



Australian Government
Department of Industry,
Science and Resources

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0087

Certain Hollow Structural Sections

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

**Applicant:
Pillar Products Pty Ltd**

26 September 2022

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Abbreviations

Abbreviations/short form	Full reference
ADN	Anti-Dumping Notice
the applicant	Pillar Products 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
EPR	Electronic Public Record
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 (the applicant). The application seeks an exemption from anti-dumping measures on certain hollow structural sections (the exemption goods). The exemption goods are exported from the People's Republic of China (China), the Republic of Korea (ROK), Malaysia and Taiwan. Interim dumping duties (IDD) apply to hollow structural sections exported from China, the ROK, Malaysia and Taiwan, except exports by Kukje Steel Co Ltd and Hi-Steel Co Ltd. Interim countervailing duties (ICD) only apply to hollow structural sections exported from China, except for exports by Huludao City Steel Pipe Industrial Co. Ltd, Qingdao Xiangxing Steel Pipe Co and Dalian Steelforce Hi-Tech Co Ltd.

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 hollow structural sections exported to Australia from China, the ROK, Malaysia and Taiwan were originally imposed on 3 July 2012. The then Minister for Home Affairs has found that exports from China, the ROK, Malaysia and Taiwan were dumped.² Hollow Structural Sections (HSS) exported from China was found to be subsidised.³ The dumping and subsidisation of these goods was found to have caused material injury to the Australian industry. Anti-Dumping Notice (ADN) No 2012/31 contains 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, the ROK, Malaysia and Taiwan covered by the current dumping duty and countervailing duty notices are:

Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and non-circular hollow sections. Normally referred to as either CHS (circular or oval hollow sections) or RHS (rectangular or square hollow sections) collectively referred to as hollow structural sections (HSS), including CHS with other than plain ends, such as threaded, swaged and shouldered.

Finish Types:

Galvanised (including in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG)); or Non-galvanised (including, but not restricted to, painted, black, lacquered or oiled finishes).

Sizes:

Circular products – outside diameter exceeding 21 mm up to and including 165.1 mm; or Oval, square and rectangular products – perimeter up to and including 1277.3 mm; that may also be categorised according to minimum yield strength, the most common classifications being 250 and 350 mega Pascals (MPa).

The following goods are excluded from measures:

- Conveyor tube made for high speed idler rolls on conveyor systems with inner and outer fin protrusions removed by scarfing;
- (not exceeding 0.1 mm on outer surface and 0.25 mm on inner surface), and out of round standards (i.e. ovality) which do not exceed 0.6 mm in order to maintain vibration free rotation and minimum wind noise during operation;
- Precision RHS with a nominal thickness of less than 1.6 mm; and
- Air heater tubes to AS 2556.

The following goods are exempt from measures:

Ministerial Exemption Instrument No 1 of 2016

IDD and ICD do not apply to goods subject to Tariff Concession Order (TCO) 1609617 with an effective date of 16 February 2016.

² Except for exports by Kukje Steel Co Ltd and Hi-Steel Co Ltd.

³ Except for exports by Huludao City Steel Pipe Industrial Co. Ltd, Qingdao Xiangxing Steel Pipe Co and Dalian Steelforce Hi-Tech Co Ltd.

- Tubes, square or rectangular, electric resistance welded, complying with Australian/New Zealand Standard 1163:2009 (AS/NZS1163:2009), Grade C350L0 OR C450L0, with a perimeter not less than 1,050 mm and having either:
 - silicon content plus 2.5 times the phosphorus content NOT greater than 0.09%;
 - silicon content greater than 0.14% and NOT greater than 0.24%

Ministerial Exemption Instrument No 3 of 2021

Electrical Resistance Welded Hot-dip Galvanised Shouldered Pipe produced in accordance with American Petroleum Institute Standard Specification 5L. The steel grade for the pipe and the shoulder rings that are welded to both ends of the pipe is API 5L Grade B PSL1. A full penetration fillet weld secures the rings to the ends of the pipe. Following welding, the full length of shouldered pipe is hot-dip galvanised to a minimum zinc coating thickness of 300 g/m²

The exemption goods are also specified according to the following dimensions:

- Outer diameter (mm): 165.1
 - ends tolerance (mm): -0.4, +1.6
 - Wall thickness (mm): 2.5 ± 0.32
- Ring and shoulder:
 - Nominal ring thickness (mm): 4.8 ± 0.15
 - Shoulder outside diameter (mm): 174.5 ± 0.8
 - Ring length (mm): 17.5 ± 0.4
 - Maximum out of square (mm): 1.0
- Length not less than 6,000 mm and not greater than 6,500 mm with a tolerance of -50 mm, +20 mm.

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
7306.30.00	31, 32, 33, 34, 35, 36, 37
7306.61.00	21, 22, 25
7306.69.00	10
7306.50.00*	45*
7306.61.00*	90*

The tariff subheadings (7306.61.00 (90) and 7306.50.00 (45)) only apply to the following exporters/suppliers:

- Dalian Steelforce Hi-Tech Co. (China)
- Tianjin Friend Steel Pipe Co. Ltd (China)
- Tianjin Ruitong Iron and Steel Co. Ltd (China)
- Roswell S A R Ltd (China) and
- Alpine Pipe Manufacturing SDN BHD (Malaysia).

