

**PUBLIC FILE VERSION**

Arrium Limited  
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30 November 2014

Committee Secretary  
House of Representatives Standing Committee on Agriculture and Industry  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Via Email: [agind.reps@aph.gov.au](mailto:agind.reps@aph.gov.au)

Dear Sir/Madam

**ARRIUM LIMITED SUBMISSION TO THE STANDING COMMITTEE ON AGRICULTURE AND INDUSTRY – *Inquiry into Australia’s anti-circumvention framework in relation to anti-dumping measures***

Please find attached Arrium Limited’s (“Arrium”) submission to the House of Representatives Standing Committee on Agriculture and Industry’s Inquiry into Australia’s anti-circumvention framework in relation to anti-dumping measures.

The attached submission addresses the Inquiry’s Terms of Reference and details solutions to problems with the current anti-circumvention framework included within Division 5A of the Customs Act 1901.

Arrium looks forward to assisting the Committee with any clarifications concerning the submission. Please direct any questions to myself

Yours sincerely

Stephen Porter  
General Manager Trade Measures

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## **Executive Summary**

Arrium Limited is an Australian ASX listed international diversified mining and materials company with three business divisions: Arrium Mining, Arrium Mining Consumables and Arrium Steel.

Arrium currently employs over 9,000 people (6,000 in Australia). Our Australian employees are predominantly based in regional locations working in Arrium's manufacturing businesses that include OneSteel, Moly-Cop and Austube Mills.

The Arrium manufacturing businesses operate in a very open domestic market, competing with numerous steel manufacturers from a large number of exporter countries.

In an environment that continues to experience excess global steel production capacity, the majority of the import competition is traded unfairly as overseas steelmakers seek to improve production utilisation by dumping their steel into Australia.

To address this unfair trade, Arrium, through its OneSteel business, has made successful anti-dumping applications in recent years with either dumping and/or countervailing measures being applied on a number of products exported from certain countries. Unfortunately however, the effectiveness of the Australian Anti-Dumping system and the aforementioned measures are being undermined via 'circumvention'.

Arrium has identified growing circumvention activities associated with goods that are the subject of measures. This growth has been particularly evident since June 2012.

Lost profitability associated with this circumvention activity is estimated to cost Arrium more than \$[ ]M per annum.

It is Arrium's view that the anti-circumvention provisions of Division 5A of the Customs Act fail to address certain circumvention activities that are currently contributing to the evasion and avoidance of anti-dumping measures. These activities and practices include:

- the modification of exported goods;
- price manipulation activities, including reductions in export price to avoid the intended effect of ad valorem measures;
- investigation time delays sought by exporters and importers to delay the PAD; and
- exports from third countries.

It is Arrium's view that the circumvention activity involving the modification of goods can be addressed administratively by the Anti-Dumping Commission ruling that the modified goods are "alike" to those the subject of the measures. Division 5A requires amendment to address other circumvention activities.

To mitigate the material injury caused to Australian industries by circumvention Arrium recommends consideration of the following:

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- The Anti-Dumping Commission publish guidelines for “Like Goods” investigations that include the imposition of securities from the beginning of the “Like Goods’ investigation.
- Parliament introduces a new Regulation that allows the Commission to investigate circumvention via minor modification.
- The adoption of the Combination Method as the default duty to reduce circumvention via price manipulation.
- Mandatory imposition of securities from day 60 of an investigation to reduce circumvention via time delays.
- The Anti-Dumping Commission to assess and report the appropriateness of applying Retrospective Duties as part of each investigation.
- The Anti-Dumping Commission to utilise existing powers to prevent circumvention by input dumping.

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## **1.0 Introduction**

Arrium welcomes the opportunity to provide this submission to the Standing Committee on Agriculture and Industry's *Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures*.

Arrium supports the Government's commitment to Australia's Anti-Dumping System and welcomes further initiatives and enhancements that strengthen and improve the existing framework. An efficient and effective anti-dumping framework is critical in achieving a fair and level trading environment for Australian industry, particularly those that are heavily trade exposed.

