



EXEMPTION INQUIRY REPORT EX0093

CERTAIN HOLLOW STRUCTURAL SECTIONS EXPORTED TO AUSTRALIA FROM COUNTRIES SUBJECT TO ANTI-DUMPING MEASURES

Applicant: Kasia Nominees Pty Ltd (t/as DE Engineers)

12 July 2023

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ABBREVIATIONS

Short form	Full reference
ADN	Anti-Dumping Notice
the applicant	Kasia Nominees Pty Ltd (t/as DE Engineers)
AS	Australian Standard
ATM	Austube Mills Pty Ltd
China	the People's Republic of China
CHS	circular hollow sections
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	collectively, interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
EPR	electronic public record
exemption goods	the goods subject of the application as described in chapter 2.2.1
HDG	hot-dipped galvanised, or hot dip galvanising
HSS	hollow structural sections
ICD	interim countervailing duty
IDD	interim dumping duty
the Minister	the Minister for Industry and Science
NZS	New Zealand Standard
Orrcon	Orrcon Manufacturing Pty Ltd
questionnaire	'Exemption Application' questionnaire
RHS	rectangular hollow sections
ROK	Republic of Korea
THS	trapezoidal hollow sections
ZCM	zinc coating mass

1 SUMMARY

This report sets out the findings of the Anti-Dumping Commission (the commission) in response to an application by Kasia Nominees Pty Ltd t/as DE Engineers (the applicant). The application seeks an exemption from the duties applying to certain hollow structural sections (HSS).¹

Interim dumping duty (IDD) applies to HSS exported from the People's Republic of China (China), the Republic of Korea (ROK), Malaysia and Taiwan. Interim countervailing duty (ICD) applies to HSS 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 IDD, dumping duty, ICD and countervailing duty (collectively, the duties), under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).² 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 (the Minister) on whether or not to exempt goods from the duties.

1.1 Findings and conclusions

The applicant claimed in its application that the Australian industry does not produce like or directly competitive goods to the exemption goods.

After reviewing submissions from interested parties and the evidence available to it (detailed in this report), the commission found that goods produced and offered for sale by the Australian industry:

- have characteristics closely resembling the exemption goods
- are likely to be substitutable for the exemption goods in a commercial market, and
- are offered to customers generally under the ordinary terms and conditions of business.

The Commissioner has therefore concluded that like or directly competitive goods to the exemption 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. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are not satisfied.

1.2 Recommendation

The Commissioner recommends that the Minister not exempt the exemption goods from the duties.

¹ As detailed in Anti-Dumping Notice (ADN) No [2022/065](#).

² 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

2.1 The anti-dumping measures

Anti-dumping measures applying to HSS exported to Australia from China, the ROK, Malaysia and Taiwan were originally imposed by public notices on 3 July 2012.³ A dumping duty notice applies to certain HSS exported to Australia from China, the ROK, Malaysia and Taiwan. A countervailing duty notice applies to certain HSS exported to Australia from China. Further details regarding the measures applying to HSS are available on the Dumping Commodity Register.⁴

2.1.1 The goods subject to measures

The goods subject to the anti-dumping measures⁵ 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 inline galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21 millimetres (mm) up to and including 165.1 mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3 mm. Categories of HSS excluded from the goods are conveyor tube, precision RHS with a nominal thickness of less than 1.6 mm and air heater tubes to Australian Standard (AS) 2556.

The conveyor tube that is excluded from the anti-dumping measures is 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.

Following the circumvention inquiry set out in *Anti-Dumping Commission Report No. 291*, certain exporters of HSS are also subject to the measures, if they export alloyed HSS products which would otherwise meet the goods description.⁶

The following goods are exempt from the measures.

Ministerial Exemption Instrument No 1 of 2016

IDD and ICD do not apply to goods subject to Tariff Concession Order 1609617 with an effective date of 16 February 2016.⁷

Tubes, square or rectangular, electric resistance welded, complying with Australian / New Zealand Standard 1163:2009, Grade C350L0 or C450L0, with a perimeter not less than 1050 mm and having either (a) or (b) as follows:

³ ADN No. 2012/31 contains details of the measures imposed at that time.

⁴ Available on the commission website at www.adcommission.gov.au. Note that certain exporters are exempt from aspects of the measures.

⁵ [Dumping Commodity Register: Hollow Structural Sections](#).

