

# **RESPONSE TO APPLICATION FOR EXEMPTION FROM DUTY UNDER THE *CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975***

## **1 Introduction**

The Anti-Dumping Commission (the Commission) requests your response to an application for exemption from anti-dumping and countervailing measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Paragraphs 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide a discretion for the Minister (or his or her delegate) to exempt goods from measures, where he or she is satisfied 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 Commission has received an application for exemption from anti-dumping and countervailing measures in respect of hollow structural sections (HSS) for the goods described at section 5 of this form (the exemption goods).

You have been identified from the Commission's original investigation in respect of HSS as an Australian producer of the goods.

The Commission seeks your assistance in this exemption inquiry by responding to the questions in this form. The Commission will use the information you provide in its assessment as to whether an exemption from dumping and countervailing duty may be recommended to the Parliamentary Secretary to the Minister for Industry, Innovation and Science (as the relevant delegate of the Minister).<sup>1</sup>

## **2 Measures on Hollow Structural Sections**

In June 2012, the Commission completed an investigation into the alleged dumping and subsidisation of HSS exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia, Taiwan and the Kingdom of Thailand.

The then Minister for Home Affairs accepted the Commission's recommendations that HSS from China, Korea, Malaysia and Taiwan had been dumped and/or subsidised and that dumping and subsidisation had caused material injury to the Australian industry. Anti-Dumping Notice (ADN) No. 2012/31 was published notifying of this decision on 3 July 2012.

ADN No. 2012/31 contains details of the measures, including a description of the goods subject to the measures.

The reasons for the Minister's decision in this case are contained in International Trade Remedies Report No. 177 (REP 177).

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<sup>1</sup> 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.

### **3 Application for Exemption from Measures**

On 16 June 2015 Hunter Valley Signs Pty Limited trading as Hi-Vis Signs & Safety (Hi-Vis), wrote to the Commission requesting an exemption from measures in relation to its imports of certain HSS. The Commission accepted the application and advised that it would undertake an examination of the application to determine whether an exemption from duty should be recommended.

The Commission initially assessed the application under the statutory criterion that allows an exemption to be granted if a tariff concession order in respect of the goods is in effect. This assessment included seeking the views of Australian industry.

The applicant subsequently provided a submission on 4 November 2015 seeking to address a different statutory criterion, namely whether 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. This request for information relates to claims made in the applicant's 4 November 2015 submission. The Commission has not yet formed a view as to whether this submission will be considered as an amendment to the applicant's June 2015 application or as a new application.

### **4 Exemption Provisions**

The Dumping Duty Act provides a discretion for the Minister to exempt goods from dumping and/or countervailing duties if one of the criteria in subsections 8(7) and 10(8) is met. The relevant parts of subsections 8(7) and 10(8) for current purposes are set out below.

#### **Subsection 8(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;
- ...

#### **Subsection 10(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 exemption provisions are subject to the discretion of the Parliamentary Secretary and an exemption is not automatically granted, even where one of the criteria in the provisions is met.

### **5 The goods subject to the exemption application**

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

Carbon steel road sign-posts having all of the following characteristics:

- (i) *Electric resistant welded pipe;*
- (ii) *Cold drawn (manufacturing process);*
- (iii) *Hot-dipped galvanised (zinc galvanised finish);*
- (iv) *Carbon steel non alloy (materials);*
- (v) *C250 LO or lighter C350 LO materials;*
- (vi) *Circular hollow sections (otherwise generally described as pipes or tubes);*
- (vii) *With a cross section diameter of 60.3mm*
- (viii) *Cut to lengths of 3.2m, 3.25m, or 3.9m;*
- (ix) *A wall thickness between 2.9-3.2mm;*
- (x) *Manufactured to Australian Standard AS1163;2009 (Cold-Formed structural steel hollow sections);*
- (xi) *Finished by hot-dip galvanised (zinc) coating to Australian standard 4680 (Hot-dipped galvanised (zinc) coatings on fabricated ferrous articles) with an average zinc coating of 40 microns;*
- (xii) *With a tensile strength of 235-240 mpa; and*
- (xiii) *Ends drilled prior to hot-dipped galvanizing.*

#### **Goods produced by the Australian industry**

The applicant has provided information and evidence to support its claim that goods produced by the Australian industry are not like or directly competitive to the exemption goods. You should refer to the applicant's 4 November 2015 submission on the Commission's website for details of the information and evidence provided by the applicant.

