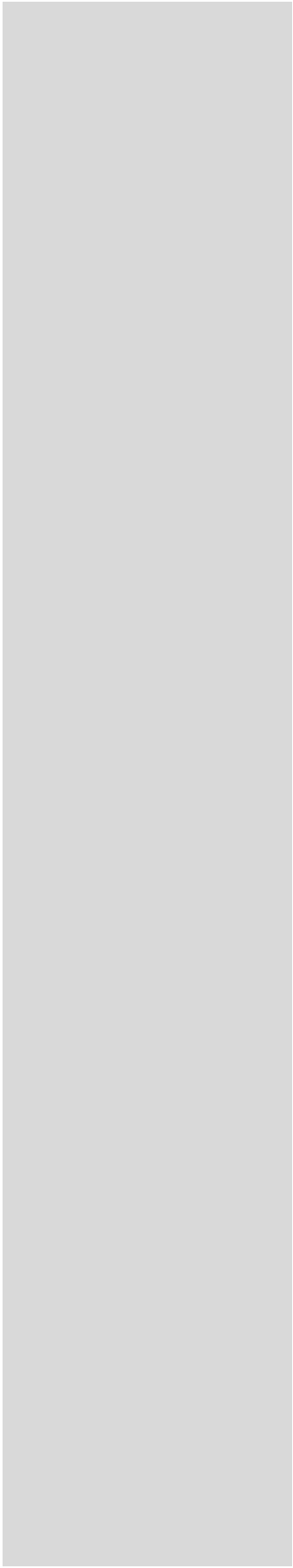




**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Anti-Dumping  
Commission**

Application for a  
review of  
anti-dumping measures



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APPLICATION UNDER SECTION 269ZA OF THE *CUSTOMS ACT 1901*  
FOR A REVIEW OF ANTI-DUMPING MEASURES

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In accordance with section 269ZA of the *Customs Act 1901*(the Act), I request that the Anti-Dumping Commissioner initiate a review of anti-dumping measures in respect of the goods the subject of this application to:

1.  **revise the level of the measures** because one or more of the variable factors relevant to the taking of measures have changed (a variable factors review)

In this case the factors that I consider have changed are:

- normal value  
 export price  
 non injurious price  
 subsidy

The variable factors review is in relation to:

- a particular exporter (if so provide name and country details)  
 exporters generally

*or*

2.  **revoke the measures** because the anti-dumping measures are no longer warranted (a revocation review)

In this case the measure I consider should be revoked is:

- the dumping duty notice  
 the countervailing duty notice  
 the undertaking

The revocation review is in relation to:

- a particular exporter (*if so provide name and country details*)  
 exporters generally

**NOTE**

Where seeking variable factors review as well as a revocation review, indicate this in *both* 1 and 2 above.

**DECLARATION**

I believe that the information contained in this application:

- provides reasonable grounds for review of the anti-dumping measure; and
- is complete and correct to the best of my knowledge and belief.

Signature:

Name:

Position:

Company:

Austube Mills Pty Ltd

ABN:

21 123 666 679

Date

23 JUNE 2017

**Signature requirements**

Where the application is made:

*By a company* - the application must be signed by a director, servant or agent acting with the authority of the body corporate.

*By a joint venture* - a director, employee, agent of each joint venturer must sign the application. Where a joint venturer is not a company, the principal of that joint venturer must sign the application form.

*On behalf of a trust* - a trustee of the trust must sign the application.

*By a sole trader* - the sole trader must sign the application.

*In any other case* - contact the Commission's client support section for advice.

**Assistance with the application**

The Anti-Dumping Commission has published guidelines to assist applicants with the completion of this application. Please refer to the '*Instructions and Guidelines for applicants: Application for review or revocation of measures*' on the Commission's website.

The Commission's client support section can provide information about dumping and countervailing procedures and the information required by the application form. Contact the team on:

**Phone:** 13 28 46 or +61 2 6213 6000 (outside Australia)

**Fax:** (03) 8539 2499 or +61 3 8539 2499 (outside Australia)

**Email:** [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au)

Other information is available from the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

Small and medium enterprises (i.e., those with up to 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the Department of Industry, Innovation and Science's International Trade Remedies Advisory (ITRA) Service. For more information on the ITRA Service, visit [www.business.gov.au](http://www.business.gov.au) or telephone the ITRA Service Hotline on +61 2 6213 7267.

