

**令和 5 年度重要技術管理体制強化事業（反迂回制度の検討に向けた法的論点等調査）
調査報告書**

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1. 本事業の概要

令和 5 年度重要技術管理体制強化事業（反迂回制度の検討に向けた法的論点等調査）（以下「本事業」という。）では、米国、E U 等で、迂回行為に対して当初調査より簡易な方法で調査を行い、決定された課税の対象となる国や産品を拡大する制度（以下「迂回防止制度」という。）が存在する中、近年、我が国でも A D 措置が増加しており、これに伴い迂回行為に適切に対処することが今後重要になる可能性があるため、我が国においても、迂回防止制度の研究及び検討を進める必要があるとの問題意識の下、①米国・E U 等の迂回防止制度の情報収集及び分析、並びに、②上記①を踏まえた我が国で導入すべき迂回防止制度に係る検討を行った。

2. 本事業の実施結果

本事業を遂行する上で、下記の順番に基づいて、分析を行った。

（1） 各国の迂回防止制度の整理

まず、米国及び E U の迂回防止制度について、貴省から提供いただいた資料及び弊所が独自に調査した内容を用いて、特に日本で発動件数が増加している A D 措置に対する迂回行為を念頭に、迂回の各類型（輸入国迂回、第三国迂回、微少変更迂回、後開発産品による迂回、第三国を経由した輸出（積替え）、販売形態・経路の再編／輸出者間の共謀（取り決め））の実体要件を整理した（別紙 1 「米国・E U の実体要件を踏まえた検討」）。

また、カナダ及び豪州の迂回防止制度についても、弊所の独自の調査に基づき、迂回の各類型の実体要件を整理した（別紙 2 「カナダ・豪州の実体要件」）。なお、カナダ及び豪州の迂回防止制度の調査については、米国及び E U の運用が明文化されている場合に参照する目的等で実施したことから、米国及び E U の迂回防止制度との比較（どのような点が明確化されているか等）の分析も実施した（別紙 1 「米国・E U の実体要件を踏まえた検討」）。

（２） 日本で導入すべき迂回防止制度の検討

続いて、上記（１）で実施した整理に基づいて、日本として導入すべき迂回防止制度の検討を行い経済産業省に対し助言を行った。

具体的には、迂回防止制度の実体要件については、日本の現行制度を前提とする規律の必要性、各国の実体要件の相違点、実務上の実現可能性、WTO協定との関係等を考慮した上で、助言を行った。

以 上

別紙 1 米国・EUの実体要件を踏まえた検討

I. はじめに

本紙では、米国及び EU の迂回防止制度の要件・効果を、各迂回行為の類型毎に整理した上で、経済産業省の提供資料及び弊所独自の調査結果（カナダ及び豪州の迂回防止制度の調査を含む）も踏まえつつ、米国・EU等の反迂回制度の情報収集及び分析を行った。

II. 全体構造の検討

- ・ 各国の迂回防止制度は、規律対象とする迂回行為の類型について、異なる構造を有している。
 - 米国は、迂回行為の一般的な定義を設けず、規律する迂回行為の類型を限定列挙した上で、各要件を定めている。
 - EUは、AD について、輸入国迂回及び第三国迂回の要件を個別に定めつつ、当該規定に加えて、迂回行為の一般的な定義も設けている（当該定義の中で、いくつかの迂回行為の類型を例示列挙している¹）。なお、CVD については、迂回行為の一般的な定義を設けるのみである。
 - カナダは、迂回行為の一般的な定義を設けた上で、具体的な迂回行為の類型を、限定列挙の形で規定している。
 - 豪州は、米国と同様で、迂回行為の一般的な定義を設けず、規律する迂回行為の類型を限定列挙した上で、各要件を定めている。

¹ Regulation (EU) 2016/1036, Article 13(1), para. 4 は“[t]he practice, process or work referred to in the third subparagraph includes, inter alia: ...”（下線部弊所）と規定し、その後続く各迂回類型が例示列挙であることを示している。

III. 各迂回類型の検討

1. 輸入国迂回

輸入国迂回とは、AD 措置の適用を回避するため、課税対象産品である完成品の部品等を措置実施国に輸入した上で、当該措置実施国で完成品への組立等を行う迂回行為である。輸入国迂回の実体要件は、①対象産品と迂回による完成品の類似性、②措置対象国から輸入される部品の価値が一定以上であること、③措置実施国での組立等により付加される価値が重大でないこと、④その他の事情（迂回防止措置として規制すべき事情等）により類型化されることから、下記表では、当該理解に基づいて、米国及び EU の実体要件を整理した²。

² 上記記載のとおり、EU は、AD 措置の迂回行為を規律する Regulation (EU) 2016/1036 とは別に、CVD 措置の迂回行為を規律する Regulation (EU) 2016/1037 を設けており、迂回防止規定も各規則に分かれて存在する。CVD 措置の迂回行為を規律する Regulation (EU) 2016/1037 には、AD 措置の迂回行為を規律する Regulation (EU) 2016/1036, Article 13(2)の輸入国迂回及び第三国迂回（assembly in the EU or a third country）に関する個別規定に相当する規定が存在しないが、Regulation (EU) 2016/1037, Article 23(3), para. 2 の“includes, inter alia”というキャッチオール規定の存在により、結局輸入国迂回及び第三国迂回も捕捉されることとなると考えられる（但し、個別規定の不在による要件の違いは、注意が必要である）。

(1) 効果

内容	米国	EU
効果	<u>19 USC § 1677i(a)(1)</u> If [the following requirements are met] the administering authority, after taking into account any advice provided by the Commission under subsection (e), <u>may include within the scope of such order or finding</u> the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.	<u>Regulation (EU) 2016/1036, Article 13(1)</u>³ <u>Anti-dumping duties</u> imposed pursuant to this Regulation <u>may be extended</u> to imports from third countries of the like product, whether slightly modified or not [...], or parts thereof, when circumvention of the measures in force is taking place.

<各国規制の比較>

- ・ 検討対象国は、いずれも、既存の措置の範囲を拡張し、又は変更することを、効果として定めている。具体的な規定ぶりは以下のとおり。
 - 米国は“may include within the scope of such order or finding”と規定。
 - EU は“anti-dumping duties ... may be extended (to imports)”と規定。
 - カナダは、“amend[] the order or finding that is the subject of the President’s decision”と規定。
 - 豪州は、“the original notice be altered”と規定。

³ Regulation (EU) 2016/1037, Article 23(1), para. 1

Countervailing duties imposed pursuant to this Regulation **may be extended** to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	米国	EU
対象産品と迂回による完成品の類似性	<u>19 USC § 1677i(a)(1)</u> (A) merchandise sold in the United States is of the <u>same class or kind</u>* as any other merchandise that is the subject of— (i) an antidumping duty order issued under section 1673e of this title, (ii) a finding issued under the Antidumping Act, 1921, or (iii) a countervailing duty order issued under section 1671e of this title or section 1303 of this title,	<u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where: (a) [...] (b) [...] (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of <u>the</u> assembled <u>like product</u> and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

<各国規制の比較>

- ・ 検討対象国は、いずれも、対象産品と迂回による完成品との類似性を要求するが、具体的な規定ぶりは異なる。
 - 米国は“same class or kind”であることを要求する。
 - EU は“like product”であることを要求する。

- ✧ 実際の事例では、調査当局が、基本的な物理的・技術的特徴及び用途に着目して、“like product”であるかどうかを判断したものがある⁴。
- ✧ なお、Regulation (EU) 2016/1036 で定める“like product”の定義は、AD 協定 2.6 条で定める“like product”の定義と（ほぼ）同一であることから⁵、EU では、対象産品と迂回による完成品との類似性と、当初措置におけるダンピング・損害の認定等の目的で対象産品との間に求められる「同種」性とは同一視されていると考えられる。
- ✧ また、EU において、“like product”は、後述のとおり、産品の微少変更による迂回に係る規律における類似性を示す概念としても使用されている。したがって、EU の場合、微少変更による迂回事案で捕捉可能といえるような完成品については、輸入国迂回の事案においても、対象産品との類似性を認めることが可能であると考えられる⁶。
- カナダは、“the assembly or completion of like goods in Canada”として、“like goods”であることを要求する⁷。
- 豪州は、“goods that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies”と規定する。

⁴ COMMISSION IMPLEMENTING REGULATION (EU) 2017/2093 of 15 November 2017 terminating the investigation concerning possible circumvention of the anti-dumping measures imposed by Council Implementing Regulation (EU) No 1331/2011 on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China by imports consigned from India, whether declared as originating in India or not, and terminating the registration of such imports imposed by Commission Implementing Regulation (EU) 2017/272 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2093&from=fr>> paras. 18-20.

