

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

Exemption Inquiry EX0100 – Response requested by 12 March 2024

1 Introduction

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

Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide discretion for the Minister for Industry and Science (the Minister) to exempt goods from anti-dumping measures, where they are 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 measures in respect of certain hollow structural sections (HSS, or 'the goods') for the goods described at section 5 of this form ('the exemption goods').

Your company has been identified as an Australian producer of the goods.

The commission seeks your assistance in this exemption inquiry by responding to this questionnaire. The commission will use the information you provide in its assessment as to whether an exemption from dumping and/or countervailing duties may be recommended to the Minister.

2 Current anti-dumping measures

The anti-dumping measures were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of *International Trade Remedies Branch Report No 177*. All exporters of HSS from the People's Republic of China (China), the Republic of Korea, Malaysia and Taiwan are subject to the dumping duty notice, with exporters of HSS from China also subject to the countervailing duty notice.

The goods subject to measures 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.

Public File

The following categories of HSS are excluded from the goods:

- 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;
- precision RHS with a nominal thickness of less than 1.6 mm; and
- air heater tubes to AS 2556.

As a result of previous decisions by the relevant Minister, certain HSS which is subject to measures has been declared exempt from dumping and/or countervailing duties. Details of these exempt goods can be found on the Dumping Commodity Register for HSS.¹

3 Application for Exemption from Measures

An application for an exemption has been made to the commission by MGN CIVIL Pty Ltd.

4 Exemption Provisions

The Dumping Duty Act provides discretion for the Minister to exempt goods from dumping duties if one of the criteria in section 8(7)(a) is met, or to exempt goods from countervailing duties if one of the criteria in section 10(8)(a) is met.

Section 8(7)(a)

The Minister may, by notice in writing, exempt goods from interim dumping duty or 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)(a)

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 Minister and an exemption is not automatically granted, even where the criteria in the provision is met.

¹ https://www.industry.gov.au/sites/default/files/adc/measures/2023-10/dcr_-_hollow_structural_sections.pdf

5 The Goods Subject to this Exemption Application

The goods the subject of this exemption inquiry were defined by the applicant as:

~~350 grade, 60 mm x 120 mm x 10 mm thick steel bars with a length of 11.9 metres~~

350 grade 60mm x 120mm x 10mm thick steel rectangular tube, length of 11.9m

The exemption goods are generally classified to the tariff subheading 7306.61.00 (statistical code 22 and 25) of Schedule 3 to the *Customs Tariff Act 1995*.

Goods produced in Australia

The applicant claims that there are no Australian manufacturers of the exemption goods as described.

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

The commission has identified your company as a producer of HSS.

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

The commission seeks your assistance with this exemption inquiry by responding to the questions in this form. The commission will use the information you provide to make a recommendation as to whether an exemption from dumping and/or countervailing duty should be granted by the Minister for Industry and Science.

Specifically, the information provided by Australian HSS producers will assist the commission in determining 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.

Public File

Due date for the response

We request that you complete your response and return it to the commission by ~~12 March 2024~~. **8 April 2024**.

Please email your response to investigations1@adcommission.gov.au

Verification of the information that you supply

The commission may seek to verify some or all of the information supplied in the response. The commission may request evidence to support the claims such as quotations and offers of sale.

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 Minister will be made as soon as practicable after obtaining all 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. The commission puts greater weight on submissions that are available to other interested parties for comment.

Please ensure that each page of information you provide is clearly marked either:

‘OFFICIAL: Sensitive’ or ‘PUBLIC RECORD’.

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

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

Public File
Response to Exemption Application

PART A – Company Information

A.1 Please provide the following company contact information:

Name:	██████████
Position in company:	██████████
Address:	121 Evans Road, SALISBURY, QLD, 4107
Telephone:	██████████
E-mail address of contact person:	██████████

PART B – Response to Exemption Application

B.1

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

- Oppose
 Not oppose

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.

B.2

Please state the reasons why you do not oppose the request for an exemption to the 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 an Exemption Form'?

