



Australian Government
Department of Industry,
Science and Resources

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0086

Precision Pipe and Tube Steel

**Exported to Australia from the People's Republic of
China and the Republic of Korea**

Applicants:

**Pillar Products Pty Ltd and Taskmaster Hardware
Australia Pty Ltd**

11 July 2022

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Abbreviations

Abbreviations/short form	Full reference
ADN	Anti-Dumping Notice
the applicants	Pillar Products Pty Ltd and Taskmaster Hardware Australia Pty Ltd
ARM	Australian Rollforming Manufacturers Pty Ltd
China	the People's Republic of China
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duties	interim dumping duty, interim countervailing duty, dumping duty and countervailing duty
exemption goods	the goods subject of the application as described in section 3.2.
mm	millimetres
Minister	the Minister for Industry and Science
Orrcon	Orrcon Manufacturing Pty Ltd
questionnaire	'Response to Exemption Application' questionnaire
ROK	Republic of Korea

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the commission) following an application by Pillar Products Pty Ltd and Taskmaster Hardware Australia Pty Ltd (the applicants). The application seeks exemption from anti-dumping measures on certain precision pipe and tube steel (the exemption goods). The exemption goods are exported from the People's Republic of China (China) and the Republic of Korea (ROK). Interim dumping duties apply to precision pipe and tube steel exported from China and the ROK. Interim countervailing duties only apply to precision pipe and tube steel exported from China.

The application requests an exemption from interim dumping and interim countervailing duty and dumping and countervailing duties (collectively, the duties) under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act). These sections apply when:

[L]ike or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

This report sets out the commission's findings. The Commissioner of the Anti-Dumping Commission (the Commissioner) relied on these findings to make a recommendation to the Minister for Industry and Science on whether or not to exempt goods from the duties.

1.1 Findings and conclusions

The commission finds that there is no Australian industry producing like or directly competitive goods. Therefore:

- like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade, and
- the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are satisfied.

These findings are based on the application and the Australian industry's response to the 'Response to Exemption Application' questionnaire (questionnaire).

1.2 Recommendation

The Commissioner recommends to the Minister that the exemption goods be exempted from the duties.

1.3 Authority to make the decision

Sections 8(7) and 10(8) set out, among other things, the matters to be considered by the Minister in deciding whether to exercise their discretion to exempt goods from the duties.

¹ A reference to a division or section in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

2. Background and legislative requirements

2.1 The measures

Anti-dumping measures on precision pipe and tube steel exported to Australia from China and the ROK were originally imposed on 27 September 2021. The then Acting Minister for Industry, Science and Technology found that exports from China were dumped and subsidised, and exports from the ROK were dumped, and this caused material injury to the Australian industry.

Anti-Dumping Notice (ADN) Nos 2021/109 and 2021/110 contain details of the measures imposed at that time. The dumping commodity register outlines the measures currently active.

2.2 The goods subject to measures

The goods exported from China and the ROK covered by the current dumping duty and countervailing duty notices are:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres (mm) in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a nominal thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end configurations such as plain, square faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.²

² ADN Nos 2021/109 and 2021/110.

2.3 Tariff classification

The goods subject to measures may be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

Tariff Subheading	Statistical Code	Description
7306		OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:
7306.30.00		Other, welded, of circular cross-section, of iron or non-alloy steel:
	30	Not exceeding 21 mm external diameter
7306.50.00		
	45	<i>Other, welded, of circular cross-section, of other alloy steel</i>
7306.6		Other, welded, of non-circular cross-section
7306.61.00		<i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i>
	21	Wall thickness not exceeding 2 mm

Table 1: General tariff classification for the goods

2.4 Legislative framework for an exemption

The applicants have applied for an exemption under sections 8(7)(a) and 10(8)(a).

Section 8(7) says:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

Section 10(8) says:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

The applicants request that the Minister exercise his discretion to exempt goods from the duties on the basis that like or directly competitive goods are not offered for sale in Australia.

2.4.1 Definition of 'like or directly competitive goods'

Like goods

The term 'like goods' is defined in section 269T(1) of the *Customs Act 1901* (the Customs Act). Section 6 of the Dumping Duty Act says that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of 'like goods' in the Customs Act applies to the commission's assessment of whether the exemption goods are 'like goods' under sections 8(7)(a) and 10(8)(a).

Section 269T(1) of the Customs Act defines 'like goods' as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Chapter 2 of the commission's *Dumping and Subsidy Manual* contains the commission's established policy and practice for like goods. Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the commission will assess whether they have characteristics closely resembling each other. This includes assessing their physical likeness, commercial likeness, functional likeness and production likeness.

Directly competitive goods

The term 'directly competitive' is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts.

Accordingly, case law and relevant dictionary definitions help to understand this term.

Case law suggests assessing a 'direct' relationship is a question of fact and degree.³ Drawing on the Macquarie Dictionary and case law, the commission defines 'directly' as 'excluding that which is indirect or remote;⁴ absolutely; exactly; precisely'.

The Macquarie Dictionary defines 'competitive' as:

- of, relating to, involving, or decided by competition; and
- having a feature comparable or superior to that of a commercial rival.

Based on the above, the commission considers:

- the phrase 'directly competitive' means goods with comparable features that rival each other in a commercial market
- the assessment will be one of fact and degree, and
- the goods will not merely remotely or indirectly compete.

Alternatives to satisfying sections 8(7)(a) and 10(8)(a)

Under sections 8(7)(a) and 10(8)(a), if either like goods or directly competitive goods are for sale in Australia, the exemption requirements will not to be met. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption.

