

Public Submission

17 June 2024

The Director – Investigations  
Anti-Dumping Commission  
GPO Box 2013  
Canberra ACT 2601

Dear Director – Investigations,

Regarding Anti-circumvention application 643

### **INTRODUCTION**

Sanwa is an Australian company and has been an importer or exporter of steel scrap, steel billets, steel wire rods, steel ribbed wire and finished steel wire mesh at different times over the last 30 plus years. We are familiar with the production process for each step and the interests of all the players at different stages of the supply chain from scrap to finished wire mesh.

As an importer of steel in an industry where currently the domestic steel producers represent the majority of AD or AC actions raised, I am familiar with the AD system and the positions that the different players necessarily adopt to best push their respective interests. However, this is my first circumvention action that I have encountered and been invited to make submissions as a directly interested party. Please excuse my ignorance as to any finer points of circumvention actions but I will try to be measured in my comments and base what I say on the obvious common sense and basic knowledge of anti-circumvention cases. If however, it relates to the reinforcing industry and in particular the importing of reinforcing steels, which I consider is an area where after almost 40 years in this industry I believe I am as expert as any in the country, I may be more forthright.

I have had the opportunity to read the reports written on behalf of the two Chinese producers. Most of the content of these submissions make perfect sense to me and there is very little that I might say that I disagree with. However given that Sanwa is an Australian trading company with a current market represented by those companies producing mesh from wire rods in Australia as well as those companies buying the finished mesh produced by the Chinese manufacturers, our specific interests are at times different to those of the manufacturers themselves. Sanwa is in the fortunate position where our existing exposure to the anti-circumvention duties of 31 percent for ordered product is minimal and the longer term opportunity to do more business with the wire rod users (domestic mesh makers) outweighs the lost opportunity to do more finished Chinese mesh business. Equally we have access to Malaysian wire mesh to the Australian standard and

if the Chinese are taken out of the market, the competitive supply options from countries other than China, such as Malaysia are greatly improved.

I feel very strongly that the ADC has been grossly taken advantage of by the applicant and presented with an argument which in my opinion goes way beyond just “one side of the story” and in fact represents a distortion and intended manipulation of the facts such that an independent body without any knowledge of the technical or commercial issues (the ADC) is convinced to take action which in the normal course it would never have done had it been provided with even a remotely fair summary of the true facts..

Whilst the ADC makes it clear in all its communications that no final findings of fact have been made, the anti-circumvention application has been accepted by the ADC on the basis presumably that a prima facie case for circumvention has been found to exist. It is my contention that the applicant is aware that the ADC does not have the technical knowledge of the product, nor the market, nor the relevant and different tariff code classifications which impact this case and has directly and intentionally taken advantage of this ignorance to lodge this application even with the expectation that their case is weak and has little chance of succeeding.

I have been requested as an importer on the record to provide a wide range of detailed information on the business which has already been transacted. This information requested via a spreadsheet referred to as Part D sales is time consuming to provide and I do not consider relevant to the case, given that this requested information is not directly related to the issue of whether the physical modification is real or slight. That is that if the applicant cannot get to first base by presenting any sort of vaguely reasonable argument that the physical modification is “slight” only, then everything else becomes irrelevant. I believe the basic facts of the relevant physical transformation when presented by someone with a knowledge of the industry and the products, overwhelmingly show that the applicant’s case is non-existent and hence does not require further consideration. (because it fails before first base.)

### **What is “slight” modification**

The critical issue in the success or not of this Anti-Circumvention action is whether the changes to the goods subject to the original anti-dumping action (being Wire Rods in coil) have only been “slightly modified” and not more, allowing the transformed products to be subjected to the anti-dumping provisions of the original product (Wire Rods) rather than the duties and tariffs in place if it is considered to be the transformed goods, being Wire Mesh. I want firstly to focus on the process of manufacture to show that the modification is not slight and is not considered slight by the WTO, various independent technical bodies in Australia and around the world and the producer of more than half the world’s steel, the Chinese.

The key paragraph here is Table 2.2.1 of the document titled ANNEXURE ***Detailed statement regarding the circumvention activities in relation to the original***

**notice that have occurred** with paragraph quoted below headed **“2.2.1 Each good’s general physical characteristics: Paragraph 48(3)(a)”**

The similarities and differences in each good’s general physical characteristics are summarized in **Table 2.2.1**, below

Physical characteristic	Goods (subject to measures)	Circumvention goods
<b>Cross-sectional diameter</b>	5.5 mm to 13.5 mm	4.24 mm to 11.9 mm
<b>Dimensions</b>	Coiled	Sheets up to 6.0 x 2.4m
<b>Carbon content</b>	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%.
<b>Colour</b>	Steel finish	Steel finish

It is the extent to which the applicant selectively chooses these particular points of comparison and only these, which end up hiding the true reality that I believe reveals their knowledge of the weakness of their case.

