



8 October 2024

The Director, Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
Investigations4@adcommission.gov.au

Dear Director,

Anti-circumvention Inquiry No. 643 concerning the slight modification of goods: Rod in coil exported from the People's Republic of China

AUSTRALIAN INDUSTRY RESPONSE TO EXPORTER SUBMISSION

InfraBuild (Newcastle) Pty Ltd (**InfraBuild**), the applicant for this anti-circumvention inquiry refers to the submission of the exporter, Tianjin Tiangkang Metal Products Co. Ltd (**TKM**) in this matter¹ and responds as follows.

At the outset, by virtue of the description of the circumvention goods in its application, InfraBuild is only interested in those grades of the goods (rod in coil), that are suitable for slight modification to the circumvention goods (steel reinforcing mesh), in other words, 'rod for mesh'. Although the Chinese exporter, TKM, seeks to capture all grades of the goods, by the generic reference, rod in coil, 'RIC', for the purpose of its response to this submission, InfraBuild will refer only to those goods relevant to the circumvention inquiry, namely, 'rod for mesh'.

"TKM understands that Infrabuild sells RIC to numerous Australian manufacturers that process into cold drawn wire. Those manufacturers then further process the cold drawn wire into reinforcing mesh sheets."²

TKM seeks to suggest that all Australian manufacturers of reinforcing mesh sheets; and by implication, Chinese manufacturers and exporters; process rod in coil to produce "cold drawn wire", primarily, and that the production of reinforcing mesh sheets from this 'intermediate' good is optional, or so separated in time that the nexus or proximity between the rod in coil and reinforcing mesh sheets is distant or broken. This is factually and commercially misleading because the Australian industry knows of no Australian fabricator of reinforcing mesh sheets to import "cold drawn wire" exported from China to produce reinforcing mesh sheets in Australia.

In other words, the Australian market for rod for mesh and reinforcing mesh, are inextricably linked, and one is a substitute for the other. To suggest that the Australian industry (or importers of the goods) sell rod for mesh to Australian reinforcing mesh fabricators to routinely produce "cold drawn

¹ EPR Folio No. 643/004.

² EPR Folio No. 643/004, pp. 1-2.



wire”, rather than reinforcing mesh is to elevate the status of the *intermediate* above the *final*, finished goods.

“...the Commission did not consider or find that locally produced cold drawn wire or reinforcing mesh sheets to be like goods in the original investigation”³

The Australian industry does not see the relevance of this observation to the question of whether the *“slightly modified goods”* are the circumvention goods. The purpose of a circumvention inquiry is not to find that the circumvention goods are ‘like’ to the original ‘goods under consideration’ - if that were so, then the role of the circumvention inquiry would become moot; as a dumping duty notice under subsection 269TG(2) of the *Customs Act 1901 (Act)* would otherwise apply to the ‘circumvention goods’ as they are ‘like’. In contrast the purpose of the circumvention inquiry is to determine whether the circumvention goods were ‘slightly modified’ such that the dumping duty notice would not otherwise apply to them.

Therefore, the fact that (to quote TKM) *“reinforcing mesh sheet[s] are not identical and do not have characteristics closely resembling each other, and as such, ...represent different Australian industries producing different and distinct like goods”*... is precisely the point of the circumvention inquiry.

‘three products’ myth⁴

TKM seeks to suggest that there are three stages of production of reinforcing mesh in Australia, with particular emphasis being placed on the role of *“cold drawn wire”*, and that there is an *“industry”* for this product, comprising of *“Infrabuild, Mesh & Bar, Vicmesh, others”*.⁵ To suggest that there is a ‘sub-market’ within the Australian reinforcing mesh market at the point at which the rod for mesh is “rolled”, but before it is “cut to length”⁶ is misleading.