If there are no like or directly competitive goods offered for sale in Australia, then the requirements for exemption in sections 8(7)(a) and 10(8)(a) will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

³ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

⁴ *Ibid.*

3. Exemption inquiry

3.1 Application and initiation

On 29 September 2021, the applicants requested an exemption from the duties for certain precision pipe and tube steel.

The commission accepted the applicants' request as an application for an exemption from the duties. On 18 November 2021, the Commissioner initiated an exemption inquiry by publishing ADN No 2021/141. That ADN provided details of the goods subject to the inquiry and outlined the procedures for the inquiry.

3.2 The exemption goods

The goods (exemption goods) subject to the application for exemption are as follows:

Curtain rods that are [sic] have a 16 mm outside diameter and a 0.4 mm gauge/wall thickness. They come in both powder-coated (Black/White/Ivory) and electroplated (Brushed Chrome).

The curtain rods come in lengths 1.5, 2.0, 2.5 and 3.0 metres, and are individually heat/shrink wrapped and labelled.

The curtain rods are made of A class hot-rolled strip metal comprising of 0.12% Carbon and are made using a roll forming process and a longitudinal welding technique (the exemption goods).

The application states that the exemption goods are generally classified to tariff subheading 7306.30.00 of Schedule 3 to the *Customs Tariff Act 1995*.

3.3 Claims made in the application

The applicants' letter outlined that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The applicants provided email correspondence⁵ with relevant Australian industry members Australian Rollforming Manufacturers Pty Ltd (ARM) and Orrcon Manufacturing Pty Ltd (Orrcon). In that correspondence the applicants asked ARM and Orrcon if they are able to manufacture the exemption goods. Both ARM and Orrcon replied stating that they were unable to manufacture or sell the product requested.

3.4 Claims made in response to the application

On 18 November 2021 the commission invited ARM and Orrcon to respond to the application by completing the questionnaire. ARM did not respond to the commission's invitation.

Orrcon responded to the commission's invitation. It:

- stated that the exemption goods are like goods to those it manufactures
- also stated that it did not oppose the application for an exemption
- requested that the descriptions of the exemption goods be modified to include tolerances on gauge of no more than $\pm 5\%$, and length of no more than $\pm 1\%$.

⁵ EX0086 electronic public record, document 01.

4. Assessment of claims

4.1 Finding

Sections 8(7)(a) and 10(8)(a) state the Minister may grant an exemption from anti-dumping duties where:

[L]ike or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

The commission is satisfied that conditions for granting an exemption are satisfied.

The commission finds that neither like nor directly competitive goods are offered for sale in Australia. In so finding the commission considers:

- the significant difference in gauge thickness between the exemption goods and the goods Orrcon manufactures means they are not like or directly competitive, and
- the exemption description in the application should not be modified.

This is based on the claims made by the applicants, evidence of the product range offered by Orrcon and the fact that Australian industry did not object to granting the exemption when given the opportunity.

4.2 Basis for finding on like or directly competitive goods

The emails provided with the application contained statements from ARM and Orrcon that they could not produce goods that had the same dimensions as the exemption goods. Orrcon also expressly did not oppose the exemption in its response to the questionnaire. However, Orrcon considered the exemption goods to be like goods to those it manufactures. This is despite being unable to manufacture goods to the required gauge of the exemption goods. Orrcon's evidence demonstrates its ability to produce goods to a minimum gauge of 0.9 mm. The gauge for the exemption goods is 0.4 mm.

The commission considers that the physical characteristics such as gauge thickness, diameter and length determine the exemption description of the goods. The commission considers the difference between gauge thicknesses of 0.4 mm and 0.9 mm is sufficiently material to find that the goods are not like, nor are they directly competitive. The commission is therefore satisfied that like or directly competitive goods are not offered for sale in Australia.

4.3 Proposed modification of the exemption description

Orrcon considers the exemption goods description provided in the application may be subject to misuse by importers of the goods. Orrcon proposed in its response to the questionnaire to modify the exemption goods description to include gauge tolerances of no more than $\pm 5\%$ and length tolerances of no more than $\pm 1\%$.

The commission assesses the exemption goods against what the Australian industry offers for sale in Australia. The exempt goods, even with the maximum proposed tolerances applied, are outside the range of goods offered for sale by the Australian industry. It is therefore the commission's view that no modifications to the exemption goods description are required.

4.4 Conclusion

The commission finds that the Australian industry does not offer for sale like or directly competitive goods to the exemption goods. It follows that the exemption goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are satisfied.

5. Recommendation

Based on the commission's examination of the application and submissions made to the inquiry, the Commissioner considers that like or directly competitive goods to the exemption goods are not offered for sale in Australia.

Accordingly, the Commissioner recommends that the Minister exercise their discretion to exempt the exemption goods, being:

Curtain rods that have a 16 mm outside diameter and a 0.4 mm gauge/wall thickness. They come in both powder-coated (Black/White/Ivory) and electroplated (Brushed Chrome).

The curtain rods come in lengths 1.5, 2.0, 2.5 and 3.0 metres, and are individually heat/shrink wrapped and labelled.

The curtain rods are made of A class hot-rolled strip metal comprising of 0.12% Carbon and are made using a roll forming process and a longitudinal welding technique.

from interim dumping duty and dumping duty in accordance with section 8(7)(a), and interim countervailing duty and countervailing duty under section 10(8)(a).

5.1 Effective date of exemption

The date of effect of the granting of an exemption is at the discretion of the Minister. The Dumping Duty Act limits the Minister's discretion to a date not earlier than the date of application for the exemption.⁶

It is the commission's policy to recommend that the date of effect is the date of the application. In this matter, that date is 29 September 2021. The commission recommends granting the exemption have effect from 29 September 2021.

⁶ Sections 8(8A) and 10(9A).