



Australian Government
Department of Industry,
Science and Resources

**Anti-Dumping
Commission**

Exemption Inquiry Report: EX0091

Precision Pipe and Tube Steel

**Exported to Australia from the People's Republic of
China and the Republic of Korea**

**Applicant:
Emro Products Pty Ltd**

10 August 2022

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Abbreviations

Abbreviations	Full reference
Applicant	Emro Products Pty Ltd
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
Customs Act	<i>Customs Act 1901</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
Emro Products	Emro Products Pty Ltd
EPR	Electronic Public Record
Exemption goods	The goods subject of the application as described in section 3.2
Minister	The Minister for Industry and Science
Orrcon	Orrcon Manufacturing Pty Ltd
Questionnaire	'Response to Exemption Application' questionnaire
REP 550	Anti-Dumping Commission Report No. 550
the ROK	the Republic of Korea

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the commission) following an application by Emro Products Pty Ltd (Emro Products). The application seeks an exemption from anti-dumping measures on certain precision pipe and tube steel (the exemption goods). The exemption goods are exported from the People's Republic of China (China) and the Republic of Korea (ROK). Interim dumping duties apply to precision pipe and tube steel exported from China and the ROK. Interim countervailing duties apply to precision pipe and tube steel exported from China.

The application requests an exemption from interim dumping duty, interim countervailing duty, dumping duty and countervailing duty (collectively, the duties) under sections 8(7)(a) and 10(8)(a) of the *Customs Tariff (Anti-Dumping) Act 1975*¹ (the Dumping Duty Act). These sections apply when:

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

This report sets out the commission's findings. The Commissioner of the Anti-Dumping Commission (the Commissioner) relied on these findings to make a recommendation to the Minister for Industry and Science (the Minister) on whether or not to exempt goods from the duties

The commission finds that there is no Australian industry producing like or directly competitive goods. Therefore:

- like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade and
- the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are satisfied.

These findings are based on the application and the Australian industry's response to the 'Response to Exemption Application' questionnaire (questionnaire).

1.1 Recommendation

The Commissioner recommends to the Minister that the exemption goods be exempted from the duties.

1.2 Authority to make the decision

Sections 8(7) and 10(8) set out, among other things, the matters to be considered by the Minister in deciding whether to exercise their discretion to exempt goods from the duties.

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. Background to measures

2.1 The measures

Anti-dumping measures on precision pipe and tube steel exported to Australia from China and the ROK were imposed on 27 September 2021. The then Acting Minister for Industry, Science and Technology found that exports from China were dumped and subsidised, and exports from the ROK were dumped, and this caused material injury to the Australian industry.

Anti-Dumping Notice (ADN) Nos 2021/109 and 2021/110 contain details of the measures imposed at that time. The dumping commodity register outlines the measures currently active.

2.2 The goods subject to measures

The goods exported from China and the ROK covered by the current dumping duty and countervailing duty notices are:

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

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("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 nominal thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

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

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

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.²

² ADN Nos 2021/109 and 2021/110.

2.3 Tariff classification

The goods subject to measures may be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

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:
7306.30.00		Other, welded, of circular cross-section, of iron or non-alloy steel:
	30	Not exceeding 21 mm external diameter
7306.50.00		
	45	<i>Other, welded, of circular cross-section, of other alloy steel</i>
7306.6		Other, welded, of non-circular cross-section
7306.61.00		<i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i>
	21	Wall thickness not exceeding 2 mm

Table 1: General tariff classification for the goods

3. Exemption inquiry

3.1 Application and initiation

On 21 December 2021, Emro Products (the applicant) wrote to the commission requesting an exemption from dumping duty and countervailing duty in relation to its imports of precision pipe and tube steel.

The commission accepted the applicant's letter³ as an application for an exemption from the duties. On 8 February 2022, the Commissioner initiated an exemption inquiry by publishing Anti-Dumping Notice (ADN) 2022/011. That ADN provided details of the goods subject to the inquiry and outlined the procedures for the inquiry.

3.2 The exemption goods

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

Chrome plated steel tube in 16mm and 19mm outside diameters.

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*.

