



Australian Government
Anti-Dumping Commission

Exemption inquiry report: EX0043

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

**Applicant:
ThyssenKrupp Mannex Pty Ltd**

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Abbreviations

Abbreviations	Full reference
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Services
ATM	Austube Mills Pty Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Applicant	ThyssenKrupp Mannex Pty Ltd (TKM)
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
DIBP	Department of Immigration and Border Protection
Exemption goods	The goods subject of the application as described in section 3.3.
Orrcon Steel	Orrcon Operations Pty Ltd
Parliamentary Secretary	The Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science
TCO	Tariff Concession Order
the Act	<i>Customs Act 1901</i>
the goods	The goods the subject of the application

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by ThyssenKrupp Mannex Pty Ltd (TKM) requesting an exemption from dumping duty and countervailing duty (the duties) under paragraphs 8(7)(b) and 10(8)(aa)¹ of the *Customs Tariff (Anti-Dumping) Act 1975*² (the Dumping Duty Act) in relation to the export of certain hollow structural sections from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan.

This report sets out the Commission's findings upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Assistant Minister for Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)³ on whether or not to exempt goods from the duties.

1.1 Recommendation

The Commission has found that the Tariff Concession Order (TCO) relied upon for the purpose of this application under Part XVA of the *Customs Act 1901* (the Act) is no longer in force for the goods the subject of the application. Accordingly, the Commission considers the requirements of paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act for granting an exemption are not satisfied.

That the Commissioner recommend to the Parliamentary Secretary that certain hollow structural sections not be exempted from dumping duty and countervailing duty on the grounds of paragraphs 8(7)(b) and 10(8)(aa).

1.2 Application of law to facts

1.2.1 Initiation of inquiry

After examining the application, the Commission initiated an inquiry on 19 February 2016.

1.3 Findings and conclusions

The Commission has found that the TCO relied upon for this exemption application is no longer in force. The conditions for granting an exemption are therefore not satisfied.

Based on these findings, the Commissioner should recommend to the Parliamentary Secretary that certain hollow structural sections subject to this application not be exempted from dumping duty and countervailing duty.

¹ That a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

² A reference to a division, section, subsection or paragraph in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975*, unless otherwise specified.

³ On 23 December 2014 the Minister for Industry and Science delegated his powers and functions under Part XVB of the Act to the Parliamentary Secretary to the Minister for Industry and Science. On 20 September 2015, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Science. Accordingly, the Parliamentary Secretary is the relevant decision maker with respect to this exemption enquiry.

2. Background

2.1 Original investigation

On 7 June 2012, the Commission completed an investigation⁴ into the alleged dumping and subsidisation of certain hollow structural sections exported to Australia from China, Korea, Malaysia and Taiwan.

The then Minister for Home Affairs accepted the Commissioner's recommendations and found that certain hollow structural sections from China, Korea, Malaysia and Taiwan had been dumped and subsidised and that the dumping and subsidisation had caused material injury to the Australian industry. Dumping and countervailing duty notices were published on 3 July 2012.

Anti-Dumping Notice (ADN) 2012/31⁵ contains details of the measures, including a description of the goods subject to measures.

2.2 Exemption application

On 18 December 2015, Xpress Trade Consulting, on behalf of their client TKM, submitted an application to the Commission requesting an exemption from the duties in relation to its imports of certain hollow structural sections, pertaining to Custom's Tariff Classification 7306.61.00 covered by Tariff Concession Order TC 1332191 (**Confidential Attachment 1**).

TKM's application outlined the following grounds in support of its application for an exemption from the duties on the basis that a TCO was currently in force. Specifically, the applicant provided the following information to support its application:

"Exemption 2 – A Tariff Concession Order (TCO) under Part XVA of the Customs Act 1901 in respect of goods is in force from anti-dumping measures on certain Hollow Structural Sections. The applicant asserted that there is no local manufacturer as evidenced by the fact that the two local manufacturers were applicants of prevailing TCOs."

Additionally, the applicant has claimed that:

"it has in hand an order from OneSteel Metalcentre (group company of one of the local manufacturer) for goods that comply with the wording of TC 1332191, attesting to the fact that the goods are not available from local production".

However, evidence of this claim was not provided in the application.

2.3 Exemption inquiry

On 19 February 2016, the Commissioner initiated an exemption inquiry and published Anti-Dumping Notice (ADN) 2016/16⁶ which advised that an exemption inquiry had been initiated on the grounds that a TCO was in force, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

⁴ See original investigation, details at: <http://adcommission.gov.au/cases/Pages/ArchivedCases/ITR177.aspx>

⁵ See ADN 2012/31 at: <http://adcommission.gov.au/notices/Documents/2012/120607ACDN-HSS-FinalMeasures.pdf>

⁶ See ADN 2016/16 at: <http://adcommission.gov.au/cases/Exemptions/EX%200043/001%20-%20ADN%202016-16%20-%20EX0043%20%20EX0044.pdf>

The Commission identified the Australian industry pertaining to the goods the subject of the application, and invited them to complete the 'response to exemption application' questionnaire (the questionnaire). On 19 February 2016, the questionnaire was provided to the Australian industry, with responses requested to be submitted by 11 March 2016. The specific companies identified as the Australian industry included Orrcon Operations Pty Ltd (Orrcon Steel), Australian Pipe & Tube and Austube Mills Pty Ltd (ATM). Submissions by ATM⁷ and Orrcon Steel⁸ were received on 10 March 2016 and 11 March 2016 respectively, outlining their objections to the exemption request (**Attachments 2 and 3**).