The intended effect of a dumping duty is to remove the injury caused to Australian industry by dumped exports. Attempts by foreign exporters and Australian importers to circumvent anti-dumping measures undermine the intended effect of dumping measures and reduce an applicant industry's confidence in the Anti-Dumping System.

Circumvention (or avoidance) of dumping measures is extremely damaging as it:

- Extends material injury to Australian industry's weakened and disadvantaged by unfair trade;
- Is difficult for Australian industry to detect as offending importers/exporters disguise their actions;
- Defrauds the Australian taxpayer of legitimate dumping duty revenue;
- Undermines confidence in the Anti-Dumping System;
- Rewards exporters who are prepared to avoid legitimate duties; and
- Destroys jobs, stifles Australian Industry's growth and attractiveness for investment.

Circumvention in Australia is being exacerbated by

- Administrative bodies not exercising existing powers to prevent the avoidance of dumping duties.
- The types of anti-dumping duties currently being imposed at the completion of an investigation.
- Gaps in Australia's circumvention legislation.

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## **2.0 Overview of Arrium**

Arrium Limited is an Australian ASX listed international diversified mining and materials company with three business segments: Arrium Mining, Arrium Mining Consumables and Arrium Steel.

Arrium currently employs over 9,000 people across Australia and around the world. Over 6,000 of these people are employed in Australia, working in Arrium's manufacturing businesses that include OneSteel, Moly-Cop, Austube Mills.

OneSteel Manufacturing Pty Ltd ("OneSteel") manufactures approximately 2.0M mt per annum of 'long steel' products at production facilities at Whyalla, S.A., Laverton, Victoria, Newcastle and Western Sydney, NSW. Austube Mills manufactures Hollow Steel Sections at facilities in Melbourne, Newcastle and Brisbane, whilst Molycop manufactures steel grinding media in Newcastle. Arrium is a strong supporter of "competition" but only on the basis that it is "fair competition".

## **3.0 The scope, prevalence and impact of circumvention by foreign exporters and Australian Importers**

There exists a number of ways in which foreign exporters and Australian importers are successfully evading the effect of Australia's intended anti-dumping measures. i.e. to address unfair trade. Circumvention contributes to lost sales volumes, revenues and profit, and poses a real threat to the sustainability of Arrium's domestic manufacturing operations. As an applicant industry that has successfully demonstrated the need for anti-dumping measures to be applied on steel product exports to Australia, Arrium is familiar with a range of different evasion schemes currently in use by certain foreign exporters and Australian importers. For the purposes of this submission, Arrium has identified four of the more prominent circumvention activities:

- (i) Changes to the Product Description
- (ii) Price Manipulation
- (iii) Time Delays
- (iv) Changes to Country of Origin

### **3.1 Avoidance of duties by changes to the product description**

Australian importers have the ability to change the tariff code that the like goods are imported under without changing the nature or function of the product. Customs and Border Protection has the legal authority in the *Customs Act 1901* to collect duties on "Like Goods" that would prevent this type of circumvention. Customs and Border Protection has not yet exercised this authority. The non-collection of duties allows importers to successfully avoid paying dumping duty that has been levied by the Minister, thereby extending material injury that anti-dumping

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measures were intended to prevent. The circumvention of measures on like goods undermines Australian industries ability to compete on a fair basis, stifling investment, growth, jobs and depriving government of legitimate revenue.

A clear and current example of the circumvention of measures involves the import of Hollow Structural Sections (HSS) into Australia from China and Malaysia. Within 6 months of measures being imposed, certain exporters began adding very small amounts of the alloy boron, to the HSS steel. Imports of “alloyed” HSS products increased by approximately 1,000 per cent from 300 tonnes per month to 3,000 to 4,000 tonnes per month. Whilst the addition of micro levels (8ppm) of Boron doesn’t alter the essential characteristics of the goods in any manner, it permits a change to a tariff statistical code from non-alloy to alloy. For a cost of less than \$5/t to add the 8ppm of Boron, foreign exporters are currently evading up to \$100/t in dumping measures.

The addition of Boron in many steel goods is a deliberate circumvention strategy as clearly indicated by the following statement from an Australian importer.

