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

**Anti-Dumping
Commission**

EXEMPTION INQUIRY REPORT EX0080

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

Applicant: Unecom Australia Pty Ltd

21 October 2022

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ABBREVIATIONS

Abbreviation	Full reference
ABF	Australian Border Force
the Act	<i>Customs Act 1901</i>
ADN	Anti-Dumping Notice
AS/NZS	Australian / New Zealand Standards
AS/NZS 1397	Australian standard 1397:2001 - Continuous hot-dip metallic coated steel sheet and strip - Coatings of zinc and zinc alloyed with aluminium and magnesium
AS/NZS 2053.7	Australian standard 2053:2002 - Conduits and fittings for electrical installations - Part 7: Rigid metal conduits and fittings
AS/NZS 4680	Australian standard 4680:2006 – Hot-dip galvanized (zinc) coatings on fabricated ferrous articles
ATM	Austube Mills Pty Ltd
BlueScope	BlueScope Steel Ltd
Caddy Industrial	Caddy Industrial Sales Pty Ltd
China	the People's Republic of China
CHS	circular hollow sections
commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
the Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
the duties	interim dumping duty and interim countervailing duty
EPR	electronic public record
ERW	electric resistance welding
exemption goods	the goods subject of the application as described in chapter 2.3.1
HDG	hot-dipped galvanised, or hot dip galvanising
HRC	hot rolled coil
HSS	hollow structural sections
mm	millimetres
the Minister	the Minister for Industry and Science
Orrcon	Orrcon Manufacturing Pty Ltd
post-galvanised conduit	black steel conduit batch hot dip galvanised to comply with AS/NZS 4680:2006
pre-galvanised conduit	steel conduit made from hot rolled coil already galvanised to AS/NZS 1397

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REP 177	<i>International Trade Remedies Branch Report No. 177</i>
RHS	rectangular hollow sections
ROK	Republic of Korea
TCO	tariff concession order
Unecom	Unecom Australia Pty Ltd
Williams Mining	Williams Mining & Industrial Sales Pty Ltd

1 SUMMARY AND RECOMMENDATIONS

This report sets out the findings of the Anti-Dumping Commission (the commission) in response to an application from Unecom Australia Pty Ltd (Unecom). Unecom's application sought an exemption from interim dumping duty and interim 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 These sections relate to whether 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. The discretion to grant an exemption only arises where the criteria of the sections are met.

The exemption application is in relation to certain hollow structural sections (HSS) exported from the People's Republic of China (China), the Republic of Korea (ROK), Malaysia and Taiwan.

After examining the application, the Commissioner of the Anti-Dumping Commission (the Commissioner) initiated an inquiry on 22 March 2021.

The Commissioner has relied on the findings in this report to make a recommendation to the Minister for Industry and Science (the Minister) as to whether or not to exempt the exemption goods (as defined in chapter 2.3.1) from the duties, as is set out below.

1.1 Findings and conclusions

Unecom claimed in its application that the Australian industry producing HSS does not produce like or directly competitive goods to the exemption goods.² However, in a later submission, Unecom contended that the Australian industry did not produce identical goods to the exemption goods, and did not address the issue of whether the Australian industry produced and sold like or directly competitive goods.³

Following submissions from the Australian industry and other interested parties and its review of the evidence available to it (detailed in this report), the commission has found that the Australian industry producing HSS:

- manufactures goods which are like goods to the exemption goods and
- sells the like goods to an Australian downstream fabricator which carries out a final process of manufacture before selling what become directly competitive goods to the exemption goods to Australian customers.

The Commissioner has therefore concluded 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.

¹ 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 Available on the electronic public record (EPR) for this inquiry, EX0080, [document 1](#).

³ EPR EX0080, [document 6](#).

1.2 Recommendation

As the Minister cannot be satisfied of the like goods criterion, the Minister's discretion to exempt the exemptions goods from the duties does not arise. The Commissioner recommends that the Minister not exempt the exemption goods.