**Cross-sectional Diameter**

It is not disputed that the cross-sectional diameter is 5.5 mm to 13.5 mm in the goods subject to measure and 4.24 mm to 11.9 mm in the finished mesh. It would be more accurate at this point to also note that the wire rod is plain round but the mesh wire is round with ribs protruding so the cross-sectional diameter even taking into account the difference in base diameter, will look different.

**Dimensions**

Yes the wire rod is supplied in coils and the mesh is supplied in sheets. Each sheet of mesh can vary in weight between 30 KG to 160 KG but most is in the 50 to 100 KG range. That is each coil of wire rod (around 2,000 KG) will create a minimum of usually more than 20 sheets of mesh

**Carbon Content**

The product is not melted down and re-created chemically so of course the carbon content for rods and mesh is the same. Including this chemical quality of the steel within the table dealing with physical characteristics and their differences and similarities would seem to be suggesting that having the same carbon content in the wire rods and the wire mesh

somehow strengthens their case that one is only a “slight “modification of the other. The process of making mesh cannot change the chemistry so this point of physical comparison here means nothing.

## Colour.

Both are described as steel finish and this is evidence that the applicant is searching here for anything that might help them. I have never heard of a colour called steel finish because frankly most steel comes in many different shades of grey. In this case wire rods are a hot rolled product which typically may still have some mill scale attached whilst the wire of which the mesh is comprised in Australia is almost always cold rolled and ribbed which removes any scale and brightens the finish of the wire. If you are going to accurately compare the colour of wire rod to the ribbed mesh wire, then you would need to refer to the fact that typically cold rolled wire is a little bit more shiny as a result of the reduction and loss of mill scale. This reference to “Steel Finish” is an insult to ADC. They are saying..... *We cannot come up with anything better than a two word generic description indicating that since both are made of steel and have a **steel finish** colour they therefore must be similar.*

## Tensile Strength/ Elongation?

This is surely more a physical characteristic than carbon content but is not included. What is not made clear, anywhere, is that every single tonne of wire rod when converted into mesh has the wire rod drawn through dies which reduce the diameter typically around ten percent and in this physical reduction process, the wire’s physical properties change dramatically with an increase in strength and reduction in flexibility. This physical reduction of the wire rod starts with a typical strength of around 300 MPA but after the drawing and ribbing working ends up with a minimum tensile strength of 500 MPA. This is critical to achieve the necessary physical properties of the finished wire and meet the requirements of 500 L Grade under AS 4671 for the welded mesh. Nothing is mentioned because this would be a deal breaker for their application. Accordingly, this critical aspect, being the strength of the final wire and mesh and its ability to bend and not break which helps our buildings stay up, is simply not included.

The question could still be asked .....But is this still just a slight modification or is it more ?. Just in case it is not obvious, you can always check with the major trading or technical organizations. The WTO believe it is more than slight manufacture because they provide different tariff codes for supply of the steel as wire rod, then a different one if converted into cold drawn wire and then another one again if the wire is further converted into finished wire mesh in sheets. The Australian Certification Authority for Reinforcing and Structural Steel (ACRS) being an organization the creation of which the Applicant was heavily involved back around the year 2000, certainly believes they are very different as they have completely different certification requirements and certificates dependent on whether the product is supplied as.. basic wire rods (Mostly no certification) or after the next stage of the manufacturing process as cold drawn ribbed wire or after the final stage of manufacturing as fully finished welded wire mesh. The applicant is very familiar with all this because it has ACRS certification in each stage of this manufacturing process for all of its operations and has for the last 24 years supported the Authority with certification for

each of the different schemes handling the different stages of manufacture through to finished mesh. If you look overseas you will find that one of the principal technical bodies in Europe, CARES which provides a similar service to that which ACRS provides in Australia also considers Wire Rods, cold worked (drawn) wire and finished mesh in different categories requiring different certification requirements. The Chinese government says that if you are going to attract government assistance to export then it must be a value added finished product. Wire Rods gets no such assistance, Ribbed Wire gets no such assistance. Wire mesh as a value added finished product gets a refund of approx. 13 percent for VAT paid. This leads to the next point.

