

Approach to Anti-Circumvention: Brazil



SDCOM

SUBSECRETARIA DE DEFESA COMERCIAL
E INTERESSE PÚBLICO

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SUBSECRETARIA DE DEFESA COMERCIAL
E INTERESSE PÚBLICO

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2. Types of circumvention

3. Analysis

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Overview

1. Definition of circumvention

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1.2. Circumvention of anti-dumping measures

2. Types of circumvention

2.1. Completion or assembly in Brazil

2.2. Completion or assembly in third countries

2.3. Minor alteration of a product subject to an AD
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2.4. Distinction between circumvention and
fraudulent claiming of origin

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1. Definition of circumvention

1.1. Brazilian legislation

Art. 10-A of Law N. 9,019, of 1995:

Anti-dumping and countervailing measures may be extended to third countries, as well as to parts, pieces or components of the products subject to measures in force, if there is a determination of the existence of practices aimed at frustrating the effectiveness of the measure.



At present there are regulations in force detailing the scope and procedures to anti-circumvention reviews **only for antidumping measures**.





1. Definition of circumvention

1.2. Circumvention of anti-dumping measures

Circumvention investigations regarding anti-dumping measures are regulated by Subsection II of Section III of Chapter VIII of Decree N. 8,058 of 2013.

- Definition:

Circumvention is considered as a trade practice aimed at frustrating the effectiveness of an anti-dumping measure in force through the introduction of certain imports into the national territory.

What kind of imports?





Overview

1. Definition of circumvention

- 1.1. Brazilian legislation
- 1.2. Circumvention of anti-dumping measures

2. Types of circumvention

- 2.1. Completion or assembly in Brazil
- 2.2. Completion or assembly in third countries
- 2.3. Minor modifications of a product subject to an AD measure
- 2.4. Distinction between circumvention and fraudulent claiming of origin