⁵ Regulation (EU) 2016/1036, Article 1(4): “For the purposes of this Regulation, ‘like product’ means a product which is identical, that is to say, alike in all respects, to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”

⁶ 欧州における微少変更の事例として、COUNCIL IMPLEMENTING REGULATION (EU) No 871/2013 of 2 September 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95% of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35mm but does not exceed 4,0mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97% of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35mm but does not exceed 4,0mm, originating in the People's Republic of China <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0871>>

⁷ Canada Border Services Agency のウェブサイトでは、“like goods”が“identical or similar goods”と同義である旨の説明がされているが、“like goods”又は“identical or similar goods”であるかどうかの具体的な考慮要素を示した規定等は見当たらない。<<https://www.cbsa-asfc.gc.ca/sima-lmsi/ccg-gpc-eng.html>>

イ 措置対象国から輸入される部品の価額の完成品の価額に占める割合が一定以上であること

内容	米国	EU
措置対象国部品の価額の割合が一定以上	<u>19 USC § 1677i(a)(1)</u> (B) such merchandise sold in the United States is <u>completed or assembled in the United States</u> from parts or components produced in the foreign country with respect to which such order or finding applies. (D) the value of the parts or components referred to in subparagraph (B) is <u>a significant portion</u> of the total value of the merchandise,	<u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. <u>An assembly operation in the Union</u> or a third country shall be considered to circumvent the measures in force where: (a) [...]; and (b) the parts constitute <u>60% or more of the total value of the parts of the assembled product</u>, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost; and (c) [...]

<各国規制の比較>

- ・ 検討対象国は、いずれも、措置対象国から輸入される部品の価額の完成品の価額に占める割合が一定以上であることを要求するが、基準の定め方は異なる。
 - 米国・豪州は、“significant portion”という、定性的な基準を定める。なお、米国は、当該割合の分子（部品の価額）は、構成価格又は代替価格（AD 措置の対象国が非市場経済国の場合）を求める計算方法に従い、その生産費用を基礎として決定するが⁸、分母（完成品の価額）の計算方法に関する詳細な規定は見当たっていない。

⁸ “Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In determining the value of parts or components (including such purchases from another person) under section 781(a)(1)(D) of the Act, or of processing performed (including by another person) under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.”（19 CFR § 351.226(h)。なお、第三国迂回の迂回類型に対しては、19 CFR § 351.226(i)が適用される。）

☆ *Certain Uncoated Paper from Brazil: Uncoated Paper Rolls* の事例では、当初措置の対象産品たる非塗工紙シートの部品に相当する非塗工ロール紙の輸入が問題とされていたところ、調査当局は、米国事業者であり、対象国（ブラジル）における非塗工ロール紙生産者から非塗工ロール紙を仕入れ、これを非塗工紙シートに加工（外部の加工業者（converter）も利用）し、米国国内で販売する Perez Trading Company（以下「**Perez**」という。）に対し、質問状を送付した。Perez は、調査当局に対し、非塗工紙シートの製品別の生産費用（①非塗工ロール紙の購入費用、②非関連会社たる加工業者に支払う加工費、③販売費及び一般管理費及び④純利息費用を含む）及び米国国内での販売数量及び販売金額の情報を提供した。これを受け、調査当局は、“significant portion”が認められるかどうかの判断において、分子として非塗工ロール紙の平均購入費用を使用し、分母として非塗工紙シートの平均単価（販売金額を販売数量で除して算出）を使用したとされている（製品別に算出された割合は加重平均されている）⁹。

- EU は、“60% or more”という、定量的な基準を定める。
- カナダは、“major portion”という、定性的な基準を定める。

⁹ Preliminary Decision Memorandum for Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Uncoated Paper from Brazil: Uncoated Paper Rolls <<https://access.trade.gov/Resources/frn/summary/brazil/2021-01792-1.pdf>> p.13; Business Proprietary Memorandum for Perez Trading Company （ACCESS <<https://access.trade.gov/login.aspx>> にログイン後、データベースから入手可） pp.2-3.

ウ 措置実施国での組立等により付加される価値が重大でないこと

内容	米国	EU
措置実施国での組立等による付加価値が重大でない	<u>19 USC § 1677i(a)(1)</u> (C) the process of assembly or completion in the United States is <u>minor or insignificant</u>, <minor or insignificant> <u>19 USC § 1677i(a)(2)</u> In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account— (A) the level of investment in the United States, (B) the level of research and development in the United States, (C) the nature of the production process in the United States, (D) the extent of production facilities in the United States, and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.	<u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where: (a) [...] (b) the parts constitute 60% or more of the total value of the parts of the assembled product, <u>except</u> that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is <u>greater than 25%</u> of the manufacturing cost; and (c) [...]

<各国規制の比較>

- ・ 豪州を除く検討対象国は、いずれも、措置実施国における組立等により付加される価値が重大でないことを要求するが、基準の定め方は異なる。
 - 米国は、米国内での組立等が“minor or insignificant”であることを求める。加工の価値を算定する際に前提とする部品の価額は、構成価格又は代替価格（AD措置の対象国が非市場経済国の場合）を求める計算方法に従い、その生産費用を基礎として決定する（19 CFR § 351.226(h)。なお、第三国迂回の迂回類型に対しては、19 CFR § 351.226(i)が適用される。）。

◇ 米国内での加工の価値が米国内で販売される商品の価値に占める割合が小さいかどうかの判断にあたっては、*Certain Uncoated Paper from Brazil: Uncoated Paper Rolls* の事例で、調査当局は、Perez から提供を受けた情報に基づき、非塗工紙シート（完成品に相当）の平均単価に占める非塗工紙シートの平均原価の割合を算出した上で（製品別に算出された割合は加重平均されている）、米国での加工価値（the value of converting subject-paper rolls in the United States）が米国で販売される商品の価値に占める割合が小さいことを判断している¹⁰。

- EU は、EU 内での組立等により 25%を超える付加価値が付与されていないことを求める。
- カナダは、カナダ国内の組立等が“insignificant”であることを求める。

エ その他の事情

内容	米国	EU(*)
・ 貿易パターンの変化 ・ 会社関係性 ・ 経済的正当性の欠如 ・ 損害の発生又は当初措置	19 USC § 1677i(a)(3) In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as— (A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the parts or components is affiliated with the	<u>Regulation (EU) 2016/1036, Article 13(1), para. 3¹¹</u> Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the

¹⁰ Preliminary Decision Memorandum for Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Uncoated Paper from Brazil: Uncoated Paper Rolls pp.12-13.; Business Proprietary Memorandum for Perez Trading Company pp.2-3.

¹¹ Regulation (EU) 2016/1037, Article 23(3), para. 1
 Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy. The practice, process or work referred to in the first subparagraph includes, inter alia:

内容	米国	EU(*)
の救済効果が損なわれているか ・ダンピングの存在	person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.	normal values previously established for the like product, if necessary in accordance with the provisions of Article 2. <u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where: (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; (b) [...] (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

* Regulation (EU) 2016/1036 における Article 13(1) と Article 13(2) の関係 : Regulation (EU) 2016/1036 Article 13(1) は、迂回に関する一般的な要件を規定している一方で、Regulation (EU) 2016/1036 Article 13(2) は、“An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where” と規定しており、組立が EU 又は第三国で行われる場合の要件を掲げているところ、輸入国迂回及び第三国迂回の認定のためには、Article 13(2) の 3 要件のみを満たせば足りるのか、Article 13(1) 及び(2) の双方の要件を満たす必要があるのか、条文の文言からは明らかでないところがある。この点、EU の迂回に関する先例では、第三国における組立が問題となった事例において、①貿易パターンの変化、②経済的正当性の欠如、③当初措置の救済効果が損なわれていること、④ダンピングの存在という Article 13(1) に掲げられる各要件に加えて、⑤組立が当初措置調査開始後又は直前に開始し又は実質的に増加したこと、⑥措置対象国から輸入される部品の価額の完成品の価額に占める割合が 60% であること及び EU 内での組立により 25% を超える付加価値が付与されていないことがそれぞれ認定されている事例がある¹²。かかる事例は、輸入国迂回及び第三国迂回の認定のためには、Article 13(1) の要件に加えて、Article 13(2) の各要件が満たさ

¹² 例えば、COMMISSION IMPLEMENTING REGULATION (EU) 2021/1475 of 14 September 2021 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People’s Republic of China to imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1475&from=EN>>.