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

- Yes
 No

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

Public File

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?

Yes. Orrcon manufactures a range of pipe and tubular sections that are used in like or directly competitive end-use applications. These pipe and tube products are manufactured to Australian Standards AS/NZS 1163, AS1074 and AS1450 and as such may be used extensively across a broad range of engineering end-use applications, including civil engineering applications. This includes, but is not limited to:

- posts, beams, props, staunchions, and trusses;
- road furniture, gantries and poles;
- heat exchangers;
- material handling equipment, such as conveyors, and stillages;
- products within the Solar industry;
- products for mining, and mineral processing;
- piling;
- products for heavy structural fabrication; and
- products for fluids, such as bore drilling, fire fabricators, and industrial plumbing.

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, 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.

Public File

- 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.

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.

The applicant fails to specify an Australian or International product or manufacturing standard in the description of the goods. But the applicants “350” grade designation is the standard grade for HSS structural pipe and tube manufactured to AS/NZS 1163. Further, Orrcon manufactures a range of pipe and tube sections that are compliant to AS/NZS 1163 C450 grade.

At its manufacturing sites in QLD, SA and NSW Orrcon produces an extensive range of circular, square and rectangular HSS – with size range capability summarised in the following table:

Range	Section	Grade*	Thickness (mm)	Sizes*	Length (mm)	Product Type/Finish	Coating Specification*
Structural	Square Hollow Section (SHS)	AS/NZS 1163 C250L0, C350L0, C450L0^	1.6 – 10.0	20x20 - 200x200	6,500 – 12,480	ALLGAL® ALLGAL® PCQ	AS4750 ZE50/50
	Rectangular Hollow Section (RHS)	AS/NZS 1163 - C250L0, C350L0, C450L0^		38x25 - 250x150		SMARTCOTE®	QAL-OSP-CRP-001
	Circular Hollow Section (CHS)	AS 1074 - AS/NZS 1163 C250L0, C350L0		20NB - 250NB φ127 to φ254	6,100	PREGAL ULTRASPEC-GAL®	AS4792 ZB50/50 AS4792 ZB135/135 AS4792 ZB150/150
	Yard Rail/Oval Sections	AS/NZS 1163 C350L0		52x25 - 124x42		Oiled & No Oil Paint	
	Silo & Special Sections	AS/NZS 1163 C350L0#		75x64		12,000	MAXI-TUBE®
Sprinkler & Hydrant Pipe	ORRFIRE®	AS 1074 - AS/NZS 1163 C250L0, C350L0 ActivFire®	XL – H	20NB - 150NB	6,500 – 12,000	ALLGAL®, ALLGAL® PCQ	AS4750 ZE50/50
						SMARTCOTE®	QAL-OSP-CRP-001
						Hot Dip Galvanised	AS4792 HDG300
Precision	Square Hollow Section (SHS)	AS 1450 C200, C250 #	1.2 – 3.2	12.7x12.7 - 65x65	6,100 & 7,320 (standard lengths)	SEMB & MSBR – Cold Roll MSBL – Hot rolled ACMS – Aluminium coated (H/E, HVAC) MSGB – Zinc coated mild steel GALVABOND MECSPEC-GAL® - Strength grade Precision	
	Rectangular Hollow Section (RHS)			12x9 - 90x40			
	Circular Hollow Section (CHS)		0.9 – 3.2	12.7OD - 101.6OD			

Manufacturing capability extends from grade 200 through to structural grades of C250, C350 and C450. While Orrcon does not possess the specific tooling to manufacture a 120x60mm section, Orrcon can manufacture Australian standard tubular RHS sections in the range from 38x25mm through to 250x150mm.

Public File

A range of recently manufactured sections are summarised in the below table, and are detailed as per Orrcon's production records included at Confidential Attachment 1. These products are used by customers of Orrcon that operate in the Australian civil engineering and construction sector for end-use applications that are like and/or similar to those of the applicant.

[confidential table deleted: commercially sensitive production records]

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.