“Confidential quote from Australian importer”<sup>1</sup>

The impact of this duty avoidance is devastating not only to Arrium’s Austube business but to other Australian producers and their suppliers of goods and services.

Since dumping measures were imposed on HSS products in June 2012, more than 54,000 tonnes of HSS has been imported under alloyed codes that Customs and Border Protection has failed to collect dumping duties. In addition to the lost production tonnes, the dumped and subsidised tonnes are depressing all of the Australian industry’s domestic selling prices by approximately 10 per cent that costs the industry in excess of \$[ ]m in profits annually. The deliberate practice of unfair trade has directly led to Arrium’s Austube Mills alone shedding a further [ ] % of its workforce during this period.

In addition to the minor modification of the goods the subject of measures through the addition of certain alloys, there are a number of other known examples of importers changing the tariff classifications in order to evade applicable dumping duties. These include:

- Foreign exporters re-specifying a product without necessarily making a physical change to the product. An example of this is dual specifying HSS as “Line Pipe” so that it can be imported under a different tariff code.
- Foreign exporters applying a primer to steel product so that a change in the tariff classification occurs for the goods from “uncoated steel” to “coated steel”.
- Foreign exporters drilling a hole in the a beam or tube of steel to enable a change of the tariff classification to a ‘fabricated’ steel.

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<sup>1</sup> Confidential correspondence Jan 2014

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By making minor adjustments to products that do not change the performance characteristics of the existing product, foreign exporters are able to avoid the existing dumping duties that have been imposed.

Other jurisdictions have taken actions to defend their domestic industries from unfair trade. The table below lists only those that relate to the addition of boron to steel products.

Date	Product	Exporting Country	Type of Measure	Country taking action
Jul-12	Hot-rolled coil & plate	China & Russia	Import duty	India
Nov-14	Rebar	China & Ukraine	Quality control restrictions	India
Aug-13	Wire rod	China	AD duties	Thailand
Sep-13	Hot-rolled coil, sheet & plate	China	Safeguard duty	Thailand
Mar-13	Cold-rolled coil	China	AD duties	Indonesia
Investigation started Feb 14	Beams	China	Safeguard duty	Indonesia
Jan-11	Boron-added steel products	China	Import duty	Vietnam
Jan-14	Wire rod	China	Import licencing requirements	Malaysia
Jul-14	Flat steel products	China	Like Good	Pakistan
Oct-14	Rebar & wire rod	China	Import duty	Turkey
Decision due Dec 14	Plate	China & Ukraine	Circumvention (boron-addition) enquiry	Brazil

### Recommendations:

1. Adopt operational practices similar to the US "Scope Rulings" that provide guidelines for a "Like Goods" investigation. (Details of scope rulings are discussed later).

To prevent injury from continuing during a "like goods" investigation, importers should be required to lodge dumping securities from the beginning of the investigation. If the Commission determines they aren't like goods, the securities do not need to be paid.

2. Introduce a Regulation that allows the Commission to investigate circumvention activities via minor modification similar to those operating in both the US and the European Union.

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### **3.2 Avoidance of the intended effect of dumping measures via price manipulation.**

At the completion of a dumping investigation, the Parliamentary Secretary has the discretion to apply measures in a number of different forms. These include:

- Ad valorem duty method;
- Floor price duty method;
- Fixed duty or flat \$ per tonne; or
- Combination method of fixed and variable duty method.

The form of measure employed has a significant impact on foreign exporter's ability to evade the intended effect of the duty. The impact of each form of measure is discussed below.

