



Australian Government
**Australian Customs and
Border Protection Service**

Customs House
5 Constitution Avenue
Canberra City ACT 2601

Julia Morris
Committee Secretary
Standing Committee on Agriculture and Industry
PO Box 6021, Parliament House,
Canberra ACT 2600

Dear Ms Morris

ACBPS SUBMISSION TO THE INQUIRY INTO CIRCUMVENTION OF ANTI-DUMPING LAWS

Thank you for inviting the Australian Customs and Border Protection Service (ACBPS) to provide a submission to the Standing Committee's inquiry into circumvention of anti-dumping laws.

We are pleased to provide the Standing Committee with the following comments.

Trade related economic risk

ACBPS is Australia's lead border Agency, and manages a wide range of border risks including economic risk.

Economic border risk is the likelihood of trade distorting the level playing field on which Australian firms compete, denying the benefits of competition to Australian consumers, or removing the incentive for Australian firms to innovate, attract investment and retain value. Government trade policy, Australian law and our international commitments provide the context for the management of economic risk at the border. The Government supports a policy of trade exposure and economic openness.

ACBPS recognises the potential of trade-related economic risk to have a significant effect on Australian traders and manufacturers. ACBPS's role is to ensure compliance with the rules of trade in a way that is consistent with the

Government's economic objectives, that is, to minimise fraud and to ensure fairness.

Economic border risk appears as:

- a) illegal or improper behaviour that creates operational losses relating to the administration of trade law at the border such as duty evasion, **circumvention of anti-dumping and countervailing (ADCV) measures**, misreporting, the abuse of intellectual property rights, improper benefits from free trade agreements, tariff concession orders and the like, and
- b) serious non-compliance where trade is the vehicle for duty and tax fraud, transfer pricing and money laundering.

The role of ACBPS in the Australian anti-dumping scheme

The ACBPS supports the Australian anti-dumping scheme by:

- enforcing ADCV measures including investigation and where appropriate prosecution and sanctioning of those who avoid payment of ADCV duties
- recovering debts associated with non or incorrect payment of ADCV duties
- refunding monies associated with over or incorrect payment of ADCV duties
- providing the Anti-Dumping Commission (ADC) with an appropriate level of access to the Integrated Cargo System and other trade related data to perform its functions, and
- providing the ADC with expert advice on relevant matters including the Tariff.

ADCV circumvention practices

ACBPS is aware of several practices used by unscrupulous people to circumvent illegally the payment of ADCV duties.

These practices often involve collusion between several parties in the supply chain, and at times, they involve professional fraud facilitation networks that have an extensive global footprint, operate in several countries and pose a direct risk to several jurisdictions including Australia.

ACBPS assessment is that these professional networks facilitate the avoidance of millions of dollars in ADCV duties and other duties and taxes across numerous jurisdictions.

Some of the known or suspected practices employed to circumvent illegally ADCV duties include:

- **hiding the true origin of the goods** to avoid payment of ADCV duties by falsifying, or fraudulently obtaining, certificates of origin or other documentary evidence; transshipping the goods through a third country and physically changing the presentation of the goods (e.g. re-packaging, re-labelling)

- **manipulating the value of the goods** subject to ADCV duties, which may involve collusion between the foreign manufacturer or exporter and the Australian importer
- **misclassifying the goods** subject of ADCV duties to a tariff classification that does not attract such duties
- **falsely claiming an exemption** on the basis of goods, country or exporter.
- **misreporting the goods**, often through underreporting the correct quantity of the total number of goods in a consignment, or an incorrect description or origin of the goods
- **collusion between foreign exporters** so that goods subject of ADCV duties are supplied from a lower duty rate supplier or exempt supplier.
- **comingling** goods the subject of ADCV duties in the same consignment as those that are not.

The ACBPS response to circumvention of ADCV duties

The ACBPS addresses circumvention of ADCV duties as a priority through proactive measures including intelligence collection and analysis, real time interventions at the border, investigations and other enforcement activity.

Under Commonwealth legislation, the ACBPS has a wide range of law enforcement and regulatory powers at the border. These powers include the ability to search, examine, question, seize and arrest, which are relevant to the ACBPS's efforts to address the illegal circumvention of ADCV.

ACBPS employs an intelligence-led, risk-based approach so that we are in a better position to provide assurance that our trade related border interventions are effective in delivering intended 'macro' trade policy outcomes and so that we can address areas where Australian industries may be exposed to unfair competition.

ACBPS works collaboratively with the ADC, which includes the referral of industry information, the exchange of staff and ongoing liaison in relation to anti-circumvention matters.

ACBPS also receives information and intelligence from and, where appropriate works with key industry representatives to raise levels of awareness and knowledge on certain products, and to address specific areas of suspected circumvention of ADCV duties.

ACBPS through its network of offshore counsellors, is also working closely with key international partners such as the World Customs Organisation (WCO) and several Customs and regulatory administrations, through sharing information and methodologies used by those actors who are involved in many of the practices described above.

Finally, ACBPS has recently established, within the Special Investigations and Programmes (SIP) Branch, the Trade Enforcement Unit (TEU). The TEU now provides the Service with a specialist investigation and enforcement capability

dealing with complex trade crime, including the illegal circumvention of ADCV duties, and systemic vulnerabilities in the border control framework.

The TEU aims to prevent, detect and deter serious and complex trade related crime, with a focus on financial crime, including through the investigation, prosecution or alternative sanctioning of offenders.

The TEU currently has a number of proactive operations and criminal investigations on foot in relation to the suspected circumvention of ADCV, with a number of criminal charges already laid against several entities. The TEU has also seized goods subject of ADCV duties.

We also expect the laying of charges against other entities in the near future.

ACBPS looks forward to seeing the outcomes of the inquiry, and working further with key stakeholders to detect and prevent the illegal circumvention of ADCV.

Yours sincerely

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Strategic Border Command

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