### **Export Rebates and Countervailing Duties.**

I believe that once the ADC actually review this case, with the benefit of some independent comments, they will see that there is zero merit in the applicant's case. What is the pity is that in fact the Chinese mesh makers are, in my opinion, getting some advantage from their government to export finished mesh. As I have declared above it is not my intention to make comments on the different pricing between the different stages of the production chain between scrap-billets-wire rods- ribbed wire- finished welded mesh. Indeed, the costings provided by the Chinese producers are all redacted so I have no idea what their costings are. However it is worth making some comment on the Infrabuild complaint that the pricing variation between wire rods (the product under existing trade measures of 31 percent) and the finished mesh is very slight. They argue that this is because the finished product is only slightly modified and accordingly the increase in price is only slight. What it does not take into account is the substantial export advantage that is derived when the Chinese manufacturer converts the wire rod or ribbed wire (not considered a finished product) into a finished sheet of welded mesh fabric. In 2021 China cancelled export VAT rebates for many products such as wire rods and drawn wire but left them in place for various finished products such as manufactured wire mesh.

The Australian mesh makers are fighting a competitor able to access around 13 percent government assistance via the VAT rebate on products which are exported. That export advantage is a refund of the VAT taxes paid in China if the finished product (mesh) is exported compared with the situation when the finished product is sold domestically within China. This is definitely capable of distorting normal trade flows and would also appear in my limited knowledge to be capable of providing grounds for relief via countervailing duties for the Australian mesh makers (of which Infrabuild is one).

It is a great surprise to me that the applicant did not go in this direction which whilst requiring the support of the other independent mesh makers would seem to be the obvious mechanism for providing relief in the current circumstances. I have not verified the actual rates or terms of the export rebates received by the mesh-makers, but I believe my comments are correct. I do not feel it appropriate to seek their admission to something which whilst possibly assisting their avoidance of these anti-circumvention duties might set themselves up for counter-vailing duties down the track.

## **WHAT DOES CIRCUMVENTION MEAN AND WHAT IS THE ACTUAL CIRCUMVENTION ACTION.**

A company executive wakes up and says I can increase my sales by adding some holes to my steel beams (to make it a “fabricated beam”) or extra boron to my steel wire rods (to make it a special alloy steel” ) which will have a minimal cost extra and will not hurt his steel but will help him avoid substantial government taxes or duties or win government export rebates. They don’t do any of this for most of the steel they produce but for certain markets they have worked out that anomalies exist which make the changes artificially financially attractive so for part of their production they make the changes. For the rest it is business as usual. Yes, when it comes to the legal question of whether this is circumvention, the Australian case law says that it is and I agree with it. The changes (drill holes/ or added boron) were made specifically to allow an existing product which did not entitle the producer to various financial advantages to suddenly earn the financial advantages. The changes were real, and they are capable of being described and viewed. However, if that producer does not change anything in the way it produces its products, anything at all and simply continues to do what he has always done and what all his competitors do all around the world, can that really be circumvention? The Chinese mesh makers are doing what every mesh maker in the world does when they make mesh. They produce mesh not to earn the 13 percent export advantage or avoid the 31 percent Australian dumping duty but simply because that is what they do. They make mesh to reinforce concrete.

Circumvention means *the act of bypassing or going around something or the act of avoiding, evading, or forestalling something, often by cleverness or deception*. Critical is the act of going around or at least a change in direction. What are the Chinese mesh makers “**going around**” ? I would put it to you that they are going around nothing. Rather they are driving dead ahead because the road they are following has been there for 50 years and is very straight and very wide and everyone drives on it. The point is that it seems an extremely tenuous argument that circumvention exists when there has been no change to the method of manufacture (in any way) and indeed the alleged circumvention was also taking place years before there was any incentive to circumvent. The Applicant acknowledges that Chinese mesh was being produced and sold in the Australian market before the AD action on wire rods was in place and before there was any incentive to circumvent. The fact is that the method of manufacture of this Chinese mesh both before and after the AD action on duties, was identical. So what was the actual circumvention activity/action which the applicant must say has taken place in order to be able to substantiate their case that circumvention has taken place. Were any special elements added to change the alloy grade ? .... No. Was the wire rod/ribbed wire/wire mesh product or production changed in any physical way at all, other than in the normal course of their business of mesh manufacture as practiced by the Chinese mesh makers, Australian mesh makers and indeed most mesh makers throughout the world well before and well after the wire rod Anti-Dumping duties were imposed?... No.

### **CONFLICT OF INTERESTS**

I have already stated that our company is conflicted. We have been known as a supplier of wire rods to the market for far longer and in far greater volume than any of the finished mesh that we have imported. Equally we have a strong relationship with Malaysian manufacturers of the finished mesh. Both of these interests are as strong if not stronger from a financial reward perspective. Accordingly, should we not be letting the applicant say what they want and bear the gains from their ill-gotten fruit? All the major mesh makers in Australia excepting Infrabuild have bought wire rods from us at different times over the years and they are our company and personal friends. Putting aside the interests of the Australian public already dealing with the high costs of building materials, the problem is the precedent that it sets and the attack that it makes on Australia's reputation (and the ADC in particular) as a fair administrator of natural and administrative justice. Does it allow the Chinese trade system to more easily attack our exports whether they be wine or seafood or whatever else they feel inclined. I suspect not but it certainly sets a precedent that protective self-interest can trump fair enforcement of WTO trade rules.