**Required information**

1. Provide details of the name, street and postal address, of the applicant seeking the continuation.
2. Provide details of the name of a contact person, including their position, telephone number and facsimile number, and e-mail address.
3. Name other parties supporting this application.
4. Describe your interest as an affected party (eg are you concerned with the exportation of the goods, the importation of the goods, or part of the Australian industry, or acting on behalf of the Government of an exporting country).
5. Provide details of the current anti-dumping measure(s) the subject of this review application, including:
  - tariff classification

- the countries or companies
- specified date of publication of the measure

6. Provide the names, addresses, telephone numbers and facsimile numbers of other parties likely to have an interest in this matter e.g. Australian manufacturers, importers, exporters and/or users.

**Applications for review of variable factors**

If you are applying for a variable factors review (in box 1 above) provide a detailed statement setting out your reasons. Include information about:

- the factor(s) you wish to have reviewed;
- the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and
- in your opinion the causes of the change and whether these causes are likely to persist.

**Application for a revocation review**

If you are applying for a revocation review (in box 2 above), provide a detailed statement setting out your reasons.

Include evidence in support of your view that there are reasonable grounds for asserting that the measures are no longer warranted. Refer to the "Guidelines for Preparing an Application for Review of Measures" as part of preparing your response. If you consider anti-dumping measures are no longer warranted because of:

- *no dumping or no subsidisation*: provide evidence that there is no dumping, or no subsidy, and why dumping or subsidisation is unlikely to recur if measures were revoked.
- *no injury*: provide evidence that there is no current injury, and there is unlikely to be a recurrence of injury if the measures were to be revoked.

**Lodgement of the application**

This application, together with the supporting evidence, must be lodged in the manner approved by the Commissioner under subsection 269SMS(2) of the Act. The Commissioner has approved lodgement of this application by either::

- preferably, email, using the email address [clientsupport@adcommission.gov.au](mailto:clientsupport@adcommission.gov.au), or
- pre-paid post to:  
The Commissioner of the Anti-Dumping Commission  
GPO Box 1632  
Melbourne VIC 3001, or
- facsimile, using the number (03) 8539 2499 or +61 3 8539 2499 **(outside Australia)**

**Public Record**

During an investigation all interested parties are given the opportunity to defend their interests, by making a submission. The Commission maintains a public record of these submissions. The public record is available on the Commission's website at [www.adcommission.gov.au](http://www.adcommission.gov.au).

At the time of making the application both a confidential version (for official use only) and non-confidential version (public record) of the application must be submitted. Please ensure each page of the application is clearly marked

**PUBLIC FILE**

“FOR OFFICIAL USE ONLY” or “PUBLIC RECORD”. The non-confidential application should enable a reasonable understanding of the substance of the information submitted in confidence, clearly showing the reasons for seeking the review, or, if those reasons cannot be summarised, a statement of reasons why summarisation is not possible. If you cannot provide a non-confidential version, contact the Commission’s client support section for advice.

# APPLICATION FOR REVIEW OF MEASURES

## Austube Mills Pty Ltd

**1. Provide details of the name, street and postal address, of the applicant seeking the review.**

The applicant seeking the review of anti-dumping and countervailing measures applicable to Hollow Structural Sections ("HSS") exported from the People's Republic of China ("China"), Malaysia, Korea and Taiwan is Austube Mills Pty Ltd (subject to Deed of Company Arrangement) (ABN 21 123 666 679).

Austube Mills Pty Ltd ("Austube Mills") is a wholly owned subsidiary of Arrium Limited (subject to Deed of Company Arrangement) formerly OneSteel Limited.