れる必要があることを前提としていると考えられる。

<各国規制の比較>

① 貿易パターン・輸入量の変化等

- ・ 豪州を除く検討対象国は、当該事情を要件又は考慮要素として掲げる。
 - 米国は、考慮（take into account）との表現を用いる。
 - ✧ 貿易パターンの変化については、当該迂回防止調査の対象である部品（parts or components）及び完成品の双方に関して、AD 措置発動以降の貿易パターンの変化を検討する。なお、当該事情は、国単位で考慮する場合もあれば、個別企業単位で考慮する場合もある模様である¹³。
 - EU・カナダは、要件であることを明確にしている。
 - ✧ EU は、迂回行為の一般的な定義の中で、貿易パターンの変化の存在を求めている。また、輸入国迂回及び第三国迂回の個別規定の中でも、当初措置調査開始後又は直前に、輸入国での組立が開始又は増加したことが要件として明示されている。
 - ✧ カナダは、当該貿易パターンの変化が AD 措置の発動により発生したこと（the change in trade pattern is caused by the imposition of anti-dumping or countervailing duties）を要件として定めている。また、考慮要素（輸入国迂回、第三国迂回及び微少変更迂回で共通）として以下を掲げる。
 - (a) 当初措置の対象産品のカナダへの輸入量の変化
 - (b) 迂回が発生している可能性のある産品のカナダへの輸入量の変化
 - (c) (i) (a)に規定された産品と同種の産品（like goods）又は (ii) (i)に規定された同種の産品に組み立てられ若しくは完成される部品若しくは構成要素の、当初措置命令において掲げられた国又は(b)に規定される迂回産品の原産国若しくは輸出国に対する認定において掲げられた国（当該迂回防止調査の対象となっている第三国）からの輸入量の変化
 - (d) その他の一切の関連要素

¹³ *Hydrofluorocarbon Blends from China (CIRC)*、第三国迂回の事例であるが *Certain Aluminum Foil from China (CIRC)*においては、貿易パターンの変化は国単位で分析されている。またこれも第三国迂回の事例であるが、*Certain Aluminum Foil from China (CIRC)*においては、貿易パターンの変化は米国輸入統計を用いた国単位の分析と調査対象会社の内部統計資料を用いた個別企業単位の分析の両方が行われている。

② 措置実施国で組立等を行っている事業者が、輸入される部品の生産者・輸出者の関連企業であること

- ・ 米国は、当該事情を考慮要素として掲げるが、その他の検討対象国では、当該事情について規定していない。

③ 経済的正当性の欠如

- ・ EU のみが明示的に規定している。迂回の不存在を主張する利害関係者が、当該貿易パターンの変化により定量的な利益を得られることを反証すべきこととなる¹⁴。このように、EU は、貿易パターンの変化と、経済的正当性の有無を、別の要件として定めているが、実際の判断では、一定の重複があると考えられる。

④ 損害の発生又は当初措置の救済効果が損なわれていること

- ・ 検討対象国のうち、EU とカナダのみ、要件として定められている。
- ・ EU は、文言上は、①損害の発生又は②当初措置の救済効果が損なわれたことのいずれかを要求する。
- ・ カナダは、**undermining the remedial effects of the order** として当初措置の救済効果が損なわれていることを要求した上で、考慮要素を以下のとおり例示列举する（輸入国迂回、第三国迂回及び微少変更迂回で共通）。
 - (a) カナダにおいて組み立てられ若しくは完成されてカナダにおいて販売される同種の産品（like goods）の価格及び数量、又は第三国において組み立てられ若しくは完成される同種の産品又は微少に変更された同種の産品の輸入価格及び輸入数量
 - (b) (a)の産品が、そのようなことがなければ当初措置の対象産品を購入していた可能性のある顧客に対し販売されているか否か
 - (c) (a)の産品が、当初措置の対象産品と同じ用途を有しているか否か
 - (d) その他の一切の関連要素

¹⁴ Van Bael & Bellis, EU Anti-Dumping and Other Trade Defence Instruments, 2019, 590-594 頁参照。

⑤ ダンピングの存在

- ・ 検討対象国のうち EU のみが要件として定める。ダンピングの有無は、過去の事例も踏まえると¹⁵、当初措置の対象となっている完成品の価格を比較して判断されるものと考えられる。

⑥ 迂回産品自体が当初措置の対象ではないこと

- ・ 検討対象国のうち豪州のみ、要件として定める¹⁶。

2. 第三国迂回

第三国迂回とは、AD 措置の適用を回避するため、課税対象産品である完成品の部品等を第三国に輸出した上で、当該第三国で完成品への組立等を行った上で、当該第三国から措置実施国に完成品を輸出する迂回行為である。第三国迂回の実体要件は、輸入国迂回と類似しており、①対象産品と迂回による完成品の類似性、②措置対象国から第三国に輸出される部品の価値が一定以上であること、③第三国での組立等により付加される価値が重大でないこと、④その他の事情（迂回防止措置として規制すべき事情等）により類型化されることから、下記表では、当該理解に基づいて、米国及び EU の実体要件を整理した。

¹⁵ COUNCIL REGULATION (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 <<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31997R0071>> para.24.

¹⁶ Customs Act 1901, Section 269ZDBB(2)(e): “section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia”.

(1) 効果

内容	米国	EU
効果	<u>19 USC § 1677i(b)(1)</u> If [the following requirements are met] the administering authority, after taking into account any advice provided by the Commission under subsection (e), <u>may include</u> such imported merchandise [for which the following conditions are met] <u>within the scope of such order or finding</u> at any time such order or finding is in effect.	<u>Regulation (EU) 2016/1036, Article 13(1)</u>¹⁷ <u>Anti-dumping duties</u> imposed pursuant to this Regulation <u>may be extended</u> to imports from third countries of the like product, whether slightly modified or not [...], or parts thereof, when circumvention of the measures in force is taking place.

各国規制の比較の点については、カナダ・豪州に関する記載も含め、上記 1. 輸入国迂回と同様である。

¹⁷ Regulation (EU) 2016/1037, Article 23(1), para. 1
 Countervailing duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	米国	EU
対象産品と迂回による完成品の類似性	<u>19 USC § 1677i(b)(1)</u> (A) merchandise imported into the United States is of the same class or kind as any other merchandise produced in a foreign country that is the subject of— (i) an antidumping duty order issued under section 1673e of this title, (ii) a finding issued under the Antidumping Act, 1921, or (iii) a countervailing duty order issued under section 1671e of this title or section 1303 of this title.	<u>Regulation (EU) 2016/1036, Article 13(2)</u> (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

各国規制の比較の点については、カナダ・豪州に関する記載も含め、上記 1. 輸入国迂回と同様である。

イ 第三国で組立等されて輸入される措置対象国部品の価額の、完成品の価額に占める割合が一定以上であること

内容	米国	EU
措置対象国部品の価額の割合が一定以上	<u>19 USC § 1677i(b)(1)</u> (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which- (i) is subject to such order or finding, or (ii) is produced in the foreign country with respect to which such order or finding applies.,	<u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where:

内容	米国	EU
	(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is <u>a significant portion of the total value</u> of the merchandise exported to the United States, (19 USC § 1677j(b)(1))	(a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; and (b) the parts constitute <u>60% or more of the total value of the parts of the assembled product</u> , except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost; and

各国規制の比較の点については、組立等の場所が措置実施国から第三国に変わる点を除き、カナダ・豪州に関する記載も含め、上記1. 輸入国迂回と同様と考えられる。

ウ 第三国での組立等により付加される価値が重大でないこと

内容	米国	EU
第三国での組立等による付加価値が重大でない	<u>19 USC § 1677i(b)(1)</u> (C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is <u>minor or insignificant</u>. <u>19 USC § 1677i(b)(2)</u> In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account— (A) the level of investment in the foreign country, (B) the level of research and development in the foreign country, (C) the nature of the production process in the foreign country, (D) the extent of production facilities in the foreign country, and (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.	<u>Regulation (EU) 2016/1036, Article 13(2)</u> (b) the parts constitute 60% or more of the total value of the parts of the assembled product, <u>except</u> that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is <u>greater than 25%</u> of the manufacturing cost; and