### **THE GOOD THE BAD AND THE NOT SO SURE.**

Who are the good guys in this. The applicant will tell you that it is the Australian mesh makers who are suffering from the exports of a product which is obviously in massive surplus because of the well-known problems in the Chinese domestic construction market. These domestic mesh makers are producing Australian made goods when they buy from Infrabuild or are they? You see what the applicant has not disclosed in anything I have read, is that they are also large importers of wire rods and steel billets themselves. I do not know the grade they buy their billets but believe it is shipped to Newcastle for conversion into reinforcing steels. The market also talks about the many thousands of tonnes of Vietnamese wire rods which have been imported by the applicant over the last 12 months. I suspect that these imported wire rods are mostly consumed by their own downstream operations rather than further highlight to their domestic wire rod customers that they cannot always supply the whole market.

Before the steel importers are given too bad a name, please bear in mind that when Newcastle closed down its steel making furnaces just before the year 2000, Australia was producing more than 8 million tonnes per year of steel and now it is less than 6 million tonnes per year. During this period our population expanded from around 19 million to the current 26.6 million people. The steel importers of construction steels provide competition to the single monopoly long product producer (the applicant Infrabuild) but much more importantly, provide steel itself which is needed in greater volume by a population which has grown by more than 35 percent over the period whilst the steel production capacity

has reduced by more than 25 percent. It is this imported steel which helps to allow the country to build the infrastructure and housing to support the Australian lifestyle.

What I have not mentioned is the hypocrisy of the Applicant saying that its own conversion from its imported billets to wire rods or deformed bar in a single tariff jump allows the finished wire rods or bar to suddenly earn a new country of manufacture (Australia and important when supplying to Australian Government content requirements) but on the other hand the applicant is now also saying that a double tariff jump from wire rod to ribbed wire to mesh is not enough to change the notional country of manufacture.

### **THE SMOKING GUN**

It is not the fact that the whole world recognizes the significant difference between wire rods and mesh or that the applicant's technical team have been instrumental for more than 20 years in providing technical resources and input in the support of the ACRS schemes based on the substantial different technical requirements for wire rods, ribbed wire and finished mesh. Rather it is that there is no evidence of any actual circumvention activity / circumvention action. There is a very weak argument that as there are some creative similarities between the finished mesh and the initial wire rod (same colour, same carbon content etc.) therefore the mesh simply **MUST** be a slightly modified version of the wire rods. However, the critical question is *what is the actual alleged circumvention activity*. IE What "sneaky" stuff have the Chinese mesh makers done to get around the wire rod AD duties. The applicant has not asked this question or proposed an answer to this question because the answer is clearly damaging to their case.....They have done nothing.

### **IN SUMMARY**

One unit of wire rod (being a coil weighing approx. two tonnes with an outside diameter of 1250 mm) is converted into a finished product which has almost twice the strength but less than half its flexibility together with newly created ribs along every side. Its shape is then further converted into sheets of wire mesh via electrical resistance welding. One sales unit of the now finished product typically weighs around one twentieth of the original coil weight but occupies a flat floor space around ten times greater. Yet the applicant would have you believe that this is only a slight physical modification. Would anyone ever argue that a ball of wool is only *slightly* modified when converted into a woolen blanket sold in the shops? Frankly that would be a much easier argument to win because the woolen yarn remains the same throughout whereas the wire rod eventually "woven" into mesh is transformed into a thinner product with substantially different mechanical qualities and then fused together at each meeting point before its final shape is finalized. If the new definition of "slight modification" were to be accepted widely it would provide systematic damage to the entire anti-dumping system by blurring the lines between products and effectively reducing the entire WTO system of uniform tariff codes as an optional exercise chosen by the country of import.



## **A QUIET WORD**

It is my view that ADC should have a quiet word to the applicant suggesting that the application for Anti-Circumvention should be immediately withdrawn and that alternative trade remedies be investigated. In my limited opinion, counter-vailing duties may be appropriate which could win them 13 percent, whilst anti-dumping is possibly unlikely to be successful because the domestic prices in China are probably very low in line with their current economic/construction issues. On this latter point I am guessing.

It should also indicate that for all future trade applications, there should be included an affidavit or, statement under oath, that the application represents a fair summary of all the facts and issues and the signatories have a genuine belief in their truth.

regards

### **David Roberts**

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