



22 December 2023

The Commissioner of the Anti-Dumping Commission
Anti-Dumping Commission
215 Spring Street
MELBOURNE VIC 3000

By email: clientsupport@adcommission.gov.au

Dear Commissioner Armstrong

Application seeking an exemption from anti-dumping duties

We act on behalf of Schiavello Manufacturing Pty Ltd (**Schiavello**). Schiavello would like to seek an exemption from anti-dumping measures that apply to certain hollow structural sections.

Contact details

Schiavello's details are as follows:

Schiavello Manufacturing Pty Ltd
1 Sharps Road
Tullamarine VIC 3043

The details for the contact person for this application are as follows:

Russell Wiese
0431 646 488
rwiese@cgtlaw.com.au

Exemption goods

The exemption goods are described as follows:

Steel electric resistance welded pipe, circular, seamless, EN10305 Standard, cold drawn, with OR without grooves, In the following sizes:

*51.0 mm Outside Diameter x 47.0 mm Inside Diameter, Wall Thickness 2.0mm
63.5 mm Outside Diameter x 59.5 mm Inside Diameter, Wall Thickness 2.0mm
76.2 mm Outside Diameter x 72.2 mm Inside Diameter, Wall Thickness 2.0mm*

Having all of the following specifications:

- *Length ranging from 4.0 meters to 5.8 meters or from 5.8 meters to 8.9 meters, and;*
- *Surface roughness (Ra) no greater than 1.6 micrometres, and;*
- *Outside and inside diameter tolerance no greater than +/- 0.1 mm,*



- *Straightness tolerance 0.1 mm, and;*
- *E355-SR grade steel (JIS G3445 STKM 11A-E-C), cold drawn and stress relieved in a controlled atmosphere.*

The exemption goods are generally classified to the following tariff classifications and statistical codes:

7306.30.00 / 31

7306.30.00 / 34

Applicant's interest as an affected party

Schiavello is an importer (and manufacturer/supplier) of various products and buildings. It currently imports the exemption goods from the [Country of export redacted] and uses those goods in the construction of "sit / stand desks".

Schiavello is not aware of any other importers of the exemption goods.

Details of other parties likely to have an interest in this exemption application and their interest in this application

The Australian industry that produces hollow structural sections are likely to have an interest in this matter. The Australian industry is comprised of the following entities:

Orrcon Steel
16-24 Westall Road
CLAYTON SOUTH VIC 3169

Steelforce Australia Pty Ltd
91 Calarco Drive
DERRIMUT VIC 3030

Each of the above companies were contacted in writing prior to seeking this exemption. The details of this contact are detailed below.

Grounds on which Schiavello are seeking the exemption

Schiavello is seeking the exemption on the grounds 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.

Schiavello has attempted to source the exemption goods from Australian steel manufacturers without success. Details of these attempts are below.

Narrower wording

Please note that the wording put to the Australian industry was wider than the wording set out above. In particular, the wording of the exemption requested in this letter has the following differences than the wording put to the Australian industry:

- There was no reference to "seamless". However, the goods are specified as being "cold drawn" and all cold drawn goods are seamless;
- The wording "with OR without grooves" was not included;
- The outside and inside tolerance was set at +/- 0.25 mm rather than +/- 0.1 mm;
- There was no specified straightness tolerance.



All of the above changes narrow the goods description. We do not believe that there is a requirement on Schiavello to put the amended narrower wording to the Australian industry as the goods covered by the amended wording were fully encompassed within the goods covered by the original wording. If the Australian industry could not produce the goods the subject of the original wording, the industry will also not be able to produce the goods the subject of the narrower wording.

Orrcon Steel

On 22 June 2023 a representative of Schiavello emailed representatives of Orrcon requesting whether Orrcon could supply the exemption goods. In that email Orrcon was advise that:

“If you and other Australian producers are unable to supply the above goods, we intend to make an application for an exemption from the dumping duties that apply to the importation of certain HSS from certain countries. Please let me know your position in response to the proposed exemption request.”

On 29 June 2023 representatives of Orrcon replied that Orrcon could not supply the exemption goods. Orrcon offered to provide assistance with Schiavello applying for a tariff concession order concerning the exemption goods.

We note that Orrcon state in the email that it will liaise with its business unit, Austube, regarding the matter. No further correspondence was received.

A confidential copy of the emails referred to above are enclosed.

Steelforce

On 22 June 2023 a representative of Schiavello emailed representatives of Steelforce requesting whether Steelforce could supply the exemption goods. In that email Steelforce was advise that:

“If you and other Australian producers are unable to supply the above goods, we intend to make an application for an exemption from the dumping duties that apply to the importation of certain HSS from certain countries. Please let me know your position in response to the proposed exemption request.”

Steelforce has not provided a substantive response to the Schiavello email. About 7 weeks after the initial email a representative of Steelforce requested details of the dumping duties that applied. Those details were provided on that same day (14 August 2023). There has been no further response from Steelforce.

Since the original email to Steelforce, 6 months have passed and Steelforce has not provided any confirmation of its ability to supply the exemption goods. Further, Steelforce was informed that Schiavello intended to apply for a dumping duty exemption and it provided no substantive response.

A confidential copy of the correspondence with Steelforce is attached.

We are also instructed that Schiavello has reviewed online product catalogues for Steelforce and Orrcon and not been able to identify any offerings of products that fit within the dimensions of the exemption goods.

In the circumstances, it is reasonable for the Anti-Dumping Commission to form the view that neither Steelforce nor Orrcon can, or are willing to, supply the exemption goods.