⁶ Anti-Dumping Notice No. 2016/24 - electronic public record (EPR) for case 291 - document no. 38. The affected exporters from China are Dalian Steelforce Hi-Tech Co., Tianjin Friend Steel Pipe Co., Ltd, Tianjin Ruitong Iron and Steel Co., Ltd and Roswell S A R L Limited. The affected exporter from Malaysia is Alpine Pipe Manufacturing SDN BHD.

⁷ [ADN No 2016/116](#).

- a) silicon content plus 2.5 times the phosphorus content NOT greater than 0.09%;
- b) silicon content greater than 0.14% and NOT greater than 0.24%.

Ministerial Exemption Instrument No 3 of 2021

IDD and ICD do not apply to the following goods with an effective date of 14 May 2020.⁸

Electrical Resistance Welded Hot-dip Galvanised Shouldered Pipe produced in accordance with American Petroleum Institute Standard Specification 5L (API 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 PSL1.⁹ 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.

Ministerial Exemption Instrument No 5 of 2022

IDD and ICD do not apply to the following goods with an effective date of 29 September 2021.¹⁰

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.

Ministerial Exemption Instrument No 1 of 2023

IDD and ICD do not apply to the following goods with an effective date of 6 April 2022.¹¹

STEEL ELECTIC RESISTANCE WELDED PIPE, CIRCULAR, EN10305 Standard, cold drawn, in the following sizes:

- 69 mm Outside Diameter x 57 mm Inside Diameter, Wall Thickness 6.0 mm
- 83 mm Outside Diameter x 70 mm Inside Diameter, Wall Thickness 6.5 mm
- 89 mm Outside Diameter x 79 mm Inside Diameter, Wall Thickness 5.0 mm
- 101 mm Outside Diameter x 88 mm Inside Diameter, Wall Thickness 6.2 mm

⁸ ADN No 2021/112.

⁹ American Petroleum Institute Specification 5L, Line Pipe, 46th edition.

¹⁰ ADN No 2022/084.

¹¹ ADN No 2023/020.

- 114 mm Outside Diameter x 101 mm Inside Diameter, Wall Thickness 6.5 mm
- 120 mm Outside Diameter x 107 mm Inside Diameter, Wall Thickness 6.5 mm
- 139 mm Outside Diameter x 127 mm Inside Diameter, Wall Thickness 6.0 mm
- 152 mm Outside Diameter x 127 mm Inside Diameter, Wall Thickness 12.5 mm
- 165 mm Outside Diameter x 152 mm Inside Diameter, Wall Thickness 6.5 mm

And having all of the following specifications and confirmed on mill certificates:

- Length ranging from 5.8 metres to 8.9 metres, and;
- Surface roughness (Ra) no greater than 1.6 micrometres, and;
- Outside and inside diameter tolerance no greater than ± 0.25 mm, and;
- E355-SR grade steel, cold drawn and stress relieved in a controlled atmosphere.

2.1.2 Tariff classification

The goods subject to measures may be classified in Schedule 3 to the *Customs Tariff Act 1995* as follows:

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		Other, welded, of circular cross-section, of iron or non-alloy steel:
7306.30.00		Exceeding 21 mm but not exceeding 60.3 mm external diameter:
	31	Wall thickness not exceeding 2.5 mm
	32	Wall thickness exceeding 2.5 mm but not exceeding 3.6 mm
	33	Wall thickness exceeding 3.6 mm
		Exceeding 60.3 mm but not exceeding 114.3 mm external diameter:
	34	Wall thickness not exceeding 3.2 mm
	35	<i>Wall thickness exceeding 3.2 mm but not exceeding 4.5 mm</i>
	36	<i>Wall thickness exceeding 4.5 mm</i>
	37	<i>Exceeding 114.3 mm but not exceeding 165.1 mm external diameter</i>
	7306.50.00	45
7306.6		Other, welded, of non-circular cross-section
7306.61.00		Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:
	21	Wall thickness not exceeding 2 mm
	22	Wall thickness exceeding 2 mm
	25	Exceeding 279.4 mm perimeter
	90	Other
7306.69.00	10	Of other non-circular cross-section
7306.90.00	12	Other

Table 1: General tariff classification for the goods¹²

¹² 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).

