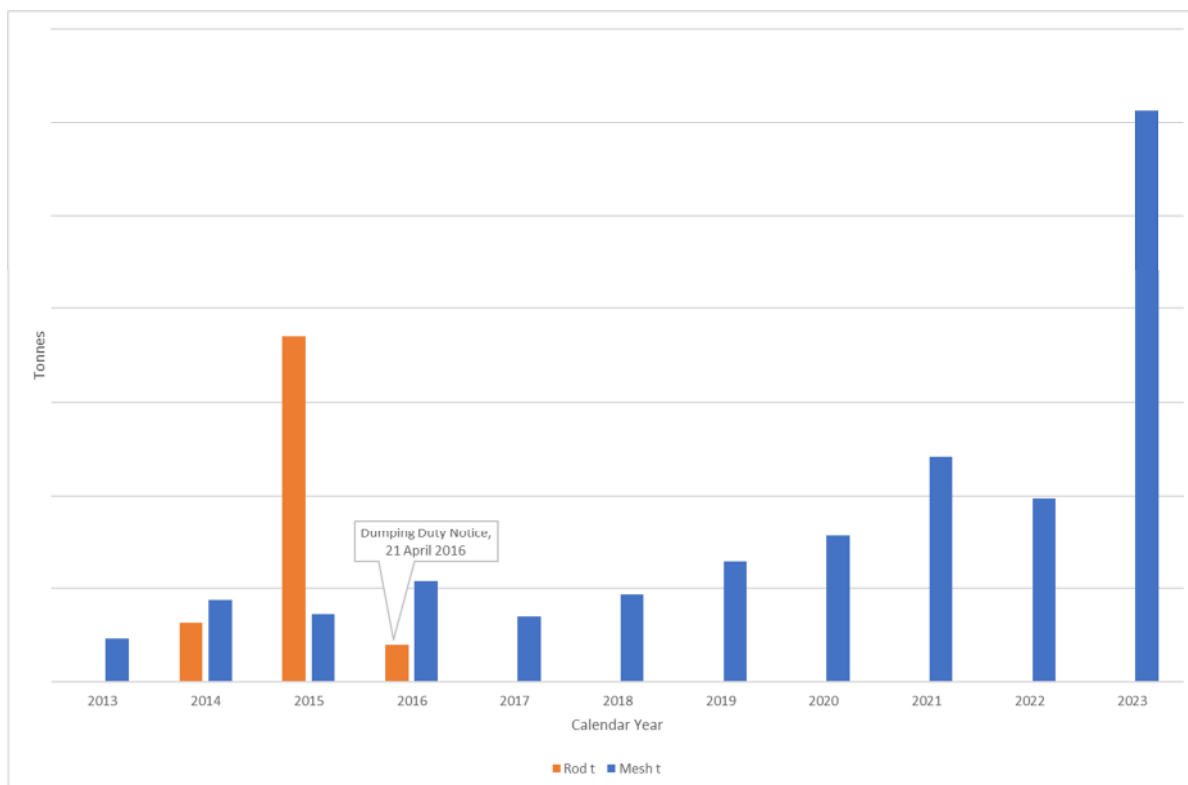
The relevant notice, 'Notice pursuant to section 8 of the *Customs Tariff (Anti-Dumping) Act 1975*' dated 21 April 2016,<sup>3</sup> applies to exports of the goods from the People's Republic of China (**China**).

To determine whether the circumvention goods have been exported to Australia, the applicant has analysed available trade data for export consignments of the circumvention goods from China.

**Figure 2.1**, below, shows the volume of the goods subject to measures and the circumvention goods exported to Australia from China from 1 January 2010 to 31 December 2023.

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<sup>3</sup> EPR Folio No. 301/040.



**Figure 2.1** The goods and circumvention goods exported to Australia from China  
(Source: CONFIDENTIAL ATTACHMENT 2.1)

**Figure 2.1**, above, shows that since the then Minister published the original notice in the second quarter of 2016, there has been a near complete substitution of the volume of exports of the goods subject to measures for the circumvention goods exported to Australia from China declared to tariff sub-heading 7314.20.00 with statistical code 24 in Schedule 3 of the *Customs Tariff Act 1995*.