Rod in coil that is “rolled” and not further modified to form reinforcing mesh, tends to be mutually exclusive of the grades of rod in coil used to produce reinforcing mesh, i.e. ‘rod for mesh’ grades. An attempt to demonstrate the mutual exclusivity between ‘rod for mesh’ grades, and rod in coil not modified into reinforcing sheets, i.e. ‘wire rod’ is contained in the Commission’s model control code matrix (Item 3, maximum carbon content), where a percentage of “greater than 0.24%” would disqualify the rod in coil from use in reinforcing mesh, as required under AS/NZS 4671:2019 *Steel for the Reinforcement of Concrete* standard.

TKM therefore simply engages in hyperbole when it asserts that any amended dumping notice *“would cover an expanded list of imported goods, for which there are multiple Australian industries producing multiple like goods”*.⁷ It also misrepresents the position in asserting that this case would “set a seriously dangerous precedent for all existing measures that are themselves inputs into further processed goods”.⁸ This case concerns circumvention goods that have replaced goods in the

³ EPR Folio No. 643/004, p. 2.

⁴ EPR Folio No. 643/004, p. 2.

⁵ EPR Folio No. 643/004, p. 3 [graphic].

⁶ EPR Folio No. 643/001, *Annexure*, Figure 2.2.4, p. 6.

⁷ EPR Folio No. 643/004, p. 3.

⁸ EPR Folio No. 643/004, p. 3.



Australian market that are subject to existing measures and are no longer exported from China. It is fallacious to assert that every input to manufacture would involve this type of circumvention behaviour by market actors and not all value adding to inputs to manufacture would involve specific factors and circumstances which qualifies as circumvention activity pursuant to the criteria set out under the applicable Customs regulation set out below.

TKM's "consideration of 'slight modification'"⁹

With respect, TKM's attempted extrapolation of a definition of slight modification is without any legal basis.

The definition of 'slight modification' is given meaning by subsection 48(3) of the *Customs (International Obligations) Regulation 2015 (Regulation)*:

- (3) *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;*
 - (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.*

[emphasis added]

Therefore, considerations of "the common definition of 'slight'", or "the ordinary definition of 'modify'",¹⁰ are irrelevant to this exercise. So too is the attempt to extrapolate a definition of 'slightly modified' from the expression "at least one substantial process in the manufacture of the

⁹ EPR Folio No. 643/004, p. 3.

¹⁰ EPR Folio No. 643/004, p. 4.



goods was carried out in Australia” in subsection 269T(3) of the Act when considering the unrelated question of whether ‘like goods’ have been produced in Australia under subsection 269T(2) of the Act. This provision deals with the completely unrelated subject of the definition of an Australian industry member under Part XVB of the Act and only serves to confuse a proper analysis of the issues in this case. Contrary to TKM’s obfuscation of the issues, InfraBuild notes that the correct criteria set out in the Regulation has been addressed in its application and in the Commission’s Consideration Report and will be duly examined by the Commission in this inquiry during verification of Infrabuild and other interested parties.

Additionally, TKM refers to subsection 269D(3) of the Act, “*which is concerned with the meaning of substantial process of manufacture*”. This provision deals with the completely unrelated subject of tariff concession orders and only serves to confuse a proper analysis of the issues in this case. Contrary to TKM’s obfuscation of the issues, InfraBuild notes that the correct criteria set out in the Regulation has been addressed in its application and in the Commission’s Consideration Report and will be duly examined by the Commission in this investigation during verification of Infrabuild and other interested parties.

Further, contrary to TKM’s submission, the question of ‘slight modification’ is not a simple comparative exercise to ascertain whether the modification is quantitatively ‘slight’. In InfraBuild’s view, the range and content of the factors in the Regulation point to a qualitative exercise that is intended to gauge, not simply a side-by-side comparison of the goods, but also an assessment of the utility or commerciality of the circumvention goods (by examining matters such as the cost of the modification).¹¹

Similarly, reference to the entirely unrelated European Commission rules and anti-circumvention framework plays no role and provides no guidance to the interpretation of the Regulation. It is observed that while the problem of circumvention of anti-dumping duty measures formed part of the negotiations which preceded the *Agreement on Implementation of Article VI of GATT 1994*, negotiators were unable to agree on specific text.¹² Therefore, any Member State’s treatments have no basis in any agreed multilateral treaty obligations.