Details of the current investigation or the anti-dumping and countervailing measures applying to the goods

The goods subject to measures 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 countries subject to measures are the People's Republic of China, The Republic of Korea, Malaysia and Taiwan.

Grounds for seeking the exemption

Schiavello does not believe that the Australian industry can produce the exemption goods. Schiavello has made written inquiries to the known producers of steel pipe and has not received confirmation of an ability to produce the exemption goods. This matches with Schiavello's experience of attempting to source the exemption goods domestically.

Exemption Goods

The exemption goods are used by Schiavello as components in a sit / stand desk. The narrower tubes are designed to be inserted into the wider tubes during the construction process. For the desk to be functional, the distance between the outer tube and the inner needs to be precise. Without this precision, the components of the constructed good will be loose and wobbly. The end good will not be functional.

To this end, it is a requirement of the exemption goods that the diameter thickness has a tolerance of only +/- 0.1 mm. It is also a requirement that the tube straightness / parallelism has a tolerance of 0.1mm.

The only way that the above tolerances can be achieved is via the ERW tube undergoing a secondary process following the original production of the tube from coil. The secondary process is a cold extrusions process. This process reduces the diameter of the product. This results in tubes that are described as having been cold drawn. Before cold drawing, the tubes need to be pickled to remove rust and undergo a phosphating and saponification treatment to form a dense metal soap film on the outer surface to reduce the friction between the tube and the mould.

Often such tubes are called, CEW (cold extruded welded) tubes, which is understood as meaning cold drawn ERW tube.

There are no Australian manufacturers that produce cold drawn ERW tube. Only ERW tube is produced in Australia. For diameters the size of the exemption goods, Australian produced tubing usually has an



inside and outside diameter tolerance of +/- 0.2 to 0.4 mm (depending on the diameter). Please see the attached BlueScope/Orrcon document setting out its round tube tolerance levels.

Legislative criteria

The exemption ground refers to the Australian industry not providing "like or directly competitive goods". Like goods in the context of a dumping investigation are defined in section 269T of the *Customs Act 1901* as:

"like goods", in relation to goods under consideration, means 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.

In the context of an exemption application, the comparison is not to the goods under consideration, but rather between the exemption goods and the goods produced in Australia.

The goods produced in Australia are not identical in all respects to the exemption goods. For instance, the Australian produced goods are not cold drawn and are not made to the required tolerances. Given this, the question is whether the exemption goods have characteristics closely resembling those of the goods produced in Australia.

In considering whether goods are "like goods" the ADC often considers the following factors:

- Physical likeness;
- Commercial likeness;
- Functional likeness; and
- Productions likeness.

Our comments on these factors are below.

Physical likeness – The primary difference between the Australian produced ERW tube and the exemption goods is that the exemptions goods are cold drawn. This is an additional production process that results in a product with much more precise tolerances regarding the diameter and the tube straightness.

Commercial likeness – The exemption goods have an extremely precise tolerance. Cold drawn tubes with a very precise tolerances do not commercially compete with ERW tubes with standard tolerances. Tubes are marketed according to their specifications and diameter tolerances is a common specification. It takes additional processing and costs to process a tube with precise tolerances. A buyer that does not need these tolerances will not incur those costs. Similarly, a buyer that needs precise tolerances will not even consider a product that falls outside of those tolerances. For these reasons, there is no commercial likeness between the Australian produced goods and the goods the subject of the exemption application.

Functional likeness – Users of goods with narrow tolerances will only specify that tolerance if it is necessary for the function to be performed by that tube. This is because the achievement of that tolerance requires additional processing and costs. If a good falls outside of the specified tolerance it will have no functional purpose.

It is possible that goods with a narrow tolerance could be used in the place of goods with a wider tolerance. However, this is not commercially realistic. A purchaser will not incur the additional processing and costs to achieve a narrower tolerance, when this is not required.

Production likeness – The exemption goods are produced from ERW pipe, which is the Australian produced goods. The exemption goods are subject to a cold extrusion process. This



process gives the goods their essential character of a very precise tolerances. The Australian produced goods do not go through a cold extrusion process.

While the goods are made from the same materials, the cold extrusion process means that the exemption goods have different production costs and processes than the Australian produced goods.

Directly competitive goods

Traditionally, the ADC has considered “directly competitive goods” to encompass

“..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.”

We are not aware of any market in which the exemption goods would compete with the Australian produced goods. It adds considerable expense to produce goods to a diameter tolerance of +/-0.1 mm. Only a purchaser that required this level of precision would purchase such goods. Where a purchaser does require that level of precision, it would not realistically be seeking to purchase goods with a standard tolerance. Such goods would not be fit for purpose.

As an example, the applicant uses the goods in the production of office desks. Without the required precision the desk would be very unstable. The desk would not be fit for purpose.

Conversely, users of standard ERW tube do not consider cold drawn tube when purchasing goods. Cold drawn tube is a specialist product with additional costs. The two goods are not considered substitutes and do not compete.

In the circumstances, there is no realistic competition between the exemption goods and the locally produced goods.

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

This criterion looks at the terms and conditions under which the Australian like or competitive goods are offered. As set out above, there are no cold drawn products produced in Australia. As such, there are no Australian produced like or directly competitive products offered, let alone being offered on equal terms or under like conditions.

For the above reasons, the applicant contends that like or directly competitive goods to the exemption 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. In the circumstances it is appropriate that the exemption goods be exempt from dumping duty.



We would be pleased to provide any further requested information to assist in the Commissioner's consideration of this application.

Yours faithfully

CGT Law

A handwritten signature in black ink that reads 'RWiese'.

Russell Wiese

Director

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