各国規制の比較の点については、組立等の場所が措置実施国から第三国に変わる点を除き、カナダ・豪州に関する記載も含め、上記1. 輸入国迂回と同様と考えられる。

エ その他の事情

内容	米国	EU
・ 貿易パターンの変化 ・ 会社関係性 ・ 経済的正当性の欠如 ・ 損害の発生又は当初措置の救済効果が損なわれているか ・ ダンピングの存在	19 USC § 1677i(b)(3) In determining whether to include merchandise assembled or completed in a foreign country in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as— (A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.	<u>Regulation (EU) 2016/1036, Article 13(1), para. 3¹⁸</u> Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2. <u>Regulation (EU) 2016/1036, Article 13(2)</u> 2. An assembly operation in the Union or a third country shall be considered to circumvent the measures in force where: (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures; (b) [...] (c) the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

各国規制の比較の点については、カナダ・豪州に関する記載も含め、上記 1. 輸入国迂回と同様である。

3. 製品の微少変更による迂回

製品の微少変更による迂回（以下「微少変更迂回」という。）とは、AD 措置の課税対象製品に対し、当該措置の対象外となるように微少な変更を加える迂回行為である。その実体要件は、措置対象製品に対する微少な変更となるが、更なる実体要件又は一考慮要素として、貿易パターンの変化等が挙げられる。下記表では、当該理解に基づいて、米国及び EU の実体要件を整理した。

(1) 効果

内容	米国	EU
効果	<u>19 USC § 1677i(c)(1)</u> The class or kind of merchandise subject to- (A) an investigation under this subtitle, (B) an antidumping duty order issued under section 1673e of this title,	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1¹⁹</u> Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when

¹⁸ Regulation (EU) 2016/1037, Article 23(3), para. 1

Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy. The practice, process or work referred to in the first subparagraph includes, inter alia:

¹⁹ Regulation (EU) 2016/1037, Article 23(1), para. 1

Countervailing duties imposed pursuant to this Regulation **may be extended** to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

内容	米国	EU
	(C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 1671e of this title or section 1303 of this title, <u>shall include articles</u> altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. <u>19 USC § 1677i(c)(2)</u> Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding. <u>19 CFR § 351.226(i)</u> Under section 781(c) of the Act, <u>the Secretary may include within the scope of an antidumping or countervailing duty order articles</u> altered in form or appearance in minor respects.	circumvention of the measures in force is taking place.

各国規制の比較の点については、カナダ・豪州に関する記載も含め、上記 1. 輸入国迂回と同様である。

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	米国	EU
対象産品と迂回による完成品の類似性	<u>19 USC § 1677i(c)(1)</u> <u>The class or kind</u> of merchandise subject to- (A) an investigation under this subtitle, (B) an antidumping duty order issued under section 1673e of this title, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 1671e of this title or section 1303 of this title, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. <u>19 CFR § 351.226(i)</u>	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1²⁰</u> Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified <u>like product</u> from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

²⁰ Regulation (EU) 2016/1037, Article 23(1), para. 1

Countervailing duties imposed pursuant to this Regulation **may be extended** to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

EU は、CVD 措置については、AD 措置に関する Regulation (EU) 2016/1036 とは別に、Regulation (EU) 2016/1037 において規定し、迂回防止規定も各規則に分かれて存在する。Regulation (EU) 2016/1037 には、Regulation (EU) 2016/1036, Article 13(2)の輸入国迂回及び第三国迂回（assembly in the EU or a third country）に関する個別規定に相当する規定が存在しないが、Regulation (EU) 2016/1037, Article 23(3), para. 2 の “includes, inter alia” というキャッチオール規定の存在により、結局輸入国迂回及び第三国迂回も捕捉されることとなる。もっとも、このような輸入国迂回及び第三国迂回に関する個別規定の不存在に鑑み、CVD 措置の迂回防止規定については、両規則で規定ぶりの共通する微小変更迂回の本項の脚注において引用する。

	Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles <u>altered in form or appearance in minor respects.</u>	
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<各国規制の比較>

- ・ 検討対象国は、いずれも、対象産品と迂回による完成品との類似性を要求するものと思われるが、具体的な規定ぶりは異なる。
 - 米国は“the class or kind”と規定。
 - EU は“like product”と規定。
 - カナダは、“like goods originating in or exported from that subject country”と規定（但し、その直後に“such that the slightly modified goods are no longer like goods”との規定もある）。
 - 豪州は、“had the circumvention goods not been so slightly modified, they would have been the subject of the notice”と規定。

イ 措置対象産品に対する微少な変更

内容	米国	EU
措置対象産品 に対する微少 な変更	<u>19 USC § 1677i(c)(1)</u> ... articles <u>altered in form or appearance in minor respects</u> (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. <u>19 CFR § 351.226(i)</u> ... The Secretary may consider such criteria including, but not limited to, <u>the overall physical characteristics of the merchandise</u>, (including chemical, dimensional, and technical characteristics), <u>the expectations of the ultimate users</u>, <u>the use of the merchandise</u>, <u>the channels of marketing</u> and <u>the cost of any modification relative to the total value of the imported products</u>. ...	<u>Regulation (EU) 2016/1036, Article 13(1), para. 4²¹</u> The practice, process or work referred to in the third subparagraph includes, inter alia: (a) the <u>slight modification</u> of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification <u>does not alter its essential characteristics</u>;

<各国規制の比較>

- ・ 検討対象国は、米国を除き“slight modification”という表現を用いており、概ね類似する。
 - 米国は、上位規定で“altered in form or appearance in minor respects”とした上で、下位規定で、物理的特徴、顧客の期待、最終用途、販売経路及び完成品の価

²¹ Regulation (EU) 2016/1037, Article 23(3), para. 2

The practice, process or work referred to in the first subparagraph includes, inter alia:

(a) the **slight modification** of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification **does not alter its essential characteristics**;

額に占める **modification** のコストという 5 つの代表的な考慮要素を挙げている。また、後述のとおり、問題の製品が米国内に輸入される際の状況（輸入時期、輸入数量等）も、別途考慮要素として規定されている。

- EU は、“**slight modification ... does not alter its essential characteristics**”と規定し、対象製品の本質的な特徴を変えるものでない変更とする。
- 豪州及びカナダは、“**slight modification**”の文言を採用し、その有無の考慮要素を詳細に列挙している。両者の内容はほぼ共通しており、考慮要素の中には、物理的特性、最終用途、代替性、顧客の選好・期待、流通経路、関税分類、変更のコスト、生産工程、生産コスト等が含まれる。豪州では、さらに、微少な変更の前後で用途・目的が変わらないことが独立の要件として規定されている。

ウ その他の事情（貿易パターンの変化等）

内容	米国	EU
- 貿易パターンの変化 - 経済的正当性の欠如 - 損害の発生又は当初措置の救済効果が損なわれているか - ダンピングの存在	19 CFR § 351.226(i) ... The Secretary also may consider the circumstances under which the products enter the United States, including but not limited to the timing of the entries and the quantity of merchandise entered during the circumvention review period.	<u>Regulation (EU) 2016/1036, Article 13(1), para. 3²²</u> Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.

<各国規制の比較>

- 検討対象国は、（米国のみ異なる表現を使用しているが）微少変更迂回の認定に当たり、貿易パターンの変化を要件又は考慮要素と位置付けている。
 - 米国は、貿易パターンの変化という表現を用いてはいないものの、微少変更迂回の認定に当たっては、問題の產品が米国内に輸入される際の状況、その代

²² Regulation (EU) 2016/1037, Article 23(3), para. 1

Circumvention shall be defined as **a change in the pattern of trade** between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is **insufficient due cause or economic justification** other than the imposition of the duty, and where there is evidence of **injury or that the remedial effects of the duty are being undermined** in terms of the prices and/or quantities of the like product and that **the imported like product and/or parts thereof still benefit from the subsidy**.