TKM’s assessment of “relevant factors for comparison”¹³

“a) Each good’s general physical characteristics”¹⁴

TKM argues that “*the Australian Standard (AS/NZ 4671) requires concrete reinforcing steel to have the necessary mechanical properties (strength and ductility) appropriate to the engineering design assumptions on which they are based*”. Rod for mesh achieves these characteristics when modified. Rod for mesh has no applicable Australian Standard, as its general physical characteristics are designed to meet the physical characteristics of reinforcing mesh when modified.

¹¹ See paragraph 48(3)(f) of the Regulation.

¹² Uruguay Round Agreement, Uruguay Round ministerial decisions and declarations, Decisions adopted by the Trade Negotiations Committee on 15 December 1993 and 14 April 1994, Decision on anti-circumvention.

¹³ EPR Folio No. 643/004, p. 4.

¹⁴ EPR Folio No. 643/004, p. 4.



Further references by TKM to the introduction of *“ribbed and unique markings”*¹⁵ are best understood as outcomes of the modification process when applied to achieve the circumvention goods. In fact, not all the circumvention goods have a *“ribbed”* finish, and may remain with a *“smooth round finish”*.

In summary, the *“general physical characteristics”* of the rod for mesh (goods), are essential characteristics for the slightly modified reinforcing mesh (circumvention goods), as the latter cannot be achieved without the former.

“b) Each good’s end use”¹⁶

Those grades of the goods suitable for the production of the circumvention goods, are typically not *“further processed by various industries to manufacture finished goods used in numerous applications such as screws, bolts, nails, mesh and other reinforcing elements”* as TKM suggests. This circumvention inquiry is only interested in those grades of the goods (rod for mesh) that are suitable for modification into the circumvention goods, not as a *“feedstock material for drawing of wire”*.

The only end use for rod for mesh is reinforcing mesh, the circumvention goods. It is marketed as such, and the producer does not warrant their suitability for any other end use.

TKM admits that the modification process, which TKM describes as *“the cold drawing process and mesh welding process alters the mechanical and geometric properties of the RIC”* to produce the circumvention goods (reinforcing mesh). In other words, TKM acknowledges that the modification process; which InfraBuild described in its application as *“rolled, cut to length and cross-welded into mesh sheets”*¹⁷ is one and the same, and produces only one end use, namely reinforcing mesh. Those grades of the goods suitable for modification into the circumvention goods (rod for mesh), have no producer warranted end-use other than as feedstock for the production of reinforcing mesh, in other words, the end use of rod for mesh and the circumvention goods are not independent, but entirely related.

The identification of other grades of the goods not suitable for the production of reinforcing mesh sheets (i.e. not rod for mesh), are not the subject of this inquiry, and may be used for an end-use unrelated to reinforcing mesh sheets, in other words, not the circumvention goods, i.e. *“screws, bolts, nails”*, as TKM describes it.

“c) Interchangeability of each good”¹⁸

TKM correctly observes that *“the cold drawing process and mesh welding process alters the mechanical and geometric properties of the RIC”*. However, TKM then reaches two incorrect conclusions.

¹⁵ EPR Folio No. 643/007, p. 5.

¹⁶ EPR Folio No. 643/004, p. 6.

¹⁷ EPR Folio No. 643/001.

¹⁸ EPR Folio No. 643/004, p. 6.



Firstly, TKM incorrectly concludes *“that the end use applications for RIC and mesh sheets are distinct and do not intersect”*. This is patently incorrect. The end use for rod for mesh is entirely related to the production of the circumvention goods, i.e. reinforcing mesh.