The applicant identified that prior to the original notice, there were imports of the goods subject to measures from China. However, following the publication of the dumping duty notice, imports of the goods were either entirely absent or in marginal quantities. In the period prior to the original notice, although there were imports of the circumvention goods from China, their volumes immediately increased following the publication of the dumping duty notice (April 2016), so that by December 2016, the volume of exports of the circumvention goods were almost three-times the volume of the circumvention goods in April 2016. As such, following the publication of the original notice, the applicant observed growing and consistent volumes of imports from China of the circumvention goods. The applicant considers this indicates that exporters have commenced exporting the circumvention goods since the original notice in substitution for the goods subject to measures.

## 2.2 Before that export, are ‘the circumvention goods slightly modified’?

The circumstances in paragraph 48(2)(b) are that the circumvention goods are slightly modified before export.

The applicant alleges that several importers are importing goods that are slightly modified before export to Australia from China. Specifically, the slightly modified goods exported to Australia from China have been rolled, cut to length and cross-welded into mesh sheets (that is, the circumvention goods), which is not within the description of the goods covered by the original notice.

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In evaluating whether the circumvention goods are slightly modified before export, the applicant compares the circumvention goods and the goods the subject of the original notice in the following analysis, having regard to the factors listed in subsection 48(3). The factors outlined in subsection 48(3) are not an exhaustive list of factors that may be considered, and regard may be had to any factor the Commissioner considers relevant.

For the sake of completeness, the applicant has presented its analysis based on a consideration of all the factors listed in subsection 48(3). However, the applicant considers that the Commissioner does not have to be satisfied that all those factors indicate that the circumvention goods are slightly modified.

The applicant's analysis is set out in *Sections 2.2.1 to 2.2.14* below.

### 2.2.1 Each good's general physical characteristics: Paragraph 48(3)(a)

Historically, the goods subject to measures were substantially used in the production of the circumvention goods.

The goods are rolled, cut to length and cross-welded in a mesh pattern forming sheets of various dimensions.

The similarities and differences in each good's general physical characteristics are summarised in **Table 2.2.1**, below.

Physical characteristic	Goods (subject to measures)	Circumvention goods
Cross-sectional diameter	5.5 mm to 13.5 mm	4.24 mm to 11.9 mm
Dimensions	Coiled	Sheets up to 6.0 x 2.4m
Carbon content	By weight a carbon content of equal to or greater than 0.05%, and less than or equal to 0.20%.	By weight a carbon content of equal to or greater than 0.05%, and less than or equal to 0.20%.
Colour	Steel finish	Steel finish

**Table 2.2.1** Typical characteristics of the goods (subject to measures) and the circumvention goods used in concrete reinforcement

From **Table 2.2.1**, above, the differences between the goods and the circumvention goods are just the shape and cross-sectional diameter, with both otherwise being put to the same end use application in the reinforcement of concrete.

Noting the above, the applicant considers there is overlap in the physical characteristics of the goods and the circumvention goods with one being the feed material for the other. However, the

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presentation of the goods and the circumvention goods is not the same – the former is presented in coiled form, the latter as cross-welded lengths of rolled coil.

The carbon content of the goods and the circumvention goods is identical. Rod in coil within this carbon content range (rod for mesh) is suitable to be slightly modified into the circumvention goods (mesh).

Therefore, the applicant considers that the similarities between the general physical characteristics other than a difference in presentation supports the conclusion that there was a slight modification of goods.

### **2.2.2 Each good's end use: Paragraph 48(3)(b)**

The goods are the only material input into the circumvention goods. Both are ultimately used for the exact same end use application (as mesh used as a reinforcing substrate in concrete).

The goods are marketed and promoted for use in the manufacture of the circumvention goods. *Section 2.2.8*, below, discusses this in more detail.

Both the goods and the circumvention goods retain the same general characteristics (being colour and raw materials) except for thickness and form, that is, the goods are in coiled form, and the circumvention goods are in sheets of mesh, i.e. rolled coil, cut to length and cross-welded. There is no distinction in the end use of the goods and the circumvention goods, the former is wholly used in the manufacture of the latter, and the end use of both are as mesh in concrete.

The applicant notes that although prior to the original notice, importers of the goods did offer the circumvention goods for sales in Australia, they did so in significantly lower quantities. Following publication of the dumping duty notice, importers of the goods offered the circumvention goods (mesh) for sale in Australia to the same customers of the goods (i.e local mesh manufacturers).

