PUBLIC RECORD

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The Director, Investigations 1
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2600

BY EMAIL: investigations1@adcommission.gov.au

Dear Director,

Anti-circumvention inquiry No 643 in relation to slight modification of goods exported to Australia concerning rod in coil exported from The People's Republic of China (China)

AUSTRALIAN INDUSTRY RESPONSE TO THE STATEMENT OF ESSENTIAL FACTS

InfraBuild (Newcastle) Pty Ltd, the applicant for this anti-circumvention inquiry and member of the Australian industry producing like goods to the goods the subject of this inquiry (the **applicant**), refers to the *Statement of Essential Facts* of the Commissioner of the *Anti-dumping Commission* (**SEF 643**).[1] In response to SEF 643 the applicant makes a number of observations for consideration by the Commission (**commission**) when making its final report.

Summary

The applicant considers that the commission has followed an incorrect approach of comparing the circumvention good description to the full description of the goods the subject of the notice, not to models or subsets within the subject description, when considering the various (non-exhaustive) factors under subsection 48(3).[2] The applicant submits that this incorrect approach means that an exporter may circumvent, commercially significant volumes of the subject goods by targeting circumvention activities to a particular model or subset of the original, subject goods. As such the commission's interpretation stands to undermine the purpose and effectiveness of the anti-circumvention framework as it relates to the slight modification of goods.

The applicant has also provided observations on the preliminary factual findings of the commission under each of the factors identified under subsection 48(3). These observations should be read in

[1] EPR Folio No. 643/026.
[2] References to legislative provisions, are references to provisions of the *Customs (International Obligations) Regulation 2015* (**the Regulation**) unless expressly stated.

conjunction with the applicant's submission dated 3 July 2025[3] (which was not considered by the commission at the time of making SEF 643).[4] In summary, the applicant observes that:

- the commission's particular market situation finding as it relates to RIC was not accounted for when assessing the degree of modification costs, i.e. the failure to upwardly adjust Chinese RIC costs against market benchmarks means that the modification costs are compared to a lower base (raw material) cost than would otherwise apply in the absence of a particular market situation for RIC;
- the non-mandatory role of "ribbing" in mesh under the AS/NZS standard;
- the applicant's proportions of production of "rod for mesh" RIC, and non-mesh RIC;
- the interchangeability and marketability of models of RIC between "rod for mesh" and non-mesh uses; and
- the relevance of different tariff sub-headings to an assessment of whether the modification was slight.

The commission's approach is considered below.

The commission's approach to comparing the original, subject goods and circumvention goods

In *Section 4.4.1* the commission advises that:

> *When comparing the circumvention good and the good the subject of the notice, the commission has considered the good according to the goods description contained in the notice rather than the narrower 'rod for mesh' as referred to by the applicant.*

When assessing the factors under subsection 48(3) of the Regulation, the commission has compared the circumvention good description to the full description of the goods the subject of the notice, not to models or subsets within the subject description, **even if the alleged circumvention activity is occurring, exclusively, within one of these models or subsets only**. This approach greatly limits the scope and functionality of the Regulation to find circumvention activities and is at odds with earlier positive findings of the Commission that the circumstances set out in section 48(2) have been satisfied.

[3] EPR Folio No. 643/024.
[4] SEF 643, p. 20 refers.

To demonstrate how the commission's approach in this inquiry (INQ 643) greatly limits the scope and functionality of the Regulation, the applicant first considers the Commission's previous decisions concerning the question of the 'slight modification' circumvention activity.

Anti-circumvention Inquiry No. 291 - Hollow structural sections

In this case, the circumvention goods were "made of alloy steel", compared to the goods described in the original duty notice as "made of carbon steel". The commission here found a circumvention activity with respect to those goods made of "alloy steel", and as the original duty notice was published by reference to the tariff codes (applicable to carbon steel), the outcome resulted in the amendment of the duty notice to includes the tariff codes applicable to alloy steel, with respect to named exporters.

Anti-circumvention Inquiry Nos. 290, 298 and 298c - Zinc coated (galvanised) steel

The circumvention goods here were "steel products containing alloys", compared to the goods described in the original duty notice as "products of iron and non-alloy steel". Again, the original duty notice was altered to include steel products containing alloys with respect to named exporters.