Secondly, TKM’s statement that *“RIC and the circumvention goods are not interchangeable in any way”*. Again, this is patently incorrect. In terms of the market for rod for mesh, there is complete interchangeability, a customer either purchases relevant grades of the goods, or purchases the circumvention goods.

“d) Differences in the processes used to produce each good”¹⁹

TKM admits that it *“does not manufacture RIC, it has no direct comparison of the production processes for each good”*.²⁰ Therefore TKM is simply not qualified to provide observations on this subject that can be relied upon by the Commission. Further, TKM is presumed to be a customer of rod for mesh in China, and engaged in the process of “slight modification” of the rod for mesh into the circumvention goods.

Observation and verification of this process is required. However, it is again presumed that TKM’s process of slight modification continues on from the related rod for mesh purchased by it.

“e) Differences in the cost to produce each good”²¹

TKM admits that it does purchase RIC as “its feedstock for manufacturing cold drawn wire and mesh sheets”. What TKM does with the so-called ‘cold drawn wire’ manufactured from rod for mesh is a matter for verification by the Commission.

“f) Cost of modification”²²

Based on redactions, InfraBuild is unable to comment on TKM’s claimed *“substantial conversion cost by any reasonable measures”*.²³ This claimed value will require verification by the Commission. However, InfraBuild finds it curious that TKM claims a separate conversion cost for the modification of rod for mesh to “cold drawn wire”. We suspect that TKM is reporting on its costs of production or manufacture of goods other than the circumvention goods, and from rod in coil which is not in fact suitable for modification into reinforcing mesh sheets. In other words, TKM may be reporting on its costs of modification of something other than the circumvention goods.

“g) Customer preferences and expectations relating to each good”²⁴

TKM correctly identifies one point of relevant comparison when assessing customer preferences and expectations relating to rod for mesh and the circumvention goods, namely *“a comparison of the preferences and expectations of the customers purchasing the original RIC and the alleged*

¹⁹ EPR Folio No. 643/004, p. 7.

²⁰ EPR Folio No. 643/004, p. 7.

²¹ EPR Folio No. 643/004, p. 7.

²² EPR Folio No. 643/004, p. 7.

²³ EPR Folio No. 643/004, p. 7.

²⁴ EPR Folio No. 643/004, p. 7.



*circumvented mesh sheets.*²⁵ That is, that a customer purchasing the rod for mesh, may cease to do so, and purchase the circumvention goods instead. TKM incorrectly assumes that the analysis must occur at the end-user level. However, this is not required under the provisions of the Regulation.

Assuming TKM operated within the Australian market, it would have a choice to buy rod for mesh and modify to reinforcing mesh sheets, which it would either then sell “*either directly to builders and/or pre-casters, or to smaller steel stockists/distributors which will supply builders*”, or purchase reinforcing mesh sheets and supply to the same customers. From its perspective, the purchase of rod for mesh or reinforcing mesh sheets is entirely interchangeable and driven by the price of the latter.

The substitution of rod for mesh, for the circumvention goods, reinforcing mesh sheets, has opened a second channel into the Australian market, namely, the supply of the circumvention goods either directly, or via distributors/resellers to the end-user customer, builders/pre-casters.²⁶

InfraBuild categorically rejects TKM’s assertions that “*Customers of RIC have no expectations or preferences for the goods complying with an Australian Standard or produced by ACRS accredited mills, as neither are relevant to RIC.*” A customer of rod for mesh is critically interested in the specifications of the goods, and its suitability for modification to reinforcing mesh sheets, as the latter cannot comply with AS/NZ 4671, unless the former is specifically manufactured and controlled to achieve those physical and mechanical qualities. In a market sense, the customer has no expectation of rod for mesh other than its suitability for modification to reinforcing mesh sheets. In other words, the customer’s expectations of the goods (rod for mesh) are entirely aligned to its preferences for the circumvention goods (reinforcing mesh sheets).