2.2 Exemption inquiry

On 29 June 2022, the applicant requested an exemption from the duties in relation to its imports of HSS. The applicant's letter outlined the following grounds in support of its application for an exemption from the duties:

[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 accepted the applicant's letter as an application for an exemption from the duties. On 20 July 2022, the Commissioner published ADN No 2022/065. ADN No 2022/065 advised that an exemption inquiry had been initiated, provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The commission invited members of the Australian industry to respond to the 'Exemption Application' questionnaire (the questionnaire).

The commission received completed questionnaire responses from Australian industry members Orrcon Manufacturing Pty Ltd (Orrcon), and Austube Mills Pty Ltd (ATM), both of which opposed the exemption application.¹³ All known members of the Australian industry producing HSS were invited to submit a questionnaire response.

2.2.1 Goods subject to the application for exemption

The exemption goods are described as:¹⁴

Electric resistance welded pipe made of carbon steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections), RHS (square or rectangular) and trapezoidal hollow sections comprising ALL of the following:

- a) an air-blown hot-dipped galvanised finish; and
- b) a zinc coating mass of 200-300g/m².

2.2.2 Previous exemption inquiry - EX0015

For context, the commission notes that the applicant has previously applied for an exemption from the measures applying to HSS. The exemption goods considered in EX0015 are similar to those in this inquiry, although they were limited to CHS with specific nominal sizes. The EX0015 exemption goods were described as:

Electric resistance welded pipe made of carbon steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections) having a hot-dipped galvanised (HDG) finish, and a nominal size (NB) of either 25, 32, 40 or 50 millimetres exported to Australia from China, Korea, Malaysia and Taiwan comprising ALL of the following:

- a) an air-blown hot-dipped galvanised finish;
- b) a zinc coating mass of 200-300g/m².

Similarly, the applicant sought the exemption on the basis that like or directly competitive goods were not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.¹⁵

¹³ Electronic public record (EPR) for this inquiry EX0093, [document 003](#) and [004](#).

¹⁴ EPR EX0093, [document 001](#).

¹⁵ EPR EX0015 - [document 001](#).

In that inquiry, the commission found the conditions of sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act were not satisfied. In reaching that conclusion, the commission found that:

- pre-galvanised and in-line galvanised CHS produced by the Australian industry possessed sufficient physical, commercial, functional, and production likenesses to determine that they were like to the EX0015 exemption goods.
- notwithstanding some physical differences, batch-galvanised HDG CHS and pre-galvanised or in-line galvanised HDG CHS have characteristics closely resembling air-blown HDG CHS and were therefore 'like goods' to air-blown HDG CHS, and
- although there are some applications in which only air-blown HDG CHS may be suitable, the Australian industry did produce goods which are directly competitive with air-blown HDG CHS.¹⁶

¹⁶ EPR EX0015 - [document 011](#), chapter 6.

3 ASSESSMENT OF CLAIMS AND RECOMMENDATION

3.1 The applicant's claims

The applicant uses the exemption goods in the production of agricultural products, mainly to fabricate grain silo base frames. It claimed that the Australian industry producing HSS does not produce like or directly competitive goods to the exemption goods.¹⁷ Specifically, the applicant claimed that it was unable to source locally manufactured air blown HDG pipe with a zinc coating mass (ZCM) of 200-300 g/m². The applicant claims this specification is needed for adequate corrosion resistance, while maintaining the ability to be welded.

In support of its claim that like or directly competitive goods are not offered for sale in Australia, the applicant submitted that:

- There are distinct markets for air blown HDG, pre and in-line galvanised, and batch-galvanised HDG pipe. Air blowing is not merely just an additional process to control the thickness of zinc.
- Zinc thickness is proportional to the service life of coated steel. Australian made pre or in-line galvanised CHS has a maximum ZCM of 100 g/m² or less and consequently does not have the corrosion resistance necessary for agricultural products where exposure to certain environments and chemicals can increase corrosion rates. This includes exposure to animal waste, and proximity to coastal areas.
- It requires a galvanised product with a ZCM of at least 200-300 g/m² to allow its fabricated products to meet standards and performance expectations, being a 50-year lifespan.
- It has attempted to make silo frames using Australian produced HSS. The assembled frame required treatment with zinc rich paint to achieve sufficient corrosion resistance. This process was uneconomical and the finish unacceptable.
- Australian made batch galvanised CHS has a minimum ZCM of 500-600 g/m² and cannot be readily manipulated or welded. This makes it unsuitable for use in the manufacture of steel silo frames.
- Whole steel silo frames it produces are too large to be batch galvanised. Therefore, components it uses must be able to be welded while maintaining sufficient corrosion resistance.
- The Australian industry does not possess the specific manufacturing equipment in Australia available to produce air blown HDG HSS in the specification of the exemption goods.
- Since the HSS measures were imposed in 2012, the applicant has sourced air blown HDG pipe with a ZCM of 200-300 g/m² from Australian suppliers, but those products were imported, and not produced in Australia.
- Sales of imported air blown HDG CHS are substantial, indicating there is a significant and distinct market for air blown HDG CHS.
- Orrcon's parent company, Bluescope Steel Ltd, has imported significant quantities of air blown HDG pipe. The applicant stated the amount imported is up to 100 times greater than Bluescope Steel Ltd's sales of Australian made product of comparable size.