#### **6 Instructions on completing this 'Response to the Exemption Application'**

The Commission's HSS investigation, completed in July 2012, identified your company as an Australian producer of HSS.

Consequently, the Commission has forwarded you this 'response to exemption application' (the response) to provide you with the opportunity to participate in this exemption inquiry.

The Commission will use the information provided by Australian producers to determine:

- whether like or directly competitive goods are offered for sale in Australia, and
- whether offers for sale of the goods are available to all purchasers on equal terms under like conditions having regard to custom and usage of trade.

#### **Due date for response**

We request that you complete your response and return it to the Commission by **22 December 2015** – *21 days after sending the questionnaire.*

Responses may be lodged either by mail or by email to the following:

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Director Operations 9  
Anti-Dumping Commission  
Industry House  
10 Binara Street  
Canberra ACT 2601  
Australia

Email: [Operations9@adcommission.gov.au](mailto:Operations9@adcommission.gov.au)

### Verification of the information that you provide

The Commission may seek to verify some or all of the information that you provide. The Commission may request evidence, such as quotations and offers of sale, to support any claims you make.

An onsite visit by the Commission may be required in some cases. A report will be prepared of visits conducted and a non-confidential version will be placed on the public record.

There is no legislative timeframe for completion of an exemption inquiry, however a recommendation to the Parliamentary Secretary will be made as soon as practicable after obtaining all the relevant information.

### Confidential and non-confidential submissions

We request that you also lodge a non-confidential version of your response suitable for placement on the public record.

Please ensure that each page of any response you provide is clearly marked either "FOR OFFICIAL USE ONLY" (for the confidential version of your response) or "PUBLIC RECORD" (for the non-confidential version of your response).

All information provided to the Commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the public record.

### Outline of information required by the Response

<b>Part A</b>	Company information
<b>Part B</b>	Response to exemption application
<b>Part C</b>	Identical goods
<b>Part D</b>	Like or directly competitive goods
<b>Part E</b>	Capability to produce like or directly competitive goods
<b>Part F</b>	Additional comments
<b>Part G</b>	Your declaration

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## Response to Exemption Application

### PART A – Company Information

A.1 Please provide the following company contact information;

Name:	Brett Willcox
Position in company:	Manager – Operations & Support Services Austube Mills
Address:	[REDACTED]
Telephone:	[REDACTED]
Facsimile number:	[REDACTED]
E-mail address of contact person:	[REDACTED]

### PART B – Response to Exemption Application

#### B.1

Does your company oppose or not consent to the request for an exemption?]

**NOTE: If your company does not oppose the request for an exemption, you do not need to complete all parts of the questionnaire. Please indicate that you do not oppose the request (stating the reasons why), answer the questions that are relevant to your reasons for not opposing the request, sign and return the form as soon as possible.**

Austube Mills Pty Ltd ('ATM') is opposed to the granting of an exemption from anti-dumping and countervailing measures for the nominated goods.

### PART C – Identical Goods

#### C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this 'Response to Exemption Form'?

If no, go to Part D - Like or directly competitive goods.

ATM does not produce goods that are identical in all respects to the exemption goods description due to the descriptor term "cold drawn". [REDACTED]

[REDACTED] Confidential further advice.

It should be pointed out that the exemption goods description is flawed if not self-contradictory. This is exemplified by the requirements of:

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(ii) *Cold drawn (manufacturing process)*. This process is not required. The Commission has received previous submissions from Hi-Vis (specifically EX0042 Doc. No. 006) which notes that their fabricated HSS requirements must meet the Roads and Maritime Services Post Design Standard ('**RMS Standard**'). The RMS Standard is based on AS/NZS 1163:2009 and cold drawn HSS product would not be compliant with AS/NZS 1163 nor the RMS Standard. In our recent discussions with officers from Border Force and previous correspondence with the Commission, the cold drawn manufacturing process requirement is an overkill for such applications as used by the RMS Standard. ATM doubts that Hi-Vis understands the difference between "cold drawn" and "cold rolled". The latter term is listed in the Tianjin Qunshengda Steel Pipe Co., Ltd Test Certificate contained in EX 0042 Doc.No. 001.

(v) *Grade C250 LO or lighter C350 LO material*. Grades C250L0 and C350L0 are AS/NZS 1163:2009 grades and not listed as these grades in any other national/international HSS Standard.