In neither of these two examples was evidence led that the circumvention activity related to all models of the original, subject goods description. **By insisting that a comparison be made between the circumvention goods and all models presented under the original goods description it is conceivable that an exporter may circumvent, commercially significant volumes of the subject goods by targeting circumvention activities to a particular model or subset of the original, subject goods.** For example, in the case of a goods description that defines the goods as 'whether uncoated or including a zinc (galvanised) coating', then an exporter who attempts to circumvent the measures by including a zinc alloy coating would not be found to have slightly modified the goods, because, to apply the commission's approach to comparison between the circumvention goods and the original goods description, the circumvention goods would only apply to a model or subset of the original, subject goods, namely those models that were originally "zinc (galvanised) *coated*", but not the whole original, subject goods description which includes "*uncoated*" models.

In other words, to apply the commission's interpretation of subsection 48(2) would mean that a slight modification circumvention activity could only be found in circumstances where the "slight" modification occurred with respect to the entire population of the original, subject goods. It is not

even clear whether, a finding that a "slight' modification that can occur with respect to the entire population of the circumvention goods, but only occurs with respect to part of it, would still qualify as a regulated circumvention activity under the commission's interpretation.

The applicant submits that this error by the Commission has resulted in a flawed consideration of the factors under subsection 48(3), by performing a comparison between the circumvention goods and the original, subject goods that is too broad.

By taking this approach, the commission has fettered the Minister's discretion to alter the original notice in a manner that addresses the circumvention activity. In its application, the applicant, established a proposed alteration to the original notice that extends the imposition of measures to the circumvention goods specifically, without affecting other aspects of the original goods description. There is no obligation on the Minister to alter the original dumping duty notice that makes all categories (or models) of the original, subject goods to the circumvention activity. In other words, the outcome of the inquiry permits the Minister to alter only a subset of the original, subject goods. **Therefore, if the altered notice may be specific to a subset or model of the original, subject goods, it makes no sense for the commission to insist on a comparison of the factors to all models within the original, goods description.** This interpretation by the commission would make subsection 48(3) and subsection 269ZDBH(1) of the *Customs Act 1901*, incompatible.

Even if the commission's approach is correct; which is not admitted; then the commission's analysis of the factors under subsection 48(3) is based on a theoretical view of the original, subject goods and the actual circumvention goods exported. The applicant uses the expression, "theoretical", advisedly, as the evidence of the applicant throughout the inquiry was that the original, subject goods "actually" imported were goods meeting the 'rod for mesh' description, and not other purposes. We see in SEF 643 no analysis of the Border Force data to contradict this submission. Without such analysis, the commission applies the subsection 48(3) factors to a "theoretical" set of models of the original, subject goods that were never exported to Australia from the subject source. This distorts the commission's ability to perform a meaningful comparison to the circumvention behaviours intended to be analysed under the Regulation.

Factual findings requiring further consideration

Notwithstanding the applicant's critique of the commission's method of comparing the circumvention good and the good the subject of the notice, the applicant observes the following

matters requiring correction concerning the commission's analysis of the factors. For convenience, references to sub-headings are as they appear in SEF 643:

4.4.2.1 Section 48(3)(a) - Each good's general physical characteristics

It is observed that the commission found that the profile of the circumvention goods was a relevant change (i.e. more than 'slight').

> *The commission also considers that the other physical differences noted in the submissions by Beijing Xingtai and TKM, such as ductility and profile, are relevant.*[5]

This conclusion is not correct as the relevant standard (AS/NZS 4671:2019), does not require any ribbing or indentation to the profile of the rolled rod in coil.[6]

4.4.2.2 Section 48(3)(b) - Each good's end use

The commission comments that:

> *As part of the industry verification, the commission requested further information from the applicant to clarify the proportion of total RIC production that was 'rod for mesh' compared to other types of RIC. InfraBuild confirmed that it produced a similar amount of 'rod for mesh' and other types of RIC. InfraBuild further clarified that the overwhelming majority of 'rod for mesh' is used for mesh, rather than the overwhelming majority of (all) RIC being used for mesh. Other types of RIC are used to produce other products that are not reinforcing mesh, demonstrating that RIC has various purposes other than being used to produce mesh.*[7]