“h) Way in which each good is marketed”²⁷

Those goods suitable for modification to reinforcing mesh are identified in the market as ‘rod for mesh’, branded as ‘RodMesh500’ and marketed as “[m]ainly used for reinforcing mesh”.²⁸ The use of rod for mesh is clear and limited to modification to reinforcing mesh.

“i) Channels of trade and distribution for each good”²⁹

TKM’s understanding of the Australian market is incorrect:

“TKM understands that importing traders will on-sell the imported mesh sheets directly to steel distributors and not to local mesh manufacturers, which require RIC for further processing.”³⁰

InfraBuild has led evidence that exporters and importers of the circumvention goods will supply both steel distributors and local mesh manufacturers directly. By doing so, the exporters and importers

²⁵ EPR Folio No. 643/004, p. 8.

²⁶ EPR Folio No. 643/009, p. 12, response to ‘Australian Industry Questionnaire’.

²⁷ EPR Folio No. 643/004, p. 9.

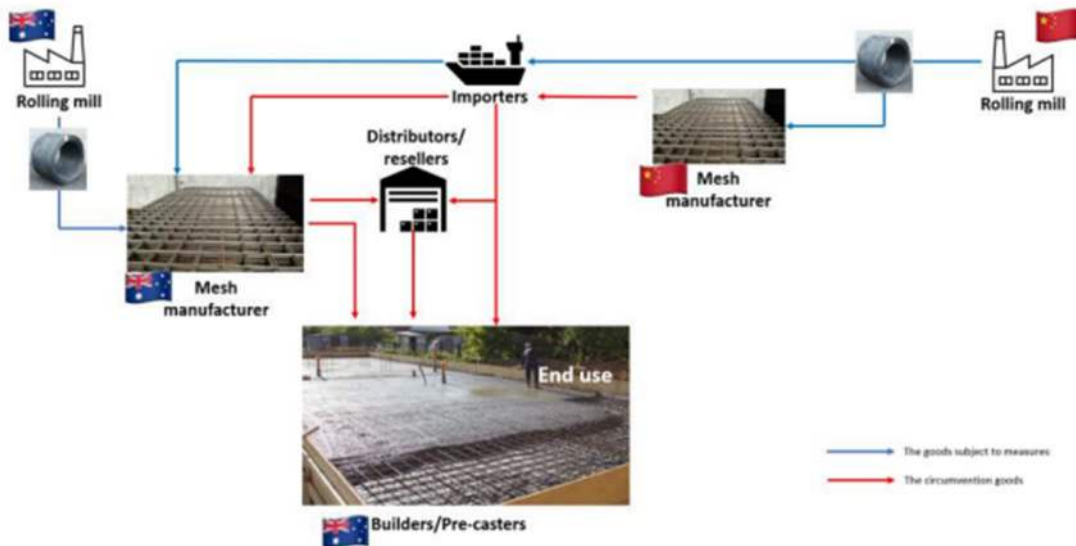
²⁸ CONFIDENTIAL ATTACHMENT 1.

²⁹ EPR Folio No. 643/004, p. 9.

³⁰ EPR Folio No. 643/004, p. 9.

are circumventing the effect of the measures imposed on those goods suitable for modification to reinforcing mesh, i.e. rod for mesh. The importation into Australia of the circumvention goods from China has changed the channels to market for the sale of mesh. In contrast to this circumvention activity, it is noted that some Australian mesh manufacturers continue to import rod for mesh from countries other than China for modification to reinforcing mesh sheets and sale in Australia. However, such Australian mesh manufacturers no longer import rod for mesh from China since the imposition of measures, but instead import reinforcing mesh sheets from China.

For completeness, in its response to *Industry Questionnaire*, InfraBuild has updated its channel to market diagram to include the role of distributors/resellers, and direct sales of the circumvention goods to builder/pre-casters:



Source: *Response to Australian industry Questionnaire*, EPR Folio No. 643/009, p. 12.

