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14 May 2021

Panel Member O'Connor  
Anti-Dumping Review Panel  
C/- Legal, Audit & Assurance  
Department of Industry, Science, Energy and Resources  
10 Binara Street  
Canberra City ACT 2601

**By Email: [adrp@industry.gov.au](mailto:adrp@industry.gov.au)**

Dear Panel Member,

**ADRP Review No. 131: HOLLOW STRUCTURAL SECTIONS (HSS) EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA (KOREA), MALAYSIA, TAIWAN AND THE KINGDOM OF THAILAND**

Austube Mills Pty Ltd (**Austube Mills**) provides the following submission to the Anti-Dumping Review Panel (**ADRP**) concerning Review No. 529 (**REV 529**), the revocation of the anti-dumping measures applying to HSS exported from Korea by Kukje Steel Co Ltd (**Kukje**).

Pursuant to s.269ZZJ of the *Customs Act 1901*<sup>1</sup> a person who is an interested party in relation to a reviewable decision may make submissions to the Review Panel in accordance with the notice publicising the Review.

Austube Mills is an Australian manufacturer of HSS and comprises part of the Australian industry manufacturing like goods the subject of REV 529.<sup>2</sup>

References to grounds correspond with those contained in the public notice of Panel Member O'Connor under s.269ZZI dated 16 April 2021.

**1. Likelihood of Dumping recurring or continuing if the measures were to expire**

*The decision of the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the negative dumping margin found during the inquiry was likely to continue beyond the revocation of the measures.*

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<sup>1</sup> All legislative references in this submission are to the Customs Act 1901, unless otherwise stated.

<sup>2</sup> REP529, p.25

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## Summary

Austube Mills submits that there is positive evidence and facts available for the Commissioner of the Anti-Dumping Commission (the **Commissioner**<sup>3</sup>) to be satisfied that revoking the measures applying to Kukje would likely lead to a continuation or recurrence of the dumping the measure is intended to prevent.

The positive evidence and facts available during REV 529 were:

- The constraining effect of the measures limited Kukje's ability to decrease its export prices to increase export volumes;
- The Australian market for HSS is a price sensitive market with pricing linked to sales volumes and market share;
- Kukje's excess capacity;
- Kukje's export focus;
- Kukje's maintenance of distribution networks into Australia;
- Relevant trade actions in other jurisdictions; and
- Relevant dumping findings.

The question for the Commission for considering whether Kukje exports were likely to be dumped, if the measures were to be revoked, was what would be the prime consideration for Kukje in pricing its exports when it no longer had to have regard to anti-dumping measures.

Austube Mills submits that the evidence and facts demonstrate that it is likely that Kukje would reduce its export pricing to secure increased volumes and that those export prices would likely be at dumped prices.

### *Constraining effect of the measures*

Austube Mills submitted to REV 529 that the Commission needed to consider the constraining effect of the existing anti-dumping measures on Kukje's export prices and volumes<sup>4</sup>.

Positive evidence of the constraining effect of the measures included statements by Kukje that:

- *(it) is able to ensure its **exports are not dumped** by developing a price setting model that has regard to the Commission's consistent product comparisons and derives from a regular review of domestic selling prices and costs; and*
- *its export price setting was done having **regard to the existing floor price measure**;*

It is evident that the anti-dumping measures were the prime consideration in Kukje's pricing of its exports.

This is reinforced further in REV 529 where the Commission noted that:

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<sup>3</sup> References to the Commissioner includes references to the Commission.

<sup>4</sup> EPR 529/077

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*The Commission analysed Kukje’s quarterly export prices against the applicable floor price **since May 2015. In the first two years of those measures, Kukje was observed to export at below the floor price and accordingly, duty was payable on those consignments.***

*When Kukje’s floor price measures were revised in July 2017, after REP 379, Kukje began to consistently export above its floor price, with a further divergence from the floor price demonstrated after REP 419 in June 2018.*

*The Commission notes that, since September 2017, Kukje’s weighted average quarterly export price has been consistently above its floor price.<sup>5</sup> (emphasis added)*

It is evident that after incurring interim dumping duties on its exports for the two years following the imposition of a floor price in May 2015 that Kukje adjusted its export prices by having regard to the measures to ensure no interim dumping duties were incurred.

Further evidence of the constraining effect of the measures is that the Commission has noted that Kukje has the spare capacity to increase its exports to Australia<sup>6</sup> but has not done so despite its exports being more profitable than its domestic sales.

It goes against commercial logic for a business whose primary focus is profits to not increase sales to a more profitable market sector unless there was valid concern for doing so.