表例として、輸入時期、輸入数量等も、物理的特徴や用途といった考慮要素と併せて考慮することができることとしている。

- EU は、輸入国/第三国迂回と同様、貿易パターンの変化を要件としている。
 - 豪州は、貿易パターンの変化を独立の要件とはしていない一方、米国のように、微少変更の有無の考慮要素として(j) patterns of trade for each good が考慮される。
 - カナダは、貿易パターンの変化を独立の要件とし、かつその考慮要素も詳細に例示列挙している。
- ・ 経済的正当性の欠如、損害の発生又は当初措置の救済効果が損なわれているか、及びダンピングの存在については、上記 1. 輸入国迂回と同様である。

4. 後発開発品による迂回

後発開発品による迂回（以下「後発開発品迂回」という。）とは、AD 措置の対象外となるよう、課税対象産品との類似性は維持しつつ、後発的に開発を行った産品の輸出を行う迂回行為である。後発開発品迂回に係る規定は米国のみで見当たったところ、下記表では、後発開発品迂回の考慮要素等として米国が規律する内容を整理した。

内容	米国
効果	<u>19 USC § 1677i(d)(1)</u> For purposes of determining whether merchandise developed after an investigation is initiated under this subtitle or section 1303 of this title(hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order issued under this title or section 303 as a result of such investigation,
【考慮要素】 ・ 物理的特徴、顧客の期待、最終用途、販売経路、広告・展示方法の同一性	<u>19 USC § 1677i(d)(1)</u> the administering authority shall consider whether— (A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product"),

内容	米国
	(B) the <u>expectations of the ultimate purchasers</u> of the later-developed merchandise <u>are the same</u> as for the earlier product, (C) the <u>ultimate use</u> of the earlier product and the later-developed merchandise <u>are the same</u>, (D) the later-developed merchandise is sold through <u>the same channels of trade</u> as the earlier product, and (E) the later-developed merchandise is <u>advertised and displayed in a manner similar</u> to the earlier product.
【対象産品外との結論に至るための理由の制限】	<u>19 USC § 1677i(d)(2)</u> The administering authority <u>may not exclude</u> a later-developed merchandise from a countervailing or antidumping duty order <u>merely because</u> the merchandise- (A) is classified under a <u>tariff classification</u> other than that identified in the petition or the administering authority's prior notices during the proceeding, or (B) permits the purchaser to perform <u>additional functions</u>, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

<各国規制の比較>

- ・ 米国には本類型に対する迂回防止規定が見当たったが、EU、カナダ及び豪州には見当たらない。

5. 第三国を経由した輸出

第三国を経由した輸出とは、AD 措置の適用を回避するため、課税対象産品を第三国に輸出し、当該第三国から措置実施国に産品を輸出する行為（いわゆる積替え）を指す。本行為を迂回行為として規律する規定はEU 及び豪州で見当たったところ、下記表では、EU の実体要件を整理した。

内容	EU
効果	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1</u>²³ Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.
要件① 対象産品と迂回による完成品の類似性	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1</u> Anti-dumping duties imposed pursuant to this Regulation may be extended to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.
要件② 産品の託送 要件③ 貿易パターンの変化	<u>Regulation (EU) 2016/1036, Article 13(1), paras. 3 and 4</u>²⁴ Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like

²³ Regulation (EU) 2016/1037, Article 23(1), para. 1
Countervailing duties imposed pursuant to this Regulation **may be extended** to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

²⁴ Regulation (EU) 2016/1037, Article 23(3), para. 1
Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy. The practice, process or work referred to in the first subparagraph includes, inter alia:

The practice, process or work referred to in the first subparagraph includes, inter alia:

- (a) [...]
- (b) the consignment of the product subject to measures via third countries;
- (c) [...].

内容	EU
要件④ 経済的正当性の欠如	<u>product</u> , and where there is <u>evidence of dumping</u> in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.
要件⑤ ダンピングの存在	The practice, process or work referred to in the third subparagraph includes, inter alia:
要件⑥ 損害の存在又は当初措置の救済効果が損なわれていること	(a) [...] (b) the <u>consignment of the product subject to measures via third countries</u> ; (c) [...][以下略]

<各国規制の比較>

- ・ EU 及び豪州には本類型に係る迂回防止規定が見当たった一方で、米国及びカナダには見当たらない。
 - EU 規定は、上述のとおり、①対象産品と迂回による完成品の類似性、②措置対象国での販売形態・経路の再編、③取引パターンの変化、④経済的正当性の欠如、⑤ダンピングの存在、⑥損害の発生又は当初措置の救済効果が損なわれていること、が要件となっている。
 - 豪州の規定は、①措置対象国でない国から豪州への輸出、②輸入が第三国を経由していること、③最初の輸出が措置対象国から行われていること、④迂回産品が豪州に直接輸出された場合に当初措置の対象となること、⑤迂回産品自体は当初措置の対象でないこと、が要件となっている。

6. 販売形態・経路の再編/輸出者間の共謀

販売形態・経路の再編/輸出者間の共謀とは、AD 措置の対象国の輸出者等の間で共謀し、販売形態・経路を再編等し、低い税率が適用される者から輸出することで、高い税率を回避する行為を指す。本行為を迂回行為として規律する規定は EU 及び豪州で見当たったところ、下記表は、EU の実体要件を整理した。

内容	EU
効果	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1</u>²⁵ Anti-dumping duties imposed pursuant to this Regulation <u>mav be extended</u> to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.
要件① 対象産品と迂回による完成品の同一性・類似性	<u>Regulation (EU) 2016/1036, Article 13(1), para. 1</u> Anti-dumping duties imposed pursuant to this Regulation may be extended to <u>imports from third countries of the like product, whether slightly modified or not,</u> or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.
要件② 措置対象国での販売形態・経路の再編 要件③ 貿易パターンの変化	<u>Regulation (EU) 2016/1036, Article 13(1), paras. 3 and 4</u>²⁶ Circumvention shall be defined as <u>a change in the pattern of trade</u> between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is <u>insufficient due cause or economic justification</u> other than the imposition of the duty, and where there is evidence of injury or that <u>the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the</u>

²⁵ Regulation (EU) 2016/1037, Article 23(1), para. 1
Countervailing duties imposed pursuant to this Regulation **mav be extended** to imports from third countries of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place.

²⁶ Regulation (EU) 2016/1037, Article 23(3), para. 2
Circumvention shall be defined as a change in the pattern of trade between third countries and the Union or between individual companies in the country subject to measures and the Union, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product and that the imported like product and/or parts thereof still benefit from the subsidy.

The practice, process or work referred to in the first subparagraph includes, inter alia:

- (a) [...]
- (b) [...]
- (c) the **reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures** in order to eventually have their products exported to the Union **through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers.**

内容	EU
要件④ 経済的正当性の欠如	like product , and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2.
要件⑤ ダンピングの存在	The practice, process or work referred to in the third subparagraph includes, inter alia:
要件⑥ 損害の存在又は当初措置の救済効果が 損なわれていること	(a) [...] (b) [...] (c) the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Union through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers ; (d) [...][以下略]

<各国規制の比較>

- ・ EU 及び豪州には本類型に係る迂回防止規定が見当たったが、米国及びカナダには見当たらない。
 - EU 規定は、上述のとおり、①対象製品と迂回による完成品の類似性、②措置対象国での販売形態・経路の再編、③取引パターンの変化、④経済的正当性の欠如、⑤ダンピングの存在、⑥損害の存在又は当初措置の救済効果が損なわれていること、が要件となっている。
 - 豪州の規定は、①措置対象国から豪州に輸出されていること、②輸出者間の共謀、③迂回を実行する輸出者と合意を結ぶ相手方の輸出者（以下「他方の輸出者」という。）が当初措置の対象に含まれること、④迂回製品が他方の輸出者から輸出された場合には当初措置の対象となること、⑤迂回輸出によって、当初措置の対象から外れ、又は他方の輸出者に適用される税率よりも低い税率が適用されること、が要件となっている。
 -