“j) Patterns of trade for each good”³¹

TKM continues to make its misguided assertion that “*mesh manufacturers in Australia can only use RIC as feedstock on their cold drawing lines and mesh machines. There is no scope for mesh manufacturers to interchange between RIC and mesh sheets.*”³² This is patently incorrect. TKM fails, or refuses, to acknowledge that mesh manufacturers in Australia have a ‘make or buy’ decision that can apply to reinforcing mesh sheets. As participants in the Australian market for reinforcing mesh, with a direct channel into to the end-use level of trade, that is a choice they have. The import statistics support this reality, with some mesh manufacturers no longer purchasing the goods, rod for mesh, from China following the imposition of measures, but instead purchasing reinforcing mesh exported from China.

³¹ EPR Folio No. 643/004, p. 10.

³² EPR Folio No. 643/004, pp. 10-11.



InfraBuild fails to see how the following chart of imports for each good exported from China supports TKM’s contention that “the import data does not support a view that mesh sheet imports have displaced RIC imports”.³³

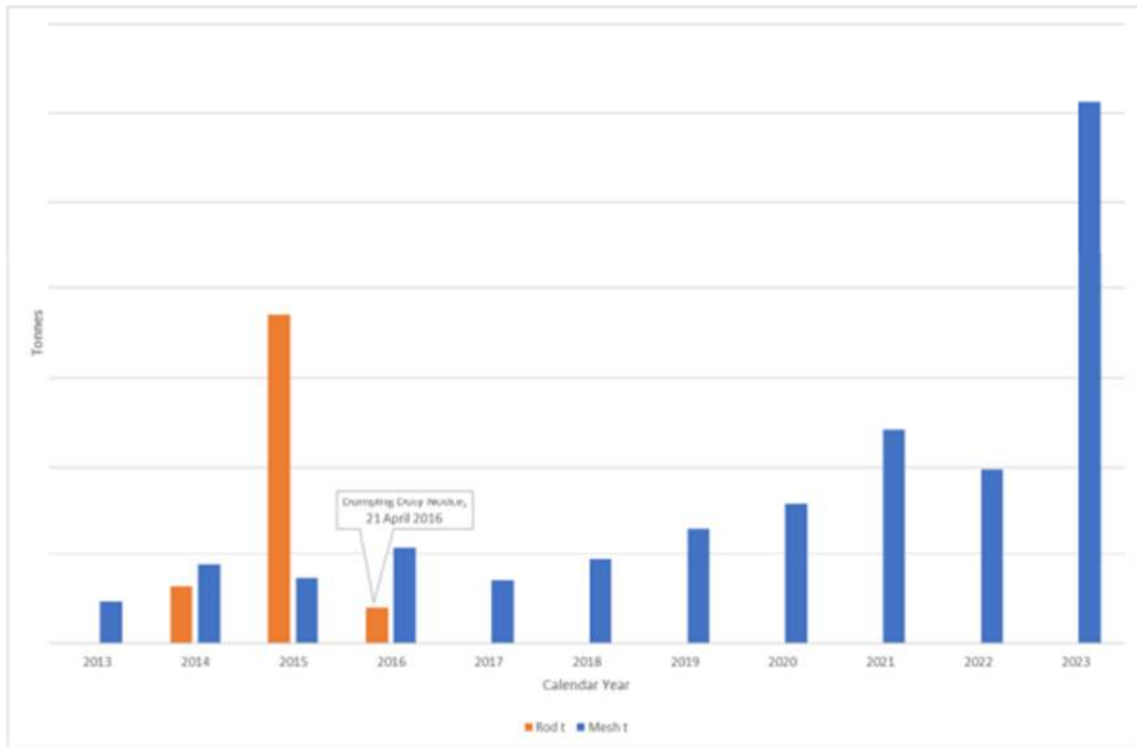


Figure 2.1 The goods and circumvention goods exported to Australia from China (Source: CONFIDENTIAL ATTACHMENT 2.1)

Source: ANNEXURE to Application for an anti-circumvention inquiry: Rod in coil – China, EPR Folio No.643/001, p. 3.

