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密等及解密條件或保密期限：
附件：如文(另傳送承辦人)

主旨：有關澳洲反傾銷委員會之反規避調查(anti-circumvention inquiry)程序事，謹請查照。

說明：

- 一、依據貴局雙一組許科長本年4月27日電子郵件辦理。
- 二、依據澳洲反傾銷委員會(Anti-Dumping Commission, ADC)網站說明(如附件1)，反規避調查旨在瞭解廠商有無企圖逃避或減輕傾銷稅或平衡稅負之行為，其要點如下：
 - (一)規避行為樣態：零件在澳洲或第三地組裝、經由1個或多個第三地出口至澳洲、出口商間之安排、逃避課稅效果、其他法令規定之規避行為等。
 - (二)2014年1月1日起適用之調查程序(流程圖如附件2)：
 - 1、ADC須於收到申請書之20日內決定是否展開反規避調查；倘決定展開調查，ADC應在媒體公布。
 - 2、公告展開調查日起，利害關係人得於40日內提交書面意見；ADC應於100日內完成調查報告並向部長作成建議。
 - 3、部長應於30日內決定是否接受ADC建議。



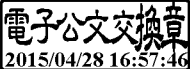
4、利害關係人可就前揭之部長決定向反傾銷再審小組申請再審。

(三)本(104)年4月1日起，ADC新增針對輕微改變(slight modification)之反規避調查措施。產品可能遭認定屬 slight modified者之考量因素包括(但不限於)：僅改變產品之物理特徵、最終用途、可改組為另一種產品(interchangeability of each good)、加工過程不同、生產或修改之成本不同、消費者偏好或期待之不同、行銷方式不同、配銷通路不同、外觀樣式不同、定價不同、出口量不同、稅則或統計分類不同等。

三、另查ADC本年3月30日公告新增針對輕微改變(slight modification)之反規避調查措施(詳附件3)，其要點如下：

- (一)何謂輕微改變之產品(slight modification of goods)
。其內容同前揭說明。
- (二)程序及結果：調查期限為155日；並應於110日內公布調查事實報告(a statement of essential facts)。

正本：經濟部國際貿易局

副本： 2015/04/28 16:57:46

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Anti-circumvention inquiries

What is an anti-circumvention inquiry?

An anti-circumvention inquiry is an inquiry into whether certain activities are occurring with the intention of avoiding or reducing dumping or countervailing duties.

Circumvention activities take various forms and exploit different aspects of the anti-dumping and countervailing system. The outcome of these activities is that they ensure that the relevant goods do not attract the intended dumping or countervailing duty. Circumvention activities include:

- assembly of parts in Australia;
- assembly of parts in a third country;
- export of goods through one or more third countries;
- arrangements between exporters;
- avoidance of the intended effect of duty; and
- any additional circumstances prescribed by regulation.

When an application for an anti-circumvention inquiry is received, the Anti-Dumping Commissioner will decide whether or not to reject the application within 20 days of its lodgement. The Commissioner must reject the application if not satisfied that the requirements of the application form have been met, and that there appear to be reasonable grounds for asserting that one or more circumvention activities have occurred.

If the Commissioner does not reject the application, or if the Minister requests an inquiry, a notice will be published in a national distributed newspaper, indicating that an inquiry is to be conducted. The application will also be notified of the Commissioner's decision.

Information relating to anti-circumvention inquiries, the related process, details of the activities listed above, and requirements for applicants, are provided in [Application for an anti-circumvention inquiry: Guidelines for applicants \(April 2015\) \(PDF 275KB\)](#) and [Anti-Circumvention Inquiry flow chart \(PDF 31KB\)](#).

From 1 January 2014, a new anti-circumvention inquiry into avoidance of the intended effect of duty will be available. Information relating to this anti-circumvention inquiry, the related process and requirements for applicants, are provided in [Application for an anti-circumvention: Avoidance of Intended Effect of Duty - Guidelines for applicants \(January 2014\) \(PDF 155KB\)](#) and [Anti-circumvention inquiry into avoidance of the intended effect of the duty flow chart \(PDF 34KB\)](#).

