

24 March 2023

Mr Tim King
Anti-Dumping Commission
GPO Box 1632
Melbourne Victoria 3001

Public File

Dear Mr King,

Anti-Dumping Exemption Inquiry 96 (EX0096) – Hollow Structural Sections from China, Korea, Malaysia, and Taiwan

1. Introduction

Orrcon Manufacturing Pty Ltd (**Orrcon**) is a member of the Australian industry manufacturing hollow structural sections (**HSS** and/or **the goods**). Orrcon refers to the recent public file submission by the applicant to EX0096, and makes the following comments.

2. Inadequate exemption goods description

The goods the subject of EX0096 (**the exemption goods**) have been simplistically defined by the applicant as circular chrome plated tube of 25 millimetre (**mm**) outside diameter, and oval chrome plated tube of 30 x 15mm. Orrcon has maintained throughout the course of this inquiry that this description is insufficient for the Anti-Dumping Commissioner (**the Commissioner**) to adequately assess whether a recommendation should be made to the Minister to grant the exemption.

Section 8(7)(a) and Section 10(8)(a) of the Dumping Duty Act states that the Minister may exempt goods from interim dumping and/or countervailing duty where like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms, under like conditions, and having regard to the custom and usage of trade.

The description of what is not alike or not directly competitive is critical to the Minister's legal mandate in considering the exemption. Like the terms of reference in any legal or investigative process, the description of the exemption goods serves the purpose of delineating precisely what is the subject of the exemption, and thereby delineating what is not. Orrcon has repeatedly sought to ensure that the goods the subject of this inquiry are described in the requisite level of detail to, first and foremost, adequately assess whether the conditions under Section 8(7)(a) and Section 10(8)(a) are met, and if so, secondly, that the goods defined in the exemption permit the duty-free importation of those specific goods and no others.

Orrcon details below the efforts made during this inquiry regarding the appropriate articulation of the exemption goods. Such efforts were undertaken on the basis that Orrcon was not consulted by the applicant prior to it lodging the exemption application. Rather, the applicant relied upon correspondence with Orrcon in relation to EX0091 as evidence of its like/directly competitive goods assessment:

1. Orrcon's public file submission of 23 December 2022 where it stated that:

Specifically, what is missing from the description of the exemption goods includes: the surface finish and coating specification or standard, the tube material standard and grade of the pipe

material, the designated wall thickness/es, the length or lengths for each size, and any packaging or product labelling.

2. Orrcon's industry questionnaire response of 1 February 2023 where it reiterated that:

*A number of recent exemption applications related to Precision pipe & tube steel (Precision) and HSS were raised in calendar 2022. A summary of the goods description relating to these applications is provided below. All appear to relate to a particular market end-use, specifically household rod and rail applications. Please note that EX0086 and EX0087 for Precision and HSS respectively **provide a complete description and includes all necessary information to describe the goods**. In contrast, EX0091 and this application provides a limited description of the goods, which covers a broader range covering Orrcon's published manufacturing capability. [emphasis added].*

As granted by the Minister, the exemption goods under EX0087 were defined as follows:

Curtain rods with:

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

The curtain rods come in lengths 2.0m and 3.0m, 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 applicant's recent submission claims, in relation to EX0087, that the product it seeks exemption for is identical in terms of functional likeness, finish, diameter, and is extremely 'like' in regard to sizes which are inconsequential to the function of the product. Yet, the applicant did not seek to provide this specificity when defining the exemption goods. To reiterate, the applicant's exemption goods description for this inquiry is simply:

- *Chrome plated steel tube in 25mm outside diameters (circular).*
- *Chrome plated steel tube 30x15mm (oval).*

This overly simplistic description is problematic – it establishes a precedent that the absence of a Australian producer who can provide the specific finish (chrome is one of many), alongside basic product measurements, then permits an exemption from dumping duties. The reality is however that a far more detailed and sometimes complex process is required to establish whether like or directly competitive goods are or are not offered for sale in Australia to all purchasers, on equal terms, under like conditions, and with regard to the custom and usage of trade. This process is only as robust as the exemption goods description allows.

Orrcon submits that an appropriate exemption goods description should have been established at the outset, based on its discussions with the applicant, and the applicant's knowledge of earlier exemptions and the detail evident therein.

3. Conclusion

The exemption goods description for the inquiry in question is insufficient. There is a clear and stark contrast between it and earlier Ministerial exemptions that cover the same/similar goods. Orrcon therefore requests that the Commissioner not recommend that the Minister exempt the exemption goods from the duties in accordance with sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act. This will permit the applicant to re-apply for an exemption and permit due process throughout a new inquiry based on an appropriate and detailed exemption goods description.

For and on behalf of Australian industry.