2. Types of circumvention

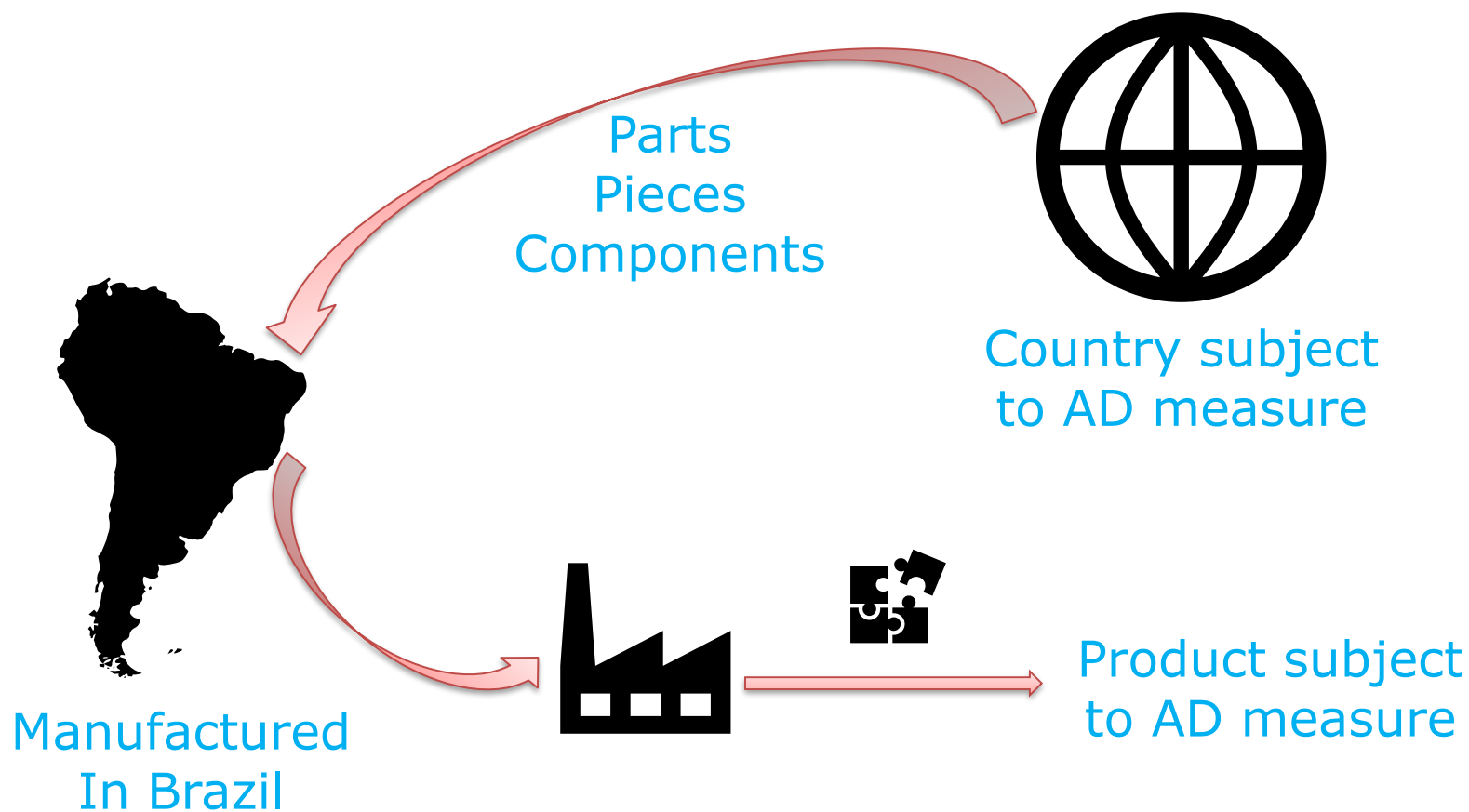
2.1. Completion or assembly in Brazil

The scope of an anti-dumping measure may be extended by an anti-circumvention review for imports of:

- parts, pieces or components originating in or from the country subject to the antidumping measure destined for the manufacturing in Brazil of the product subject to the anti-dumping measure

2. Types of circumvention

2.1. Completion or assembly in Brazil





2. Types of circumvention

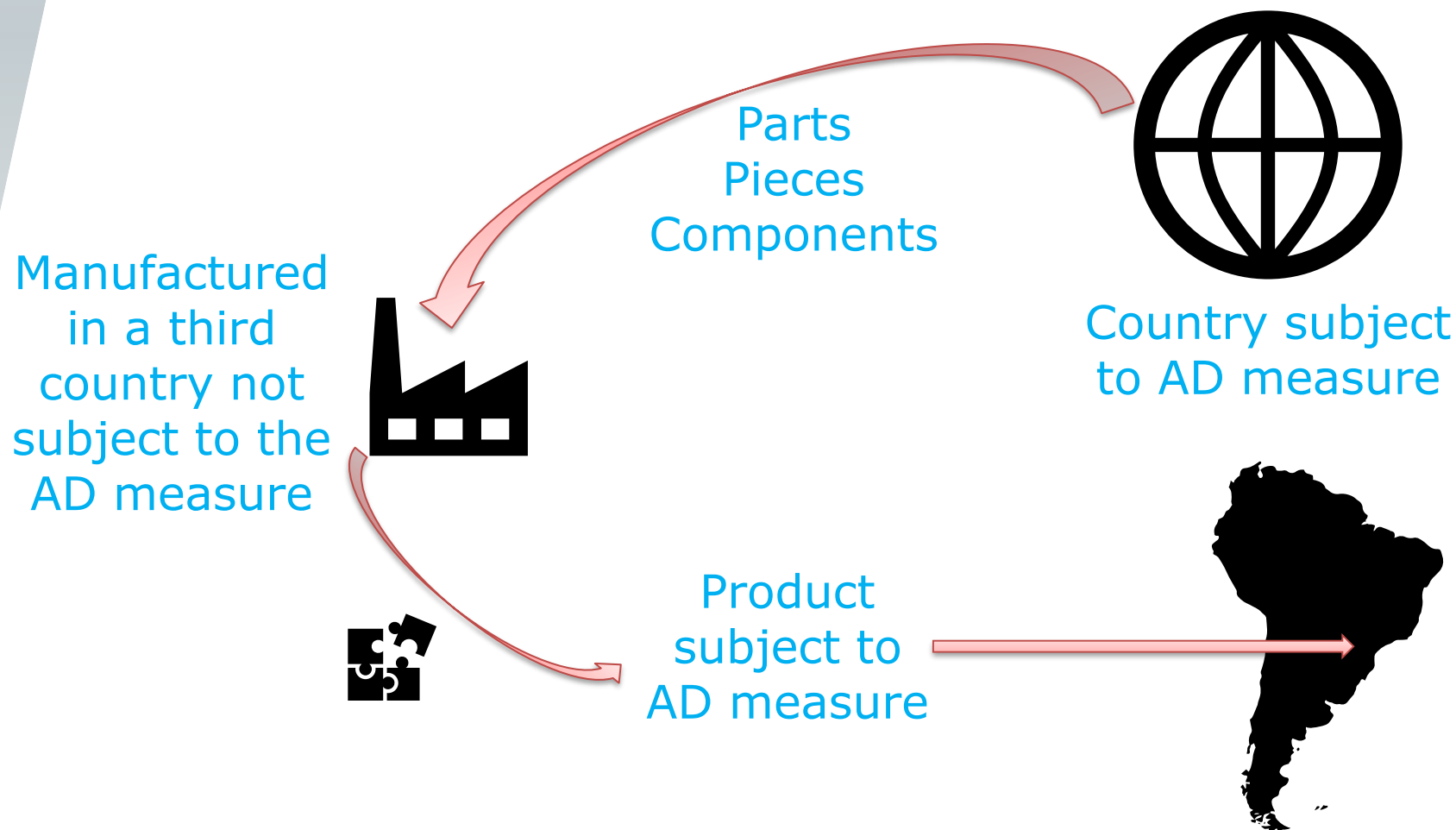
2.2. Completion or assembly in third countries