The applicant attached evidence in support of its statements, which included:

¹⁷ EPR EX0080, [document 1](#).

- correspondence with Australian manufacturers about their range of available products, and whether they would object to an exemption application,
- Australian manufacturers' product catalogues, and
- photos showing corrosion of different types of galvanised HSS.

3.2 Australian industry's claims

In their responses to the questionnaire, both Orrcon and ATM objected to the application because they each consider they offer locally produced goods for sale that are like or directly competitive to the exemption goods. Neither Orrcon nor ATM claimed to produce identical goods to the exemption goods.

3.2.1 Like or competing product ranges

Orrcon and ATM both noted that the exemption goods description is broad and would capture a range of HSS products that are like or directly competitive with products each produces in Australia. Notably, the exemption goods description captured galvanised CHS, RHS and trapezoidal hollow sections (THS) of any dimension.

Orrcon claims it produces the following goods which are like or directly competitive to the exemption goods:

- ULTRASPEC-GAL and MECSPEC-GAL are pre-galvanised pipe and tube range manufactured to AS / New Zealand Standard (NZS) 1163 from AS 1397 Z275 steel coil. These products have a HDG coating with total coating mass of 275 g/m².
- ALLGAL coated and SMARTCOTE painted tubes (CHS). ALLGAL is an electro-galvanised pipe and tube range manufactured to AS/NZS 1163 and AS4750 ZE50/50.

ATM claimed that its DuraGal range of steel pipe was like or directly competitive to the exemption goods. DuraGal is a range of electric resistance welded carbon steel CHS, RHS and THS that are HDG, with a minimum ZCM of 100 g/m² or 135 g/m². It also submitted that there had been no change to the products it produces nor the manner in which the goods are offered for sale since EX0015, which was for substantially the same products (with a narrower scope) as the exemption goods.

3.2.2 Responses to the applicant's claims

In response to the applicant's claim that the ZCM of Australian made pre or in-line galvanised HSS provide insufficient corrosion resistance for agricultural products, Orrcon submitted that:

- The finish type selected by an engineer is a fit-for-purpose consideration, one that accounts for the cost of a solution and its durability, but also a range of other factors. The photos provided by the applicant shows that silo manufacturers have made the choice over a period of the last few years to use HDG, DuraGal or ALLGAL at various points in time.
- The photos in the application displaying corrosion on silo frames made with ALLGAL and DuraGal show either an incorrect installation (silo frame placed directly on soil), or that corrosion has occurred at welded connection points, and not across the frame generally. As welding damages the zinc coating, these photos demonstrate inadequate repair or maintenance.
- Several government bodies, state authorities and councils have established that for steel post applications, similar to the silo post application, that pre-galvanised tubular (CHS) steel to AS/NZS 4792 ZB135/135 (i.e. a ZCM of 135 g/m² on both the internal and external surface) is equivalent and like or directly substitutional for

tubular products manufactured to AS 1074 or AS/NZS 1163 (cold formed structural steel hollow sections) or AS 1450:2007 - Steel tubes for mechanical purposes galvanised to AS/NZS 4680:2006 - HDG (zinc) coatings on fabricated ferrous articles.

ATM submitted that:

- Three large Australian manufacturers all specify and use Australian made DuraGal product which competes against the imported product used by the applicant.
- There is a lack of supporting data to substantiate the performance/warranty claims for the exemption goods, in particular, that they can provide a coating life of 50 years when in contact with fertilisers, animal urine and animal faeces. ATM referenced corrosion rate information from the Galvanizers Association of Australia, which specifies a ZCM of 700 to 2,100 g/m² is needed for a HDG coating in contact with soil to last 50 years.

