



EXEMPTION INQUIRY REPORT EX0100

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

Applicant: MGN Civil Pty Ltd

28 August 2024

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ABBREVIATIONS

Abbreviation	Full reference
ADN	Anti-Dumping Notice
the applicant	MGN Civil Pty Ltd
China	the People's Republic of China
ROK	Republic of Korea
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 2.2.2
HSS	hollow structural sections
ICD	interim countervailing duty
IDD	interim dumping duty
the Minister	the Minister for Industry and Science
Orrcon	Orrcon Manufacturing Pty Ltd
questionnaire	'Exemption Application' questionnaire
RHS	rectangular or square hollow sections

1 SUMMARY

This report sets out the findings of the Anti-Dumping Commission (the commission) in response to an application by MGN Civil Pty Ltd (the applicant). The application seeks an exemption from the anti-dumping measures 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 and ICD (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.

The Commissioner of the Anti-Dumping Commission (the Commissioner) has relied on the findings in this report to make a recommendation to the Minister for Industry and Science (the Minister) on whether or not to exempt the exemption goods (as defined in section 2.2.1) 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 (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 found 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 [2022/110](#).

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

Since the imposition of the measures, 5 exemptions applying to HSS have been granted and these are outlined below.

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

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. The commission's policy is to recommend to the Minister that the date of the effect of an exemption is the date of the application.

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:

- 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 powder coated (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

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.

- 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
- 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.

Ministerial Exemption Instrument No 3 of 2023

IDD and ICD do not apply to the following goods with an effective date of 1 November 2022.¹²

Curtain rods meeting the below specification and finishes:

- 25 mm outer diameter (circular), 1.0 mm wall thickness, polished chrome electroplated finish
- 30 x 15 mm dimension (oval), 1.0 mm wall thickness, polished chrome electroplated finish

The exemption goods are comprised of cold-rolled strip metal, which is longitudinally welded, cut to length, polished, and then chrome electroplated. The material composition is iron steel, ~0.8% carbon.

The curtain rods come in the following lengths:

- 25 mm outer diameter (circular): 900 mm, 1200 mm, 1800 mm, 2400 mm, 2700 mm and 3600 mm
- 30 x 15 mm dimension (oval): 1800 mm, 2400 mm and 3600 mm

Packaging/product labelling: tubes are individually sleeved and barcoded and packaged (bundles of 5 pieces for 25 mm OD (circular), bundles of 10 for 30 x 15 mm (oval)) within rectangular cardboard cartons with an outer carton GTIN barcode.

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

¹² ADN No 2023/55.

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:
	35	Wall thickness exceeding 3.2 mm but not exceeding 4.5 mm
	36	Wall thickness exceeding 4.5 mm
	37	Exceeding 114.3 mm but not exceeding 165.1 mm external diameter
7306.50.00	45	Other, welded, of circular cross-section, of other alloy steel
7306.6		Other, welded, of non-circular cross-section
		Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:
7306.61.00	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 goods¹³

2.2 Exemption Inquiry

On 25 January 2024, 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:

MGN Civil had previously in 2020 sort [sic] out this sizing of steel rectangular in Australia and were advised by all manufactures that this grade and size of rectangular tube is not commonly used and advised that only England and China produce this sizing. With the continual decline of Australian steel manufacturing industry, the situation has not changed in the subsequent four years and the product is not available locally.

The Commissioner accepted the applicant's letter as an application for an exemption from the duties. On 9 February 2024, the Commissioner published ADN No 2024/005.¹⁴ ADN No 2024/005 advised that an exemption inquiry had been initiated, and provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The commission invited Australian industry members producing HSS, and other interested parties, to respond to the 'Exemption Application' questionnaire (the questionnaire).

A completed questionnaire response was received from Australian industry member Orrcon Manufacturing Pty Ltd (Orrcon).

¹³ 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).

¹⁴ See EPR EX0100 item no [005](#).