From 1 April 2015, a new type of circumvention activity will address circumstances where exporters slightly modify their goods in order to circumvent duties that apply to the original (or unmodified) good. This activity will be prescribed through regulation.

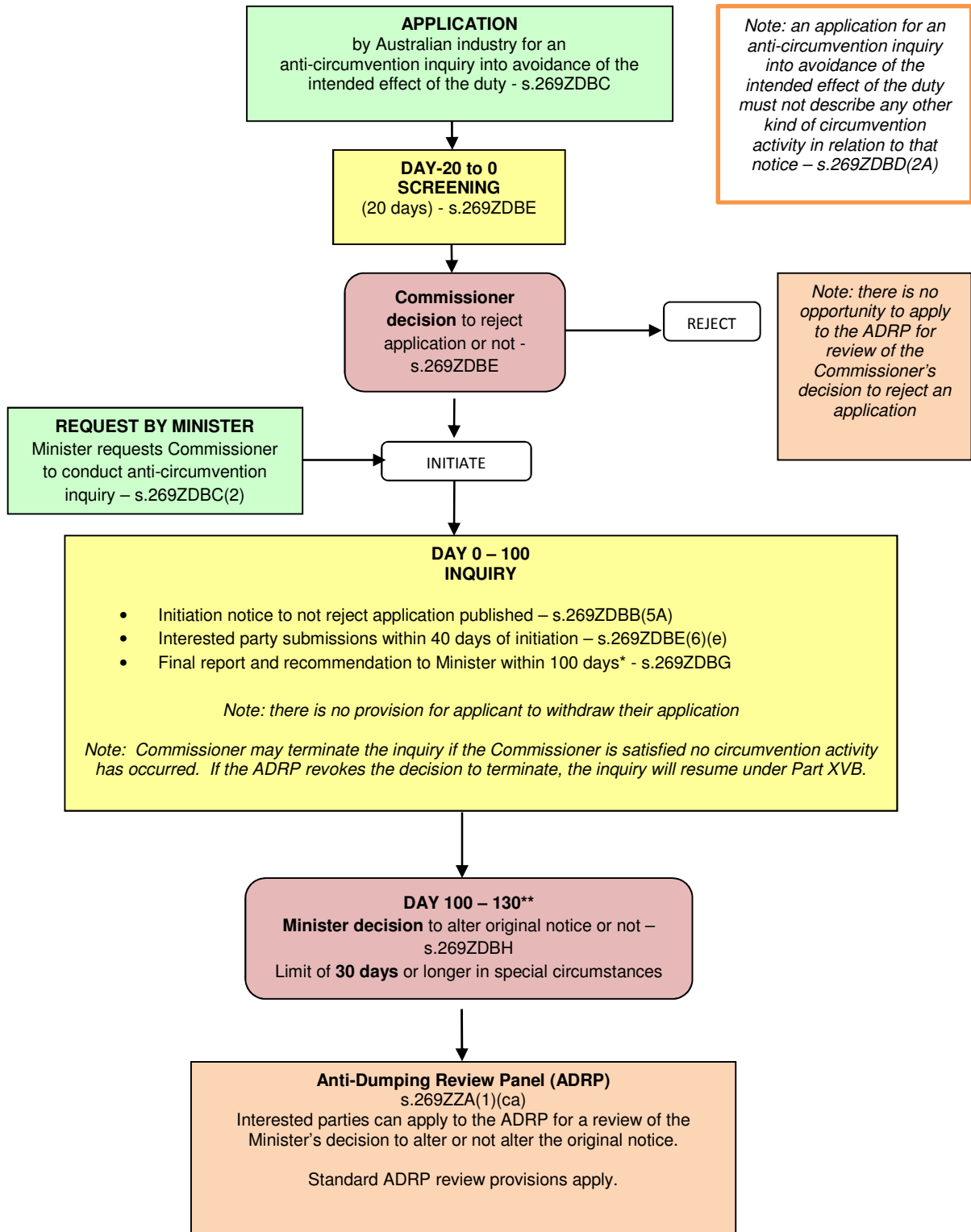
The types of factors that may indicate that a good has been slightly modified include (but are not limited to):

- each good's general physical characteristics;
- each good's end use;
- the interchangeability of each good;

- differences in the processes used to produce each good;
- differences in the cost to produce each good;
- the cost of modification;
- customer preferences and expectations relating to each good;
- the way in which each good is marketed;
- channels of trade and distribution for each good;
- patterns of trade for each good;
- changes in the pricing of each good;
- changes in the export volumes for each good; and
- tariff classifications and statistical codes for each good.