The scope of an anti-dumping measure may be extended by an anti-circumvention review for imports of:

- a product from third countries whose manufacture, using parts, pieces or components originating in or from the country subject to the anti-dumping measure, results in the product subject to the anti-dumping measure

2. Types of circumvention

2.2. Completion or assembly in third countries





2. Types of circumvention

2.3. Minor modifications

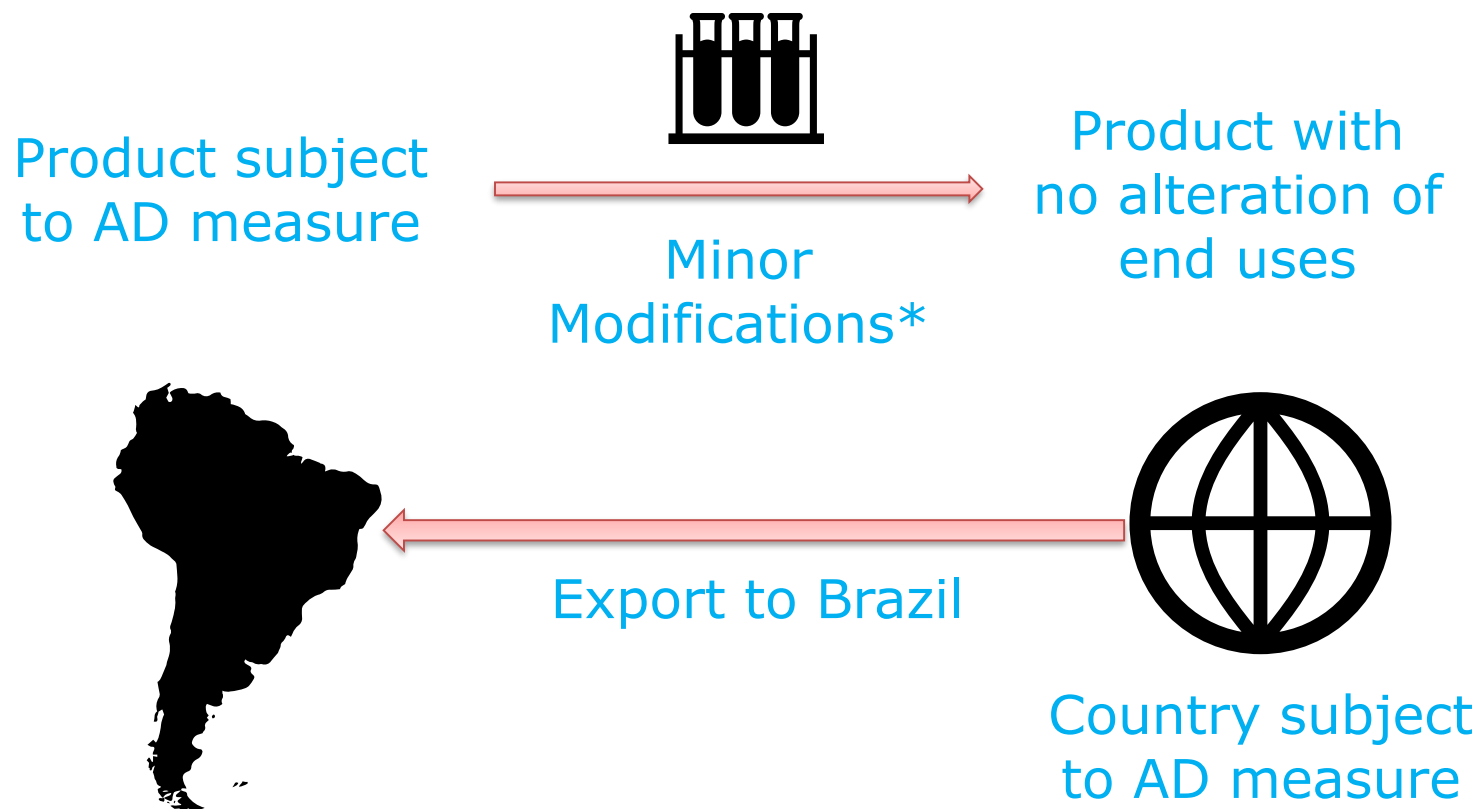
The scope of an anti-dumping measure may be extended by an anti-circumvention review for imports of:

- a product originating in or from the country subject to the anti-dumping measure containing **marginal modifications** in relation to the product subject to the measure but **that do not alter the final use or purpose of the product subject to the antidumping.**



2. Types of circumvention

2.3. Minor modifications



* may result in change of tariff classification



2. Types of circumvention

2.4. Distinction between circumvention and fraudulent claiming of origin

Triangulation: export of the product object of AD measures to a third country and then to Brazil with the goal to avoid payment of such measures

- no marginal alterations
- no assembly of parts, pieces or components in Brazil or in third countries
- Investigating authority:
 - Subsecretariat of International Negotiations (SEINT):
 - Coordination of Origin Regimes



Overview

3. Analysis

3.1 Elements to be assessed

3.1.1 Countries of origin

3.1.2. Producers, exporters and /or importers

4. Administrative process

4.1. Applications

4.2. Request for information

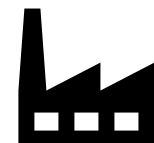
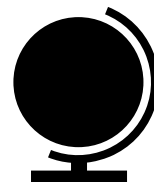
4.3 Deadline to conclude the review

4.4 Extension of AD measures

3. Analysis

3.1. Elements to be assessed

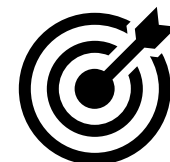
- Combined examination of the information relative to:
 - countries of origin of the exports of the products or of the parts, pieces and components; and
 - producers and exporters of such countries, or Brazilian importers of parts, pieces and components.



3. Analysis

3.1.1 Countries of origin

- All types of anti-circumvention reviews
- Examination to determine:
 - Changes in trade flows* assessed in terms of:
 - (i) price
 - (ii) imported quantity
- Whether changes in trade flows* are the product of a process, activity, or practice for which there is no economic basis or justification other than to thwart the effectiveness of the anti-dumping measure in force.



* Following initiation of the original investigation or review



3. Analysis

3.1.2. Producers, exporters and /or importers

- individual analysis of information on producers, exporters or importers to determine whether:

- Case 1: completion or assembly in Brazil

- the resale in Brazil of the manufactured product is below the normal value for the product subject to the anti-dumping measure
- the parts, pieces and components are not used for purposes other than the manufacture of the final product
- manufacturing began or substantially increased after the initiation of the original investigation or last review (cont.)





3. Analysis

3.1.2. Producers, exporters and /or importers

- individual analysis of information on producers, exporters or importers to determine whether:

- Case 1: completion or assembly in Brazil (cont.)
 - the parts, pieces or components account for 60% or more of the total value of the parts, pieces and components of the product manufactured in Brazil

 - the added value in the manufacturing operations is 35% or less of the manufacturing cost of the product, not including:
 - depreciation costs;
 - packaging costs;
 - costs and expenses not directly related to the manufacture of the product



3. Analysis

3.1.2. Producers, exporters and /or importers

- Case study: **completion or assembly in Brazil**

- ✓ Product subject to anti-dumping duty: **blankets**.
- ✓ Product subject to circumvention: **long pile fabrics** originating in the country subject to the measure used to manufacture blankets in Brazil.
- ✓ Long pile fabrics represented **more than 83%** of total value of parts, pieces and components of product manufactured in Brazil.
- ✓ **Less than 25%** added value in the manufacturing operations.
- ✓ **Resale prices lower than normal value** of the original investigation.

3. Analysis

3.1.2. Producers, exporters and /or importers

- **individual analysis** of information on producers, exporters or importers to determine whether:
- Case 2: Completion or assembly in third countries
 - the export of the product to Brazil occurred at **prices below the normal value** determined for the product subject to the anti-dumping measure
 - the export of the product to Brazil corresponded to a **significant proportion of the total sales** of the producer or the exporter (cont.)





