

# **RESPONSE TO AN APPLICATION FOR EXEMPTION FROM DUTY UNDER THE CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975**

**Exemption inquiry EX0093 – response requested by 12 August 2022**

## **1 Introduction**

The Anti-Dumping Commission (the commission) requests your response to an application for exemption from anti-dumping measures under the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act).

Sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act provide discretion for the Minister for Industry and Science (the Minister) to exempt goods from anti-dumping measures, where they are 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.

The commission has received an application for exemption from anti-dumping measures in respect of certain hollow structural sections (HSS or the goods) for the goods described at section 5 of this form (“the exemption goods”). Your company has been identified as an Australian producer of the goods. The commission seeks your assistance in this exemption inquiry by responding to this questionnaire. The commission will use the information you provide in its assessment as to whether an exemption from dumping duties may be recommended to the Minister.

## **2 Current anti-dumping measures**

The anti-dumping measures were initially imposed by public notice on 3 July 2012 by the then Minister for Home Affairs following consideration of International Trade Remedies Branch Report No. 177. Interim dumping duties apply to all exporters of HSS from People’s Republic of China (China), Malaysia and Taiwan. Interim dumping duties apply to all exporters of HSS from the Republic of Korea except Kukje Steel Co Ltd and Hi-Steel Co., Ltd. Interim countervailing duties apply to all exporters from China, except Dalian Steelforce Hi-Tech Co. Ltd, Huludao City Steel Pipe Industrial Co. Ltd and Qingdao Xianxing Steel Pipe Co. Ltd. The goods subject to the anti-dumping measures and this inquiry 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.

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

### **Exempted goods**

As a result of Ministerial Exemption Instrument No 1 of 2016 , certain HSS is exempt from the anti-dumping measures as a result of a Tariff Concession Order (TCO) 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%.

As a result of Ministerial Exemption Instrument No 3 of 2021, certain HSS is exempt from anti-dumping measures pursuant to sections 8(7)(a) and 10(8)(a) of the Dumping Duty Act:

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. 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/m<sup>2</sup>.

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):  $2.5 \pm 0.32$
- Ring and shoulder:
  - Nominal ring thickness (mm):  $4.8 \pm 0.15$
  - Shoulder outside diameter (mm):  $174.5 \pm 0.8$
  - Ring length (mm):  $17.5 \pm 0.4$
  - 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.

### **3 Application for Exemption from Measures**

An application for an exemption has been made to the commission by Kasia Nominees Pty Ltd trading as DE Engineers (DE Engineers). The commission has accepted the application and will now undertake an examination to determine whether it should recommend the requested exemption.

## 4 Exemption Provisions

The Dumping Duty Act provides discretion for the Minister to exempt goods from dumping duties if one of the criteria in section 8(7) is met, or to exempt goods from countervailing duties if one of the criteria in section 10(8) is met. The relevant parts of sections 8(7) and 10(8) for current purposes are set out below.

### Section 8(7)

The Minister may, by notice in writing, exempt goods from interim dumping duty or 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)

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;

...

The exemption provisions are subject to the discretion of the Minister and an exemption is not automatically granted, even where the criteria in the provision is met.

## **5 The Goods Subject to this Exemption Application**

The goods the subject of this exemption inquiry were described by the applicant as:

Electric resistance welded pipe made of carbon steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections), RHS (square or rectangular) and trapezoidal hollow sections comprising ALL of the following:

- a) an air-blown hot-dipped galvanised finish;
- b) a zinc coating mass of 200-300g/m<sup>2</sup>.

### **Goods produced in Australia**

The applicant claims that there are no Australian manufacturers of the exemption goods as described.

## **6 Instructions on Completing this 'Response to the Exemption Application'**

The commission has identified your company as a producer of hollow structural sections. Consequently, the commission has forwarded you this 'response to exemption application' (the response) to provide you with the opportunity to participate in this exemption inquiry.

The commission seeks your assistance with this exemption inquiry by responding to the questions in this form. The commission will use the information you provide to make a recommendation as to whether an exemption from dumping and/or countervailing duty should be granted by the Minister for Industry and Science.

Specifically, the information provided by Australian hollow structural sections producers will assist the commission in determining whether like or directly competitive goods are offered for sale in Australia and whether offers for sale of the goods are available to all purchasers on equal terms under like conditions having regard to custom and usage of trade.

### **Due date for the response**

We request that you complete your response and return it to the commission by **12 August 2022**.