7. 措置の意図した効果の回避（avoidance of the intended effects of duty）

措置の意図した効果の回避とは、迂回製品の輸入者が、当初の AD 措置により課された関税に相応する価格の引き上げを行うことなく、迂回製品を販売する行為

を指す（“absorption”とも表現される）。措置の意図した効果の回避に対する迂回防止規定は豪州でのみ見当たった（豪州の規定は別紙 2 を参照）。

<各国規制の比較>

- ・ 豪州には本類型に対する迂回防止規定が見当たったが、米国、EU 及びカナダには見当たらない。
 - 豪州の規定は、①措置対象国から豪州に輸出されていること、②輸出者が当初措置の対象であること、③迂回製品の輸出に当初措置が適用されること、④迂回製品の輸入者が、豪州において、当初措置により課された関税に相応する価格の引上げを行うことなく、豪州国内で迂回製品を販売すること、⑤①乃至④が合理的な期間にわたって継続すること、が要件となっている。
- ・ なお、少なくとも米国及び EU では、措置の意図した効果を回避しようとする行為に対し、迂回防止措置とは別の制度で対処できることが、明文上読み取れる。
 - 米国では、商務省（DOC）が AD 措置の年次レビューにおいて AD 税率を再度決定することができるほか²⁷、AD 措置命令の公表から 2 年後又は 4 年後のレビューにおいて申請があった場合には、“absorption”の存否を判断しなければならない²⁸。当該判断結果は国際貿易委員会（ITC）に通知され、5 年後のサンセットレビューにおいて考慮される²⁹。
 - EU は、当該行為につき、迂回行為とは別の“absorption”と捉え、再調査の結果当初措置が効果を発揮していない（対象製品の輸出価格がむしろ低下している又は変化がない）ことが認定された場合には、当初税率の 2 倍以内の範囲で当初税率を修正することを認める規定を設けている³⁰³¹。

以 上

²⁷ 19 USC §1675(a)(1)(B)

²⁸ 19 USC §1675(a)(4)

²⁹ 19 USC §1675(a)(4)

³⁰ Regulation (EU) 2016/1036, Article 12(1) and (3).

³¹ EU では、この手法のほか、米国と同様に、当初措置のレビュー手続（interim review）によって、当該行為に対処することも理論上は可能であると思われる。すなわち、EU の規則は、当初措置のレビュー手続を開始することができるケースとして、当初措置が対抗措置として不十分である場合を挙げており（Regulation (EU) 2016/1036, Article 11(3), Regulation (EU) 2016/1037, Article 19(2)）、当初措置により課された関税に相応する価格の引き上げを行うことなく販売が可能であるとする、このケースに該当し、レビュー手続の結果、税率の引上げ等が可能になると考えられる（但し、このような適用が可能かどうかについて、米国のように規定上明らかにされているわけではない）。

別紙2 カナダ・豪州の実体要件

I. 輸入国迂回

(1) 効果

内容	カナダ	豪州
効果	<u>Special Import Measures Act (“SIMA”), Section 75.1(1)</u> Subject to subsection 75(1), within 180 days after initiating an investigation under subsection 72(1), the President shall make a decision and shall (c) in the case of the President finding that there is circumvention, file with the Tribunal the decision, the reasons for the decision and any other material relating to the decision that may be required under the rules of the Tribunal. <u>SIMA, Section 75.3</u> Without delay after a decision setting out a finding of circumvention is filed with the Tribunal under paragraph 75.1(1)(c), the Tribunal shall make an order <u>amending the order or finding that is the subject of the President’s decision</u> in the manner described in the decision, including any terms and conditions that are set out in the decision. <u>SIMA, Section 71</u>	<u>Customs Act 1901, Section 269ZDBG(1)</u> The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and ... give the Minister a report recommending: ... (d) the following: (i) the <u>original notice be altered</u> because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred; (ii) the alterations to be made to the original notice. <u>Customs Act 1901, Section 269ZDBB(2)</u> <i>Circumvention activity</i>, in relation to the notice, occurs if the following apply:

内容	カナダ	豪州
	For the purposes of sections 72 to 75.6, <i>circumvention</i> means a situation in which all of the following exist:	

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	カナダ	豪州
対象産品と迂回による完成品の類似性	<u>Special Import Measures Regulation, Section 57.12(a)</u> (a) the assembly or completion of like goods in Canada, ...;	<u>Customs Act 1901, Section 269ZDBB(2)</u> (c) those parts are assembled in Australia, ... to create goods (the <i>assembled goods</i>) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;

イ 措置対象国から輸入される部品の価額の完成品の価額に占める割合が一定以上であること

内容	カナダ	豪州
措置対象国部品の価額の割合が一定以上	<u>SIMA, Section 71(b)</u> (b) a prescribed activity is occurring and <u>imports of the goods to which that prescribed activity applies</u> are undermining the remedial effects of the order in council or the order or finding of the Tribunal; and <u>Special Import Measures Regulation, Section 57.12(a)</u> For the purpose of paragraph 71(b) of the Act, the following activities are prescribed: (a) the assembly or completion of like goods in Canada, ... using parts or components — that <u>represent a major portion of the total cost of producing the like goods</u> — <u>originating in or exported from a country that is subject to the applicable order</u> of the Governor in Council or the applicable order or finding of the Tribunal, whether or not those parts or components are the only ones used to assemble or complete the like goods in Canada;	<u>Customs Act 1901, Section 269ZDBB(2)</u> (a) goods in the form of <u>individual parts</u> (the <i>circumvention goods</i>) are <u>exported to Australia</u>; (b) those parts are <u>manufactured in a foreign country</u> in respect of which <u>the notice applies</u>; (c) those parts are <u>assembled in Australia</u>, ...; (d) the <u>total value of the parts</u> manufactured in that foreign country <u>is a significant proportion of the value of the assembled goods</u>;

ウ 措置実施国での組立等が重大な工程でないこと

内容	カナダ	豪州
措置実施国での組立等が重大な工程でない	<u>Special Import Measures Regulation, Section 57.12(a)</u> (a) the assembly or completion of like goods in Canada, by means of <u>insignificant processes</u>, ...;	

内容	カナダ	豪州
いこと	<u>Special Import Measures Regulation, Section 57.13</u> The following factors may be considered in determining whether the processes of assembly or completion of the like goods referred to in paragraph 57.12(a) or (b) are insignificant: (a) the nature of those processes; (b) the nature of the facilities used to carry out those processes; (c) the level of investment related to those processes and to those facilities; (d) the level of research and development related to those processes; (e) the costs of those processes; (f) the proportion of those costs in relation to the cost of production of the like goods; and (g) any other relevant factor.	

エ その他の事情

内容	カナダ	豪州
貿易パターンの変化	<u>SIMA, Section 71(a)</u> (a) a <u>change has occurred in the pattern of trade</u> since the day on which an order imposing a countervailing duty was made under section 7 or an investigation was initiated under section 31, as the case may be; <u>Special Import Measures Regulation, Section 57.11</u>	

内容	カナダ	豪州
	For the purpose of paragraph 71(a) of the Act, the following factors may be considered in determining whether there has been a change in the pattern of trade: (a) any change in the volume of imports into Canada of goods subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (b) any change in the volume of imports into Canada of goods in respect of which circumvention may be occurring; (c) any change in the volume of imports — from the country named in that applicable order or order or finding into the country from which goods referred to in paragraph (b) originate or are exported — of (i) like goods in relation to goods referred to in paragraph (a), or (ii) parts or components from which like goods referred to in subparagraph (i) are assembled or completed; and (d) any other relevant factor.	
貿易パターン の 変 化 が AD/CVD 賦課 により生じた こと	<u>SIMA, Section 71(c)</u> (c) the change in trade pattern is <u>caused by the imposition of anti-dumping or countervailing duties.</u> <u>Special Import Measures Regulation, Section 57.16</u> For the purpose of paragraph 71(c) of the Act, the following factors may be considered in determining whether the change in trade pattern is caused by the imposition of anti-dumping or countervailing duties:	

内容	カナダ	豪州
	(a) a difference in costs in respect of (i) goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal, and (ii) the like goods referred to in paragraph 57.12(a) or (b) or the slightly modified goods referred to in paragraph 57.12(c); (b) the timing of when an activity referred to in section 57.12 began or substantially increased in relation to the day on which an order imposing a countervailing duty was made under section 7 of the Act or an investigation was initiated under section 31 of the Act, as the case may be; (c) the sale, in a country other than Canada, of like goods referred to in paragraph 57.12(b), of parts or components referred to in paragraph 57.12(a) or (b) or of slightly modified goods referred to in paragraph 57.12(c); (d) a change in consumer preferences in relation to goods referred to in subparagraph (a)(i) or (ii) or to parts or components referred to in paragraph 57.12(a); (e) a change in technology related to the production of goods referred to in subparagraph (a)(i) or (ii); (e.1) any economic or commercial factors that are unrelated to the imposition of anti-dumping or countervailing duties; and (f) any other relevant factor.	
当初措置の救済効果が損な	<u>SIMA. Section 71(b)</u> (b) a prescribed activity is occurring and imports of the goods to which that prescribed	

内容	カナダ	豪州
われていること	activity applies are <u>undermining the remedial effects of the order</u> in council or the order or finding of the Tribunal; and <u>Special Import Measures Regulation, Section 57.15</u> For the purposes of paragraph 71(b) of the Act, the following factors may be considered in determining whether imports of goods to which an activity referred to in section 57.12 applies are undermining the remedial effects of the applicable order of the Governor in Council or the applicable order or finding of the Tribunal: (a) the price and volume of like goods referred to in paragraph 57.12(a) sold in Canada or the price and volume of imports of like goods referred to in paragraph 57.12(b) or of slightly modified goods referred to in paragraph 57.12(c); (b) whether the goods referred to in paragraph (a) are sold to consumers that otherwise may have bought goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (c) whether the goods referred to in paragraph (a) have the same use as goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; and (d) any other relevant factor.	
迂回産品自体が当初措置の対象ではない		<u>Customs Act 1901, Section 269ZDBB(2)</u> (e) <u>section 8 or 10 of the Dumping Duty Act</u>, as the case requires, <u>does not apply</u> to the export of the circumvention goods to Australia.