#### *Price sensitivity and sales volumes*

Austube Mills submits that the reasoning behind Kukje not increasing export volumes are that the Australian HSS market is a price sensitive market with the Commission noting the link between *increased competition on prices to achieve sales volume and market share*<sup>7</sup>.

For Kukje to increase sales volumes would require a decrease in export prices with past evidenced concerns by Kukje of the anti-dumping measures in place. It is evident that Kukje’s behaviour in regard to setting its export prices, which also affects the volumes it can export, has been influenced and constrained by the anti-dumping measures in place.

#### *Excess capacity, export focus and relevant trade actions*

The Commission noted that Kukje has “*had excess capacity to supply the Australian market since the imposition of measures.*”<sup>8</sup>

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<sup>5</sup> REP 529, p.111

<sup>6</sup> REP 529, p.110

<sup>7</sup> REP 529, p.122

<sup>8</sup> REP 529, p.110

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Austube Mills submitted that trade actions in other jurisdictions that affect Kukje are relevant as to the likelihood of dumping continuing or recurring. Kukje's is an exporter of HSS and like goods, with its main export markets being the United States of America (US), Japan and Australia.

Trade actions have affected Korea's and Kukje exports of HSS like products with world export volumes of HSS from Korea declining in absolute terms by 26% and Korean exports to the US declining by 59%<sup>9</sup> from their peak in 2017. REP 529 notes in regard to Kukje's exports that "*Kukje's exports to the US have declined following a peak in exports in the REP 419 review period. **This aligns with the Korean market export activity generally***"<sup>10</sup> (emphasis added).

REP 529 also noted that "it appears that the section 232 trade action has restricted Korea's exports to that market"<sup>11</sup> and that the Report 379 (REP 379), had noted that "*Evidence also obtained during onsite verification shows that Kukje relies heavily on exports of HSS to the United States (US).*"<sup>12</sup> (emphasis added)

Current dumping and other trade remedy actions by other countries applying to Kukje on HSS products, that are similar or like to the HSS the subject of the measures, are:

- The US, with measures applying to RHS and CHS of varying sizes finishes and thickness.<sup>13</sup>;
- Canada, with measures applying to RHS and CHS of varying sizes and finishes.<sup>14</sup>;
- Thailand, with measures applying to RHS and CHS of varying sizes and finishes<sup>15</sup>;
- US Section 232 actions that places a restriction limiting the volume of imports of steel products including HSS from Korea<sup>16</sup>; and
- European Union (EU) Safeguard actions on steel products, including HSS. The EU in announcing the safeguard measures noted **the deflective effect of the US Section 232 actions** that would see export production diverted to Europe<sup>17</sup>;

Austube Mills submitted that the evidence showed that the Global overcapacity in steel market leading to an unprecedented number of global trade actions with the expectation that **displaced export volumes will increasingly be diverted to open markets**<sup>18</sup>. (emphasis added)

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<sup>9</sup> EPR REV 529/054, p.9

<sup>10</sup> REP 529, p.117

<sup>11</sup> REP 529, p.116

<sup>12</sup> REP 529, p. 117

<sup>13</sup> EPR REV 529/054, pps 2-4.

<sup>14</sup> EPR REV 529/054, pps 4-6.

<sup>15</sup> EPR REV 529/054, pps 6-7.

<sup>16</sup> EPR REV 529/054, p. 7.

<sup>17</sup> EPR REV 529/054, pps 7-8.

<sup>18</sup> EPR REV 529/054, pps 8-9.

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The Commission's Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission (2016 Steel Report) found that **ongoing excess capacity is a significant challenge for the global steel industry, particularly in Asia.**<sup>19</sup> (emphasis added)

The OECD Steel Committee at its 86th session in March 2019 expressed its concerns in relation to global steel capacity noting that *"The Committee reiterated concern about persisting structural imbalances in the global steel sector, and emphasised the need to swiftly remove market-distorting policies that contribute to excess capacity"*.<sup>20</sup>

The above evidences that there is a global overcapacity of steel products, including HSS, with trade actions leading to a deflection effect of this spare export production to open markets.

Kukje's traditional export markets are the US, Japan and Australia. Kukje's exports to its major market, the US, have been substantially impacted as noted above. Trade actions noted above restrict Kukje's options of seeking other markets for its exports leaving Australia, as an open market, the prime focus for its exports should the measures be revoked as the prime focus for Kukje's exports.

Austube Mills noted in REV 529 that Kukje stated in its exporter response that:

Export sales to Australia and to third countries are affected by the **different market conditions**, by the nature of the purchasers in those markets, and **by specific factors applying** to each such market<sup>21</sup>. (emphasis added)

Austube Mills contends that trade actions are the key specific factor affecting Kukje's exports.