ATM's address and contract details are as follows:

**Head office**

Austube Mills  
Building 7  
Industrial Drive  
Mayfield, NSW 2304  
**Tel:** 1800 281 424  
**Email:** [info@austubemills.com](mailto:info@austubemills.com)

**2. Provide details of the name of a contact person, including their position, telephone number and facsimile number, and e-mail address.**

The relevant contact person(s) at ATM in respect of this application for review of measures is as follows:

**Primary Contact**

██████████  
Trade Measures Manager - Austube Mills Pty Ltd  
146 Ingram Road, Acacia Ridge, Qld, 4110  
Telephone: ██████████  
Facsimile: ██████████  
E-mail address: ██████████

**Alternative contact**

██████████  
Manager Trade Development - OneSteel Manufacturing Pty Ltd  
Level 6, 205 Pacific Highway, St Leonards, NSW 2065  
Telephone: ██████████  
Facsimile: ██████████  
E-mail address: ██████████

This application has been prepared with the assistance of:

Mr John O'Connor  
John O'Connor & Associates Pty Ltd  
P.O. Box 329, Coorparoo Qld 4151  
Telephone: (07) 3342 1921  
Facsimile: (07) 3342 1931



E-mail address: [jmoconnor@optusnet.com.au](mailto:jmoconnor@optusnet.com.au)  
ABN: 39 098 650 241

**3. Name other parties supporting this application.**

Contact details for Australian manufacturers of HSS that support this application as follows:

Orrcon Steel Limited  
121 Evans Road  
Salisbury QLD 4107  
Tel: (07) 3274 0500

The details of personnel to contact:

██████████

Team Leader – Trade Affairs

██████████

██████████

**4. Describe your interest as an affected party (eg are you concerned with the exportation of the goods, the importation of the goods, or part of the Australian industry, or acting on behalf of the Government of an exporting country).**

Austube Mills has an interest as an affected party in relation to this application for a review of measures because Austube Mills is:

- an Australian manufacturer of HSS the subject of measures,
- the original applicant for the imposition of measures in Investigation 177.

**5. Provide details of the current anti-dumping measure(s) the subject of this review application, including:**

**tariff classification**

**the countries or companies**

**specified date of publication of the measure**

Tariff Classification

The goods the subject of anti-dumping measures are hollow structural sections (“HSS”) classified to the following subheadings:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37);
- 7306.61.00 (statistical codes 21, 22 and 25); and
- 7306.69.00 (statistical code 10).

Circumvention goods the subject of anti-dumping measures are classified to the following subheadings:

- 7306.50.00 (statistical code 45); and
- 7306.61.00 (statistical code 90)

Countries/companies the subject of the measures

The current anti-dumping measures, in the form of a dumping duty notice, applying to certain hollow structural sections (the goods) exported to Australia from the People’s Republic of China (China), the

Republic of Korea (Korea), Malaysia and Taiwan (“*the Dumping Duty Notice*”).

The applicant seeks a review of the *Dumping Duty Notice* as it applies to all exporters of the the goods exported to Australia from China, Malaysia, Korea and Taiwan.

Period of Review

The applicant for this review nominates a review period of twelve-months ending 30 June 2017.

Date of publication of the measures

The *Dumping Duty Notice* was published on 3 July 2012 (refer ACDN No. 2012/31).

**6. If you are applying for a variable factors review (in box 1 above) provide a detailed statement setting out your reasons. Include information about:**

- **the factor(s) you wish to have reviewed;**
- **the amount by which that factor is likely to have changed since anti-dumping measures were last imposed, and evidence in support; and**
- **in your opinion the causes of the change and whether these causes are likely to persist.**

***Background***

The anti-dumping measures the subject of this application for review were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of International Trade Remedies Branch Report No. 177 (REP 177). The nominated investigation period for Case 177 was from 1 July 2010 to 30 June 2011.<sup>1</sup>

On 30 September 2013 Review of Measures (ADC 266) - Hollow Structural Sections exported from the Republic of Korea was initiated with the importer Stemcor being the applicant. The findings were published on the 15<sup>th</sup> May 2015 resulting in the dumping margins for Kukje reducing from 3.2% to 0%.

