

RIGBY COOKE LAWYERS

Level 11, 360 Elizabeth Street
Melbourne Victoria 3000

GPO Box 4767
Melbourne Victoria 3001

T +61 3 9321 7888
F +61 3 9321 7900

www.rigbycooke.com.au

ABN 58 552 536 547
DX 191 Melbourne

Our ref: **ATH:20191896**
Your ref:

Direct dial: 03 9321 7851
Direct email: ahudson@rigbycooke.com.au
Page: 1/11

PUBLIC RECORD

30 April 2020

The Director
Investigations 3
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2601

By Email: investigation3@adcommission.gov.au

Dear Director,

RCR International Pty Ltd

Submission to Investigation 550 into alleged dumping and subsidisation of precision pipe and tube steel exported to Australia from the People's Republic of China, the Republic of Korea, Taiwan and the Socialist Republic of Vietnam

NON-CONFIDENTIAL VERSION

We act for RCR. We also act for RCR's supplier, [REDACTED] [VIETNAMESE SUPPLIER] and will be providing an additional submission on behalf of [REDACTED] [VIETNAMESE SUPPLIER] with its Exporter Questionnaire once completed in accordance with the ADC's timeframes.

In the meantime, we are instructed that this Submission is also made on behalf of [REDACTED] [VIETNAMESE SUPPLIER].

We are instructed to make the submissions set out below on behalf of RCR and [REDACTED] [VIETNAMESE SUPPLIER] in response to the initiation of this Investigation. We submit that RCR is an "interested party" as defined in paragraph 269T(1)(b) of the Act on the basis that it imported relevant goods as discussed below during the Investigation Period and as such is entitled to provide this Submission to the ADC pursuant to paragraph 269TC(4)(c) of the Act.

For the purposes of this Submission all defined terms have the meaning set out in the attached Schedule of Definitions.

1 RCR's business

1.1 RCR is an importer of steel products for supply to Australian hardware store retailers. As discussed above, the goods relevant to this Investigation are supplied to RCR by a Vietnamese exporter, [REDACTED] [VIETNAMESE SUPPLIER].

This email transmission is intended to be transmitted to the person named. Should it be received by another person, its contents are to be treated as strictly confidential. It is a privileged communication between the firm and the person named. Any use, distribution or reproduction of the information by anyone other than that person is prohibited. If you have received this email in error please contact us on 61 3 9321 7888.

Liability limited by a scheme approved under Professional Standards Legislation

20200509_3575581v1

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 2/11

- 1.2 RCR has imported its Goods to Australia from [REDACTED] [VIETNAMESE SUPPLIER] since 2014 and has maintained consistent imports from Vietnam during that time.
- 1.3 RCR supplies to hardware retail stores such as [REDACTED] [HARDWARE RETAIL STORES] and other independent retail stores. RCR's Goods are generally used in the "do-it-yourself" and "do-it-for-me" segments of the market which includes home handyman and domestic trade customers.
- 1.4 End users of RCR's Goods are generally domestic consumers and tradespeople undertaking domestic work such as renovations and all of its Goods are purchased from retail hardware stores on a piece by piece basis.
- 1.5 There has been a change in trends over the last 5 years in these markets and this has been reflected in retail stores choosing to keep a limited amount of stock on hand at any point in time. Sales trends have, however, remained relatively stable during this time.
- 1.6 Competition between RCR and members of the Australian industry is largely limited to those members of the Australian industry wishing to sell off-cuts. The products are not generally used for any structural purposes and are not required to be made to any specific standards or regulations. Further, the sale of offcuts is not a large or highly lucrative aspect of the Australian market.
- 1.7 We are instructed that steel products produced by the Australian industry which may be similar to RCR's Goods are not sold in the same sizes as RCR's Goods. Further, the market in which RCR competes is relatively small as compared to the broader steel market in which Orrcon and other members of the Australian industry operate. We discuss these issues further below.
- 1.8 [REDACTED] [HARDWARE RETAIL STORE] is RCR's main purchaser of RCR's Goods and we request that the ADC approach [REDACTED] [HARDWARE RETAIL STORE] if it requires any further information in relation to customer demand and the market applicable to RCR's Goods specifically.

2 Goods subject to measures

- 2.1 We note that the GUC are described as follows:

"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 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).

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 3/11

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."

2.2 RCR imports the following Goods which are relevant to this Investigation:

[REDACTED]

[SPECIFICATIONS OF RCR GOODS]

2.3 While RCR appears to import goods which meet the description of the GUC, we submit that the description of the GUC is overly broad to the point that it encompasses goods which do not have the same application or function of the goods which the Australian industry produces and supplies in the Australian market.

2.4 The application of such a broad description of the GUC is likely to lead to the perverse and unintended outcome that goods which are not immediately relevant to the Investigation are subject to measures. This will adversely affect Australian businesses, including our clients' business and should be considered before any measures are applied.