- (i) The ad valorem measure is a duty based on a percentage of the export price. In cases where exporters aren't selling below variable cost, the ad valorem method often fails to have any effect. Foreign exporters simply reduce export prices further, pay less dumping duty and the Australian industry continues to suffer material injury.
  - a. For example: if the ad valorem rate is 3%, the exporter only needs to lower the export price by 2.9% and the impact of the measure is circumvented, material injury to the Australian industry continues and the government collects less duty.
- (ii) A floor price duty is one in which duty is only paid if the declared export price is lower than a nominated floor price. This type of measure is even easier for exporters to avoid and is difficult to detect. Export documents can simply show the export price to be the Floor Price and attract no duty. However the exporter can then easily provide additional discount payments via "rebates" or "target incentives" circumventing the measures. Injury to the Australian industry continues and the government collects no dumping duties.
- (iii) A fixed rate per tonne is also not the most effective type of measure to prevent injury as foreign exporters can again lower the price of the imports by the amount of the dumping duty. Whilst this serves to raise revenue for the government it can fail to prevent material injury from unfair trade from reoccurring.
- (iv) The most effective type of measure to reduce the opportunity for foreign exporters to evade dumping duties via price manipulation is the 'Combination Method' that involves a fixed and variable duty components. With this measure, the floor price component of the method works to ensure the ad valorem rate is not reduced by exporters lowering the price. In particular, it is critical that it applies in a falling price market when industries are more vulnerable to the effects of unfair trade.

To reduce circumvention via price manipulation, it is essential that the Parliamentary Secretary impose measures that are most likely to remove injury caused by unfair trade. Importers always have the opportunity to recover any excess dumping duties they have paid;

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Australian industry receives no compensation for any material injury that it has already suffered.

Arrium has recently been impacted by the imposition of a singular ad valorem rate of duty, with the Anti-Dumping Commission's ("the Commission") view that this is the simplest and easiest to administer. Ease and simplicity are not the criteria that should be used when determining the type of measure; it is its effectiveness in preventing material injury from occurring.

**Recommendation:**

The Combination method duty should be the default measure imposed, unless there are exceptional circumstances.

Exceptional circumstances could include measures being set when prices are at record highs that result from natural disasters that affect raw material prices.

**3.3 Avoidance of the intended effect of dumping measures via time delays**

Circumvention should not only be regarded as an activity that occurs once measures are formally imposed. The avoidance of potential duties is also a circumvention activity as it is an action designed to avoid the intended effect of the duty that in turn damages Australian industry.

For reference the earliest date in an investigation that dumping or countervailing measures can become effective is 60 days from the start of the investigation. The Commission cannot make a Preliminary Affirmative Determination "PAD" imposing provisional measures prior to this date. Once a PAD is issued, Customs and Border Protection requires importers to lodge dumping securities for any inbound shipments of the "like goods". At the end of the investigation, if exporters are found to be dumping, the securities are converted into payment of interim dumping duties. For exporters not been found to be dumping, the securities are cancelled and no payment is required.

Exporters and importers know that if the goods are imported prior to a PAD is issued they are able to avoid potential import duties. This knowledge's leads to types of behaviour designed to avoid the intended effect of dumping duties:

1. Exporters' dramatically increasing exports of dumped goods before a PAD is issued
  - Some foreign exporters rapidly increase exports of dumped goods between the commencement of an anti-dumping investigation and the earliest date that the Commission can require dumping securities, i.e. 60 days from the commencement of an investigation.

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- The Commission currently has the power to address this form of circumvention under Section 269TN. Retrospective notices are able to be imposed if
  - there is an upsurge in volumes before a PAD comes into effect; and
  - the importer knew or ought to have known the product was dumped.

The fact that an investigation has been initiated indicates that there is prima facie evidence that dumping is occurring and that it causing material injury to Australian industry.

- Arrium is not aware of any instances in which the Commission has either invoked this power or even considered the imposition of retrospective duties.

**Recommendation:**

The Commission investigate the appropriateness of Retrospective Duties in each case and report the outcome in the SEF to allow stakeholders to respond.

2. Exporters requesting extensions to delay a PAD

- At the commencement of an investigation the Commission sends questionnaires to foreign exporters to enable the Commission to form its preliminary determinations on whether or not dumping is occurring. Australian importers and foreign exporters routinely seek extensions to return these questionnaires, knowing that this will delay the imposition of a PAD that triggers a requirement for securities to be placed.
- OneSteel has a copy of correspondence from an Australian importer to their customers, advising the customers that the Commission has a history of inability to gather enough evidence in 60 days to be able to issue a PAD. This is done to encourage customers to continue to receive dumped goods before securities are put in place.

*“confidential quote”*

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- The Commission has a record of granting generous extensions to exporters which disadvantages the Australian industry. Other jurisdictions such as the US granting no more than a week and treat any late or incomplete questionnaires as non –cooperative.