Importers of mesh include traders who import the goods subject to measures, such as [REDACTED] Pty Ltd ([REDACTED]). There are also a range of new traders including [REDACTED] Pty Ltd, [REDACTED] Pty Ltd, [REDACTED] Traders, [REDACTED] Pty Ltd and [REDACTED] Pty Ltd.

The substitution of the volume of sales of the goods (rod in coil) for the circumvention goods (mesh) demonstrates that the goods and the circumvention goods have the same final end use.

### **2.2.3 The interchangeability of each good: Paragraph 48(3)(c)**

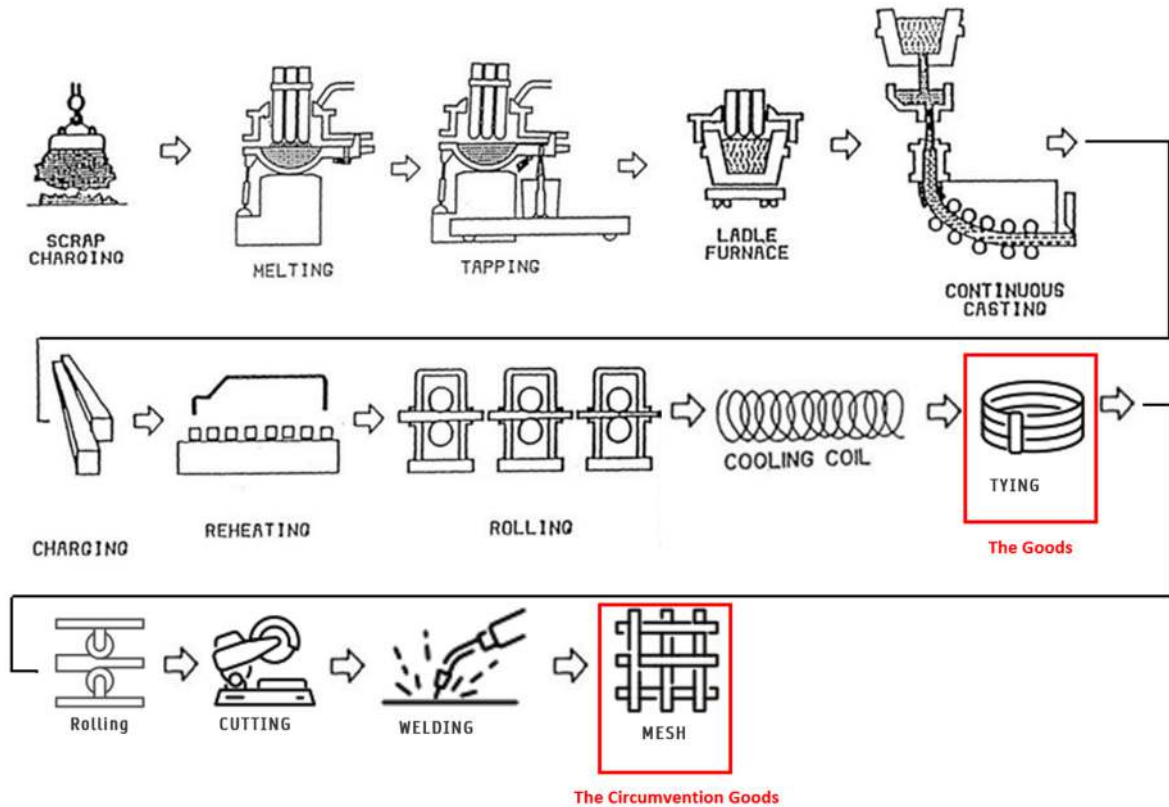
In terms of the channels to the Australian market for mesh in concrete, the goods and the circumvention goods are interchangeable for customers of the goods (i.e. local mesh manufacturers). That is, a customer of the goods (local mesh manufacturer), can take and sell the circumvention goods into the market. This is achieved by the customer substituting its purchase of the goods for the circumvention goods (finished mesh product). In essence, a number of customers of the goods (local mesh manufacturers) have become customers of the circumvention goods (mesh) as either direct importers and/or wholesalers of the circumvention goods by changing their supply model; from local mesh manufacture and supply, to purchase imported mesh and supply; but continue to sell mesh to the same parties.

Examples of customers who have substituted their purchases of the goods for the circumvention goods include:

- [REDACTED];
- [REDACTED]; and
- [REDACTED].