Please email your response to [investigations@adcommission.gov.au](mailto:investigations@adcommission.gov.au)

### **Verification of the information that you supply**

The commission may seek to verify some or all of the information supplied in the response. The commission may request evidence to support the claims such as quotations and offers of sale.

An onsite visit by the commission may be required in some cases. A report will be prepared of visits conducted and a non-confidential version will be placed on the public record.

There is no legislative timeframe for completion of an exemption inquiry, however a recommendation to the Minister will be made as soon as practicable after obtaining all relevant information.

### **Confidential and non-confidential submissions**

We request that you also lodge a non-confidential version of your response suitable for placement on the public record. The commission puts greater weight on submissions that

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are available to other interested parties for comment.

Please ensure that each page of information you provide is clearly marked either: “SENSITIVE: Official” or “PUBLIC RECORD”.

All information provided to the commission in confidence will be treated accordingly. The non-confidential version of your submission will be placed on the public record.

**Outline of information required by the response**

<b>Part A</b>	Company contact information
<b>Part B</b>	Response to exemption application
<b>Part C</b>	Identical goods
<b>Part D</b>	Like or directly competitive goods
<b>Part E</b>	Capability to produce like or directly competitive goods
<b>Part F</b>	Additional comments
<b>Part G</b>	Your declaration

## Response to Exemption Application

### PART A – Company Information

A.1 Please provide the following company contact information:

Name:	████
Position in company:	████
Address:	Level 27, 8 Chifley Square, Sydney NSW 2000
Telephone:	████
Facsimile number:	
E-mail address of contact person:	████

### PART B – Response to Exemption Application

#### B.1

Does your company oppose or not consent to the request for an exemption?

- Oppose  
 Not oppose

**NOTE: If your company does not oppose the request for an exemption, you do not need to complete all parts of the questionnaire. Please indicate that you do not oppose the request (stating the reasons why), answer the questions that are relevant to your reasons for not opposing the request, sign and return the form as soon as possible.**

#### B.2

Please state the reasons why you do not oppose the request for an exemption to the goods.

### PART C – Identical Goods

#### C.1

Does your company produce, in Australia, goods that are identical in all respects to the goods described in section 5 of this 'Response to Exemption Form'?

If no, go to Part D – Like or directly competitive goods.

- Yes  
 No

#### C.2

Please provide evidence that you have produced and sold in Australia, in the last 12 months, goods that are identical in all respects to the goods subject to this application for exemption.

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Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods in the same detail as set out in the description of the goods (section 5), please provide additional information that indicates that identical goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature respecting the identical goods you have produced and sold.

### C.3

Provide evidence of the terms and conditions of sale of these identical goods. Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

## PART D – Like or Directly Competitive Goods

### D.1

If your company does not produce identical goods, does it produce and sell in Australia goods that are like or directly competitive to the goods subject to this application for exemption?

**YES.** [Austube Mills Pty Ltd \(Austube Mills\) produces and sells in Australia goods that are like or directly competitive to the goods subject to this application for exemption.](#)

In determining whether the goods are like or directly competitive, the commission will consider whether the goods have characteristics closely resembling each other and are substitutable.

The commission may also consider:

- whether physical characteristics of the goods are similar (including size, weight, shape, content, appearance, grade, standards, strength and purity)
- whether the goods are commercially alike, this may include consideration of the following
  - whether the goods directly compete in the same market sector
  - the extent to which participants in the supply chain are willing to switch between the goods and the goods subject to the application for exemption
  - how the price of the goods and goods subject to the application influences consumption
  - whether the goods share similar distribution channels and
  - whether the goods are similarly packaged.
- functional likeness – whether the goods are suitable with regard to end use, this may include an assessment of
  - the extent to which the goods are functionally substitutable
  - the extent to which the goods are capable of performing the same or similar function
  - whether the goods have the same or similar quality standards and
  - consumer behavior in relation to the goods and goods subject to this application for exemption.
- production likeness, this may include an assessment of
  - the extent to which the goods are constructed of the same or similar materials
  - the manufacturing process of the goods and
  - whether any patented processes or inputs are involved in the production of the goods.

**D.2**

If you answered yes to question D.1, please provide a description of the goods produced by your company that you consider to be like or directly competitive to the goods subject to this application. Your description of the goods your company produces should refer to all aspects of the goods as set out in the description of the goods in section 5.