There is evidence and facts to show that Kukje's exports have been affected by these trade actions through substantially reduced volumes to the US, measures in place in other markets restricting access and increased competition in available open markets restricting access through increased competition from displaced and diverted export volumes.

Austube Mills contends that it is more likely than not, that the revocation of the anti-dumping measures pertaining to Kukje will enable Kukje to lower its prices and recommence dumping, in order to increase export volumes to Australia. This is a reasonable outcome to expect given that Australia will be one of the few remaining open markets for Kukje's exports and given that Australia is a one of Kukje's main export markets.

#### *Relevant dumping findings and maintenance of distribution links*

Relevant dumping findings that evidence whether dumping by Kukje of its exports of HSS would likely continue or recur if the measures were to be revoked include:

- The Commission's statement in REP 379 that "A compelling factor of the Commission's assessment of the likelihood of the reoccurrence of dumping is an assessment of the effectiveness of the current measures.

<sup>19</sup> <https://adcommission.gov.au/adsystem/referencematerial/Documents/Steel.Aluminium.Report.31.August.2016.pdf>

<sup>20</sup> <http://www.oecd.org/sti/ind/86-oecd-steel-chair-statement.htm>

<sup>21</sup> EPR REV 529/015, p.33

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Kukje's export pricing methodology is a positive indication that the imposition of the measures are having their intended effect."<sup>22</sup>

- The Commission's statement in REP 379 that "Kukje ... is being constrained by the imposition of the measures and due to the risks faced by importers potentially having to rely on favourable duty assessments to recover their costs to import and sell should they import from Kukje;<sup>23</sup>
- Kukje has incurred interim dumping duties on its exports for the two-year period from May 2015 as noted above;
- A number of duty assessments applying to Kukje have resulted in partial refunds of interim dumping duties<sup>24</sup> **evidencing dumping during those periods**<sup>25</sup>;
- Kukje has not participated in other relevant duty assessments with one assessment, DA0117, being terminated, **evidencing dumping during those periods**<sup>26</sup>;
- Yearly reviews of the US measures have determined dumping margins for Kukje with the most recent finalised margins ranging from 12.81% to 13.16%. Recent sunset reviews concluded that revocation of the measures would likely lead to a continuation of dumping and material injury<sup>27</sup>;
- The Thai investigation noted above found dumping margins ranging from 3.49% to 53.88%; and
- The Canadian reviews found Korean exporters, were export focused, being highly leveraged to export markets, were dumping whilst measures were in place and were likely to seek other markets such as Canada due to trade actions by other countries if the measures were to be revoked<sup>28</sup>;

The Commission noted in REP "that Kukje has changed its importer customers since REP 379. The concerns expressed by the Commission in REP 379 regarding Kukje's pricing strategy are no longer relevant, given the changed circumstances in the present review period."<sup>29</sup>

Austube Mills had brought to the Commission's attention that "Austube Mills is not aware that Kukje has changed its import customers since REP 379. Austube Mills is aware that there was a change of ownership and name of the **major importer that Kukje has exported HSS to since at least June 2010, but otherwise all other details including relationships, price setting and to an extent, personnel remain the same.**"<sup>30</sup>(emphasis added)

It would appear that the Commission is relying on an erroneous perception that a change in customers has led to a change in circumstances that negates the relevant findings of REP 379 applicable to REV 529 in considering whether the measures should be revoked.

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<sup>22</sup> REP 379, p.56

<sup>23</sup> Ibid

<sup>24</sup> REP 529, p.108

<sup>25</sup> During a duty assessment, the Minister is required to ascertain normal values and export prices to determine dumping margins, s.269Y. Partial refunds evidences a positive dumping margin for those periods.

<sup>26</sup> Where no application is made or an application is terminated the interim duty duties paid are taken to be the final duties payable, s.269YA. No refunds of interim dumping duties paid evidences positive dumping margins for those periods.

<sup>27</sup> EPR REV 529/054, pps 2-4.

<sup>28</sup> EPR REV 529/054, pps 4-6.

<sup>29</sup> REP 529, p.118

<sup>30</sup> EPR REV 529/077, p.12

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Austube Mills submits that the above relevant dumping findings evidence that Kukje is an export focused manufacturer whose pricing behaviour is influenced by the anti-dumping measures in place. Austube Mills further submits that given Kukje's spare capacity, the loss of volumes in its major export market and the price/volume relationship in the Australian market it is likely that Kukje would reduce its export prices to increase export volumes to Australia and that it is likely that those increased export volumes would be at dumped prices.