3.3 Claims made in the application

In support of its claim that like or directly competitive goods are not offered for sale in Australia, the applicant provided email correspondence with relevant Australian industry member Orrcon Manufacturing Pty Ltd (Orrcon). In that correspondence the applicant asked Orrcon if they are able to manufacture the exemption goods. Orrcon replied stating:

"The manufacturing capability of Orrcon Steel's precision round tube extends in the range of ϕ 12.7mm through to ϕ 101.6mm in various gauges, finishes and lengths. This capability information is publicly available on our internet site for verification purposes. Orrcon Steel ... does not offer metal finishing services for chrome electroplating ... Orrcon Steel has customers that we supply steel precision tube to who then subsequently process (*cut to length, bend, de-burr, etc*) and electroplate into finished products."

"These sizes, their surface finish condition aside, we would consider as like products that are within Orrcon's existing manufacturing size range capability."⁴

The applicant states in correspondence to Orrcon provided in the application that "[Emro Products] have spoken to a number of electroplating facilities in Australia, and so far none have been able to meet requirements due to insufficient tank sizes."⁵

3.4 Claims made in response to the application

On 28 February 2022, Orrcon responded to the application by completing the Australian industry questionnaire. In its response, Orrcon:

- stated that it did not oppose the application for an exemption

³ EPR - EX0091, document 01

⁴ Confidential Attachment 1 – Email dated 30 November 2021 between EMRO and Orrcon provided as an attachment to the application by EMRO for an exemption.

⁵ Ibid

- stated that the exemption goods are like goods to those it manufactures
- requested that the descriptions of the exemption goods be modified to include tolerances on gauge of no more than $\pm 5\%$, and length of no more than $\pm 1\%$.

In regards to the exemption goods being like to those Orrcon manufacturers, it stated:

“The manufacturing capability of Orrcon’s precision round tube extends in the range of outer diameter $\phi 12.7\text{mm}$ through to $\phi 101.6\text{mm}$ in various gauges and finishes. Orrcon does have customers that are supplied steel precision tube who then subsequently process (cut to length, bend, de-burr, etc) and electroplate into finished products. The sizes listed on the exemption request we consider as like products that sit within Orrcon’s manufacturing capability. As way of evidence, refer highlighted in a screen shot extract from Orrcon’s National Product Catalogue, which is available on the Orrcon Steel internet site.”⁶

In regards to the request to modify the exemption goods, Orrcon subsequently rescinded this request.⁷

No other parties made submissions to this inquiry.

⁶ EPR - EX0091, document 03

⁷ EPR - EX0091, document 04

4. Assessment of claims

4.1 Finding

Sections 8(7)(a) and 10(8)(a) state the Minister may grant an exemption from anti-dumping duties where:

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

Appendix A provides further details of the legislative framework for a 'like or directly competitive goods' exemption.

The commission is satisfied that conditions for granting an exemption are satisfied.

The commission considers that the difference between chrome plated steel tube and other finishes is sufficiently material to find that the goods produced by the Australian Industry are not like or directly competitive with the exemption goods.

4.2 Basis for finding on like or directly competitive goods

In its response to the Australian industry questionnaire, Orrcon demonstrated to the commission that they produce goods to the dimensions requested by the applicant. Orrcon acknowledged in their correspondence to the applicant that they do not provide electroplating services that would enable those goods to meet the finish requirement (chrome plated) that the applicant is seeking.

Orrcon consider that there may be alternative manufacturing capability for chrome plating in Australia, however Orrcon did not identify any Australian business capable of chrome plating the goods it produces to meet the description of the exemption goods. Further, the applicant stated to Orrcon that it had contacted a number of electroplating facilities in Australia, and none have been able to meet its requirements due to insufficient tank sizes. No chrome plating manufacturers participated in this inquiry.

On the information made available to this inquiry, the commission considers that chrome plating of the goods produced in Australia, in the dimensions required by the applicant, is not currently available to the applicant.

The commission considers that the physical characteristic of finish is a significant feature in the description of the exemption goods. The commission considers the difference between chrome plated steel tube and other finishes is sufficiently material to find that the exemption goods are not like to, or directly competitive with, those produced by Orrcon.

The commission is therefore satisfied that like or directly competitive goods are not offered for sale in Australia.

4.3 Conclusion

The commission finds that the Australian industry does not offer for sale like or directly competitive goods to the exemption goods. It follows that the exemption 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. Accordingly, the conditions of sections 8(7)(a) and 10(8)(a) for granting an exemption are satisfied.