Austube Mills produces like or directly competitive goods to the goods subject to this application for exemption. These are sold and marketed under the 'DuraGal' brand.

DuraGal products are electric resistance welded pipe made of carbon and alloy steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections), RHS (square or rectangular) and trapezoidal hollow sections that are galvanised for corrosion protection.

Please see the attached *Product Availability Guide* ([NON CONFIDENTIAL ATTACHMENT 1](#)) for the full Austube Mills product range.

Characteristics	Description
Electric resistance welded pipe made of carbon steel,	Identical
comprising circular and hollow sections normally referred to as CHS (circular hollow sections), RHS (square or rectangular) and trapezoidal hollow sections	Identical section shapes
an air-blown hot-dipped galvanised finish;	Hot dipped galvanised
a zinc coating mass of 200-300g/m <sup>2</sup> .	A minimum zinc coating mass of 100g/m <sup>2</sup> or a minimum zinc coating mass of 135g/m <sup>2</sup>

Please provide evidence that the goods you consider like or directly competitive to the goods subject to this application for exemption have recently been produced or sold in Australia by your company. Evidence can be in the form of production reports and sales invoices. To the extent that production reports or sales invoices do not refer to the goods described in the above table, please provide additional information that indicates that the goods have been produced or sold. The evidence should be attached to this form to ensure that it can be linked to this specific response. Please also include any available product literature concerning the like or directly competitive goods you produced and sold.

The evidence that Austube Mills produces and sells the goods in Australia that it considers to be like or directly competitive to the goods subject to this application (i.e. DuraGal) was recently verified by the Commission as part of industry verification in *Continuation Inquiry No. 590* (**CON 590**).

During the inquiry period for CON 590, the Commission verified that Austube Mills produced approximately [REDACTED] tonnes of galvanized hollow structural sections in the following shapes, CHS, RHS, SHS, and 'Rail' (trapezoidal). These products were sold to over [REDACTED] customer locations around Australia in a [REDACTED] period. Refer to [CONFIDENTIAL ATTACHMENTS 1, 2 & 3](#). Additionally, a copy of the ATM A4 Domestic sales worksheet from CON 590 is available on request.



**D.3**

Provide evidence of the terms and conditions of sale of these like or directly competitive products.

Are these products available to all purchasers on equal terms under like conditions? If so, provide evidence and explain why you consider that these products are available to all purchasers on equal terms under like conditions.

Evidence can be in the form of sales invoices, sales contracts, sales reports or advertisements and brochures.

Austube Mills supplies material to its customers, which are at the [REDACTED] level of trade. These customers then on-sell to their own customers.

All of Austube Mills' customers (steel distributors) are able to access Australian made HSS, subject to [REDACTED] (e.g. credit terms, delivery terms, etc.). Please refer to [CONFIDENTIAL ATTACHMENT 4](#), the Austube Mills' *Guide to Purchasing* for more details.

[CONFIDENTIAL ATTACHMENTS 1-3](#) provide evidence that Austube Mills has sold these products to its [REDACTED] [customers].

**PART E – Capability to Produce Identical or Like or Directly Competitive Products**

**E.1**

If your company has not produced and sold in Australia products that are identical to, or like or directly competitive to the goods subject to this application for exemption, is your company capable of producing such goods?

Not applicable as Austube Mills has sold like or directly competitive to the goods subject to this application for exemption.

Yes

No

**E.2**

If you answered yes to question E.1, indicate whether the product that you can produce is identical to, or like or directly competitive to the goods subject to this application for exemption.

Not applicable as Austube Mills has sold like or directly competitive to the goods subject to this application for exemption.

**E.3**

If you are capable of producing identical, like or directly competitive goods, explain why you have not produced such goods.

Provide evidence of your production capability, including evidence of the production and sale of similar products, certification of the identical, like or directly competitive goods and at what cost they could be produced, as well as any plans for the imminent production of the goods or orders for the goods and any relevant information.

Not applicable as Austube Mills has sold like or directly competitive to the goods subject to this application for exemption.

**E.4**

If you are capable of producing identical, like or directly competitive goods, provide reasonable evidence of likely terms and conditions of sale for these goods.

Not applicable as Austube Mills has sold like or directly competitive to the goods subject to this application for exemption.

## PART F – Additional Comments

### F.1

Provide any additional comments including any other information that will assist the commission in reaching a recommendation to the Minister regarding this application for exemption.

Austube Mills rejects the claim from DE Engineers 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.