2.2.1 Goods subject to the application for exemption

The application describes the exemption goods as follows:

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) for square or rectangular cross-section to the *Customs Tariff Act 1995*.

3 ASSESSMENT OF CLAIMS AND COMMISSIONER FINDINGS

3.1 The applicant's claims

The applicant claims that the Australian industry producing HSS does not produce the exemption goods. In its application, the applicant details its efforts to source the certain grade and size of rectangular tube from local manufacturers and provided evidence supporting its application that the product is not manufactured in Australia.

On this basis of the information in its application, the applicant claims 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.

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

- Correspondence with Australian manufacturers about their range of available products
- Photos and video demonstrating MGN Civils' end use of the exemption goods

3.2 Australian industry claim

Orrcon opposes the application because it offers locally produced goods for sale in Australia that are like or directly competitive to the exemption goods.¹⁵ Orrcon submitted that the Australian industry manufactures and sells the exemption goods.

3.2.1 Supporting evidence of like or competing product ranges

In its submission dated 9 April 2024, Orrcon notes that while the applicant does not specify the relevant international or Australian standard of the goods, the "350" grade designated by the applicant¹⁶ is a grade specified for HSS structural pipe and tube manufactured to Australian Standards AS/NZS 1163.¹⁷ Orrcon has manufacturing capability for a range of HSS structural grades of C250, C350 and C450.

Orrcon also states that while it 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, which includes the exemption goods specified by the applicant in section 2.2.1 above.

In its questionnaire response, Orrcon provided the commission with evidence that it manufactures goods that are:

- like/directly competitive to the exemption goods
- substitutable for the exemption goods (including RHS sections in a size range that would be substitutable for the 120x60mm size specified), and
- commonly used by customers of Orrcon who operate in similar sectors as the applicant.

From this evidence, the commission considers it likely that the exemption goods could be used as a substitute for goods that are already offered for sale by the Australian industry.

¹⁵ See EPR EX0100 item no [005](#).

¹⁶ See EPR EX0100 item no 001, page 2, the applicant refers to the grade as "350".

¹⁷ The grade specified in AS/NZS 1163 is C350.

3.3 Applicant's response to Australian industry claims

The commission did not receive any submissions from the applicant in response to Orrcon's opposition to the exemption application.

3.4 Legislative requirements for an exemption

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.

3.5 The commission's assessment and findings

The commission examined the information presented in the application, from the Australian Industry member Orrcon, publicly available information, and information collected by the commission in relevant previous matters, including 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.

The commission notes that interested parties were provided an opportunity to make submissions and the only submission received from Australian industry members is the opposing submission made by Orrcon.¹⁸

The commission finds that evidence provided by Orrcon shows:

- Orrcon make the exemption goods, within the parameters that the applicant has specified and therefore produce products that are like or directly competitive to the requested exemption goods listed in section 2.2.1.
- Orrcon offers the goods to all purchasers on equal terms under like conditions as detailed in the questionnaire response received by the commission

No other submissions were received which indicate that the Australian industry does not produce goods. The commission considers there is sufficient evidence to find that the Australian industry produces both like and directly competitive goods to the exemption goods.

3.6 Conclusion

The Commissioner finds 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.

¹⁸ See EPR EX0100 item no [005](#).

4 RECOMMENDATION

Based on the commission's examination of the application, submissions made to the inquiry, and the evidence detailed in this report, the Commissioner finds 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 Commissioner recommends that the Minister not exempt the exemption goods from the duties.

5 APPENDIX A – ‘LIKE OR DIRECTLY COMPETITIVE GOODS’ FRAMEWORK

Legislation

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.

and 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 sections 8(7)(a) and 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.¹⁹ Drawing on the Macquarie Dictionary and case law, the commission defines 'directly' as:

excluding that which is indirect or remote;²⁰ 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 sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

The exemption provisions in sections 8(7)(a) and 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 sections 8(7)(a) and 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.

¹⁹ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

²⁰ *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 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.²¹

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.²² 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.

²¹ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

²² *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.