**2.2.4 Differences in the processes used to produce each good: Paragraph 48(3)(d)**

The goods are wholly manufactured into the circumvention goods.



**Figure 2.2.4** Production process

Manufacturers produce the goods and the circumvention goods using identical raw materials, steel billets.

**2.2.5 Differences in the cost to produce each good: Paragraph 48(3)(e)**

As the circumvention goods are wholly produced from the goods, the additional cost of production is a function of the conversion process. The applicant considers this cost to be an average of \$ [REDACTED] per tonne in the FY 2023 period. In other words, the cost to produce the goods account for approximately [REDACTED] % of the cost to produce the circumvention goods.<sup>4</sup> However, given that labour rates for manufacturing in China are approximately one-quarter of the average manufacturing

<sup>4</sup> CONFIDENTIAL ATTACHMENT 2.2.5

labour rates in Australia, then the applicant expects the additional costs of production in China for the circumvention goods to be less than this amount.<sup>5</sup>

On a per tonne basis, the change in cost from the goods to the circumvention goods would be minor in relation to the overall cost of the goods.

### **2.2.6 The cost of modification: Paragraph 48(3)(f)**

Based on its own manufacturing experience, modifying the goods to form the circumvention goods involves only a few additional processes. As indicated in *Section 2.2.5*, above, in FY 2023 the cost of modification was approximately █████% of the overall cost of the circumvention goods – a minor amount. As manufacturing labour rates in China are at one-quarter of manufacturing labour rates in Australia, the applicant expects the cost of modification to be significantly less than the rate calculated for the cost to modify the goods in Australia (refer *Section 2.2.5*, above).

This supports the conclusion that there was a slight modification of goods.

### **2.2.7 Customer preferences and expectations relating to each good: Paragraph 48(3)(g)**

As the final end use customer of the goods and the circumvention goods is the same, they have identical preferences and expectations relating to each of the goods, that is:

- Reinforcing mesh (the circumvention goods) for sale in the Australian market is manufactured to AS/NZS 4671; and
- The goods (rod in coil) are produced in grades designed to meet the manufactured mesh requirements of AS/NZS 4671.

Therefore, as the goods and circumvention goods belong to the same channel to market, having identical end use customers, their preferences and expectations are identical.

### **2.2.8 The way in which each good is marketed: Paragraph 48(3)(h)**

The goods are sold in coils and may be marketed under generic names, such as 'rod for mesh'. The goods are manufactured for compliance for use in mesh produced to AS/NZS 4671.

The goods comprise hot-rolled rods in coils of steel, whether or not containing alloys, that have maximum cross sections that are less than 14mm. The goods are marketed for use in the production of the circumvention goods. All our (████) customers sell reinforcing mesh to re-sellers or builders [*channel to market*]. █████ of our █████ customers (including █████) buy our rod in coil for manufacture into mesh. The majority of those (████) customers who do not manufacture mesh, buy