3. Exemption inquiry

3.1 Application and initiation

On 29 September 2021, the applicant requested an exemption from the duties for certain HSS. The commission accepted the applicant's request as an application for an exemption from the duties. On 18 November 2021, the Commissioner initiated an exemption inquiry by publishing ADN No 2021/142. 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 with:

- 25 mm outside diameter in 0.5 mm gauge/wall thickness in both powder coated (White/Ivory/Black) and electroplated (Brushed Chrome).
- 32 mm outside diameter in 0.7 mm gauge/wall thickness in electroplated finish (Brushed Chrome).

The curtain rods come in lengths 2.0 m and 3.0 m, 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 are classified to the tariff subheading 7306.30.00 (statistical code 30) of Schedule 3 to the *Customs Tariff Act 1995*.

3.3 Claims made in the application

The applicant's 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 applicant provided email correspondence⁴ with relevant Australian industry members Australian Rollforming Manufacturers Pty Ltd (ARM) and Orrcon Manufacturing Pty Ltd (Orrcon). In that correspondence the applicant 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 $\pm 1\%$.

Orrcon subsequently rescinded its request for a modification to the exemption goods description.⁵

⁴ EX0087 electronic public record (EPR) document 01

⁵ EX0087 EPR document 04

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.

Appendix A provides further details of the legislative framework for a 'like or directly competitive goods' exemption.

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

The commission finds that neither like nor directly competitive goods⁶ are offered for sale in Australia. The commission considers that the significant difference in gauge thickness between the exemption goods and the goods Orrcon manufactures means they are not like or directly competitive.

This finding considers the applicant's claims, evidence of the product range that Orrcon offers 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.

Orrcon considers the exemption goods to be like goods to those it manufactures. This said, Orrcon is 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 0.5 and 0.7 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 0.7 mm and 0.9 mm is sufficiently material to find that the goods manufactured by the Australian Industry are not like to, or are they directly competitive with, the exemption goods. It follows that the Australian Industry does not sell goods like to, or directly competitive with, the exemption goods.

4.3 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 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. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are satisfied.

⁶ Like or directly competitive goods to the exemption goods.

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 with:

- 25 mm outside diameter in 0.5 mm gauge/wall thickness in both powdercoated (White/Ivory/Black) and electroplated (Brushed Chrome).
- 32 mm outside diameter in 0.7 mm gauge/wall thickness in electroplated finish (Brushed Chrome).

The curtain rods come in lengths 2.0 m and 3.0 m, 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.⁷

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 effective from 29 September 2021.

⁷ Sections 8(8A) and 10(9A).

Appendix A – Legislative framework for a ‘like or directly competitive goods’ exemption

Legislation

Section 8(7) provides:

- (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;

And

Section 10(8) provides:

- (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;

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 provides 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 is applicable to the Commission’s assessment of whether the exemption goods are ‘like goods’ under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

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* embodies the commission’s established policy and practice in relation to 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 including 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, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a “direct” relationship is a question of fact and degree.⁸ Drawing on the Macquarie Dictionary and case law, the commission defines “directly” as:

excluding that which is indirect or remote;⁹ absolutely; exactly; precisely.

The Macquarie Dictionary also defines “competitive” as:

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

The phrase “*directly competitive*” can therefore be taken to refer to 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) of the Dumping Duty Act

The exemption provisions in sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where either like goods or directly competitive goods are not offered for sale in Australia. 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. It is sufficient for there to be either like goods or directly competitive goods for sale in Australia for the requirements of the exemption not to be met.

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) of the Dumping Duty Act 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.

Definition of “custom and usage of trade”

Although the domestically produced goods may be “like or directly competitive goods”, the Minister may still grant an exemption to duties in circumstances where the “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 term “custom and usage of trade” is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines “custom” as:

*a habitual practice; the usual way of acting in given circumstance; and
habits or usages collectively; convention.*

The Macquarie Dictionary defines “usage” as:

customary way of doing; a custom or practice;

⁸ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

⁹ *Ibid.*

*the body of rules or customs followed by a particular set of people;
usual conduct or behaviour.*

As custom can only to be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

*the multiplication or aggregation of a great number of particular instances; but these instances must not be miscellaneous in character, but must have a principle of unity running through their variety, and that unity must show a certain course of business and an established understanding respecting it.*¹⁰

Custom or usage of trade is a term used in common law in the interpretation of implied terms in contracts within a particular trade or industry.¹¹ When considering what is “custom or trade usage” the courts have concluded that:

1. Custom or usage was established mercantile usage or professional practice: *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440; and
2. Evidence of actual market practices was crucial to the existence of a custom or usage. However, universal acceptance was not necessary: *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.

¹⁰ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

¹¹ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.