5. Recommendation

Based on the commission's examination of the application and submissions made to the inquiry, the Commissioner considers that like or directly competitive goods to the exemption goods are not offered for sale in Australia.

Accordingly, the Commissioner recommends that the Minister exercise their discretion to exempt the exemption goods, being:

Chrome plated steel tube in 16mm and 19mm outside diameters

from interim dumping duty and dumping duty in accordance with section 8(7)(a), and interim countervailing duty and countervailing duty under section 10(8)(a).

5.1 Effective date of exemption

The date of effect of the granting of an exemption is at the discretion of the Minister. The Dumping Duty Act limits the Minister's discretion to a date not earlier than the date of application for the exemption.⁸

It is the commission's practice to recommend that the date of effect is the date of the application. In this matter, that date is 21 December 2021. The commission recommends granting the exemption effective from 21 December 2021.

⁸ Sections 8(8A) and 10(9A).

Appendix A – Legislative framework for a ‘like or directly competitive goods’ exemption

Legislation

Section 8(7) provides:

- (7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

And

Section 10(8) provides:

- (8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:
 - (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

Definition of “like or directly competitive goods”

Like goods

The term “like goods” is defined in section 269T(1) of the *Customs Act 1901* (the Customs Act). Section 6 of the Dumping Duty Act provides that the Customs Act is incorporated and shall be read as one with the Dumping Duty Act. Accordingly, the definition of “like goods” in the Customs Act is applicable to the Commission’s assessment of whether the exemption goods are ‘like goods’ under sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act.

Section 269T(1) of the Customs Act defines “like goods” as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

Chapter 2 of the commission’s *Dumping and Subsidy Manual* embodies the commission’s established policy and practice in relation to like goods. Where two goods are identical they are automatically like goods, but where two goods are not alike in all respects the commission will assess whether they have characteristics closely resembling each other including assessing their physical likeness, commercial likeness, functional likeness and production likeness.

Directly competitive goods

The term “directly competitive” is not defined in the Dumping Duty Act or the Customs Act and has not been the subject of judicial consideration by Australian courts. Accordingly, assistance in understanding this term can be derived by having recourse to relevant dictionary definitions and case law. Case law suggests an assessment of a “direct” relationship is a question of fact and degree.⁹ Drawing on the Macquarie Dictionary and case law, the commission defines “directly” as:

excluding that which is indirect or remote;¹⁰ absolutely; exactly; precisely.

The Macquarie Dictionary also defines “competitive” as:

*of, relating to, involving, or decided by competition; and
having a feature comparable or superior to that of a commercial rival.*

The phrase “*directly competitive*” can therefore be taken to refer to goods with comparable features that rival each other in a commercial market. The assessment will be one of fact and degree, and the goods will not merely remotely or indirectly compete.

Alternatives to satisfying sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act

The exemption provisions in sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act specifically provide for exemptions where either like goods or directly competitive goods are not offered for sale in Australia. It is not necessary to be satisfied that there are both like goods and directly competitive goods for sale in Australia in order to deny the application for an exemption. It is sufficient for there to be either like goods or directly competitive goods for sale in Australia for the requirements of the exemption not to be met.

If there are no like or directly competitive goods offered for sale in Australia, then the requirements for exemption in sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act will be met.

If there are like or directly competitive goods, then it is necessary to consider whether these like or directly competitive goods are offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade.

Definition of “custom and usage of trade”

Although the domestically produced goods may be “like or directly competitive goods”, the Minister may still grant an exemption to duties in circumstances where the “like or directly competitive goods” are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the “custom and usage of trade”.

The term “custom and usage of trade” is not defined in the Dumping Duty Act or the Customs Act. The Macquarie Dictionary defines “custom” as:

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

⁹ *Adelaide Development Co Pty Ltd v Corporation of the City of Adelaide and Anor* (1991) 56 SASR 497 at [45].

¹⁰ *Ibid.*

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 to be inferred from a large number of individual acts, the existence of a custom and usage of trade must involve:

*the multiplication or aggregation of a great number of 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.*¹¹

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.¹² 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.

¹¹ *Anderson v Wadey* (1899) 20 N.S.W.R. 412 at p. 417.

¹² *Castlemaine Tooheys Ltd v Carlton & United Breweries Ltd* (1987) 10 NSWLR 468.