#### Likelihood of dumping continuing or recurring

Austube Mills contends that it is likely (ie more probable than not) that exports of HSS from Kukje will recur at dumped prices as Kukje seeks to increase its export volumes to Australia. The contention that dumping will recur from Kukje is supported by positive evidence and facts that includes:

- The HSS market is a price sensitive market with decreases in prices resulting in increases in volumes;
- The anti-dumping measures have acted as a constraint on Kukje, following the imposition of measures;
- Kukje is an export focused manufacturer that has lost a substantial portion of its major market;
- Kukje has a history of dumping when anti-dumping measures have been in place in Australia; and
- Kukje has a history of dumping like products to HSS in other jurisdictions.

#### **Conclusion on likelihood of dumping continuing or recurring**

Austube Mills submits that there is positive evidence to demonstrate that the anti-dumping measures have had a constraining effect on Kukje's export behaviour for HSS exports exported to Australia.

Austube Mills submits that the Commission has incorrectly interpreted the negative margins found for Kukje and not fully examined whether that behaviour has been modified by the anti-dumping measures and whether that behaviour will continue were the measures to be revoked.

Austube Mills further submits that the facts and evidence demonstrates that it is likely that dumping by Kukje will continue or recur where the measures are revoked.

#### **2. Material injury, or likelihood of material injury, by dumped exports, continuing or recurring**

*The decision of the Minister to revoke the anti-dumping measures applying to HSS exported to Australia from Korea by Kukje is not the correct or preferable decision as the Commissioner failed to provide the Minister with a sufficient and reasonable explanation why the revocation of the measures would not lead, or be likely to lead, to a continuation of, or recurrence of, material injury.*

#### Price undercutting

Austube Mills submitted to REV 529 that the Commission had significantly departed from the undercutting exercise of the original investigation INV 177 in its price undercutting comparison.

In INV 177 price undercutting was conducted at a macro and micro level.



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### ***'Macro' analysis***

*Customs and Border Protection compared the weighted average monthly selling prices of Australian industry, individual importers and an aggregate of importers. The analysis covered sales of black, painted, pre-gal and HDG finishes over the investigation period.*

### ***'Micro' analysis***

*To obtain a more accurate, though narrower, view of the level of price undercutting, Customs and Border Protection sought to compare prices from different suppliers to major dual-sourcing customers.*

*Using verified sales transaction data for the investigation period, provided by ATM, Orrcon and importers, Customs and Border Protection compared monthly sales prices of HSS to several large Australian Distributors at the individual finish level.*

*This analysis revealed that, over the investigation period, the four major customers examined were consistently purchasing HSS from Australian industry members at higher weighted average monthly prices than the HSS they were purchasing from imported sources.<sup>31</sup> (emphasis added)*

Austube Mills further submitted to REV 529 that:

- Calculation of prices at an Ex-works level would lead to prices that were unrepresentative and unreliable;
- The pricing exercise does not appear to take into account the price premium that Austube Mills may achieve on its sales; and
- A more reliable price undercutting exercise would be to compare sales linked to the import offers and final sales dates for both Austube Mills and the importer.<sup>32</sup>

Austube Mills further submitted that the Commission is required to conduct a price undercutting analysis at the micro level as was done in the original investigation. Such an analysis would demonstrate and evidence a more reliable outcome.

Austube Mills submits to this review that where the Commission conducts a price undercutting and injury analysis exercise in a revocation that significantly departs from the methodology of the original investigation it is required to justify such the reasons it has done so, whether the different methods produces differing results and its reasoning for why it has preferred one method over the other.

Austube Mills submitted that it had provided the Commission with evidence of how Kukje's pricing affected Austube Mills prices and how a change in export pricing by Kukje would likely cause material injury<sup>33</sup>.

The injury factors and effects are material and were, as noted, supported by suitable accounting methods and counterfactual analysis with the evidence for the claims explained.

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<sup>31</sup> REP 177, p.89

<sup>32</sup> EPR REV 529/077, pps14-18.

<sup>33</sup> Confidential version EPR REV 529/077, pps 15-18.



## PUBLIC RECORD

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Austube Mills submits that the Commission's significant departure from the price undercutting methodology of the original investigation without a reasoned explanation for that departure has led to an erroneous and unsound conclusion by the Commission on whether it was likely that material injury would recur or continue if the measures against Kukje were revoked.

### Conclusion

Austube Mills submits that the available evidence supports grounds for the Commissioner being satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the anti-dumping measure is intended to prevent.

Austube Mills further submits that the correct of preferable decision would be for the Minister:

- for the Commissioner to recommend, pursuant to s.269ZDA(1A)(b), that he is satisfied, as a result of the review, that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping and the material injury that the measures are intended to prevent; and
- for the Minister to extend the declaration to Kukje, pursuant to s.269ZDB(1)(a)(iii), that the dumping duty notice is taken to have effect as if different variable factors had been fixed, relevant to the determination of duty.

For and on behalf of the Australian industry member, Austube Mills.