For the avoidance of doubt, in the period FY 2025, of total RIC production by the applicant of [redacted] tonnes, 75% was used in the production of reinforcing mesh, i.e. 'rod for mesh'. Only 25% was used in non-mesh applications.[8]

4.4.2.3 Section 48(3)(c) - The interchangeability of each good

The commission preliminarily considered that:

> *…for the good and the circumvention good to be interchangeable, they would need to be interchangeable for all or most types of customers or users of the good and circumvention good.*[9]

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[5] SEF 643, p. 27.
[6] AS/NZS 4671:2019, at [7.5.9]: *Where anchorage is to be provided by the cross-weld, the requirements for rib or indentation geometry shall be deemed to be satisfied.*
[7] SEF 643, p. 28.
[8] CONFIDENTIAL ATTACHMENT 1
[9] SEF 643, p. 30.

The applicant repeats and refers to evidence led at verification that identified near mutual exclusivity between those models of RIC identified as "rod for mesh", and non-mesh applications. For example, the Australian industry verification exercise revealed that the 'rod for mesh' grades are all but mutually exclusive of 'non-mesh' grades (except for [redacted] tonnes of rod grade 'ROD 09.50 [redacted] C2000' supplied into engineered product applications – out of a total of [redacted] tonnes of this grade supplied into mesh uses).[10]

4.4.2.5 Section 48(3)(e) - Differences in the cost to produce each good and

4.4.2.6 Section 48(3)(f) - The cost of modification

The commission observes:

> *The costs involved were not minor as the applicant had estimated; they were in line with conversion costs that the commission has calculated in other cases for other downstream products.*[11]

And further:

> *The commission verified both Beijing Xingtai's and TKM's cost data provided with their REQs, which enabled the commission to establish each exporter's conversion costs (or cost of modification). The cost of modification was calculated by taking the costs of conversion from RIC to cold drawn wire, followed by the processing of the cold drawn wire into mesh sheets. The verified cost of modification was higher than the applicant's estimated figures.*[12] [emphasis added]
>
> …
>
> *Having regard to the above, the commission considers the cost of modification to be in line with other downstream products (e.g. hollow structural sections[fn 42]) that the commission has investigated and has measures on. The cost of modification is not insignificant.*[13]

On the basis of the applicant's own cost of modification data for the FY 2024 period, the cost of modification represented [redacted] % of the cost to make the circumvention goods (AU$[redacted] /tonne).

One possible explanation for the commission's conclusion that the Chinese exporters of the circumvention goods may face a relatively higher modification cost is that it appears the commission has not fully considered its earlier findings regarding the particular market situation in the Chinese domestic market for RIC. The applicant considers that the exporters' raw material costs (RIC) need

[10] Refer CONFIDENTIAL SIGBOX EXHIBIT 643-002.
[11] SEF 643, p. 33.
[12] SEF 643, p. 33.
[13] SEF 643, p. 34.

to be benchmarked against a market value for RIC in a manner similar to the most recently concluded inquiry concerning RIC, namely *Continuation Inquiry No. 562*.

As to the question of 'the cost of modification to be in line with other downstream products (e.g. hollow structural sections)', the applicant notes that the cost of conversion of uncoated HSS in the FY 2025 period is [redacted]%.[14] The applicant observes that this conversion cost for a Chinese manufacturer of HSS is [redacted]% higher than the Australian industry's cost of modification of RIC to reinforcing mesh. This does not support the commission's observation that the Chinese mesh exporters' *'cost of modification to be in line with other downstream products'*, especially since we continue to consider that the Chinese mesh exporter's cost of modification will in percentage terms be less when compared to a cost of RIC when benchmarked (likely, upwards) for the existence of a particular market situation in China.