2.5 Additionally, RCR imports round tube with dimensions [REDACTED] [DIMENSIONS]. These tubes are not air heater tubes and as the dimension

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 4/11

fall outside the description of the GUC. The outside diameter specified for round products in the description of GUC is less than 21 millimetres. The outside diameter of the [REDACTED] [DIMENSIONS] round tubes clearly exceed the specified measurements in the description of the GUC and so should be exempted from this Investigation.

2.6 RCR's Goods are also manufactured and supplied with "value-adds" for the purposes of sale in the retail hardware market. These "value-adds" include [REDACTED] [MANUFACTURING PROCESS] than would otherwise be available. RCR's Goods are also [REDACTED] [PRODUCTION PROCESS] by [REDACTED] [VIETNAMESE SUPPLIER] prior to being exported. [REDACTED] [PRODUCTION PROCESS] which are produced for commercial or structural applications such as Orrcon's goods. RCR's goods are also [REDACTED] [CODE] as compared to Orrcon's goods which range from C250LO to C350LO. In addition, RCR's lengths are [REDACTED] [LENGTHS] only whereas Orrcon's lengths are 6.5m.

2.7 Further information in relation to the "value-adds" and the manufacturing process of the RCR Goods is included in our client's response to Part D of the Importer Questionnaire.

2.8 Accordingly, we consider it reasonable for RCR's Goods to be exempted from the measures as they are not goods that are intended to be covered by the description of GUC and are not "like goods" to the goods produced by the Australian industry for the purposes of subsection 269T(1) of the Act.

3 Preliminary Affirmative Determination

3.1 We note that the ADC is due to decide whether or not a Preliminary Affirmative Determination (**PAD**) should be made by 1 June 2020.

3.2 Pursuant to section 269TD of the *Customs Act 1901 (Act)* a PAD should only be made in circumstances where:

- (a) there appears to be sufficient grounds for the publication of such a notice; or
- (b) it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of the relevant goods.

3.3 When deciding to make a PAD the ADC must have regard to the following:

- (a) the application concerned; and
- (b) any submission concerning publication of the notice that are received by the ADC within 37 days after the date of initiation of the Investigation.

3.4 We do not consider there to be sufficient material before the ADC in this Investigation to support the making of a PAD on 1 June 2020. Orrcon's application does not appear to provide comprehensive evidence that dumping is occurring or material injury being suffered as a result and instead appears to rely on certain assertions and

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 5/11

assumptions which will need to be thoroughly tested by the ADC before any determination can be made.

3.5 Further, and as discussed below, we are instructed that our clients consider the volume of its imports to be so small as to be negligible and incapable of causing material injury to the Australian industry and so it should not be required to provide securities if a PAD is made.

3.6 As such, we request that the ADC confirms that no PAD will be issued in this case and that not securities will be put in place in relation to RCR or [REDACTED] [VIETNAMESE SUPPLIER].

4 Material injury

4.1 We are instructed that our clients do not consider there to be sufficient grounds to find that any of the GUC imported from Vietnam that may have been imported at dumped prices (which we deny) are the cause of material injury.

4.2 We refer to the Consideration Report. We note that the ADC has found that there are no grounds for a finding that the GUC have affected Orrcon's volume as it has largely maintained or increased its market share and that sales volumes have been relatively stable in the period between 1 October 2015 and 30 September 2019.

4.3 We agree with the ADC's findings on this point and submit further that there should be no finding of material injury in the form of loss of profit or reduction in profitability. While Orrcon may have recorded certain reductions in its profit margins this is highly likely to be the result of legitimate and healthy competition in the market as well as normal fluctuations in the economy.

4.4 As discussed above, RCR imports account for a relatively small proportion of steel imported to Australia from Vietnam. Based on information available through the Australian Bureau of Statistics the total imports of steel tube to Australia (including from countries other than those the subject of this Investigation) during the Investigation Period were valued at \$1.332bil. Of those total steel imports, RCR's imports constituted [REDACTED] [PERCENTAGE] We also note that China is a significant exporter of steel to Australia and that a large proportion of the exports of the GUC to Australia have originated from China.

4.5 Further, as the ADC will note in our client's response to the Importer Questionnaire RCR's sales of the GUC constitute approximately [REDACTED] [DOLLARS], which is less than [REDACTED] [PERCENTAGE] of RCR's annual turnover. [REDACTED] [PERCENTAGE] of these imports are supplied to [REDACTED] [HARDWARE RETAIL STORE] and so are not a material part of RCR's overall profit and loss.