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)*.⁴ A dumping duty notice applies to certain HSS exported to Australia from China, ROK, Malaysia and Taiwan, and a countervailing duty notice to HSS from China. 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.

The applicant for REP 177 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.⁵

⁴ The report is available on the commission website, www.adcommission.gov.au, case 177.

⁵ Anti-Dumping Notice No. 2016/24 - EPR for case 291 - [document 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.

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2.1.2 Exempt goods

As a result of *Ministerial Exemption Instrument No 1* of 2016⁶, certain HSS is exempt from the anti-dumping measures as a result of a Tariff Concession Order (TCO)⁷ 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

⁶ [Anti-Dumping Notice No. 2016/116](#) - EPR EX0044 - [document 9](#).

⁷ Available on the Australian Border Force website at www.abf.gov.au.

2.3 Exemption application

On 9 September 2020, Unecom submitted an application for exemption from the duties in relation to its imports of HSS. Unecom claimed in its application that the exemption goods are not manufactured (and therefore are not offered for sale) in Australia.⁸

Whilst considering Unecom's application, the commission considered that Unecom had provided insufficient information to support its application. The commission sought additional evidence from Unecom regarding its attempts to purchase the exemption goods from the Australian industry. Unecom provided supplementary information to support its application on 26 October 2020 and 25 February 2021.

Based on the initial application and the supplementary information provided, the Commissioner considered Unecom's application contained sufficient grounds for the initiation of an inquiry. The Commissioner initiated an exemption inquiry by publishing Anti-Dumping Notice (ADN) No. 2021/039 on 22 March 2021. ADN No. 2021/039 provides details of the exemption goods subject to this inquiry, including the procedures to be followed.

2.3.1 The exemption goods

The exemption goods subject to this inquiry are as follows:

Steel conduit which has been subject to hot dip galvanising (HDG) to prevent the goods from being subject to rusting. The goods are compliant with Australian Standard / New Zealand Standard (AS/NZS) 4680:2006 which requires the steel and zinc coating to be of certain thickness.

The goods are imported with both ends being threaded and a coupling attached to one end to allow the conduit to be constructed to lengths required within predominately the mining and industrial industry.

The goods comply with the standard AS/NZS 2053.7 which provides the standard for conduit systems for cable management however this standard is being phased out but is currently still applicable.

The goods are supplied in the following configurations (outer diameter/thickness/length):

- 25 x 1.8 x 4000 mm
- 32 x 1.8 x 4000 mm
- 40 x 1.8 x 4000 mm
- 50 x 2.0 x 4000 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*. Unecom further stated that the exemption goods are a specific type of steel conduit, which has specific uses.⁹

⁸ EPR EX0080 - [document 1](#).

⁹ Ibid.

2.4 Conduct of the inquiry

The commission invited members of the Australian HSS industry to respond to Unecom’s application by completing the Response to Exemption Application questionnaire (questionnaire).

A completed questionnaire was received from BlueScope Steel Ltd (BlueScope) on behalf of its subsidiary company Orrcon Manufacturing Pty Ltd (Orrcon), in which it opposes Unecom’s exemption application.¹⁰ BlueScope’s questionnaire stated that it made identical goods to the exemption goods and that it opposed Unecom’s TCO application. Accordingly, BlueScope did not provide a response to the questions in *Section D – like and directly competitive goods*.

The commission notes that BlueScope’s written questionnaire was not a response to the procedures published in ADN No. 2021/39 and was instead a response based on sections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act (a TCO exemption inquiry).

Notwithstanding this oversight, BlueScope provided information and evidence of the goods Orrcon manufactures and sells. Based on its examination of the information provided and the commission’s previous verification of similar data and information, the commission considers this information and evidence is relevant and can be relied on in this inquiry.

The other Australian industry member, Austube Mills Pty Ltd (ATM), acknowledged receipt of the questionnaire but did not provide a response.

Interested parties made the following submissions.

Interested party	EPR no	Submission type
Williams Mining	4	Response to ADN No. 2021/039
Unecom	5	Response to Williams Mining
Unecom	6	Response to BlueScope
BlueScope	7	Response to Unecom ¹¹
Unecom	8	Additional response to BlueScope
Caddy Industrial Sales Pty Ltd	9	Letter in support of applicant
Williams Mining	10	Response to commission’s request for information

Table 2: Submissions received and considered in this inquiry

The commission also considers that the submissions from Williams Mining are relevant for the conduct of this inquiry. The commission understands that Williams Mining purchases unthreaded goods from Orrcon. Williams Mining then performs the threading and the threaded goods are then sold to the Australian market.

The commission’s assessment of whether like or directly competitive goods to the exemption goods are manufactured and sold by the Australian industry will therefore require an examination of the role of both Orrcon and Williams Mining. This assessment is in chapter 3.2.

¹⁰ EPR EX0080 - [document 3](#).

¹¹ Unecom submitted that BlueScope’s questionnaire should not be considered by the commission as it was received after the due date listed in ADN No. 2021/39 (EPR EX0080 - [document 3](#)). The commission advises that BlueScope’s questionnaire was received within the specified timeframe, however there was a delay in uploading it to the EPR.

3 ASSESSMENT OF CLAIMS AND RECOMMENDATION

3.1 Unecom's claims

Unecom claimed in its application that the Australian HSS industry does not produce like or directly competitive goods to the exemption goods.¹² However, in a later submission, Unecom contended that the Australian industry did not produce identical goods to the exemption goods, and did not address the issue of whether the Australian industry produced and sold like or directly competitive goods.¹³

Unecom's application specifically claimed that it is unable to source locally manufactured HDG and threaded steel conduit which meets two Australian / New Zealand Standards (AS/NZS):

- AS/NZS 2053.7:2002 - Conduits and fittings for electrical installations - Part 7: Rigid metal conduits and fittings (AS/NZS 2053.7)
- AS/NZS 4680:2006 - Hot-dip galvanized (zinc) coatings on fabricated ferrous articles (AS/NZS 4680)^{14, 15}

To support this claim, Unecom provided the commission with email correspondence from its client, which was seeking to purchase the exemption goods from both Orrcon and ATM.¹⁶ The emails show that Orrcon and ATM were unable to supply locally manufactured post-galvanised conduit.

Unecom detailed in submissions that when its client had previously approached Orrcon to obtain a quote for the exemption goods, Orrcon was unable to produce a quote for the goods.¹⁷ Instead, Orrcon referred Unecom's client to Williams Mining. In Unecom's opinion, referrals by Orrcon to a non-Australian industry member for the exemption goods is sufficient to demonstrate Orrcon's inability to supply the exemption goods.

Unecom claimed in its submissions that Williams Mining does not have the manufacturing capability to produce steel conduit hot-dip galvanized to AS/NZS 4680. Unecom claimed that the product sold by Williams Mining is made from imported steel, with only the threading and coupling carried out in Australia.¹⁸

Unecom later submitted that, even if the Australian industry does manufacture goods which are identical to the exemption goods, the Australian industry is not willing or able to supply those goods to Unecom's client.¹⁹ In this submission Unecom also stressed the importance of steel conduit manufactured by the Australian industry meeting Australian standards for safety and quality, as required for use in the building and mining industries.

¹² EPR EX0080, [document 1](#).

¹³ EPR EX0080, [document 6](#).

¹⁴ Standards Australia (www.standards.org.au) publishes the Australian/New Zealand Standards. Standards are voluntary documents that set out specifications, procedures and guidelines that aim to ensure products, services, and systems are safe, consistent and reliable.

¹⁵ As the conduit is manufactured first and the galvanising occurs after fabrication, this report refers to products meeting both of AS/NZS 2053.7 and AS/NZS 4680 as 'post-galvanised conduit'.

¹⁶ Confidential Attachment 1.

¹⁷ EPR EX0080, [document 6](#).

¹⁸ EPR EX0080, [document 5](#).

¹⁹ EPR EX0080, [document 6](#).

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Caddy Industrial Sales Pty Ltd (Caddy Industrial), an Australian supplier of steel conduit, made a submission supporting Unecom's claim that the Australian industry does not make the exemption goods.²⁰

3.2 Australian industry's claims

BlueScope and Williams Mining submit that the Australian industry that manufactures and sells the exemption goods is comprised jointly of Orrcon and Williams Mining.²¹

BlueScope and Williams Mining claim that the Australian industry manufactures identical goods to the exemption goods (i.e. post-galvanised conduit) in accordance with AS/NZS 2053.7 and AS/NZS 4680. The manufacturing process is as follows:

- Orrcon uses black, hot rolled coil (HRC) to manufacture black conduit to the sizes of the exemption goods description. This black conduit is sold to Williams Mining.
- Williams Mining then carries out the threading. After threading, Williams Mining arranges for the threaded black conduit to be batch HDG to AS/NZS 4680.
- Williams Mining then sells the post-galvanised conduit (with coupling) to the Australian market.

Alternatively, Williams Mining²² submitted the Australian industry produced and sold HDG steel conduit that met AS/NZS 2053.7 and AS/NZS 1397:2001 - Continuous hot-dip metallic coated steel sheet and strip - Coatings of zinc and zinc alloyed with aluminium and magnesium (AS/NZS 1397).

The commission has referred to this product as 'pre-galvanised conduit' in this report, because:

- Orrcon uses HDG HRC (AS/NZS 1397 compliant) to manufacture pre-galvanised conduit. This pre-galvanised conduit is sold to Williams Mining.
- Williams Mining then carries out the threading. After threading, Williams Mining then sells the pre-galvanised conduit (with coupling) to the Australian market.

3.3 The commission's assessment

The commission examined the evidence presented in Unecom's application²³ and submissions,²⁴ as well as the submissions from BlueScope,²⁵ Caddy Industrial²⁶ and Williams Mining.²⁷ The commission notes that submissions were not always clear whether they were referring to post-galvanised conduit or pre-galvanised conduit.

The commission has previously found that the Australian industry producing HSS is primarily comprised of Orrcon and ATM. In this instance, only Orrcon is producing HSS of the relevant dimensions. Orrcon sells the HSS to Williams Mining, which applies a thread and on-sells the goods as electrical conduit to Australian customers.

²⁰ EPR EX0080, [document 9](#).

²¹ EPR EX0080, [document 7](#) and [document 4](#), respectively.

²² EPR EX0080, [document 10](#).

²³ EPR EX0080, [document 1](#).

²⁴ EPR EX080, documents [5](#), [6](#) and [8](#).

²⁵ EPR EX0080, [document 7](#).

²⁶ EPR EX0080, [document 9](#).

²⁷ EPR EX0080, [document 4](#).

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Figure 1 illustrates the commission's understanding of the differences between the pre-galvanised and post-galvanised conduit production processes using the electric resistance welding (ERW) process.

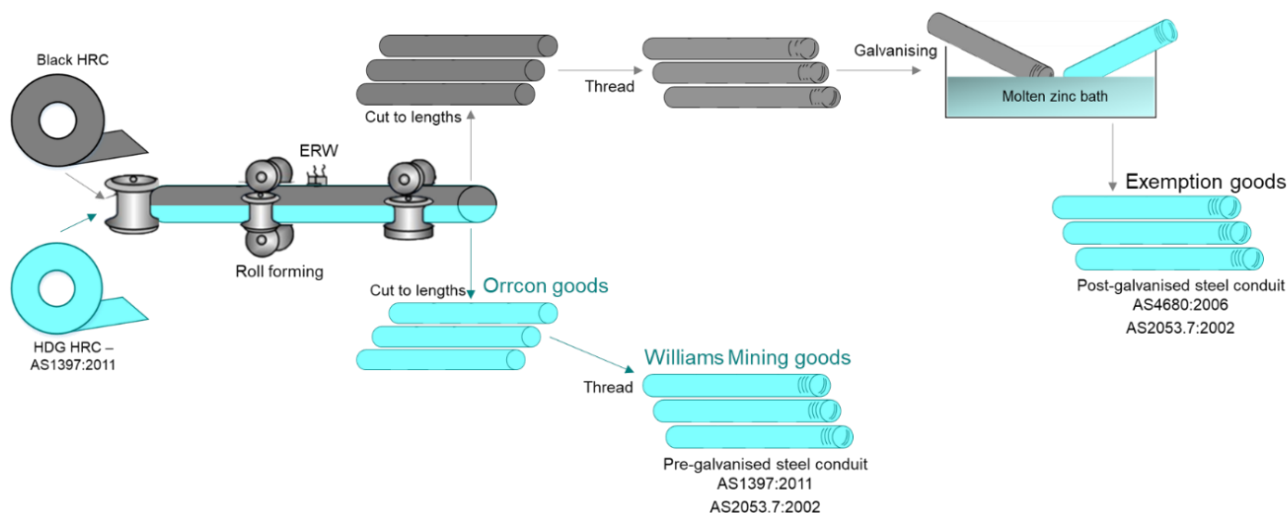


Figure 1: High-level manufacturing process

The commission has examined AS/NZS 2053.1 and AS/NZS 2053.7 which set out the general and specific requirements for the exemption goods. AS/NZS 4680 also sets out the galvanising requirements for the exemption goods. The commission has compared the goods made by the Australian industry with the exemption goods description and, where relevant, the requirements of AS/NZS 2053.1, AS/NZS 2053.7 and AS/NZS 4680.

The commission's detailed comparison is at **Confidential Attachment 1**.

3.3.1 Does the Australian industry offer for sale 'like' or 'directly competitive' goods?

Orrcon provided product compliance certificates, invoices for Orrcon's sales of conduit to Williams Mining, and Orrcon's data for steel conduit sales generally to the commission.²⁸ The commission found that the dimensions of the steel conduit (outer diameter, thickness, length) manufactured by Orrcon conformed to the dimensions of the exemption goods. The Williams Mining online product catalogue also offers for sale steel conduit which matches the dimensions of the exemption goods. Williams Mining's product catalogue also advertises that all its threaded steel conduit (purchased from Orrcon) is compliant with AS/NZS 2053.7.²⁹

All evidence submitted by Orrcon for the purposes of this inquiry to demonstrate its manufacture of the exemption goods related to pre-galvanised conduit. The commission observed that in invoices to Williams Mining, the pre-galvanised conduit Orrcon sold was described as Galvabond (a BlueScope trademark finish), which is a product made from pre-galvanised steel compliant with AS/NZS 1397.³⁰

²⁸ Confidential Attachment 1.

²⁹ Williams Mining's [product catalogue](#), page 4.

³⁰ <http://www.steel.com.au/products/coated-steel/galvabond>

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Orrcon also provided the commission with documents, including independent testing reports and product compliance certificates, to show that the steel conduit it manufactured and then sold to Williams Mining complies with AS/NZS 2053.7.³¹ The product compliance certificates provided by Orrcon for its pre-galvanised conduit as well as BlueScope's Galvabond data sheet show that the coating is of a thickness of zinc 275 g/m² with a passivated surface treatment. This means that the pre-galvanised conduit produced by Orrcon exceeds the medium protection requirements of AS/NZS 2053.7, which prescribes a zinc coating of a minimum of 100 g/m².³²

The commission also compared the galvanising of the pre-galvanised conduit made by the Australian industry with the post-galvanised conduit imported by Unecom. The inspection report provided by Unecom showed the steel conduit it imports far exceeds the minimum zinc coating mass for high protection conduit, however the commission notes that the steel conduit produced by the Australian industry is not required to reach this higher coating mass to be compliant with AS/NZS 2053.7.³³

The commission notes that clause 13.4 of AS/NZS 2053.7 provides that to meet this standard, the coating of the conduit does **not** need to be HDG. Rather, the specific batch HDG process is only one form of various coating alternatives that satisfies the requirements of that standard. Further, AS/NZS 2053 contemplates there may be other, non-threaded connections between galvanised conduits which also meet the standard. As noted in the description of the goods, the additional information provided by the Australian industry is that CHS with other than plain ends (such as threaded, swaged and shouldered) are also included within the scope of the goods subject to measures.

Both pre-galvanised and post-galvanised conduit conform to the overarching electrical conduit standard AS/NZS 2053.7. Invoices provided by Williams Mining show that its customers were willing to purchase both pre-galvanised and post-galvanised conduit, and consider these products to be essentially interchangeable.³⁴

On this basis, apart from the form through which the coating is applied, the exemption goods and the locally manufactured conduit produced by Orrcon and sold by Williams Mining are physically, commercially and functionally alike to the imported post-galvanised conduit. The commission therefore considers the pre-galvanised conduit and post-galvanised conduit to be like or directly competitive goods.

Section 8(7)(a) of the Dumping Duty Act directs the Commissioner's consideration to whether the goods are offered for sale, not whether the goods are produced / manufactured / supplied by an identified industry member. The commission considers the goods subject to the exemption application are wholly produced in Australia: the steel conduit by Orrcon and the threaded end product by Williams Mining, with Williams Mining then offering the goods for sale to the Australian market. The commission therefore finds that like or directly competitive goods to the exemption goods are offered for sale in Australia.

³¹ Confidential Attachment 1.

³² AS/NZS 2053:2002, Part 7, Clause 13.4(a).

³³ Confidential Attachment 1.

³⁴ Confidential Attachment 1.

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3.3.2 To all purchasers on equal terms under like conditions having regard to the custom and usage of trade

Unecom claimed that, even if Orrcon does manufacture the exemption goods, it is not willing or unable to supply Unecom's clients with the goods. This claim was supported by email correspondence between Unecom's clients and Orrcon, provided to the commission as supplementary information to Unecom's application.³⁵ This correspondence showed that Unecom's clients made several unsuccessful attempts to source the exemption goods from Orrcon.

The commission found that there was no clear response from Orrcon to indicate whether the Australian industry was willing to supply Unecom's clients with post-galvanised steel conduit (i.e. exactly matching the exemption goods). However, as noted in this chapter, the commission finds that the pre-galvanised conduit produced by the Australian industry has characteristics closely resembling those of the exemption goods. This pre-galvanised conduit is readily available for purchase by Australian customers, as shown in the Williams Mining product catalogue, in the Williams Mining invoices showing the sale of this steel conduit to its customers, and in Orrcon's emails to Unecom where it confirmed it could supply conduit with various types of coating as an alternative to the post-galvanised product.

The commission considers 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.

3.4 Recommendation

The Commissioner recommends that the Minister be satisfied that 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. The Commissioner therefore recommends that the Minister decide to not exempt the exemption goods from the duties.

³⁵ Confidential Attachment 1.

4 ATTACHMENTS

Attachment	Description
Confidential Attachment 1	Comparison between exemption goods and goods produced by Australian industry.

APPENDIX - LEGISLATIVE PROVISIONS AND INTERPRETATION

Legislative requirements for an exemption

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 the discretion to exempt goods from the duties. Unecom 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

Unecom 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. Alternatively, Unecom requests that the Minister exercise their discretion to exempt the goods from the duties on the basis that 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.

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 relevant 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, cognisant also of the particular context in which this term appears in these provisions 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.

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Chapter 2 of the *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.³⁶ Drawing on the Macquarie Dictionary and case law, the commission defines 'directly' as:

- excluding that which is indirect or remote;³⁷ 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' therefore refers 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'.

³⁶ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

³⁷ *Ibid.*

PUBLIC RECORD

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
- 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

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.³⁸

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.³⁹ When considering what is 'custom or trade usage' the courts have concluded that:

- custom or usage was established mercantile usage or professional practice.⁴⁰
- evidence of actual market practices was crucial to the existence of a custom or usage, however, universal acceptance was not necessary.⁴¹

³⁸ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

³⁹ *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.

⁴⁰ *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 440.

⁴¹ *Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226.