(x) *Manufactured to Australian Standard AS1163;2009 (Cold-Formed structural steel hollow sections)* . This is the primary HSS Standard referred to by the RMS Standard and, as noted in (ii) above, AS/NZS 1163:2009 does not permit cold drawn HSS.

(ix) *A wall thickness between 2.9-3.2mm*. The 3.2 mm thickness is incorrect. For 60.3 mm Outside Diameter ('**OD**') HSS, the RMS Standard specifically notes 2.9 mm wall thickness for 60.3 mm OD HSS in Grade C350L0 and 3.6 mm (not 3.2 mm) wall thickness for the lower strength 60.3 mm OD HSS to Grade C250L0. ATM offers these OD-wall thickness-grade combinations as per the RMS Standard and can also offer HSS to the Hi-Vis exemption goods description range of 2.9-3.2 mm.

(xii) *With a tensile strength of 235-240 mpa*. HSS with this tensile range would be understrength and not be compliant with the RMS Standard nor AS/NZS 1163:2009 Grades C250L0 or C350L0. ATM can also supply to the strength requirements indicated by the Hi-Vis exemption goods description.

### C.2

Please provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

### C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so,

provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

## **PART D – Like or Directly Competitive Goods**

### **D.1**

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

In determining whether the goods are like or directly competitive, the Commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The Commission may also consider;

- whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance, grade, standards, age, strength and purity);
- whether the goods are commercially alike, this may include consideration of the following;
  - whether the goods directly compete in the same market sector;
  - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption;
  - how the price of the goods and goods subject to the application influences consumption;
  - whether the goods share similar distribution channels; and
  - whether the goods are similarly packaged.
- functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of;
  - the extent to which the goods are functionally substitutable;
  - the extent to which the goods are capable of performing the same or similar function;
  - whether the goods have the same or similar quality standards; and
  - consumer behavior in relation to the goods and goods subject to this application for exemption.
- production likeness, this may include an assessment of;
  - the extent to which the goods are constructed of the same or similar materials;
  - the manufacturing process of the goods; and
  - whether any patented processes or inputs are involved in the production of the goods.

Yes. ATM produces like or directly competitive goods. Subject to the points noted in Section C.1, following the manufacture of Hollow Structural Sections ('HSS') and prior to downstream processing and coating application, ATM produces goods in all respects of the HSS as noted in the exemption goods description. After HSS



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manufacture, a steel distributor or fabricator can cut to the lengths required and have the ends drilled. A hot-dip galvanizing company can then hot-dip galvanize the fabricated HSS to AS/NZS 4680. Many Australian hot-dip galvanizing companies can also provide end drilling operations prior to galvanizing.

D.2

If you answered yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

Characteristics	Description
As the Commission is aware from previous verification visits and ATM product literature, ATM uses the electric resistance welding process to manufacture HSS.	(i) electric resistance welded pipe
As noted in Section C.1, ATM questions if the Hi-Vis is using the correct term as AS/NZS 1163:2009 does not permit "cold drawn" HSS it considers "cold-forming" (or "cold rolling") which ATM does supply to.	(ii) Cold drawn (manufacturing process)
ATM can supply HSS products that are pre-galvanised or hot-dip galvanised by other Australian manufacturers.	(iii) Hot-dipped galvanized (zinc galvanised finish)
As the Commission is aware from previous verification visits and ATM product literature, ATM processes carbon steel non-alloy hot-rolled coil to manufacture HSS.	(iv) Carbon steel non-alloy (materials)
ATM primarily manufactures HSS to AS/NZS 1163:2009. Grades C250L0 and C350L0 are two strength grades in that Standard. ATM can manufacture and supply both Grades C250L0 and C350L0. See below also.	(v) C250L0 or lighter Grade C350L0 materials
ATM primarily manufactures HSS to AS/NZS 1163:2009. Amongst other shapes, ATM can manufacture circular hollow sections. See below also.	(vi) Circular hollow sections (otherwise generally described as pipes or tubes)
Amongst other outside diameters, ATM can manufacture circular hollow sections with a cross section diameter of 60.3 mm. See below.	(vii) With a cross section diameter of 60.3 mm
Post-HSS manufacture processing by Australian industry (distributor, fabricator) – see Section D.1 and below can provide HSS cut to lengths of 3.2m, 3.25m, or 3.9m.	(viii) Cut to lengths of 3.2m, 3.25m, or 3.9m