**Recommendation;**

If exporter questionnaires are delayed by a week or are incomplete, an automatic PAD should be introduced at Day 60. If there is insufficient data, the Commission should use the dumping amounts provided in the local industry's application. As a PAD only requires securities, no payments are required to be made greater than the actual findings at the completion of the investigation.

**3.4 Avoidance of Duties by changes to the Country of Origin.**

There are a number of variations of circumvention involving changes to the Country of Origin. These include:

- Export of goods through one or more third countries is a well-known type of circumvention activity.

Export of goods through one or more third countries is a well-known type of circumvention activity. In the Australian steel industry this is currently understood to be less of an issue due to the fact that less costly forms of avoiding paying duties have not yet been prevented. eg, adding alloys or dual specifying the like goods to change the tariff classification.

- Export of goods from a third country.

The exporter the subject of measures can arrange for the goods to be exported from a related company in a third country. Alternatively, the Australian importer seeks out suppliers in a third country to supply goods to avoid the applicable measures.

- Input dumping and subsidisation.

Input circumvention describes a circumstance where intermediate raw materials are dumped into the country that then exports finished goods to Australia.

For example: Dumped/subsidised Hot Rolled Coil from China is exported to a SE Asian pipe and tube mill that then exports pipe and tube to Australia

It is acknowledged that this form of circumvention, likely sits outside the reach of the direct circumvention provisions of the Customs Act. However, there is scope to address the incidence of input circumvention through the initial investigation and variable factors review

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processes within the domestic legislation. The potential options would be governed by the particular circumstances occurring in the foreign exporter's domestic market

- a. If the dumped intermediate product (eg HRC) has no measures against it in the country where the finished goods are produced, this will likely artificially lower the price of the finished goods. The Commission has the power to treat this as a "particular market situation under subparagraph 269TAC(2)(a)(ii), and as a consequence adjust the normal value of the exporters finished goods.
- b. If the dumped intermediate product (HRC) does have measures against it in the country where the finished goods are produced, the normal value may not be impacted by the dumped material and as such a particular market situation may not apply. However if the exporter of the finished goods seeks to lower their dumping margin via an adjustment based on "duty drawback", then it has benefited from a subsidy and a countervailing measure should apply.

**Recommendation:**

The Commission utilise existing powers to adopt operational procedures that seek to remove material injury caused by input dumping. This can be done by assessing if there is a particular market situation or whether the exporter is benefiting from a subsidy.

**4.0 The operation of the anti-circumvention framework since its introduction in June 2013 including its accessibility, use by Australian businesses, recent amendments and effectiveness to date;**

Australia's specific anti-circumvention framework was introduced in June 2013 and was designed to prevent or disrupt the circumvention of dumping and countervailing duties. The framework covers the following forms of circumvention activity

- Assembly of parts in Australia.
- Assembly of parts in third country
- Export of goods through one or more third countries.
- Arrangement between exporters
- Avoidance of intended effect of duty.
- Regulations

Whilst the anti-circumvention framework doesn't specifically list "minor modification", it is important to note that the decision not to do so was based on Customs and Border Protection's May 2012 assessment that it was able to address this activity through the existing "like goods" provisions of the *Customs Act* rather than by legislative amendment.

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Arrium's experience to date is that the Australia's anti-circumvention framework has been *ineffective* in preventing circumvention of dumping measures and the subsequent material injury caused by unfair trade. To illustrate this experience below is a timeline of Arrium's communications with both the Commission and Customs and Border Protection in relation to the boron "alloy" issue in HSS.