The Australian industry objections were on the basis that they had sought revocation of the TCO the subject of the application (TC1322191), on the grounds that substitutable goods are produced by the Industry.

2.4 Legislative requirements for an exemption

TKM has applied for an exemption pursuant to paragraphs 8(7) (b) and 10(8) (aa) of the Dumping Duty Act.

Subsection 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:
 - ...
 - (b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

Subsection 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:
 - ...
 - (aa) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

In determining whether a TCO in respect of the goods is in force, regard is had initially to whether the goods are correctly classified to the tariff heading to which the TCO is linked. Close scrutiny will then be made of the terms of the TCO to ensure that the goods the subject of the application meet each of those terms. If the goods do more than what is described in the TCO, but otherwise meet its terms and are classified correctly to the tariff heading to which the TCO is linked, legal authority supports the eligibility of those particular goods for that TCO.⁹

⁷ Related-party of Onesteel.

⁸ Related party of BlueScope Steel Group.

⁹ *Robert Bosch Australia Pty Ltd v Collector of Customs*, AAT, 29 August 1986; *Re Klockner Moeller Pty Ltd v Collector of Customs*, AAT, 18 January 1989.

3. The “goods subject to measures” and the “goods subject to the application for exemption”

3.1 The goods subject to measures

The goods exported from China, Korea, 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 in galvanised and non-galvanised finishes.

The goods are normally referred to as either CHS (circular hollow sections) or RHS (rectangular or square hollow sections). The goods are collectively referred to as HSS (hollow structural sections). Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.’

Further detail regarding this description (including products that are not the goods) and the relevant tariff classifications can be found in the final report ¹⁰of the original investigation into the goods.

3.2 Tariff classification

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

7306.30.00 [31, 32, 33, 34, 35, 36 & 37]

7306.61.00 [21, 22 & 25]

7306.69.00 [10]

3.3 Goods subject to the application for exemption

The goods subject to the application for exemption are as referred in TC 1332191:

TC 1332191 *covers the following*

COLUMNS AND/OR BEAMS, hollow OR square OR rectangular shape, steel, complying with, Australian/New Zealand Standard (AS/NZS 1163:2009 grade C450L0), having BOTH of the following:

- a) silicon content NOT greater than 0.06%;*
- b) in EITHER of the following sizes:*
 - i. outside perimeter NOT less than 950 mm;*
 - ii. outside perimeter NOT less than 370 mm and thickness NOT less than 8.1mm*

¹⁰ REP177 refers (<http://adcommission.gov.au/cases/Pages/ArchivedCases/ITR177.aspx>)

4. Goods subject to the Tariff Concession Order (TCO)

4.1 Assessment

On 19 February 2016, the Commission requested the Australian industry to complete a response to the application for an exemption inquiry submitted by TKM.

On 10 and 11 March 2016, the Commission received responses from the Australian industry, specifically ATM and Orrcon Steel respectively. The responses from the Australian industry outlined their objections to the application, and advised the Commission that a TCO revocation request had been made to Australian Border Force (ABF)¹¹ seeking the revocation of the TCO relied upon by the applicant due to substitutable goods being produced by the Industry.

On 24 February 2016, A TCO revocation request pertaining to the TCO subject of the application (TC1332191) was published in the Commonwealth of Australia Gazette No. TC 16/07. The ABF was required to provide a decision on whether to revoke the TCO request within 60 days of the date it received the request, being 15 February 2016.

Subsequently, a notice pursuant to subsection 269SE (1) of the Act was gazetted by the ABF on 9 March 2016¹² revoking the TCO relied upon for this application. The following reasons for the revocation were provided:

“Substitutable goods produced in Australia in the ordinary course of business by Austube Mills, Acacia Ridge, QLD. In transit provisions apply.”

The date of effect of the TCO revocation is 15 February 2016, which precedes the date of the initiation of the exemption inquiry.

As such, the Commission has found that the TCO relied upon by the applicant (TC1332191) for the purpose of this exemption request is no longer in force, due to a successful TCO revocation request by the Australian industry.

Accordingly, the conditions for granting an exemption on the grounds that that the TCO in respect of the goods is in force are not satisfied¹³.

4.2 Conclusion

The Commission recommends that the Parliamentary Secretary not exempt the goods the subject of the application from the duties pursuant to paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act, as the TCO relied upon by the applicant in its application is no longer in force.

¹¹The ABF was established on 1 July 2015 as a result of the merger of Australian Customs and Border Protection Services (ACBPS) and the Department of Immigration and Border Protection (DIBP).

¹² Commonwealth of Australia Gazette no. TC16/09, Wednesday, 9 March 2016, p.9.

¹³ Part XVA of the *Customs Act 1901*.

5. Confidential attachments

Confidential attachment 1	Exemption Application
Confidential attachment 2	Australian Industry Questionnaire response – Austube Mills Pty Ltd
Confidential attachment 3	Australian Industry Questionnaire response – Orrcon Operations Pty Ltd