“k) Changes in the pricing of each good”³⁴

TKM’s analysis of the pricing of each good is entirely misguided.

InfraBuild has compared the FOB export prices of all rod in coil (classified HS Code 7213.91) since January 2024, and found the weighted average value, from all sources to be USD █/tonne.³⁵ By comparison, a current direct offer by an exporter of the circumvention goods to an Australian domestic mesh manufacturer has an FOB export price ranging between USD █ and █/tonne.³⁶ In other words, the circumvention goods undercut the export price of the goods by between 2% and 9%.

³³ EPR Folio No. 643/004, p. 11.

³⁴ EPR Folio No. 643/004, p. 11.

³⁵ CONFIDENTIAL ATTACHMENT 2

³⁶ CONFIDENTIAL ATTACHMENT 3.



"I) Changes in the export volumes for each good"³⁷

Firstly, in response to TKM's assertion that "[its] export volumes have steadily increased, in line with the growth of the Australian steel market, which in turn is driven by the growth in value of Australia's building and construction sectors",³⁸ InfraBuild submits that an alternate observation is that TKM's export volumes have steadily increased, in line with the decline in exports of rod for mesh from China following the imposition of measures.

Secondly, TKM asserts that anti-circumvention measures should not apply to exports of goods that have a "legitimate commercial justification" and it cites its own exports of mesh sheets prior to the imposition of measures on RIC as evidence of such justification. TKM quotes from *ADRP Report No 37* which refers to this phrase 'legitimate commercial justification'.³⁹ As a matter of statutory interpretation, in seeking to identify if the circumvention goods have a "legitimate commercial purpose", TKM is introducing an additional criterion not found in the wording of the Regulations and reliance on this criterion would constitute a legal error. The legal criteria for determining circumvention activities due to slight modification of goods exported to Australia is set out in the Regulation and these criteria must be applied to aggregate Chinese exports of the goods subject to measures and the circumvention goods occurring from 1 January 2015.⁴⁰

The issue of 'legitimate commercial justification' was dealt with in the later *ADRP Report No. 133* in relation to A4 Copy Paper exported from China, in circumstances where there had been a change in the weight of the paper to a specification outside the parameters of the original dumping notice. The *ADRP's* discussion of this issue arose in the specific context of the panel's finding (upholding the ground) that there were no exports of goods the subject of the original dumping notice and hence no possibility of substitution by the circumvention goods.⁴¹ Accordingly, the *ADRP's* discussion of 'legitimate commercial justification' must be read in this context and it does not in any way supplant the legal requirement to objectively apply the criteria of the Regulation to the facts of this case.

Notwithstanding the above comments, it is however evident that consideration of the end use or purpose of the circumvention goods is a relevant consideration in determining whether those goods are "slightly modified", as expressly outlined in paragraphs 48(3)(b) and, at least, implicitly in s 48(3)(c) of the Regulation.

³⁷ EPR Folio No. 643/004, p. 12.

³⁸ EPR Folio No. 643/009, p. 12.

³⁹ See *ADRP Report No. 37* at [42] in which Panel Member Ellis stated: "the purpose of the relevant CIO Regulation is to prevent exporters avoiding the imposition of measures under the Act by means of arrangements or conduct which are artificial or do not have legitimate commercial justification". Member Ellis further states at [48] that this purpose may be inferred from paragraphs 48(3)(a) to (m) of the Regulation, although he does not explain how that inference is made.

⁴⁰ Anti-Dumping Notice No. 2024/029 page 3.

⁴¹ See *ADRP Report No. 133* at para 59.



m) Tariff classifications and statistical codes for each good

Where applicable, the Commission has in previous anti-circumvention cases found that a change in tariff classifications and statistical codes for each good does not preclude a 'slight modification' finding.⁴²

Conclusion

Please do not hesitate to contact your InfraBuild representative on record with any questions.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

⁴² See for example *Report Nos. 291, 290, 298, 479 and 483.*