On 09 April 2015 Review of Measures (ADC 285) - Hollow Structural Sections exported from China was initiated with Steelforce Australia Pty Ltd and Steelforce Trading Pty Ltd, being the applicant. As at the date of making this application, a notice declaring the outcome of this review of the notice has not been published.

On 31st October 2016 Review of Measures (ADC 381) - Hollow Structural Sections Exported from China, Korea, Malaysia and Taiwan relating to Alpine Pipe Manufacturing Sdn Bhd was initiated with Croft Steel Traders Pty Ltd being the applicant. As at the date of making this application, a notice declaring the outcome of this review of the notice has not been published.

On 31 October 2016 *Continuation Inquiry No. 379* was initiated regarding the continuation of anti-dumping and countervailing measures. The Commission establish an Inquiry Period from 1 July 2015 to 30 June 2016. The final determination by the Minister for this Inquiry is due on the 26<sup>th</sup> of June 2017. As at the date of making this application the Minister has not published a notice in accordance with subsection 269ZH(2) of the *Customs Act 1901*.

During *Continuation Inquiry No. 379* both Orrcon and Austube Mills raised concerns with the Commission regarding the timing of the inquiry period (i.e. 1 July 2015 to 30 June 2016) coinciding with the lowest iron ore and steel prices since the Investigation Period selected for *Dumping and Subsidy Investigation No. 177*. Following the end of the *Continuation Inquiry Period* steel prices have sharply increased raising a concern

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<sup>1</sup> REP 177 p.20

## PUBLIC FILE

regarding the effectiveness of measures on the basis that any imposed floor price would not be effective in preventing dumping by exporters and material injury to the Australian industry producing HSS. This is because the operation of Australia's anti-dumping system in terms of collection of interim duties is different from other jurisdictions such as the USA which allow for duty to be recovered in the event that a duty is short paid and a liability is found to occur. The only mechanism in the Australian system is the use of a combination method whereby a floor price is imposed at the Ascertained Export Price and any actions by exporters to sell below this imposed floor price incurs an interim dumping duty. Any excess duty is returned to importers in the event that a future *Final Duty Assessment* finds that the normal values decreased sufficiently such that the export price is found to not be a dumped price. In this case excess interim duty paid can be recovered by the importer.

In the case where market prices increase to a level well above the Ascertained Export Price the imposed floor price is rendered ineffective because exporters are able to decrease prices without the collection of interim duty. This prevents the Commission from collecting any additional final duty payable in the event that duty is short paid. In the case of one exporter (██████████) who currently has a dumping margin of █████ percent, Austube Mills is of the opinion that this is already occurring and since January 2017 this particular exporter is selling at substantially dumped prices without any risk of incurring a duty liability (refer Confidential Graph 3).

In order to ensure that remedies are effective in preventing material injury Austube Mills requests that the Commission undertake a review of measures which would be based on a contemporary investigation period and apply contemporary variable factors.

### **Grounds for Review**

Variable factors have changed substantially since the findings of the last completed Review (ADC 266) were published on the 15<sup>th</sup> May 2015. For measures to be effective in preventing material injury to Australian Industry it is important that they are as contemporaneous as possible. The variable factors that have changed since the last published findings of Review of Measures 266 are the:

- ascertained normal value,
- ascertained export price, and
- subsidy.

### Ascertained Normal Value

In previous investigations the Commission estimated that Hot Rolled Coil (HRC) accounted for above 90 per cent of the cost to make HSS and thus is a key determinant of domestic price<sup>2</sup>. Therefore any substantial change in HRC in the domestic market of an exporter would in turn directly influence the Normal Value of that exporter either via those domestic sales found to be in the Ordinary Course of Trade under subsection 269TAC(1) of the *Customs Act 1901*, or the determination of Normal Values under subsection 269TAC(2)(c)(ii).