- In August 2011 Australian Tube Mills (ATM) lodged an anti-dumping application for certain Hollow Structural Sections ("HSS" also commonly known as 'pipe or tube') exported from China, Malaysia, Korea, Taiwan and Thailand.
- At the completion of the investigation in June 2012, the Minister published a dumping and countervailing notice imposing measures on HSS exported from China, Korea, Malaysia and Taiwan.
- In early 2013 ATM began receiving feedback from the market that importers/exporters were circumventing/evading the dumping measures.
- In a July 2013 meeting in Melbourne with the Trade Enforcement Unit "TEU" of Customs, ATM alerted the TEU to the possible use of boron as a method of evading duties on HSS. Advice from the TEU was that this type of issue was a "likes good" issue and that ATM should refer it to the Commission.
- In late August 2013 ATM obtained and forwarded to the Commission import statistics that showed a 1000% increase in volumes of alloyed HSS products (that included boron) that had begun arriving in Australia shortly after the imposition of measures. Confidentiality restrictions on the import statistics made it difficult to determine from which country the imports were originating.
- ATM then obtained Test Certificates that showed that foreign exporters were adding micro amounts of boron (8ppm) in order to change the import tariff classification. The Test Certificates clearly stated that the product was certified to comply with the same Australian Standard that the measures applied to. Copies of these Test Certificates were provided to the Commission.
- From mid-September 2013 Arrium staff met with senior personal within the Commission in Melbourne and Canberra in order to determine the most appropriate course of action to prevent further material injury occurring.
- On 3rd December 2013, ATM formally wrote to the Commission requesting that it alter the dumping notice to allow Customs to collect duties on HSS with Boron on the basis that they are a "like good".<sup>2</sup>

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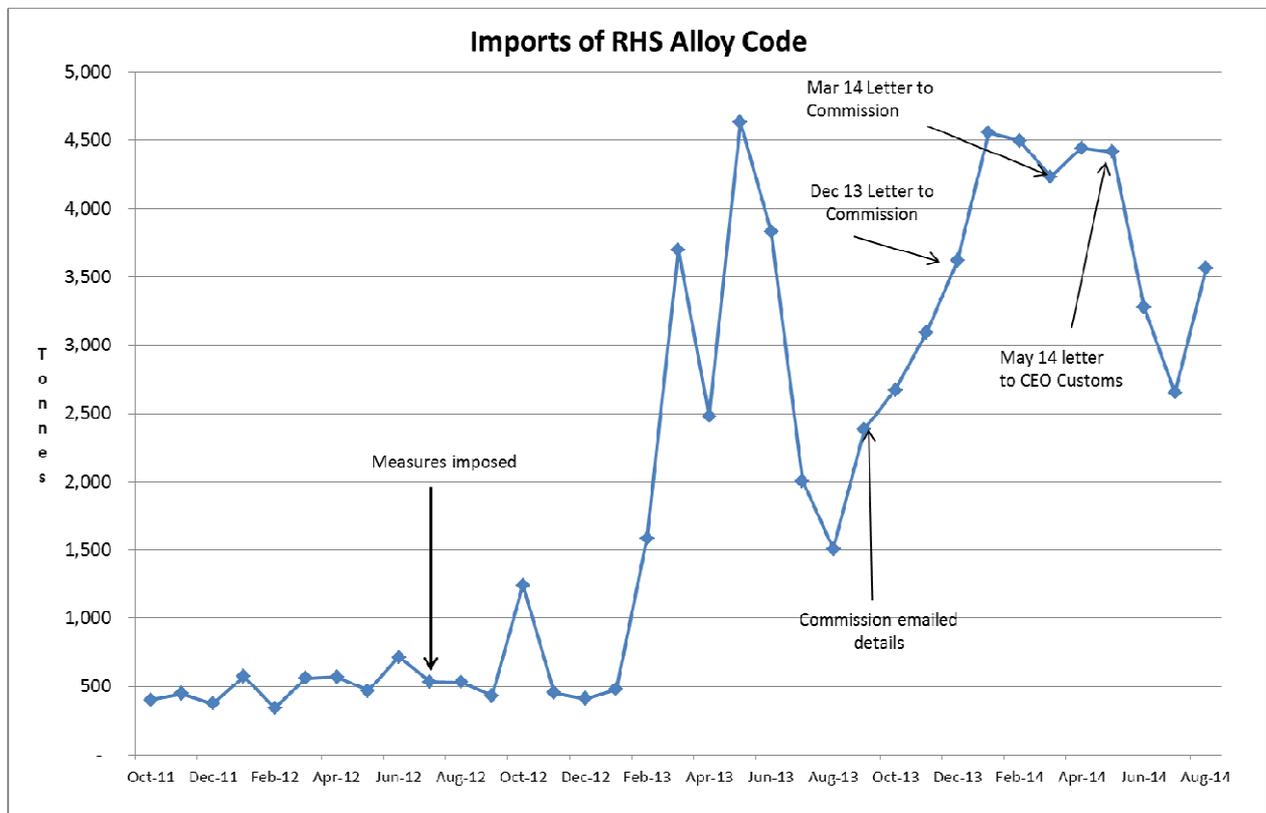
<sup>2</sup> Confidential Correspondence 3/12/13 attached