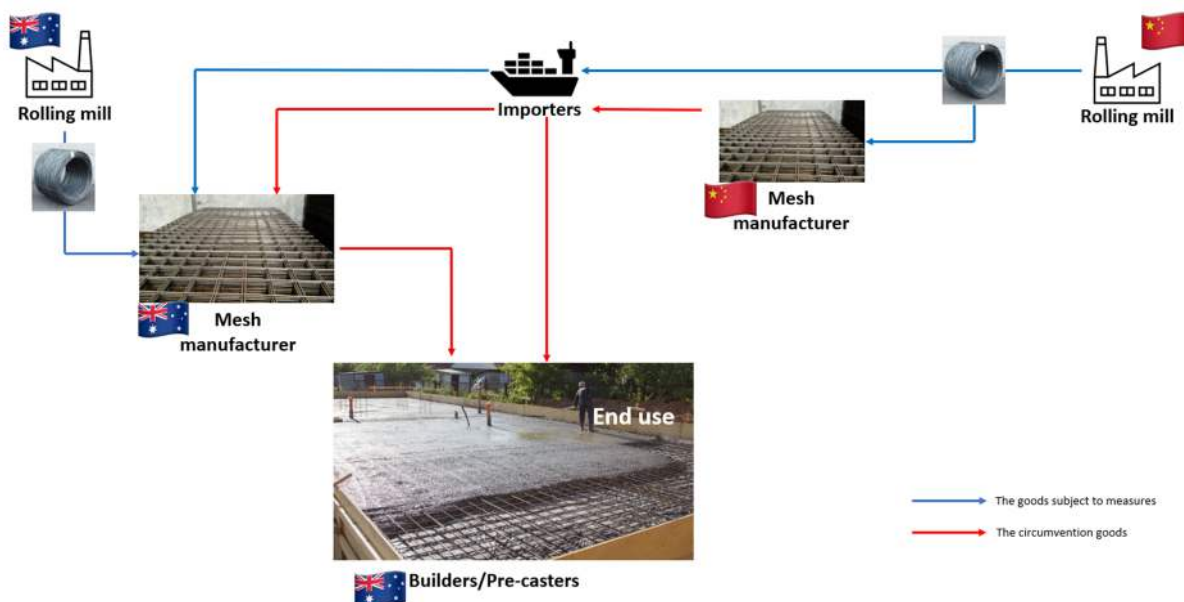
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<sup>5</sup> Average wages for manufacturing in Australia for June 2023 were reported at AUD 1,560/week (Source: <https://tradingeconomics.com/australia/indicators>). The highest annual average manufacturing wages in China for December 2022 were reported at CNY 97,528 (Source: <https://tradingeconomics.com/china/indicators>). The average monthly AUD/CNY exchange rate for December 2022 was 4.7141 (Source: <https://www.rba.gov.au/statistics/tables/xls-hist/f11hist.xls>)

mesh directly from the applicant. The goods (rod in coil) manufactured for compliance for use in mesh produced to AS/NZS 4671 are marketed for the end-use purpose of mesh in concrete.

**2.2.9 Channels of trade and distribution for each good: Paragraph 48(3)(i)**

InfraBuild typically sells the goods to reinforcing processors, who further manufacture the goods and resell to end users (for example, builders/concreters).



**Figure 2.2.9** Channel to market

Exporters supply the circumvention goods to Australian importers, who on-sell the circumvention goods to local Australian mesh manufacturers and either directly to builders or via re-sellers.

As such, there is no material difference in the channels of trade and distribution between the goods and the circumvention goods – when passing through the local mesh manufacturers. Ultimately, the same end users are supplied with the same (circumvention) goods, namely builders and pre-casters for the specific end-use of mesh used in reinforced concrete.

The applicant understands that exporters of the circumvention goods sold the circumvention goods to many of the same Australian importers. In turn those same Australian importers sold the circumvention goods to the same local mesh manufacturers as the goods subject to measures. The exporters of the circumvention goods have opened up a second channel of trade and distribution, namely supply to “builders/pre-casters” and “re-sellers”. However, both channels of trade and distribution have the same end-use target, namely mesh used in reinforced concrete, hence the goods are known in the market as “rod for mesh”.

Therefore, the applicant considers that the channels of trade and distribution for each good are ultimately identical.



**2.2.10 Patterns of trade for each good: Paragraph 48(3)(j)**

The applicant's analysis of the available export trade data supports the view that the overall volumes of the goods have almost entirely exited the Australian market since the original notice (see *Figure 2.1*, above).

Based on the available information, the applicant considers that the patterns of trade appear to support that the circumvention goods have practically entirely displaced the goods, which indicates a high degree of interchangeability between each good, i.e. a customer can purchase either the goods to manufacture the circumvention goods or purchase the circumvention goods.

**2.2.11 Changes in the pricing of each good: Paragraph 48(3)(k)**

The circumvention goods do not attract interim dumping duty calculated using a combination of the fixed and variable duty method. The fixed duty method is calculated using the *ad valorem* rate of 33.1%. This leads the circumvention goods to have a 'price advantage' over the goods in the marketplace.

As exports of the goods have largely exited the Australian market following the publication of the original notice it is difficult to compare the difference between the unit price for the circumvention goods and the subject goods. Therefore, an indexed export price for the goods exported from China on FOB terms has been compared to export price data for the circumvention goods to Australia. As the export price data is only available to the six-digit HS code, it is not possible to differentiate between galvanised and ungalvanised mesh sheets, the former having higher price values. However, a comparison of the FOB export index price of the goods and the circumvention goods indicates that the circumvention goods are sold at a very small premium to the goods subject to measures, as little as USD █████/tonne (3.9%) in June 2021, and USD █████/tonne (6.7%) and USD █████/tonne (8.1%) in the months of January and February 2023, respectively.<sup>6</sup> This indicates that the export price of the circumvention goods is comparable to the goods subject to measures.