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Amongst other wall thicknesses, ATM can manufacture circular hollow sections with a wall thickness range of 2.9-3.2mm. Note that the RMS Standard requires a wall thickness range of 2.9-3.6mm which ATM can manufacture to. See below.	(ix) A wall thickness between 2.9-3.2 mm
As noted, ATM primary HSS manufacturing Standard is AS/NZS 1163:2009 and ATM can supply HSS products to that Standard.	(x) Manufactured to Australian Standard AS/NZS 1163:2009 (Cold-formed structural steel hollow sections)
Post-HSS manufacture by Australian industry (hot-dip galvaniser) – see Section D.1 and below can provide hot-dip galvanised HSS to AS/NZS 4680. Note that this Standard requires more than 40 microns average coating thickness for the HSS wall thickness noted in (ix).	(xi) Finished by hot-dip galvanized (zinc) coating to Australian standard 4680 (Hot-dip galvanised (zinc) coatings on fabricated ferrous articles) with an average coating of 40 microns.
ATM can manufacture to HSS with tensile strengths of 235-240 MPa. However, as noted in C.1, this is not a strength grade in AS/NZS 1163 and will not comply with AS/NZS 1163 nor the RMS Standard. See Section C.1.	(xii) With a tensile strength of 235-240 mpa
Post-HSS manufacture processing by Australian industry (distributor, fabricator, hot-dip galvaniser) – see Section D.1 and below can provide HSS with ends drilled prior to hot-dip galvanising.	(xiii) Ends drilled prior to hot-dipped galvanizing

Please provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature concerning the like or directly competitive goods you produced and sold.

For the HSS goods noted in Section D.1, the attached Production Report (**Confidential Attachment A**) notes the 60.3 mm OD HSS manufactured by ATM during the period 1 December 2014 to 30 November 2015. In that attachment:

- the 50 NB (NB = nominal bore) term refers to the 60.3 mm OD HSS
- MED (for “Medium”) refers to the 2.9 mm wall thickness
- LGT (for “Light”) refers to the 3.6 mm wall thickness.

Both these HSS products comply with the RMS Standard requirements prior to hot-dip galvanizing and processing after HSS manufacture.

We also attach:

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- five Tax Invoices for sales of the above HSS product during the abovementioned period (**Confidential Attachment B**).
- the ATM Product Availability Guide (PAG) – see **Attachment C**. Please specifically see pages 3 to 5 inclusive of the ATM PAG which lists the RMS Standard HSS products as well others
- the letter of support from the Galvanizers Association of Australia (GAA) – see **Attachment D**.

ATM is limited to provide commercial documentation for HSS products and reference should also be made to **Attachment D** for the industry perspective.

### D.3

Provide evidence of the terms and conditions of sale of these like or directly competitive products. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

The terms and conditions of sale for ATM HSS goods to ATM distributors, which [redacted] [Commercial Structure] distribution business, are equal and under like conditions. Please see our response to this item in our previous submissions to the Commission which, of late, includes:

- The Anti-Dumping Application by ATM for the investigation of HSS goods from the Kingdom of Thailand (Commission Case No 254).

Additionally, please see the GAA letter of support as noted in **Attachment D**.

Coupled with Australian industry, ATM has a broad network of HSS distributors that can offer the exemption goods on equal terms and under like conditions as like and substitutable goods.

## PART E – Capability to Produce Identical or Like or Directly Products

### E.1

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

ATM are capable of producing the goods subject to this application as noted in Parts D.1, D.2 and D.3 above.

**E.2**

If you answered yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

See Parts D.1, D.2 and D.3 above.

**E.3**

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

ATM are capable of producing the goods subject to this application as noted in Parts D.1, D.2 and D.3 above.

**E.4**

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

ATM are capable of producing the goods subject to this application as noted in Parts D.1, D.2 and D.3 above.

**PART F – Additional Comments**

**F.1**

Provide any additional comments including any other information that will assist Commission in reaching a recommendation to the Parliamentary Secretary regarding this application for exemption.

**PART G – Declaration**

I hereby declare that.....(company)  
has completed the attached response to application for exemption and,  
having made due inquiry, certify that the information contained in this

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submission is complete and correct to the best of my knowledge and belief.

**Name** :..Brett Willcox.....

**Signature** :

**Position in  
Company** :..Manager – Operations & Support Services..

**Date** :..21 December 2015 .....

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