4.4.2.8 Section 48(3)(h) - The way in which each good is marketed

The commission acknowledged that:

> *Upon request after the industry verification, InfraBuild provided the commission with an estimate of the size of market for rod for mesh, which also showed a significant portion of their RIC not being used for mesh production. InfraBuild stated its belief that most – if not all – imported RIC (from all sources) was used for mesh production.*[15]

It is worth clarifying that the commission's request at verification was for an estimate of the size of the market for RIC not being used for mesh. This was provided.[16] However, the applicant is concerned that the commission has used this information in manner inconsistent with its purpose, namely, an identification of the applicant's total allocation of production of rod for mesh models of RIC. To extrapolate; as the commission appears to have attempted to do; a proportion of rod for mesh RIC from non-mesh models of RIC is not possible from the exhibit provided.

Again, for the avoidance of doubt, the applicant refers to CONFIDENTIAL ATTACHMENT 1, which separates all production of RIC between "rod for mesh" models, and non-mesh models. In summary, for the period, 12-months ending 31 March 2025, of the [redacted] tonnes of RIC produced, a total of [redacted] tonnes (or 75%) were sold or transferred as rod for mesh, and [redacted] tonnes (or 25%), were sold or allocated for non-mesh uses.

[14] Duty Assessment 286 refers.
[15] SEF 643, pp. 35-36.
[16] Refer CONFIDENTIAL SIGBOX EXHIBIT 643-002

4.4.2.11 Section 48(3)(k) -Changes in the pricing of each good

We observe that the commission concluded that the factor of pricing does not support the modification being slight, on the basis of evidence collected from the Chinese exporters, namely that:

> *The commission has assessed changes in the pricing of each good. Particular focus was placed on prices at which exporters Beijing Xingtai and TKM purchase RIC, and prices at which they sell reinforcing mesh. After analysing these prices, the commission can confirm that the price they paid domestically for RIC is … when comparing the RIC purchase price with the export prices each exporter exported the circumvention goods to Australia for was even more substantial.*[17]

Given the finding of a particular market situation for RIC in the Chinese domestic market,[18] a comparison of the circumvention goods to the domestic purchase price of RIC is not appropriate. Either a market benchmark RIC value is used for the purposes of comparison, or an approach to that proposed in the applicant's application be followed.[19]

The applicant requires further clarification of the following statement by the commission, as its meaning is not readily discernible:

> *The commission also notes that purchase prices for RIC, domestic mesh prices and export prices were comparable to each other.*[20]
>
> *…*
>
> *[E]xport prices of RIC were found to be on average lower than mesh when compared on a country-by-country basis where the country of export had both RIC and mesh exports to Australia.*

4.4.2.13 Section 48(3)(m) - Tariff classifications and statistical codes for each good

The commission preliminary found:

> *…that RIC and mesh are exported to Australia under different tariff codes. Therefore, the factor of tariff classifications and statistical codes <u>does not support the modification being slight</u>.*[21] [<u>emphasis</u> added]

There is nothing controversial about the finding that the goods and the circumvention goods were classified to different tariff subheadings and statistical codes, however, the finding that this 'does

[17] SEF 643, p. 41.
[18] REP 562.
[19] Refer <u>ANNEXURE</u> to *Application for an anti-circumvention inquiry: Rod in coil – China*, <u>CONFIDENTIAL ATTACHMENT 2.1</u>.
[20] SEF 643, p. 41.
[21] SEF 643, p. 42.

not support the modification being slight' only serves to limit the operation of the circumvention framework as it relates to slightly modified goods. In this regard, it is noted that the change in tariff classification in *Circumvention Inquiry Nos 290, 291, 298 and 298c*, was not perceived to be a limiting factor to a finding of slight modification. Indeed, in *Circumvention Inquiry No. 291*, the express purpose of the slight modification was to change the applicable tariff codes of the circumvention goods; given the tariff based goods description in the original *Dumping Duty Notice*. Although, the applicant understands that no single factor is taken in isolation, a finding under paragraph 48(3)(m) should not be seen as limiting a finding that the modification is slight.

Conclusions

The applicant seeks the commission reconsider its approach when comparing the original, subject goods to the circumvention goods under subsection 48(3). By doing so the applicant submits that the commission ought to conclude that the condition of slight modification has been satisfied under the provisions of subsection 48(2). Given the material and evidence before the commission, the applicant considers that a recommendation that the original dumping duty notice be altered to include within the scope of the subject goods the circumvention goods so slightly modified.

To discuss any aspect of this submission, please do not hesitate to contact your InfraBuild representative on record.

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

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT