



Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

EXEMPTION INQUIRY REPORT EX0079

**CERTAIN HOLLOW STRUCTURAL SECTIONS
EXPORTED TO AUSTRALIA
FROM COUNTRIES SUBJECT TO ANTI-DUMPING MEASURES**

11 November 2021

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ABBREVIATIONS

Abbreviation	Full reference
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADRP	the Anti-Dumping Review Panel
API 5L	American Petroleum Institute Specification 5L, Line Pipe, 46th edition
AS1074	<i>Australian Standard 1074-1989 (R2018) - Steel tubes and tubulars for ordinary service</i>
AS1163	<i>Australian Standard 1163:2016 - Cold-formed structural steel hollow sections</i>
China	the People's Republic of China
CHS	circular hollow sections
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
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
the exemption goods	the goods subject of the application as described in chapter 2.3.1
HDG	hot dipped galvanised
HSS	hollow structural sections
InfraBuild	InfraBuild Trading Pty Ltd
the Minister	the Minister for Industry, Energy and Emissions Reduction
mm	millimetres
NB	nominal bore
Orrcon	Orrcon Manufacturing Pty Ltd
REP 177	<i>International Trade Remedies Branch Report No. 177</i>
RHS	rectangular or square hollow sections
ROK	the Republic of Korea
Thyssenkrupp	Thyssenkrupp Materials Trading Australia Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

1.1 Introduction

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application by InfraBuild Trading Pty Ltd (InfraBuild) requesting an exemption from interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (collectively, the duties) under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).¹ The exemption request is in relation to the export of certain hollow structural sections described in chapter 2.3.1 (the exemption goods). Hollow structural sections (HSS) exported to Australia from the People's Republic of China (China), the Republic of Korea (ROK), Malaysia and Taiwan are currently subject to anti-dumping measures (described in chapter 2.1).²

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, Energy and Emissions Reduction (the Minister) whether or not to exempt the exemption goods from the duties. Sections 8(7) and 10(8) of the Dumping Duty Act set out, amongst other things, the matters to be considered by the Minister in deciding whether to exercise their discretion to exempt goods from the duties.

1.2 Findings and conclusions

The Commission has made the following findings and conclusions based on the application and information provided by the Australian industry manufacturing HSS.

The Commissioner is **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.

1.3 Recommendation

Based on the Commission's findings as outlined above, the Commissioner recommends to the Minister that the exemption goods be exempted from the duties effective from the date of application, being 14 May 2020.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Tariff (Anti-Dumping) Act 1975* unless otherwise specified.

² Similar anti-dumping measures previously applied to exports of HSS from the Kingdom of Thailand. The relevant dumping duty notice expired on 19 August 2020.

2 BACKGROUND

2.1 The anti-dumping measures

On 3 July 2012, anti-dumping measures were imposed on exports of HSS following consideration of *International Trade Remedies Branch Report No. 177* (REP 177).³ A dumping duty notice applies to HSS exported to Australia from China, ROK, Malaysia and Taiwan, and a countervailing duty notice to HSS from China. Unless continued, these measures will expire on 2 July 2022. A number of exporters are not subject to the measures; further details are in the *Dumping Commodity Register* on the Commission website, www.adcommission.gov.au.

2.1.1 The goods description

The goods subject to the anti-dumping 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.

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.

At the time of the original investigation (detailed in REP 177), the applicant supplied additional information to clarify the scope of the goods description, indicating that all HSS regardless of finish, is included. Finish types for the goods include in-line galvanised, pre-galvanised, hot-dipped galvanised and non-galvanised HSS. Non-galvanised HSS is typically of painted, black, lacquered or oiled finish coatings. CHS with other than plain ends (such as threaded, swaged and shouldered) are also included.

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.⁴

³ The [report](#) is available on the Commission website.

⁴ Anti-Dumping Notice No. 2016/24 - electronic public record (EPR) for case 291 - document no. 38 refers. 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.

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2.1.2 Exempt goods

As a result of *Ministerial Exemption Instrument No 1 of 2016*,⁵ certain HSS is exempt from the anti-dumping measures as a result of a Tariff Concession Order (TCO)⁶ granted in respect of:

 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) 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%.

2.2 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
	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
7306.6		Other, welded, of non-circular cross-section
7306.61.00	Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:	
	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 goods

⁵ [Anti-Dumping Notice No. 2016/116](#) - EPR EX0044 - document no. 9 refers.

⁶ Available on the Australian Border Force website, www.abf.gov.au.

2.3 Exemption application

On 14 May 2020, InfraBuild requested an exemption from the duties in relation to its imports of certain HSS (**Attachment 1**). InfraBuild claimed 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.

2.3.1 The exemption goods

The goods subject to the application for exemption (the exemption goods) are described as follows:

Electrical Resistance Welded Hot-dip Galvanised Shouldered Pipe produced in accordance with American Petroleum Institute Standard Specification 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 PSL1.⁷ 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.

The application states that the exemption goods are generally classified to tariff subheading 7306.30.00 of Schedule 3 to the *Customs Tariff Act 1995*.

2.4 Conduct of the inquiry

On 27 July 2020, the Commissioner initiated an exemption inquiry by publishing Anti-Dumping Notice No. 2020/84, which provided details of the exemption goods subject to the inquiry. The notice also outlined the procedures to be followed during the inquiry. The Commission sent members of the Australian industry who produce like goods an invitation to respond to InfraBuild's application. Those members were asked to complete the 'Response to Exemption Application' questionnaire.

Orrcon Manufacturing Pty Ltd (Orrcon) completed its questionnaire response by the due date, 18 August 2020 (**Attachment 2** refers). Austube Mills Pty Ltd did not provide a response to the questionnaire, advising via email that it does not have the capability to manufacture shouldered pipe. Australian Pipe & Tube Pty Ltd did not respond.

⁷ American Petroleum Institute Specification 5L, Line Pipe, 46th edition.

3 ASSESSMENT OF CLAIMS

3.1 Legislative requirements for an exemption

InfraBuild has applied for an exemption under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

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;

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;

InfraBuild requests that the Minister exercise their discretion to exempt the goods from the duties on the basis that:

- like or directly competitive goods are not offered for sale in Australia or
- like or directly competitive goods are offered for sale in Australia, but not to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

3.1.1 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 Act). Section 6 of the Dumping Duty Act provides that the Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of 'like goods' in the 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 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* sets out 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 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.⁸ Drawing on the Macquarie Dictionary and case law, the Commission defines 'directly' as:

excluding that which is indirect or remote;⁹ 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.

3.1.2 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 Act. The Macquarie Dictionary defines 'custom' as:

a habitual practice; the usual way of acting in given circumstance; and
habits or usages collectively; convention.

⁸ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

⁹ *Ibid.*

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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.

As custom can only 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 particular 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.¹⁰

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.¹¹ 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.

3.2 InfraBuild's claims

In support of the statutory grounds for seeking an exemption, InfraBuild provided a detailed statement relating to the determination of what constitutes 'like' or 'directly competitive' goods. InfraBuild asserts that like goods are not offered for sale by the Australian industry.

Physical likeness

InfraBuild asserts that there is currently no Australian pipe and tube manufacturer producing shouldered pipe and that no like or directly competitive goods are available in the Australian market that meet the specified shoulder ring requirements of the exemption goods.

Commercial likeness

The application states that the exemption goods are not commercially like or competitive to domestically manufactured HSS. InfraBuild asserts that, as domestically produced galvanised HSS is not produced as a shouldered pipe, it is not considered suitable for underground mining applications. InfraBuild states that there is a price differential for imported shouldered pipes due to their different physical characteristics. This includes full penetration welding of the shoulder rings, hot dipped galvanisation of the shouldered pipe and non-destructive and pressure testing of the pipe in accordance with the API Standard testing requirements.

¹⁰ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

¹¹ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

Production likeness

InfraBuild states that due to the different production methods and testing requirements at each stage of production, the exemption goods are not manufactured using the same techniques as domestic HSS. The stringent testing procedures required by the API 5L Standard and, in particular, the procedures required to ensure an interference fit that is hydrostatically tested in relation to the shoulder ring to pipe weld, do not apply to HSS that is produced domestically (**Confidential Attachment 3** refers).

Functional likeness

InfraBuild asserts that shouldered pipe is not functionally alike to any HSS product that is manufactured by the Australian industry. Shoulder rings allow for pipes to be joined using Victaulic couplings. In the absence of shoulder rings, pipes will need to be joined using welding techniques which will damage the integrity of the galvanised coating at the welded connection point.

3.3 Australian industry's claims

Orrcon claims in its questionnaire response that it has the capability to produce like or directly competitive goods. These goods are described as 150 mm nominal bore (NB) diameter, 3 mm thickness, of steel grades C250 or C350 and compliant to *Australian Standard 1074-1989 (R2018) - Steel tubes and tubulars for ordinary service (AS1074)* and/or *Australian Standard 1163:2016 - Cold-formed structural steel hollow sections (AS1163)*. Orrcon advised that the product is then shouldered with a welded ring and hot dipped galvanised by a third party. It states that, when using the dimensional tolerances indicated in the description of the exemption goods, its finished goods are the same as the exemption goods. Orrcon also contends that, in the absence of shouldering, there are alternative coupling techniques that effectively result in a product that is like and directly competitive to the exemption goods (**Confidential Attachment 4** refers).

Orrcon claims to have previously sold the 150 NB (165.1 mm outer diameter) pipe described above to the mining, fire protection, engineering construction and agriculture industries. Orrcon also provided evidence of a historical sale of shouldered HDG pipe to an engineering construction customer (**Confidential Attachment 5** refers). Orrcon provided further evidence of a historical quote; however, this did not result in a sale.

Orrcon raised concerns that granting an exemption to the duties for the exemption goods could result in the circumvention of the anti-dumping measures on HSS. By classifying the exemption goods as a 'finished product' using pipe that is subject to existing measures, an importer may potentially seek an exemption to circumvent the anti-dumping measures.

A further concern raised by Orrcon relates to the pipe size specified in the description of the exemption goods. The pipe size is a standard Australian domestic pipe size for both pressure and structural applications and the product can be subsequently modified to be HSS goods, which are subject to the current anti-dumping notices. The Commission has noted the concerns raised by Orrcon. However, the relevant test before the Commission is whether 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.

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Orrcon also contends that the size specified in the description of the exemption goods is not a standard API 5L pipe size and is outside the scope of the standard. As such, it would be difficult to assess whether the imported goods comply to the API 5L standards, or if the exempted goods were manufactured by an API-certified mill.

Orrcon further claims that HDG processing will remove product markings and any traceability to the API 5L mill. Orrcon highlights concerns with using galvanised pipes in mining applications. It refers to guidelines published by the Department of Home Affairs, *Tariff Classification Guide on Line Pipe of a kind used for oil or gas pipelines*.¹² It states that:

Galvanised pipe however, is not commonly, if ever, used in oil or gas pipelines. The zinc coating would compromise the pipe and also prevents effective welding of joints. Therefore, galvanised pipe is not line pipe used in oil or gas pipelines, nor of the class or kind used for oil or gas pipelines.

Orrcon considers that the quality specification of the exemption goods is weighted purely to obtaining a low-cost product. As such, it may be inadequate for the intended end-use application. Orrcon submits that:

- API 5L PSL1 does not require Charpy v-notch testing for brittleness
- size at 165.1 x 3 mm has a diameter to thickness ratio of 55:1 which increases the likelihood of not being able to resist collapse and buckling
- HDG processing and secondary cold working can lead to embrittlement of steel
- high silicon levels reduce the toughness of the steel and
- grade B/PSL1 does not require the weld on finished pipe to be heat-treated to reduce brittleness.

3.4 Submissions

In submissions, InfraBuild directly addressed Orrcon's claim that it supplies like or directly competitive goods.

InfraBuild contends that Orrcon's goods are not like or directly competitive goods, due to differences in wall thickness. Orrcon's product has a wall thickness of 3.0 mm. However, the wall thickness of the exemption goods is 2.5 mm. InfraBuild also claims that the application of tolerances distinguishes the exemption goods from those made by Orrcon. InfraBuild refers to Orrcon's *National Product Catalogue* which stipulates a wall thickness tolerance of ± 10 per cent for structural CHS, which would equate to a maximum thickness of 3.30 mm. This is 0.48 mm greater than the maximum of 2.82 mm set out in the description of the exemption goods. InfraBuild suggests that this difference results in goods that are not sufficiently light-weight or as easily handled underground. The Commission observes that the weight gain between a wall thickness of 2.82 mm and 3.30 mm over 6 metres results in a gain of 11.29 kilograms.

InfraBuild emphasises that the shoulder rings are produced to meet the requirements of API 5L and that this standard is a different standard to AS1163 / AS1074. The submission also rebuts Orrcon's claim that the 165.1 mm diameter pipe is outside the scope of the standard.

¹² <https://www.abf.gov.au/tariff-classification-subsite/files/Guides/tcg-line-pipe-kind-used-oil-gas-pipelines.pdf>.

InfraBuild claims that a light weight pipe that can be readily handled underground in mining applications is highly desired by customers. InfraBuild supported this claim citing several submissions from customers. These submissions appear to demonstrate that shouldered pipe is used at their underground mine sites (**Confidential Attachment 6** refers). This claim was further supported by drawings that detail specifications for underground mining activities that specify that the pipe must meet the standard API 5L Gr B and HDG to the standard AS1074 (**Non-confidential Attachment 7** refers). InfraBuild also emphasised that under API 5L, all lengths of pipe are required to be hydrostatically tested. This ensures the integrity of weld seams on each length of pipe, a requirement that is not found in AS1163 or AS1074.

In response to the alleged compliance risks raised by Orrcon, InfraBuild refers to the API5L standard. That standard sets out that, where pipe is subsequently coated, API 5L permits marking to be performed by the coater. As evidence of this practice, InfraBuild provided an image of the exemption goods with markings, in addition to a directly corresponding mill test certificate (**Confidential Attachment 8** refers).

InfraBuild also expressed doubts in relation to Orrcon's historical sales of galvanised shouldered pipe. In particular, InfraBuild questioned:

- to what specification the goods were made
- whether 'subsequent opportunities' pursued by Orrcon resulted in sales and
- whether the 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.

Thyssenkrupp Materials Trading Australia Pty Ltd (Thyssenkrupp) submitted that the exemption goods do not meet the API 5L standard. Thyssenkrupp submitted that galvanised pipe is not commonly used in oil and gas applications, that the exemption goods can be manufactured using AS1074 and that the exemption should not be granted.¹³ Thyssenkrupp further submitted that Orrcon's questionnaire response is heavily redacted.¹⁴ Thyssenkrupp submitted that Orrcon has no capability to galvanise pipe, and that Orrcon is on the record in REP 177 indicating that HDG pipe is not manufactured in Australia. Thyssenkrupp indicated that InfraBuild's website claims that it manufactures shouldered pipe.

3.5 The Commission's assessment of Australian industry's offer for sale of 'like' or 'directly competitive' goods

The Commission notes that Orrcon has historically sold shouldered pipe products. The Commission compared Orrcon's historical sale with the characteristics of the exemption goods. The Commission considers that those goods, although not alike in all respects, had characteristics closely resembling those of the exemption goods (**Confidential Attachment 9** refers). However, since that historical sale, there has been a long term absence of sales by Orrcon of shouldered pipe that would resemble the exemption goods.

¹³ [EPR Document 4.](#)

¹⁴ [EPR Document 5.](#)

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The Commission has evidence that Orrcon offers shouldered products for sale, demonstrated by Orrcon's steel product catalogue¹⁵ and its product list.¹⁶ Orrcon advised, however, that it does not produce the shouldered pipe (**Confidential Attachment 10** refers).

Based on this information, the Commission is satisfied that that like or directly competitive goods are not offered for sale in Australia by the Australian industry producing like goods.

As the exemption goods are not offered for sale, no further consideration of whether the goods are offered for sale on equal terms under like conditions having regard to the custom and usage of trade is required.

¹⁵ [Product Guide March 2020](#).

¹⁶ [Orrcon product list](#).

4 RECOMMENDATION

4.1 Recommendation to the Minister

Based on the information available and the Commission's findings, the Commissioner recommends that the Minister exercise a discretion to exempt the exemption goods. The exemption goods will not be subject to the duties, in accordance with sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

4.2 Effective date of exemption

The application, examined in this report, was received on 14 May 2020.

The timing for granting an exemption is at the discretion of the Minister, but must not be earlier than the day the application is made. It is the Commission's policy, generally, to recommend that an exemption is backdated to the date of the application.

The Commissioner therefore recommends that the exemption takes effect from the date of application, 14 May 2020.

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5 ATTACHMENTS

Attachment	Confidentiality	Title	EPR identifier
Attachment 1	Public	Exemption Application	EPR 1
Attachment 2	Public	Australian industry questionnaire response	EPR 3
Attachment 3	Confidential	API 5L specifications / extract	N/A
Attachment 4	Confidential	Australian industry questionnaire response	N/A
Attachment 5	Confidential	Australian industry quotation and sale	N/A
Attachment 6	Confidential	Applicant letters of support	N/A
Attachment 7	Confidential	Mine site drawings of shouldered pipe requirement	N/A
Attachment 8	Confidential	Pipe Markings / Test certificates	N/A
Attachment 9	Confidential	Analysis of the goods exemption against Australian industry's specifications	N/A
Attachment 10	Confidential	Australian industry manufacturing capability	N/A