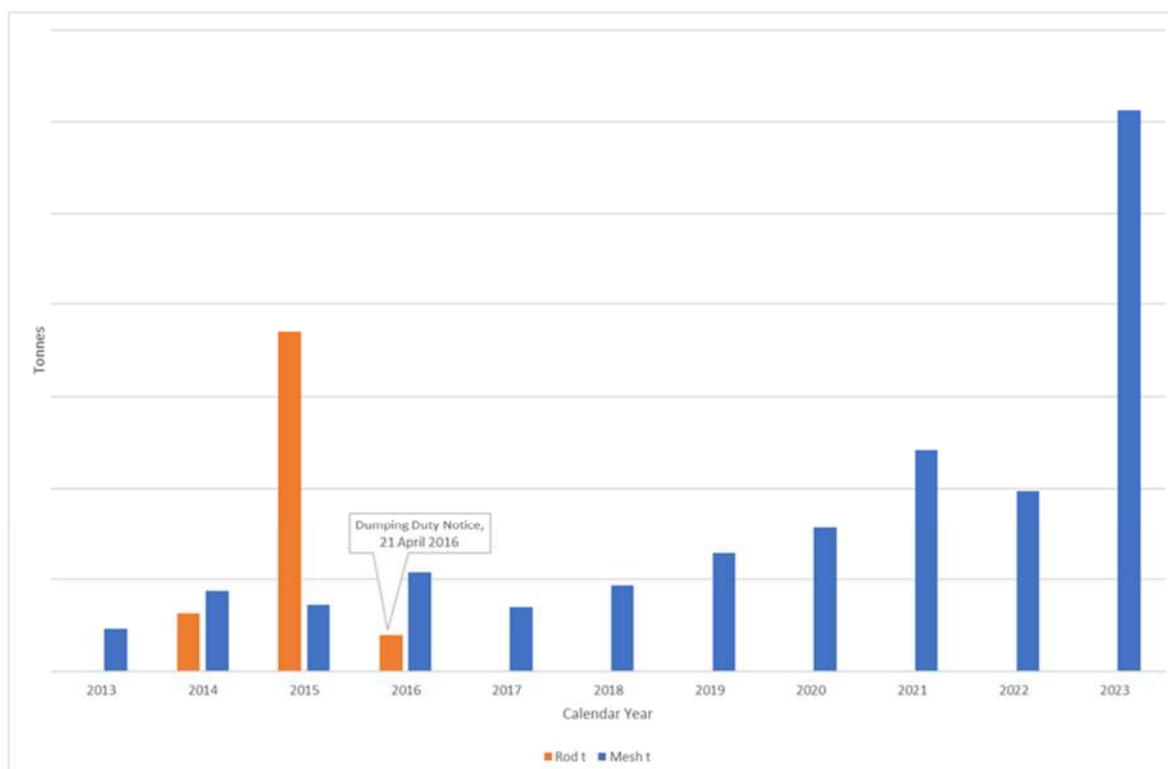
**2.2.12 Changes in the export volumes for each good: Paragraph 48(3)(l)**

██████████ is an example of an importer that is shifting its imports away from the goods, to the circumvention goods. However, ultimately, the importer is supplying the same customers of the goods with the circumvention goods, i.e. "local mesh manufacturers", and the customers of those customers, i.e. "builders" and "pre-casters".

This is consistent with the analysis of export trade data that shows that there are multiple consignments of circumvention goods exported to Australia by Chinese exporters following the publication of the original notice.

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<sup>6</sup> CONFIDENTIAL ATTACHMENT 2.1



**Figure 2.1 (reproduced)** Exports of the goods and circumvention goods from China (Source: CONFIDENTIAL ATTACHMENT 2.1)

Figure 2.1, above, indicates that import volumes of steel rod in coil decreased since the imposition of measures, whereas mesh has increased (from a low base). Since January 2017, there were (generally) only imports of circumvention goods and apart from some infrequent exceptions, no imports of rod in coil from China.

The applicant considers that the multiple consignments of the circumvention goods exported to Australia by Chinese exporters following the publication of the original notice, along with a reduction in the goods, is evidence of a change in the export volumes for each good. That is, there has been a decrease in the goods, and, at the same time, an increase in the circumvention goods.