3. Analysis

3.1.2. Producers, exporters and /or importers

- individual analysis of information on producers, exporters or importers to determine whether:
- Case 2: Completion or assembly in third countries (cont.)
 - the export of the product to Brazil began or substantially increased following initiation of the investigation or last review which resulted in the anti-dumping measure
 - the parts, pieces or components account for sixty percent (60%) or more of the total value of the parts, pieces or components of the product exported to Brazil



3. Analysis

3.1.2. Producers, exporters and /or importers

– **Case study: Completion or assembly in third countries**

- ✓ Product subject to anti-dumping duty: **blankets**
- ✓ Product subject to circumvention: blankets manufactured in **Uruguay and Paraguay** (third countries) with **long pile fabrics** (parts, pieces, components) **originating in the country subject to the measure**
- ✓ Long pile fabrics represented **between 77,6% and 98,6%** of total value of parts, pieces and components of the product manufactured in Paraguay and Uruguay and then exported to Brazil.
- ✓ Minor production process in Paraguay and Uruguay (less than 35% of the manufacturing cost of the subject product).
- ✓ Export price lower than normal value of the original investigation.

3. Analysis

3.1.2. Producers, exporters and /or importers

- **individual analysis** of information on producers, exporters or importers to determine whether:

- Case 3: Minor modifications

- the export of the product occurred at **prices below the normal value** determined for the product subject to the antidumping measure
- the export of the product corresponded to a **significant proportion of the total sales** of the producer or the exporter
- the export of the product **began or substantially increased** following initiation of the investigation which resulted in the application of the anti-dumping measure





3. Analysis

3.1.2. Producers, exporters and /or importers

- Case study: **Minor modifications**

- ✓ Product subject to the anti-dumping duty: **heavy plates** (NCM [7208.51.00](#) and [7208.52.00](#)).
- ✓ Products subject to circumvention: **painted** heavy plates (NCM [7210.70.10](#)) and **boron-added** heavy plates (NCM [7225.40.90](#)) originating in the investigated countries.
- ✓ Slighted modified product did not alter final use in comparison with that of the product subject to the measure.
- ✓ Minor differences in the cost of production.
- ✓ Export prices lower than normal value of the original investigation.

Overview

3. Analysis

3.1 Elements to be assessed

3.1.1 Countries of origin

3.1.2. Producers, exporters and/or importers

4. Procedures

4.1. Applications

4.2. Request for information

4.3 Deadline to conclude the review

4.4 Extension of AD measures

4. Procedures

4.1. Applications

- Ordinance SECEX n. 42 of 2013: provides for the information required in applications for anti-circumvention reviews, according to article 79 of Decree N. 8,058 of 2013.
 - Reasoned written application
 - Information supported by evidence, not merely on allegation
- Who may file a petition?
 - an interested party in the original investigation or in the last review of the anti-dumping measure in question
 - exceptionally, *ex officio*



4. Procedures

4.2. Request for information

- **Questionnaires**: may be sent to interested parties
- Deadline to reply:
 - **20 days**
 - may be **extended up to 10 days**
- Producers, exporters or importers who fail to provide the data requested: **best information available**





4. Procedures

4.4. Extension of anti-dumping measures

- As a rule: extension of an anti-dumping measure shall be subject to **individual determination** for each known producer, exporter or importer of the product subject to the anti-circumvention review
 - Large number of producers, exporters or importers:
 - individual determination: **impractical**
 - **selection**: criteria varies according to the type of circumvention (cont.)





4. Procedures

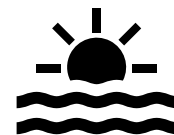
4.4. Extension of anti-dumping measures

- Selection criteria:
 - Case 1: completion or assembly in Brazil
 - **importers** accounting for the largest percentage of the volume of imported parts, pieces or components
 - Case 2: completion or assembly in third countries **and** Case 3: minor modifications
 - **producers or exporters** accounting for the largest percentage of the **volume of exports from the exporting country**

4. Procedures

4.4. Extension of anti-dumping measures

- Amount of extended duty:
 - weighted average dumping margins of original investigation or last review
 - Lesser duty
 - Exclusion of zero or *de minimis* margins
- Subject to sunset reviews



4. Procedures

4.4. Extension of anti-dumping measures

- Known producers, exporters or importers **not included** in the selection:
 - **suspension** of the anti-circumvention review
 - duties not extended
 - If there is **evidence of circumvention**:
resumption of review

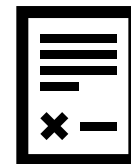
- Producers, exporters or importers with **final negative determinations**:
 - **Not subject** to the extension



4. Procedures

4.4. Extension of anti-dumping measures

- **Unknown** producers, exporters or importers; or
- Producers, exporters or importers included in the selection but that **failed to provide requested data**:
 - Extension based on **best information available**



Thank you!



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