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Director Operations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

**Dumping investigation into precision pipe and tube exported from the
Socialist Republic of Vietnam**

Dear Director,

This submission is made on behalf of Vina One Manufacturing (Vina) in response to the application by Orrcon Manufacturing Pty Ltd (Orrcon) for the publication of dumping duties on precision pipe and tube steel exported from the Socialist Republic of Vietnam (Vietnam).

The purpose of this submission is to bring to the Anti-Dumping Commission's (the Commission) earliest attention a number of critical issues requiring clarification with respect to the scope of the goods subject to investigation and as a consequence the scope of the Australian industry producing like goods. Depending on the scope of goods covered by the goods description, Orrcon's application may be invalid as it may not comply with the minimum required production volumes to meet the standing requirements set out in subsection 269TC(4) of the *Customs Act 1901* (the Act), and accordingly, not possess sufficient standing in its own right to be considered representative of the Australian industry producing like goods.

Therefore, Vina urges the Commission to carefully consider and canvass the issues raised in this submission and urgently seek further necessary and relevant information from other potential Australian producers of like goods, and views of relevant importers to allow for a proper determination of the scope of the goods under investigation and the corresponding composition of the Australian industry.

The scope of goods subject of the application

The goods subject of the application and subject to investigation as notified in ADN 2019/26 are:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic

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finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetre ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter.

For rectangular and square products, those with a thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

Neither the notice publishing the initiation of the investigation nor the application by Orrcon, make mention of whether the referenced dimensions are based on nominal or actual. For example, it is unclear from the goods description whether the thickness relevant to rectangular and square products is limited to tube with a nominal or actual thickness of less than 1.6mm.

In response to Vina's submission of 29 April 2020, the Commission advised by email correspondence that '*... it is not nominal thickness that is relevant, but actual thickness.*' As the goods description does not define rectangular and square sections by any relevant Australian Standard or specification, a simple reading then confirms that all rectangular and square sections with an actual thickness less than 1.6mm are precision tubes, irrespective of whether they are produced to and sold on the basis of nominal thicknesses that comply with the Australian structural standard, AS1163.

It is important to note that the scope of the subject goods makes it difficult for most exporters including Vina to accurately identify subject and non-subject goods. This situation arises because like most exporters, Vina does not record the actual thickness of the subject goods either in the export documents or in its accounting system. All export documents, sales records, production records are based on nominal thickness, to ensure compliance with relevant standards. The Australian customers place orders as per the nominal dimensions outlined in the Australian Standards. As such, there is great difficulty to establish whether goods are within or outside scope in preparing the exporter questionnaire response.

In view of the ambiguity in the product description and limitations of Vina & most exporters as explained above, we request that the Commission define the scope of the subject goods based on the "nominal thickness" and not on "actual thickness".

Standing requirements

Orrcon's has claimed in its application that it *'is the sole Australian manufacturer of precision pipe and tube steel products.'* The Orrcon's response seems at odds to readily available information which appears to confirm that other prominent Australian producers exist that are manufacturing like goods.

For example, the continuing measures applying to imports of hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand, covers rectangular and square sections with a nominal thickness greater than and equal to a nominal thickness of 1.6mm. These sections are manufactured to AS1163. In the corresponding investigations, reviews and continuation inquiries, the Australian industry producing like goods includes Orrcon, Austube Mills Pty Ltd (ATM) and Australian Pipe and Tube Pty Ltd (APT).

To that end, Vina expects that the Commission would have access to relevant information from these other local producers to establish their production range, given that reviews of the measures against HSS are currently underway.

From the above, it is clear without any doubt that ATM and APT do manufacture rectangular and square sections in 1.6mm nominal thickness. Therefore, they must by definition be considered producers of like goods and part of the Australian industry. This conclusion stands irrespective of whether the actual thickness of those sections is less than 1.6mm, given that Vina's exports and the Australian industry's local products are sold to the same standard and same nominal dimensions.

Given the potential inaccurate statement by Orrcon with respect to other Australian producers of like goods, Vina urges the Commission to make immediate contact with ATM and APT to confirm its domestic production of like goods and ascertain whether the applicant is sufficiently representative of the Australian industry, as defined, for the application to comply with the mandatory requirements of subsection 269TB(4) of the Act.

The relevant provisions of the law are mentioned below.

Subsection 269TB(4) of the Act requires that an application under s269TB(1) of the Act, must:

- (a) *be in writing; and*
- (b) *be in a form approved by the Commissioner for the purposes of this section; and*
- (c) *contain such information as the form requires; and*
- (d) *be signed in the manner indicated in the form; and*
- (e) *in the case of an application under subsection (1) — be supported by a sufficient part of the Australian industry.*

Subsection 269TB(6) of the Act defines 'support' as:

persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:

- a) *account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and*
- b) *account for not less than 25% of the total production or manufacture of like goods in Australia.*

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If ATM and APT are confirmed to be producers of like goods, then Orrcon's claim of being the sole Australian producer is mistaken, and as such, the validity of the Commission's finding that the application is supported by a sufficient part of the Australian industry, as required by s.269TB(4) of the Customs Act 1901 (the Act), is in doubt. If the evidence confirms that Orrcon does not account for more than 50% of total production, then the Commission is requested to cease or terminate the investigation immediately.

It is noted that the issue of the composition of the Australian industry has also been raised in a submission by Dalian Steelforce Hi-Tech Co., Ltd (Steelforce). In its submission, Steelforce references product catalogues of both ATM and APT, which appear to confirm production of like goods.

In reviewing this information, it is apparent that the thickness of rectangular and square sections does not define separate classes of goods. That is, a 25mmx25mmx1.6mm square tube is essentially no different to a 25mmx25mmx2mm, where they are manufactured to comply with the same relevant standard and grade – in this case AS1163 – C350.

To that end, it is logical to conclude that all locally produced structural rectangular and square sections complying to AS1163, are like goods as they each possess the same essential physical, commercial, functional and production characteristics. On that basis, Vina contends that the Australian industry producing like goods includes all domestic producers that manufacture rectangular and square structural sections complying to the Australian Standard AS1163.

Once again, given the clear failing of Orrcon to properly address the scope of local production and its impact on the scope of like goods, the application is undoubtedly defective. The Commission in the circumstances must remedy these failings by promptly reconsidering the composition and scope of the Australian industry, and terminate the investigation promptly on the grounds that it cannot establish the facts as they relate to material injury of the Australian industry producing like goods.

Yours sincerely

John Bracic