Confidential Chart 1 shows domestic HRC prices for Korea, Taiwan and China from October 2010 to May 2017 (Source: [REDACTED]). The chart shows that domestic HRC prices in Korea, Taiwan and China have gradually decreased since mid-2011 reaching a low point in the July 2015 to June 2016. Since the end of this period prices have increased as follows:

- Korea from USD [REDACTED] (Jul 15 to Jun 16) to USD [REDACTED] (Jun 16 to May 17) an increase of [REDACTED] %
- Taiwan from USD [REDACTED] (Jul 15 to Jun 16) to USD [REDACTED] (Jun 16 to May 17) an increase of [REDACTED] %
- China from USD [REDACTED] (Jul 15 to Jun 16) to USD [REDACTED] (Jun 16 to May 17) an increase of [REDACTED] %

Data for Malaysian coil prices is not available from [REDACTED] however Austube Mills understands that those prices have followed a similar trend (that is to say, when the proposed review period of June 2016 to May 2017, is compared by the 12-month period ending June 2016). This is supported by Confidential Attachment 3, and expressed in the following extract:

*But recent months, with a recovery in global steel prices and the Malaysian Government's latest safeguard measures on imported steel starting Sept 26, have seen life in the local steel players. Domestic steel prices have gone up by over 10% year-on-year, with steel bars trading at RM1,800-RM1,900 per tonne and wire rods at about RM1,900 per tonne.<sup>3</sup>*

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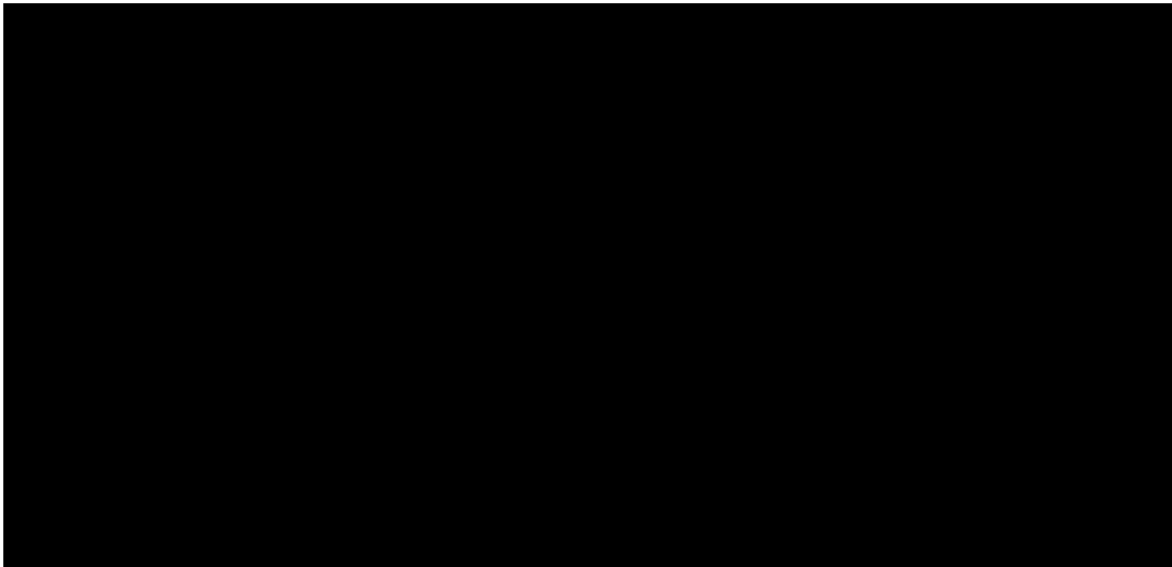
<sup>2</sup> SEF 379 p.19

<sup>3</sup> Confidential Attachment 3 - CPO and steel prices to stabilise in 2017 - Business News \_ The Star Online



**Confidential Graph 1 – Movement in domestic HRC Price for Korea, Taiwan and China (Source: [REDACTED])<sup>4</sup>**

The primary driver for the change in HRC prices is the change in main raw materials for steel making, i.e. iron ore and coking coal. Confidential Graph 2 shows a strong correlation between the movement in iron ore prices and the movement in HRC domestic prices.