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- ATM wrote a second letter on the 19th March 2014 to the Commission again urging action to prevent the blatant avoidance of duties and material injury that was occurring.
- In May 2014, ATM then wrote to the CEO of Customs and Border Protection, as the as Head of the agency responsible for collecting duties, requesting that it collect duties for like goods which included HSS with micro amounts of alloys.
- Customs advised on the 22nd September 2014 that it was tasking the Trade Enforcement Unit to investigate the matter.



The fact that 16 months after the Commission was alerted to circumvention via the addition of boron to HSS the practice continues to evade dumping duties, highlights that the current anti-circumvention framework is ineffective in preventing material injury from continuing.

The time chart also highlights that circumvention:

- Occurs within months of measures being imposed.

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- For HSS with Boron to begin arriving in Australia in Jan – Feb 14, importers would have started including it in their offers as early as Sept-Oct 13.
- is not easily detected by the Australian Industry.
  - Imports of Boron were entering for up to 12 months before it was identified.
  - Foreign exporters and Australian importers have the ability to request that Australian import statistics are made confidential hiding the country of origin and masking the circumvention.
- The Commission and Customs and Border Protection are not clear on role responsibility or how to conduct a “like goods investigation”.
  - This is despite Customs and Border Protection forming the position by May 2012 that a “like goods” investigation was the preferred method by which to treat circumvention via minor modification.

## **5.0 Practices that circumvent anti-dumping measures and the models for addressing practices administered by other anti-dumping jurisdictions**

Most of Australia’s trading partners have developed practices for addressing circumvention in order to prevent the extension of material injury to the domestic industries. These range from “scope rulings”, “minor modification” provisions through to “safeguards”.

- Scope Rulings (Like Goods Investigation)

Scope rulings are conducted in the US to clarify whether a particular product falls within the scope of the Like Goods description of the original investigation. In considering whether a particular product is included within the scope of an order, a two -step process is adopted.

(1) Examine the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

(2) If the above doesn’t provide a definitive outcome, the Secretary will further consider:

- (i) The physical characteristics of the product;
- (ii) The expectations of the ultimate purchasers;
- (iii) The ultimate use of the product;
- (iv) The channels of trade in which the product is sold; and
- (v) The manner in which the product is advertised and displayed.

In the US scope rulings appear to be more common than circumvention inquiries and are published quarterly on the Federal register. The majority of scope rulings are assessed by the US administration without a formal inquiry as the agency is empowered to rule on scope coverage.

Arrium is not aware that any US scope rulings have been challenged in the WTO.

- Minor alterations of merchandise.

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A number of jurisdictions such as the US and the European Community include in their anti-circumvention framework a provision to investigation Minor alterations or modifications of products. This is designed to prevent circumvention where an exporter changes the goods in a minor way to avoid the anti-dumping or countervailing duties.

Examples of successful US findings in the steel include

- The addition of boron to carbon steel plate exported from Canada;
- Increasing the amount of chromium in threaded rod exported from China; and
- Slightly reducing the diameter of Wire rod exported from Mexico.

## **6.0 Conclusion**

Arrium appreciates the opportunity to respond to the Standing Committee on Agriculture and Industry's Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.

Arrium recommends to the Committee that the anti-circumvention provisions of Division 5A require amendment to address:

- The modification of goods;
- Price manipulation activities, including reductions in export price to avoid the intended effect of ad valorem measures;
- Investigation time delays sought by exporters and importers to delay the PAD;
- Exports from third countries.

In addition, Arrium recommends that the Commission establish mechanisms that assist Australian industry applicant identify circumvention activities.