内容	カナダ	豪州
こと		

II. 第三国迂回

(1) 効果

内容	カナダ	豪州
効果	<u>SIMA. Section 75.1(1)</u> Subject to subsection 75(1), within 180 days after initiating an investigation under subsection 72(1), the President shall make a decision and shall (c) in the case of the President finding that there is circumvention, file with the Tribunal the decision, the reasons for the decision and any other material relating to the decision that may be required under the rules of the Tribunal. <u>SIMA. Section 75.3</u> Without delay after a decision setting out a finding of circumvention is filed with the Tribunal under paragraph 75.1(1)(c), the Tribunal shall make an order <u>amending the order or finding that is the subject of the President's decision</u> in the manner described in the decision, including any terms and conditions that are set out in the decision. <u>SIMA. Section 71</u> For the purposes of sections 72 to 75.6, <i>circumvention</i> means a situation in which all of the	<u>Customs Act 1901. Section 269ZDBG(1)</u> The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and ... give the Minister a report recommending: ... (d) the following: (i) the <u>original notice be altered</u> because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred; (ii) the alterations to be made to the original notice. <u>Customs Act 1901. Section 269ZDBB(3)</u> <i>Circumvention activity</i>, in relation to the notice, occurs if the following apply:

内容	カナダ	豪州
	following exist:	

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	カナダ	豪州
対象産品と迂回による完成品の類似性	<u>Special Import Measures Regulation, Section 57.12(b)</u> (b) the assembly or completion of like goods in a third country, ...	<u>Customs Act 1901, Section 269ZDBB(3)</u> (b) those parts are assembled in a foreign country in respect of which the notice does not apply, ... to create goods (the <i>circumvention goods</i>) <u>that would be the subject of the notice</u> if they were exported to Australia by an exporter in respect of which the notice applies;

イ 第三国で組立等されて輸入される措置対象国部品の価額の、完成品の価額に占める割合が一定以上であること

内容	カナダ	豪州
措置対象国部品の価額の割合が一定以上	<u>SIMA, Section 71(b)</u> (b) a prescribed activity is occurring and imports of the goods to which that prescribed activity applies are undermining the remedial effects of the order in council or the order or finding of the Tribunal; and <u>Special Import Measures Regulation, Section 57.12(b)</u> For the purpose of paragraph 71(b) of the Act, the following activities are prescribed: (b) the assembly or completion of like goods in a third country, by means of insignificant processes, using parts or components — that <u>represent a major portion of the total cost of producing the like goods</u> — originating in or exported from a country that is subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal, whether or not those parts or components are the only ones used to assemble or complete the like goods in the third country; and	<u>Customs Act 1901, Section 269ZDBB(3)</u> (a) goods in the form of individual parts are <u>manufactured in a foreign country</u> (the <i>original country</i>) in respect of which <u>the notice applies</u>; (b) those parts are <u>assembled in a foreign country</u> in respect of which <u>the notice does not apply, whether or not with other parts, ...</u>; (c) the circumvention goods are <u>exported to Australia</u>; (d) the <u>total value of the parts</u> manufactured in the original country <u>is a significant proportion of the customs value</u> (within the meaning of section 159) of the circumvention goods;

ウ 第三国での組立等が重大な工程でないこと

内容	カナダ	豪州
第三国での組立等が重大な工程でないこと	<u>Special Import Measures Regulation, Section 57.12(b)</u> (b) the assembly or completion of like goods in a third country, by means of <u>insignificant processes</u>, ... <u>Special Import Measures Regulation, Section 57.13</u> The following factors may be considered in determining whether the processes of assembly or completion of the like goods referred to in paragraph 57.12(a) or (b) are insignificant: (a) the nature of those processes; (b) the nature of the facilities used to carry out those processes; (c) the level of investment related to those processes and to those facilities; (d) the level of research and development related to those processes; (e) the costs of those processes; (f) the proportion of those costs in relation to the cost of production of the like goods; and (g) any other relevant factor.	

エ その他の事情

内容	カナダ	豪州
貿易パターン	<u>SIMA, Section 71(a)</u>	

内容	カナダ	豪州
の変化	(a) a <u>change has occurred in the pattern of trade</u> since the day on which an order imposing a countervailing duty was made under section 7 or an investigation was initiated under section 31, as the case may be; <u>Special Import Measures Regulation, Section 57.11</u> For the purpose of paragraph 71(a) of the Act, the following factors may be considered in determining whether there has been a change in the pattern of trade: (a) any change in the volume of imports into Canada of goods subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (b) any change in the volume of imports into Canada of goods in respect of which circumvention may be occurring; (c) any change in the volume of imports — from the country named in that applicable order or order or finding into the country from which goods referred to in paragraph (b) originate or are exported — of (i) like goods in relation to goods referred to in paragraph (a), or (ii) parts or components from which like goods referred to in subparagraph (i) are assembled or completed; and (d) any other relevant factor.	
貿易パターン の 変 化 が AD/CVD 賦課	<u>SIMA, Section 71(c)</u> (c) the change in trade pattern is <u>caused by the imposition of anti-dumping or countervailing duties.</u>	

内容	カナダ	豪州
によって生じたこと	<u>Special Import Measures Regulation, Section 57.16</u> For the purpose of paragraph 71(c) of the Act, the following factors may be considered in determining whether the change in trade pattern is caused by the imposition of anti-dumping or countervailing duties: (a) a difference in costs in respect of (i) goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal, and (ii) the like goods referred to in paragraph 57.12(a) or (b) or the slightly modified goods referred to in paragraph 57.12(c); (b) the timing of when an activity referred to in section 57.12 began or substantially increased in relation to the day on which an order imposing a countervailing duty was made under section 7 of the Act or an investigation was initiated under section 31 of the Act, as the case may be; (c) the sale, in a country other than Canada, of like goods referred to in paragraph 57.12(b), of parts or components referred to in paragraph 57.12(a) or (b) or of slightly modified goods referred to in paragraph 57.12(c); (d) a change in consumer preferences in relation to goods referred to in subparagraph (a)(i) or (ii) or to parts or components referred to in paragraph 57.12(a); (e) a change in technology related to the production of goods referred to in subparagraph (a)(i) or (ii); (e.1) any economic or commercial factors that are unrelated to the imposition of anti-	

内容	カナダ	豪州
	dumping or countervailing duties; and (f) any other relevant factor.	
当初措置の救済効果が損なわれていること	<u>SIMA, Section 71(b)</u> (b) a prescribed activity is occurring and imports of the goods to which that prescribed activity applies are <u>undermining the remedial effects of the order</u> in council or the order or finding of the Tribunal; and <u>Special Import Measures Regulation, Section 57.15</u> For the purposes of paragraph 71(b) of the Act, the following factors may be considered in determining whether imports of goods to which an activity referred to in section 57.12 applies are undermining the remedial effects of the applicable order of the Governor in Council or the applicable order or finding of the Tribunal: (a) the price and volume of like goods referred to in paragraph 57.12(a) sold in Canada or the price and volume of imports of like goods referred to in paragraph 57.12(b) or of slightly modified goods referred to in paragraph 57.12(c); (b) whether the goods referred to in paragraph (a) are sold to consumers that otherwise may have bought goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (c) whether the goods referred to in paragraph (a) have the same use as goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; and	

内容	カナダ	豪州
	(d) any other relevant factor.	
迂回製品の輸出自体は当初措置の対象ではないこと		<u>Customs Act 1901, Section 269ZDBB(3)</u> (e) section 8 or 10 of the Dumping Duty Act , as the case requires, does not apply to the export of the circumvention goods to Australia.