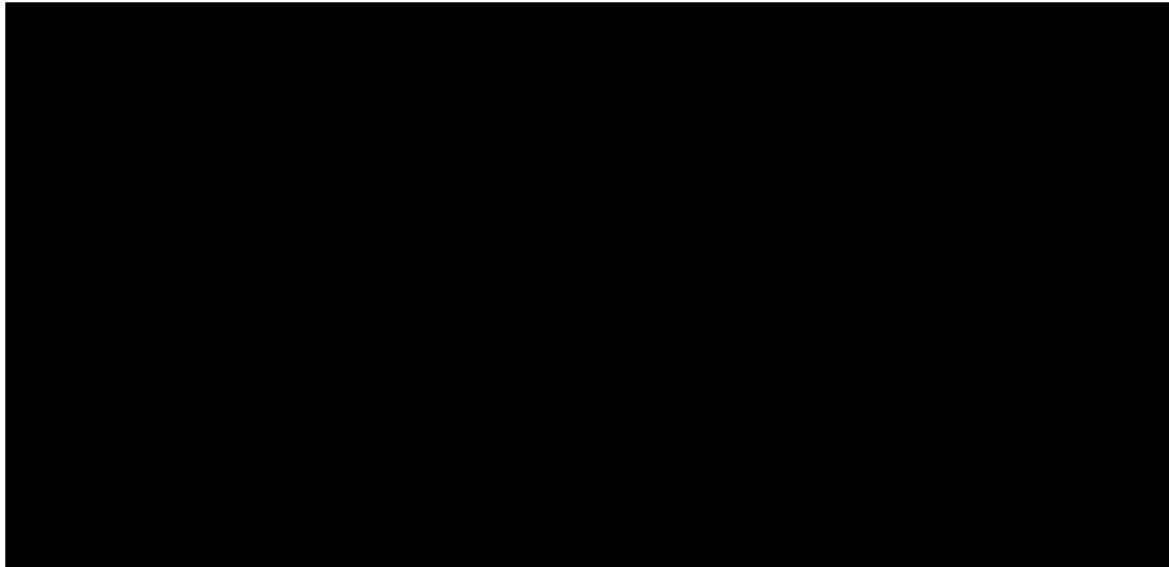
**Confidential Graph 2 – Movement in domestic HRC Price for Korea, Taiwan and China (Source: [REDACTED]) and movement in iron ore price (Source: [REDACTED])**

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<sup>4</sup> Refer Confidential Attachment A

Ascertained Export Price

Similar to domestic prices, export prices are also influenced by raw material prices. Therefore increases in steel price has also influenced increases in export prices from China, Korea and Taiwan. Austube has observed however that export prices have not increased to the same extent as HRC prices and therefore the goods' normal values. This is particularly evident in the case of [REDACTED] as shown in Confidential Graph 3.



**Confidential Graph 3** – [REDACTED] [Confidential export price vs domestic HRC prices]

Confidential Graph 3 clearly demonstrates that as [REDACTED] domestic coil prices converted to Australian Dollars have increased the Australian market offer price for [REDACTED] has increased to a lesser extent. This has resulted in a [REDACTED]% compression in margin over coil from AUD [REDACTED] (Jul 15 to Jun 16) to AUD [REDACTED] (Feb 17 to May 17).

[Confidential market intel]

*Outlook for Raw Material and Steel Prices*

Austube Mills is of the belief that the current level of HSS pricing will be sustained on the basis of the continued strong demand for steel in China driving a continued demand for steel making raw materials and downstream steel products. This is supported by industry analysts which are predicting continued growth in steel demand in China which will in all likelihood sustain steel prices, including HSS prices, at current levels (refer Confidential Attachment 2).

*“Ord Minnett<sup>5</sup> envisages the iron ore market will be broadly balanced this year.”*

*“Pertaining to steel specifically, de frutos<sup>6</sup> wrote that China’s government recently announced plans to build a new urban metropolis from the ground up, which would significantly boost demand for steel and other metals”*

*“Mr Mobius<sup>7</sup> said that he expected steel demand in China to keep on rising, albeit at a slower pace than in earlier years. That outlook is echoed by optimism at some of the top miner, with BHP Billiton and Rio both saying in March there’s potential for more growth in China’s Steel Production”*

<sup>5</sup> Ord Minnett (Ords) is a leading Australian private wealth management group - May 2017

<sup>6</sup> Raul de Frutos Tinoco – Metals Procurement Specialist - April 2017

<sup>7</sup> Mark Mobius – Executive Chairman of Templeton Emerging Markets Group - May 2017

Subsidy

Austube Mills considers that there is substantial evidence of the existence on a new subsidy program in relation to private entities. Austube Mills considers that HRC suppliers considered 'private bodies' are acting under the entrustment or direction of the government or a public body. This is substantiated by the Commission's assessment in relation to the existence of a market situation for the goods in China.