### 2.2.13 Tariff classifications and statistical codes for each good: Paragraph 48(3)(m)

The circumvention goods and the goods the subject of the original notice are classified to different tariff subheading and statistical codes being 7213.91.00 (44) and 7227.90.90 (02) in the case of the goods, and 7314.20.00 (24) in the case of the circumvention goods.

### 2.2.14 Summary of findings – are the circumvention goods slightly modified?

Having compared the circumvention goods and the goods, after having regard to the factors in subsection 48(3), the applicant considers that:

- the general physical characteristics for each good are the same, with the same colour, raw materials. The key difference is the form of the circumvention goods (i.e. mesh sheets), when compared to the goods (coiled);

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- the circumvention goods and the goods have the identical end use, namely mesh sheets for use in concrete;
- historically, the imported goods were substantially used in the production of the circumvention goods;
- the production process for the circumvention goods and the goods is the same, up until the goods which are then substantially used in the production of the circumvention goods;
- the goods account for the overwhelming majority of the cost to produce the circumvention goods (87%);
- the end-use customer has identical preferences and expectations relating to each of the goods (the goods have to enable compliance to the mesh Standard requirements);
- the goods are marketed in the Australian market for use in the production of the circumvention goods;
- the goods and circumvention goods belong to the same channels of trade and distribution to the end user in the Australian market;
- the patterns of trade for the circumvention goods and the goods indicate a high degree of interchangeability between each good, i.e. a customer can purchase either the goods to manufacture the circumvention goods or purchase the circumvention goods;
- the circumvention goods are priced at a relatively small premium to the goods, and are comparably priced to the FOB export price of the circumvention goods;
- the export of circumvention goods has affected the export volume of the goods; and
- the circumvention goods and the goods are classified to different tariff subheading and statistical codes.

After noting the above factors in common between the goods and the circumvention goods, the applicant considers that while the circumvention goods and the goods have the same general physical characteristics, the circumvention goods are slightly modified to a different form compared to the goods.

Therefore, the applicant considers that the circumvention goods are slightly modified, with that modification taking place before export (that is, in China).

### **2.3 Is the use or purpose of the circumvention goods the same before, and after, they are so slightly modified?**

The circumstances in paragraph 48(2)(c) are that the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified.

As noted in *Sections 2.2.2 and 2.2.3*, above, the applicant concluded that the goods and the circumvention goods are used for the same purpose, and that each good can be used interchangeably. That purpose is the production of mesh to AS/NZS 4671 for use as a reinforcing substrate in concrete.

### **2.4 Had the circumvention goods not been so slightly modified, would they have been the subject of the original notice?**

The circumstances in paragraph 48(2)(d) are that had the circumvention goods not been so slightly modified, they would have been the subject of the original notice.

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As per the description of the goods, the goods include hot-rolled rods in coils of steel. The circumvention goods fall outside this description as they are hot rolled rods that have been rolled, cut to length and cross-welded into mesh sheets.

The applicant considers that, had the circumvention goods not been so slightly modified, they would have been subject to the original notice.

### **2.5 Do sections 8 or 10 of the Dumping Duty Act apply to the circumvention goods?**

Sections 8 and 10 of the *Dumping Duty Act* refer to dumping duties and countervailing duties, respectively. The circumstances in paragraph 48(2)(e) are that sections 8 and 10 of the *Dumping Duty Act* do not apply to the circumvention goods (otherwise, the circumvention goods would already be subject to the original notice).

As the goods are not subject to a countervailing duty notice, section 10 of the *Dumping Duty Act* is not relevant to this inquiry.

The applicant considers that the circumvention goods are not subject to the original notice under subsection 269TG(2) of the *Customs Act 1901*, by virtue of the circumvention goods falling outside of the goods description. Therefore, section 8 of the *Dumping Duty Act* does not apply to the export of the circumvention goods to Australia.

### **3. CONCLUSION**

The applicant submits that:

- the circumvention goods are exported to Australia from a foreign country (China) in respect of which the dumping duty notice applies;
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and
- section 8 of the *Dumping Duty Act* does not apply to the export of the circumvention goods to Australia.

Accordingly, the applicant considers that a circumvention activity, in relation to the original notice, occurred in the circumstances prescribed in subsection 48(2) of the Regulation.