3.2.3 Applicant's response to Australian industry submissions

On 24 February 2023, the applicant responded to the Australian industry's submissions. The applicant claims that the exemption goods, air blown HDG 200-300 g/m² pipes are not identical to the goods produced by Orrcon and Austube Mills.

The applicant:

- states that the Australian industry produced HDG tubes with total coating mass of 275 g/m² (ULTRASPEC-GAL and MECSPEC-GAL) and 135 g/m² (DuraGal) is not equivalent to the exemption goods, which has a total coating mass of 400-600 g/m²
- affirms that the downstream products made using the exemption goods have better durability (lasting for many more years) than the products made of Australian industry HDG HSS, and
- highlights examples where there is no rusting on products made using the exemption goods, such as elevated silos placed on a concrete foundation.

Throughout the submission, the applicant focused on the benefits of using imported HSS when compared to using HSS manufactured by the Australian industry.

3.2.4 Further Australian industry submission

On 25 May 2023, ATM made a further submission which rejects the argument of the applicant's most recent submission. ATM:

- emphasised that it does not manufacture identical goods, but does manufacture goods that are 'like or directly competitive to the goods subject to this application' and such 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, and
- objected to the applicant's claims concerning ATM's HDG imports. ATM does not import any HDG product in square and rectangular sections. The only HDG product that ATM imports is circular sections.

3.3 The commission's assessment

Sections 8(7) (a) and 10(8) (a) of the Dumping Duty Act state the Minister may grant an exemption from the 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 examined the information presented in the application, submissions from the applicant, Orrcon and ATM, publicly available information, and information collected by the commission in relevant previous matters, including EX0015 and previous review and continuation inquiries. The commission has previously verified the production processes of HSS produced by the Australian industry. Based on this and publicly available information, the commission has a broad understanding of the different types of galvanised HSS produced by the Australian industry.

3.3.1 Does the Australian industry offer for sale ‘like’ or ‘directly competitive’ goods?

The exemption application is not limited to specific dimensions of HSS. Therefore the commission has considered generally whether any of the galvanised HSS produced by the Australian industry are like or directly competitive to the exemption goods.

The commission found in EX0015 that the Australian industry produced batch galvanised HDG CHS and pre-galvanised or in-line galvanised HDG CHS had characteristics closely resembling air-blown HDG CHS and were therefore ‘like goods’ to air-blown HDG CHS, the exemption goods in that inquiry. The commission also found that the Australian industry produced goods were directly competitive with the exemption goods.

EX0015 identified several physical, commercial, functional, and production likenesses shared by air-blown HDG CHS and goods produced by the Australian industry, being batch-galvanised HDG CHS **and** pre-galvanised or in-line galvanised HDG CHS.¹⁸ The commission considers that these likenesses are still relevant, and are applicable to the other shapes of HSS included in the exemption goods description, given the similar process for galvanising different HSS shapes.¹⁹

Use of galvanised HSS

AS/NZS 2312.2 sets out considerations for determining the HDG method to utilise in a given application.²⁰ In short, these include the:

- design life
- owner’s expectations
- general and local environment conditions, and anticipated changes in those conditions
- design principles to avoid corrosion
- the impact that ancillary components that may affect overall durability
- life to first maintenance options, noting that the structure may need maintenance to reach the design life
- cost and availability of options and maintenance

These factors acknowledge that designers and purchasers have flexibility when determining the nature of galvanised HSS product used for a particular application.

¹⁸ [EX0015](#), p. 17.

¹⁹ For instance, the Galvanizers Association of Australia design guidelines show similar HDG processes for RHS and CHS. See <https://gaa.com.au/design-for-hot-dip-galvanizing/>

²⁰ Standards Australia (2014), *Guide to the protection of structural steel against atmospheric corrosion by the use of protective coatings (AS/NZS 2312.2:2014)*.

A purchaser may choose to opt for a galvanising method with greater ZCM to achieve a longer life to first maintenance. But this does not preclude substitution with lesser ZCM products due to the maintenance options available, and the unique corrosivity factors of a given location.