III. 製品の微少変更

(1) 効果

内容	カナダ	豪州
効果	<u>SIMA, Section 75.1(1)</u> Subject to subsection 75(1), within 180 days after initiating an investigation under subsection 72(1), the President shall make a decision and shall (c) in the case of the President finding that there is circumvention, file with the Tribunal the decision, the reasons for the decision and any other material relating to the decision that may be required under the rules of the Tribunal. <u>SIMA, Section 75.3</u> Without delay after a decision setting out a finding of circumvention is filed with the Tribunal under paragraph 75.1(1)(c), the Tribunal shall make an order amending the order	<u>Customs Act 1901, Section 269ZDBG(1)</u> The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and ... give the Minister a report recommending: ... (d) the following: (i) the <u>original notice be altered</u> because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred; (ii) the alterations to be made to the original notice. <u>Customs Act 1901, Section 269ZDBB(6)</u> <i>Circumvention activity</i> , in relation to the notice, occurs in the circumstances prescribed by

内容	カナダ	豪州
	<u>or finding that is the subject of the President's decision</u> in the manner described in the decision, including any terms and conditions that are set out in the decision. <u>SIMA, Section 71</u> For the purposes of sections 72 to 75.6, <i>circumvention</i> means a situation in which all of the following exist:	the regulations for the purposes of this subsection. <u>Customs (International Obligations) Regulation 2015, Section 48(1)</u> For subsection 269ZDBB(6) of the Act, the circumstance set out in subsection (2) of this section is prescribed.

(2) 要件

ア 対象産品と迂回による完成品の類似性

内容	カナダ	豪州
対象産品と迂回による完成品の類似性	<u>Special Import Measures Regulation, Section 57.12(c)</u> (c) the slight modification ... of <u>like goods originating in or exported from that subject country such that the slightly modified goods are no longer like goods.</u>	<u>Customs (International Obligations) Regulation 2015, Section 48(2)</u> (d) had the circumvention goods <u>not been so slightly modified, they would have been the subject of the notice;</u>

イ 措置対象産品に対する微少な変更

内容	カナダ	豪州
措置対象産品	<u>Special Import Measures Regulation, Section 57.12(c)</u>	<u>Customs (International Obligations) Regulation 2015, Section 48(2)</u>

内容	カナダ	豪州
に対する微少な変更	For the purpose of paragraph 71(b) of the Act, the following activities are prescribed: (c) the <u>slight modification</u> ... of like goods ... <u>Special Import Measures Regulation, Section 57.14</u> The following factors may be considered in determining whether a modification of like goods referred to in paragraph 57.12(c) is slight: (a) the physical characteristics of the modified goods and the like goods, including their composition; (b) the technical specifications of the modified goods and the like goods; (c) each of the classification numbers under the Harmonized Commodity Description and Coding System attributed to the modified goods and the like goods; (d) the uses of the modified goods and the like goods; (e) the extent to which the modified goods could be substituted for the like goods and consumer preferences in relation to the modified goods and the like goods; (f) the packaging for the modified goods and the like goods, along with the promotional material and documentation concerning the modified goods and the like goods; (g) the channels of distribution for the modified goods and the like goods; (h) the difference in the processes to produce, the facilities used to produce and the costs of producing the modified goods and the like goods; (i) the cost of the modification and, if it is possible to reverse the modification, the cost of reversing it; and (j) any other relevant factor.	(b) before that export, the circumvention goods are <u>slightly modified</u>; <u>Customs (International Obligations) Regulation 2015, Section 48(3)</u> 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.

内容	カナダ	豪州

ウ その他の事情（貿易パターンの変化等）

内容	カナダ	豪州
貿易パターンの変化	<u>SIMA, Section 71(a)</u> (a) a change has occurred in the pattern of trade since the day on which an order imposing a countervailing duty was made under section 7 or an investigation was initiated under section 31, as the case may be; <u>Special Import Measures Regulation, Section 57.11</u> For the purpose of paragraph 71(a) of the Act, the following factors may be considered in determining whether there has been a change in the pattern of trade: (a) any change in the volume of imports into Canada of goods subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (b) any change in the volume of imports into Canada of goods in respect of which circumvention may be occurring; (c) any change in the volume of imports — from the country named in that applicable order or order or finding into the country from which goods referred to in paragraph (b) originate or are exported — of (i) like goods in relation to goods referred to in paragraph (a), or (ii) parts or components from which like goods referred to in subparagraph (i) are assembled	

内容	カナダ	豪州
	or completed; and (d) any other relevant factor.	
貿易パターン の 変 化 が AD/CVD 賦課 によって生じ たこと	<u>SIMA, Section 71(c)</u> (c) the change in trade pattern is <u>caused by the imposition of anti-dumping or countervailing duties.</u> <u>Special Import Measures Regulation, Section 57.16</u> For the purpose of paragraph 71(c) of the Act, the following factors may be considered in determining whether the change in trade pattern is caused by the imposition of anti-dumping or countervailing duties: (a) a difference in costs in respect of (i) goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal, and (ii) the like goods referred to in paragraph 57.12(a) or (b) or the slightly modified goods referred to in paragraph 57.12(c); (b) the timing of when an activity referred to in section 57.12 began or substantially increased in relation to the day on which an order imposing a countervailing duty was made under section 7 of the Act or an investigation was initiated under section 31 of the Act, as the case may be; (c) the sale, in a country other than Canada, of like goods referred to in paragraph 57.12(b), of parts or components referred to in paragraph 57.12(a) or (b) or of slightly modified goods	

内容	カナダ	豪州
	referred to in paragraph 57.12(c); (d) a change in consumer preferences in relation to goods referred to in subparagraph (a)(i) or (ii) or to parts or components referred to in paragraph 57.12(a); (e) a change in technology related to the production of goods referred to in subparagraph (a)(i) or (ii); (e.1) any economic or commercial factors that are unrelated to the imposition of anti-dumping or countervailing duties; and (f) any other relevant factor.	
当初措置の救済効果が損なわれているか	<u>SIMA, Section 71(b)</u> (b) a prescribed activity is occurring and imports of the goods to which that prescribed activity applies are <u>undermining the remedial effects of the order</u> in council or the order or finding of the Tribunal; and <u>Special Import Measures Regulation, Section 57.15</u> For the purposes of paragraph 71(b) of the Act, the following factors may be considered in determining whether imports of goods to which an activity referred to in section 57.12 applies are undermining the remedial effects of the applicable order of the Governor in Council or the applicable order or finding of the Tribunal: (a) the price and volume of like goods referred to in paragraph 57.12(a) sold in Canada or the price and volume of imports of like goods referred to in paragraph 57.12(b) or of slightly modified goods referred to in paragraph 57.12(c);	

内容	カナダ	豪州
	(b) whether the goods referred to in paragraph (a) are sold to consumers that otherwise may have bought goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; (c) whether the goods referred to in paragraph (a) have the same use as goods that are subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal; and (d) any other relevant factor.	
微少変更された製品の輸入	<u>SIMA, Section 71(b)</u> (b) a prescribed activity is occurring and imports of the goods to which that prescribed activity applies are undermining the remedial effects of the order in council or the order or finding of the Tribunal; and	<u>Customs (International Obligations) Regulation 2015, Section 48(2)</u> The circumstance is that all of the following apply: (a) goods (the <i>circumvention goods</i>) are exported to Australia from a foreign country in respect of which the notice applies;
微少変更が行われる国	<u>Special Import Measures Regulation, Section 57.12(c)</u> (c) the slight modification — in a country that is subject to the applicable order of the Governor in Council or the applicable order or finding of the Tribunal or in a third country ...	
迂回産品の用途・目的		<u>Customs (International Obligations) Regulation 2015, Section 48(2)</u> (c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;

内容	カナダ	豪州
迂回製品の輸出自体は当初措置の対象ではないこと		<u>Customs (International Obligations) Regulation 2015, Section 48(2)</u> (e) section 8 or 10 of the <i>Customs Tariff (Anti-Dumping) Act 1975</i> , as the case requires, <u>does not apply to the export of the circumvention goods to Australia.</u>

以 上