4.6 The ADC will also note based on the information provided in our client's response to the Importer Questionnaire in the section addressing forward orders that there has been no significant change in order patterns during the Investigation Period. RCR orders [REDACTED] [TONNES] of its Goods per month, which equates to [REDACTED] [CONTAINERS] containers per month with [REDACTED] [NUMBER] shipments imported during the Investigation Period. We also note that the ADC has estimated that the market for

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 6/11

the GUC in the year ended 30 September 2019 was approximately 22,000 tonnes. The [REDACTED] [TONNES] imported by RCR or [REDACTED] [PERCENTAGE] of the total of the market, as estimated by the ADC, must be considered to be a negligible proportion of that market in the circumstances.

- 4.7 Further, RCR's order patterns are consistent with RCR's sales patterns since 2014. These order patterns are based on supply and demand patterns in the retail hardware sector. We are instructed that these patterns remain relatively stable due to the nature of the consumers who purchase RCR's Goods. As RCR has maintained a stable pattern of imports for an extended period of time, including during a time when Orrcon does not claim that injury has been suffered, we submit that RCR's imports could not be causing any material injury allegedly suffered.
- 4.8 We are also instructed that the steel market is highly competitive and is arguably the most competitive market of all formed steel markets. This requires all businesses to operate competitively while adapting to changes in the market. If Orrcon has adopted an aggressive strategy in terms of competition in the market any downturn in profit or profitability is likely to be the result of that commercial decision made by Orrcon and is not the result of allegedly dumped goods.
- 4.9 The ADC has noted that the Australian industry has experienced increased energy costs and raw material costs and this has likely impacted the Australian industry's performance. We consider it appropriate for the ADC to consider and apply these factors to the Australian industry's claims of material injury as well as other factors which are likely to have affected performance before imposing any measures.
- 4.10 We also request that the ADC consider the impact of Free Trade Agreements which have been in place during the Investigation Period and the period in which Orrcon claims it has experienced a down-turn. In particular Free Trade Agreements such as the ChAFTA is likely to have had a significant impact on increased exports of the GUC to Australia from China. This may also be a relevant factor in any injury Orrcon claims it has suffered.
- 4.11 Accordingly, as RCR and [REDACTED] [VIETNAMESE SUPPLIER] are cooperating fully with this Investigation and its imports of the GUC appear to be negligible and arguably are *de minimis* we consider it appropriate for the Investigation to be terminated as against RCR and [REDACTED] [VIETNAMESE SUPPLIER].

5 Particular Market Situation

- 5.1 We refer to the submission made by the Vietnamese government published on the Electronic Public Record on 14 April 2020. We are instructed that our clients agree with that submission particularly in relation to any finding that a Particular market situation may exist in Vietnam. We note that the Consideration Report states that the question of if a particular market situation exists in Vietnam will be assessed throughout the Investigation.
- 5.2 We reiterate the comments in the Vietnamese Government's Submissions that the international investigations referred to by Orrcon in its application in support of the

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 7/11

position that a particular market situation exists in Vietnam should not be relied on by the ADC as they do not accurately reflect the current situation.

- 5.3 Further, we note that in previous investigations the ADC has found that there is no particular market situation in Vietnam and that the relevant goods are produced based on competitive market costs. We also note that Orrcon has not provided supporting evidence of the assertion that a particular market situation exists in Vietnam.
- 5.4 Accordingly, we request that no finding be made that there is a particular market situation in Vietnam and that the ADC rely on information provided by the Vietnamese government and Vietnamese exporters in this regard.

6 Calculation of dumping margins

- 6.1 We note that the ADC has largely accepted Orrcon's method of calculating Normal Value which includes the use of certain benchmark rates in relation to China as well as the use of Orrcon's own figures to estimate SG&A costs. We also note that the ADC has made certain adjustments to the calculation of Normal Value which Orrcon was not able to apply.
- 6.2 While we understand that the ADC considers the use of substituted or constructed values to be appropriate in certain circumstances, in the case of RCR and [REDACTED] [VIETNAMESE SUPPLIER], we submit that it is reasonable and appropriate for the ADC to use RCR and [REDACTED] [VIETNAMESE SUPPLIER] own data to calculate Normal Value as well as any dumping margin that may apply.
- 6.3 As the ADC will see, RCR has provided detailed, clear and verifiable data on which the ADC can and should rely in making its calculations. [REDACTED] [VIETNAMESE SUPPLIER] will provide equally as reliable information within the time period allowed by the ADC. RCR and [REDACTED] [VIETNAMESE SUPPLIER] are also cooperating fully with the Investigation and would be pleased to provide the ADC with any further information it may require.
- 6.4 We also refer to the Consideration Report in which the ADC has conducted preliminary calculations of potential dumping margins applicable to the countries the subject of this Investigation. We note that the ADC has seen a significant reduction in the dumping margins calculated by Orrcon based on its own assessment and reiterate our position that RCR and [REDACTED] [VIETNAMESE SUPPLIER] own data should be used when making calculations in relation to any dumping margin that may be applicable to RCR and [REDACTED] [VIETNAMESE SUPPLIER] as this data will be significantly more accurate and relevant.