The SEF at section 8.5.2 on p 35 states that Program 20 is reliant on HRC purchases from State invested enterprises.

*The calculation of the benefit received under Program 20 relies up on Tianjin Youfa identifying which of its supplies of HRC are state invested enterprises (SIEs).<sup>8</sup>*

While Program 20 applies to the supply of HRC by State Invested Enterprises at less than adequate remuneration, there exists another Program whereby private entities are carrying out the function of a State Invested Enterprise and are in fact "private bodies entrusted or directed by the government or a public body"

The issue of entrust or direction of private bodies reflects Article 1.1(a)(1)(iv) of the SCM and has been examined in detail by the WTO Appellate Body in *US — Softwood Lumber IV*, *US — Countervailing Duty Investigation on DRAMs* and *US — Anti-Dumping and Countervailing Duties (China)*.<sup>9</sup>

The Commission made the following comment with regards to this question in *Final Report 322*:

*What is evident in all of the WTO subsidy panels concerning subsidy is that determinations of whether an entity is a public or private body, or whether as a private body there is entrustment or direction, and whether a financial contribution has been made is usually a complex exercise where evidence must be carefully evaluated.*

*Concerning a private entity, a finding of entrustment or direction by a government or public body requires the government to give responsibility to a private body or exercise its authority over a private body in order to bring about a financial contribution.*

*The term 'entrusts' has been said to connote 'the action of giving responsibility to someone for a task or an object'. Therefore the responsibility the government has given the entity to 'carry out' any of the functions that are listed in paragraphs (i) to (iii) of Article 1.1(a)(1) of the Agreement on Subsidies and Countervailing Measures (SCM) must be examined. These functions are, in summary:*

- a government practice that involves a direct transfer of funds;*
- government revenue that is forgone or not collected; and*
- a government providing goods or services other than general infrastructure, or purchases goods.*

*In this process inquiry would be made whether this responsibility was achieved by formal or informal means.*

*A private body may have been directed to 'carry out' a function if there is some authority exercised over it by a government or public body. A command is one such means, but there can be means other than a command by which governments can exercise authority over a private body.<sup>10</sup>*

Austube Mills requests that the Commission review the existence of a new subsidy program whereby Hot

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<sup>8</sup> SEF 379 p.35

<sup>9</sup> Appellate Body Report, *US — Anti-Dumping and Countervailing Duties (China)*, at [302].

<sup>10</sup> Final Report 322 p. 72

Hot Rolled Coil is supplied at less than adequate remuneration by HRC suppliers that are 'private bodies entrusted or directed by the government or a public body'.

## 7. Summary

In order to ensure that remedies are effective in preventing material injury Austube Mills requests that the Commission undertake a review of measures which would be based on a contemporary investigation period and apply contemporary variable factors. The last published Review of Measures relating to the original investigation 177 was made on the 15<sup>th</sup> of May 2015. Even in the most recent 12 month period there has been an increase in steel prices including HRC prices caused by an increase in steelmaking raw material prices.

Austube Mills further contends that the export price of certain exporters have not increased by as much as their respective domestic HRC prices and it is considered likely that certain exporters have commenced dumping. Austube Mills requests a review of the *Dumping Duty Notice* as it applies to all exporters of the goods exported to Australia from China, Malaysia, Korea and Taiwan.

Austube Mill also request that the Commission Review the existence of a new subsidy Program whereby Hot Rolled Coil is supplied at less than adequate remuneration by HRC suppliers which are private bodies entrusted or directed by the government or a public body.