An applicant must include relevant evidence in support of its application and the slight modification of goods circumvention activity will also be subject to a 155 day legislative timeframe, unless extended by the Minister.

Anti-circumvention inquiry relating to avoidance of the intended effect of the duty



* Minister may extend final report timeframe beyond 100 days.

** Except where extended.



ANTI-DUMPING NOTICE NO. 2015/44

New circumvention activity to address the slight modification of goods exported to Australia

Purpose

The purpose of this Anti-Dumping Notice (ADN) is to provide an overview of the new prescribed circumvention activity to address the slight modification of goods exported to Australia.

Background

On 15 December 2014, the Federal Government announced reforms to strengthen Australia's anti-dumping system aimed at ensuring Australian manufacturers are competing on a level playing field. This package included establishing a new regulation in order to address emerging behaviours by foreign exporters to slightly modify their goods in order to circumvent existing anti-dumping duties (which cover dumping and countervailing duties).

Circumvention is a trade strategy used by exporters and importers to avoid the full payment, or intended effect, of anti-dumping duties. This undermines the trade remedy that the anti-dumping duties are intended to provide to Australian manufacturers.

On 26 February 2015, the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015* (Regulation) prescribing a slight modification of goods circumvention activity, amending the *Customs Regulations 1926* (which are due to sunset in early April 2015 and will be replaced with new regulations), received Royal Assent by the Governor-General. This Regulation will commence on **1 April 2015**.

This new Regulation expands Australia's existing anti-circumvention framework which commenced in June 2013 and was further expanded in January 2014. Under this framework Australian industry members can apply for the Anti-Dumping Commission (the Commission) to conduct anti-circumvention inquiries to address specific circumvention activities by exporters and/or importers of goods that are subject to dumping/countervailing duty notices.

What is the 'slight modification of goods'?

The circumvention activity 'slight modification of goods exported to Australia' may take place where goods exported to Australia, which would have been subject to a dumping/countervailing duty notice, are slightly modified in order to avoid anti-dumping duties. The slightly modified goods are also likely to be imported under different tariff classification subheadings in Schedule 3 to the *Customs Tariff Act 1995* (and statistical codes).

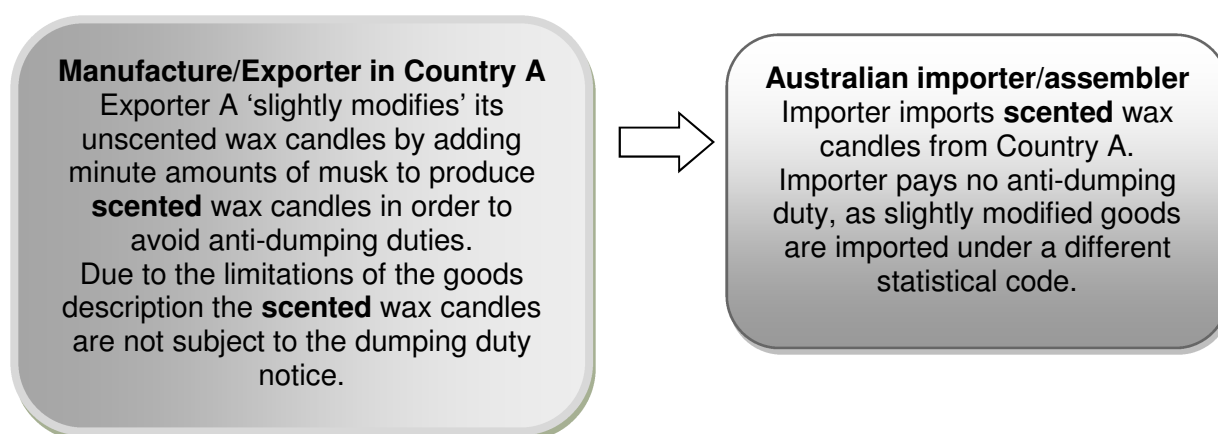
Slightly modified goods do not necessarily fall within the description of the goods to which a dumping and/or countervailing duty notice applies.