7 Subsidisation

- 7.1 We refer to the Vietnamese Government's Submission in relation to the subsidisation allegation. We agree with and adopt the Vietnamese Government's Submission in this regard.

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 8/11

7.2 We also note that in previous investigations the ADC has found that any subsidisation in Vietnam has been negligible and that further assessment of Orrcon's allegations are required. We are instructed that both RCR and [REDACTED] [VIETNAMESE SUPPLIER] consider any subsidisation which may be occurring (which they do not admit) to be negligible.

7.3 We will provide further information in relation to the alleged subsidisation in a further submission to be made on behalf of [REDACTED] [VIETNAMESE SUPPLIER].

8 Conclusions

8.1 Both RCR and [REDACTED] [VIETNAMESE SUPPLIER] are cooperating fully with the Investigation with [REDACTED] [VIETNAMESE SUPPLIER] material due to be submitted by 31 May 2020 in accordance with the extension of time granted by the ADC. We will provide a further submission on behalf of [REDACTED] [VIETNAMESE SUPPLIER] at that time.

8.2 Further, our clients do not consider its Goods to have been dumped and requests that its own data be used by the ADC in making its calculations in this regard.

8.3 However, if it is found that its Goods have been dumped (which it denies), the volume of RCR's imports are so small as to be negligible and incapable of causing material injury to Orrcon or the Australian industry.

8.4 Additionally, if it is found that Orrcon has suffered material injury as a result of allegedly dumped goods (which we deny) that injury is likely to have been caused by the much more significant volume of goods imported from China.

8.5 RCR's Goods are not sufficiently like goods produced by Orrcon as they are not manufactured for commercial use and are instead focussed on the do-it-yourself and do-it-for me retail and handyman markets. Due the extremely broad description of the GUC RCR's Goods are being inadvertently captured in that description. Accordingly, RCR's Goods should be exempted from the GUC.

8.6 There are also other factors which are likely to be the cause of Orrcon's alleged material injury which we request the ADC considers fully before imposing any measures including:

- (a) increased energy and raw material costs in Australia during the Investigation Period;
- (b) Orrcon's own, likely aggressive, strategies in the market which are commercial decisions for Orrcon and not the result of any alleged dumping; and
- (c) the impact of Free Trade Agreements including ChAFTA.

8.7 Accordingly, we request that either the Investigation be terminated as against RCR and [REDACTED] [VIETNAMESE SUPPLIER] or that RCR and [REDACTED] [VIETNAMESE SUPPLIER] Goods be exempted from the Investigation.

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 9/11

We would be pleased to provide the ADC with any further information it may require.

If you have any queries, please do not hesitate to contact our office.

Yours faithfully

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a horizontal line that tapers to the right.

Andrew Hudson
Partner

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 10/11

Schedule of Definitions

- (a) **Act** means the *Customs Act 1901*
- (b) **ADC** means the Anti-Dumping Commission
- (c) **Application** means the application made by Orrcon for the publication of dumping and/or countervailing duty notices for precision pipe and tube steel from China, Korea, Taiwan and Vietnam

█ [HARDWARE RETAIL STORE]

- (e) **ChAFTA** means the China-Australia Free Trade Agreement
- (f) **China** means the People's Republic of China
- (g) **Consideration Report** means Consideration Report Number 550
- (h) **Exporter Questionnaire** means the Exporter Questionnaire to be submitted by █ [VIETNAMESE SUPPLIER] by 31 May 2020
- (i) **Goods** means the goods imported by RCR as listed in paragraph 2.2 of this Submission
- (j) **GUC** means the Goods Under Consideration in this Investigation
- (k) **Importer Questionnaire** means the Importer Questionnaire submitted by RCR
- (l) **Investigation** means this Investigation number 550 into dumping and subsidisation of precision pipe and tube steel imported to Australia from China, Korea, Taiwan and Vietnam
- (m) **Investigation Period** means the period between 1 January 2019 and 31 December 2019

█ [VIETNAMESE SUPPLIER]

- (o) **Orrcon** means Orrcon Manufacturing Pty Ltd
- (p) **Particular Market Situation** means particular market situation as defined in the Act
- (q) **PAD** means Preliminary Affirmative Determination
- (r) **RCR Goods** has the same meaning as Goods
- (s) **RCR** means RCR International Pty Ltd
- (t) **Submission** means this submission made on behalf of RCR

RIGBY COOKE LAWYERS

Our ref: ATH:20191896

Letter to: Investigations 3
Anti-Dumping Commission

Your ref:

Page: 11/11

- (u) **Vietnamese Government's Submission** means the submission made by the Vietnamese Government to the Investigation published on the Electronic Public Record on 14 April 2020