Several recent delivery dockets for supply of the products listed in the above table of production records are included by way of evidence that these are available to all purchasers on equal terms under like conditions. The customer and products are summarised in the below table, and as per Confidential Attachment 2.

[confidential table deleted: commercially sensitive customer production details]

Additional marketing collateral of the BLU350 product range which is used in a broad range of civil and engineering activity is included for reference, at Non-Confidential Attachment 3.

PART E – Capability to Produce Identical or Like or Directly Competitive 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?

Yes

No

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.

The product is like/directly competitive to the exemption goods.

E.3

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

Public File

Over recent years, Orrcon has made significant investment in its manufacturing capability, to expand both its range and grade capability of pipe and tube products. [*confidential text deleted: commercially sensitive investment details*], is outlined at Confidential Attachment 4.

From Confidential Attachment 4, [*confidential text deleted: commercially sensitive investment and product details evidencing capability to produce like/directly competitive 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.

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.

[*confidential text deleted: commercially sensitive investment details*] and as such will be available to all purchasers on equal terms under like conditions.

PART F – Additional Comments

F.1

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

The applicant MGN Civil is seeking to claim an exemption for the use of ~40m of 120x60x10mm 350 grade tube. This is what appears to be a bespoke section and size that has been designed to be compatible with MGN's "Komatsu PC850 Prefabricated Vertical Drain rig". The application requires a thick steel rectangular tube that avoids warping and breakage and ensures that a prefabricated drain can be safely pushed to depth without mandrill failure.

The applicant is seeking an exemption to use this section as a mandrel: "a strong rectangular steel bars (Mandrill) connected to an 80T excavator and frame to push prefabricated drains into the ground to a depth of -40m."

The raising of an exemption application for a 48m mandrill which is fabricated from either 4 or 5 lengths of 11.9m long mechanical tube appears nonsensical based on the presented facts of the exemption application. The linear mass of a 120x60x10mm steel tubular section will weigh in the range of 22.42 kilograms per metre. The weight of this 48m component after fabrication will therefore come to 1,076kg. The quantity of tube being used by the applicant does not appear on the face of it to be sufficient justification to raise an exemption application. This appears to be inconsistent in the context of the applicant, MGN Civil being a large civil-marine engineering enterprise covering the eastern seaboard.

In the context of Orrcon as an Australian manufacturer, a request for an exemption on 40m of thick-walled tube is equally not a significant quantity. But, in the context of Orrcon's

Public File

customers that use the products across an extensive range of like and directly competitive end-use applications, 40m of pipe or tube could well be the entire basis of the applicant's Australian business operation.

The applicant's rig is "*fully certified at 48m*" and claimed to be "*the most capable and safest of its kind*". This is an application that exposes the two operators standing within the immediate vicinity of the mandrill to significant danger in the event of a catastrophic failure of this component. To manage this risk, the specification of the tubular goods from which this mechanical component is fabricated should contain reference to the international standard and any special requirement against which the applicant is seeking to import this product.

A review of the video on *Facebook* as provided by the applicant indicates this material is used as a re-usable mechanical component or "*mandrill*" to insert wicking fabric or tough plastic tubular mesh into the ground. The applicant fails to provide a recognised Australian or International standard to specify what is a bespoke 48m long fabricated mechanical tubular component used on a rig that is "*fully certified*". As a civil engineering company specifying this product simply as "*350*" grade is wholly inadequate to manage the associated engineering risks of importing and using this section for this application. This also appears to be inconsistent in the context of the applicant, MGN Civil, as a large civil-marine engineering enterprise covering the eastern seaboard.

Orrcon request the Commission take due consideration of these comments.

Public File

PART G – Declaration

I hereby declare that **ORRCON MANUFACTURING PTY LTD**

has completed the attached response to application for exemption and, having made due inquiry, certify that the information contained in this submission is complete and correct to the best of my knowledge and belief.

Name : [REDACTED]

Signature:

Position Company: [REDACTED]

Date: 8th April 2024