For the purpose of determining whether goods have been slightly modified, the 'circumvention goods' should be compared to the 'goods that are subject to anti-dumping duties', by taking into account the following non-exhaustive factors:

- each good's general physical characteristics;
- each good's end use;
- the interchangeability of each good;
- differences in the processes used to produce each good;
- differences in the cost to produce each good;
- the cost of modification;
- customer preferences and expectations relating to each good;
- the way in which each good is marketed;
- channels of trade and distribution for each good;
- patterns of trade for each good;
- changes in the pricing of each good;
- changes in the export volumes for each good; and
- tariff classifications and statistical codes for each good.

A hypothetical example where goods that are slightly modified by a foreign exporter in order to avoid anti-dumping duties is as follows:

The goods covered by a dumping duty notice are unscented wax candles made from wax and having fiber or paper-cored wicks exported from Country A.



In this example, Exporter A in Country A is the exporter undertaking the circumvention activity. The Australian importer may or may not be aware of the circumvention activity.

Applying for the new anti-circumvention inquiry into the slight modification of goods exported to Australia

An application into the slight modification of goods can be made by a person representing, or representing a portion of, the Australian industry producing like goods. The Parliamentary Secretary to the Minister of Industry and Science (Parliamentary Secretary) can also request that an inquiry be initiated.

An application must be made by lodging an approved application form. An accompanying document (*Application for an anti-circumvention inquiry: Guidelines for applicants*) is available to assist in the preparation of an application for this anti-circumvention inquiry.

The application form and guidelines are available on the Commission's website at www.adcommission.gov.au.

Applications seeking the conduct of an anti-circumvention inquiry into the slight modification of goods exported to Australia can be lodged on and from **1 April 2015**.

Potential applicants are encouraged to contact the Commission's Client Support section for advice in preparing an anti-circumvention application on the following contact details:

Telephone: 1300 884 159
Email: clientsupport@adcommission.gov.au

The process and outcome for the new anti-circumvention inquiry

The new anti-circumvention inquiry into the slight modification of goods will be conducted in 155 days, unless this timeframe is extended by the Parliamentary Secretary. Once an anti-circumvention inquiry is initiated, a statement of essential facts will be published by day 110 of the inquiry, unless this timeframe is extended by the Parliamentary Secretary.

As with other circumvention activities, following an anti-circumvention inquiry conducted by the Commission, the Parliamentary Secretary must declare that either:

- the original notice remain unaltered; or
- the original notice be altered (and the Parliamentary Secretary must specify these alterations).

If the Parliamentary Secretary decides to alter the original notice, these alternations can be imposed retrospectively to the date the anti-circumvention inquiry was initiated.

Dumping and Subsidy Manual

At this stage, the Dumping and Subsidy Manual (Manual) has not been updated to include new text relating to the slight modification of goods circumvention activity. Instead, a program of Manual updates will be developed to manage amendments to the Manual resulting from the Government's recent reforms to the anti-dumping system. This program seeks to provide sufficient time to undertake stakeholder consultation on proposed Manual amendments. An ADN will be issued advising the program of Manual updates, in due course, and will be available on the Commission's website at www.adcommission.gov.au.

Interested parties will be invited to make submissions on the draft amendments to the Manual, including on the revised chapter 'Anti-circumvention inquiries' to incorporate the new anti-circumvention activity.

Anti-Dumping Commission contact

If you require advice, or have any questions concerning this ADN, please contact the Commission's Client Support section on the details above.

Dale Seymour
Commissioner
Anti-Dumping Commission
30 March 2015