The commission found that the Australian industry offers several lines of locally produced galvanised HSS for sale in Australia, as set out in chapter 3.2.1. The galvanised HSS products produced by the Australian industry have several applications. The evidence available shows products from these ranges have been used in agricultural applications, including to construct silo frames, which was the primary purpose for the exemption goods specified by the applicant.

As the exemption goods description is broad, it is likely the exemption goods would have applications extending beyond the specific purposes stated by the applicant. Galvanised HSS has a variety of uses outside of the agricultural sector, and a greater ZCM does not necessarily prevent use in place of lower ZCM options, especially as it can still be welded and manipulated. The commission considers it likely that the exemption goods could be used to substitute for goods that are already offered for sale by Australian industry.

Corrosivity

AS/NZS 4792 sets out the external corrosivity factors for HDG HSS.²¹ The amount of corrosion resistance provided by a particular galvanised coating depends heavily on the macro- and micro-environmental conditions of a particular location.²² It also notes that post-galvanising fabrication activities of HDG steel (including welding) can cause damage to the zinc coating. When this occurs, treatment is needed to maintain adequate corrosion protection.²³ Further, the durability of galvanised coatings can be aided with proper maintenance and repair.

The applicant claimed that a ZCM of 200-300 g/m² on HSS is necessary for sufficient corrosion resistance for use in outdoor agricultural applications. The commission considers that there is insufficient evidence to demonstrate that this level of corrosion resistance is necessary for all applications where the exemption goods may be used. In addition, the ability to repair and maintain galvanised coatings on existing structures may provide purchasers alternative options to reach a satisfactory working life.

The commission notes that Australian produced HSS has been, and continues to be, used in the construction of agricultural products, including silo base frames. The commission does not consider that the ability of galvanised HSS to reach the useful life threshold specified by the applicant is representative of whether it is a practical alternative in a competitive market.

Like or directly competitive goods finding

The commission considers there is sufficient evidence to find that the Australian industry produces both like **and** directly competitive goods to the exemption goods.

²¹ Standards Australia (2006). *Hot-dip galvanized (zinc) coatings on ferrous hollow sections, applied by a continuous or a specialized process (AS/NZS 4792:2006)*.

²² For example, AS/NZS 4792 states that in arid inland areas with low corrosivity, a HDG tube with a ZCM of 100 g/m² can have an expected life to first maintenance period of between 20-100+ years. In high or very high corrosive environments, such as near the coast, the durability of the same tube would be significantly reduced.

²³ AS/NZS 2312.2:2014.

3.3.2 To all purchasers on equal terms under like conditions having regard to the custom and usage of trade

The applicant asserted that the Australian industry did not offer like or directly competitive goods. Therefore, it did not provide evidence in its application about whether like or directly competitive goods were available to all purchasers on equal terms under like conditions having regard to the custom and usage of trade. However, as the commission has concluded that like or directly competitive goods are available in Australia, it is necessary to assess that threshold question.

The commission examined the availability of the like or directly competitive goods produced by the Australian industry. The commission found that the like or directly competitive goods were readily available for purchase by Australian customers as evidenced by:

- product catalogues and product availability guides provided by Orrcon and ATM
- terms and conditions of sale, credit application terms, and purchasing guides provided by Orrcon and ATM and
- invoices showing the sale of galvanised HSS to ATM customers.

The commission did not find any evidence that the supply of like or directly competitive goods were subject to terms and conditions outside of normal business practices.

3.3.3 Conclusion

The commission considers that like or directly competitive goods to the exemption 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. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act for granting an exemption are not satisfied.

4 RECOMMENDATION

Based on the commission's examination of the application and submissions made to the inquiry, the Commissioner considers that the exemption goods are offered to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Accordingly, the Commissioner recommends that the Minister not exempt the exemption goods from the duties.

APPENDIX A – LEGISLATIVE PROVISIONS AND INTERPRETATION

Legislative requirements for an exemption

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

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

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 section/s 8(7)(a) and/or 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.²⁴ Drawing on the Macquarie Dictionary and case law, the commission defines 'directly' as:

excluding that which is indirect or remote;²⁵ 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 section/s 8(7)(a) and/or 10(8)(a) of the Dumping Duty Act

The exemption provisions in section/s 8(7)(a) and/or 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 section/s 8(7)(a) and/or 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.
the body of rules or customs followed by a particular set of people.
usual conduct or behaviour.

²⁴ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

²⁵ *Ibid.*

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.²⁶

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.²⁷ 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.

²⁶ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

²⁷ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.