Clear evidence that Austube Mills' DuraGal galvanized electric resistance welded hollow structural sections are like or directly competitive to the exemption goods is that three of the largest Australian manufacturers of [REDACTED] all specify and use Australian made DuraGal product which competes against the imported product used by DE Engineers. These large [REDACTED] manufacturers purchase the DuraGal range from Austube Mills distribution customers.

See [CONFIDENTIAL ATTACHMENT 5](#) for evidence of end use application of DuraGal demonstrating like or directly competitive goods to that of DE Engineers (at the 30 sec point, the line marking shows DuraGal Plus material).

Austube Mills notes that this exemption application is fundamentally the same as EX0015 that was initiated following an application lodged in 2013 also by Kasia Nominees (trading as 'DE Engineers').

The outcome of that inquiry was a recommendation by the Commission to the Parliamentary Secretary that the application for exemption be denied.

#### *2.3 Findings and conclusions*

*The Commission has made the following findings and conclusions based on available information:*

- there is an Australian industry producing like or directly competitive goods to the goods subject to the exemption inquiry; and*
- 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.*

***Based on these findings the Commissioner recommends to the Parliamentary Secretary that Kasia's application in respect of the exemption from anti-dumping measures be denied.<sup>1</sup> (emphasis added)***

Austube Mills submits that there has been no change to the products that it produces nor the manner in which the goods are offered for sale between the two exemption inquiries.

Austube Mills notes that in their latest application for exemption, Kasia Nominees, rather than narrowing the description of the exemption goods, have surprisingly broadened the description of the goods which makes their claim that there are no like or directly competitive goods even more tenuous.

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<sup>1</sup> Exemption Inquiry Ex 0015 – Hollow Structural Sections from China, Korea, Malaysia and Taiwan EPR/011, p4

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In *Exemption Inquiry EX0015*; that was refused by the Parliamentary Secretary; Kasia Nominees described the goods as:

*electric resistance welded pipe made of carbon steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections) having a nominal size (NB) of either 25, 32, 40 or 50 millimetres exported to Australia from China, Korea, Malaysia and Taiwan comprising ALL of the following:*

- a) an air-blown hot-dipped galvanised finish;*
- b) a zinc coating mass of 300g/m<sup>2</sup> .*

In this new exemption application Kasia Nominees has (i) broadened the types of shapes they are seeking exemption for, (ii) removed the restriction on the sizes, and (iii) broadened the range of the zinc coating, as evidenced from their current application below:

*Electric resistance welded pipe made of carbon steel, comprising circular and hollow sections normally referred to as CHS (circular hollow sections), RHS (square or rectangular) and trapezoidal hollow sections comprising ALL of the following:*

- a) an air-blown hot-dipped galvanised finish;*
- b) a zinc coating mass of 200-300g/m<sup>2</sup>.*

Finally, Austube Mills also submits that there is a lack of supporting data available to substantiate the performance/warranty claims for air blown hot dipped galvanised sections used by DE Engineers.

DE Engineers are of the opinion that air blown HDGP (200-300 g/m<sup>2</sup>) should be exempt from anti-dumping and countervailing measures as:

- they can provide a coating life of 50 years when in contact with fertilizers, animal urine, animal faeces and soil,
- because the Australian manufactured DuraGal and Allgal are not able to provide the required 50 year coating life in these environments.

The examples provided to justify DE Engineering's claims are anecdotal with limited or no data to substantiate the corrosivity of the environment (microns/year) and the uniqueness of the corrosivity.

Based on HDG corrosion rate data obtained from the Galvanizers Association of Australia's *Guide to the durability of hot dip galvanized steel*, Edition 3.1, July 2021, the corrosion rate of hot galvanised coatings in contact with soil is 2 – 6 micron/year. For a 50 year lifespan, the required zinc coating is 700 to 2,100 g/m<sup>2</sup>.

It is evident that a HDGP coating of 200 – 300 g/m<sup>2</sup> would not meet the DE Engineers 50-year coating life requirement. As such, the performance of Austube Mill's like or directly competitive goods provide comparable corrosivity performance to the claimed exempt goods.

**PART G – Declaration**

I hereby declare that AustubeMills (company) has completed the attached response to application for exemption and, having made due inquiry, certify that the information contained in this submission is complete and correct to the best of my knowledge and belief.

**Name** : [REDACTED]

**Signature** :.....[SGD].....

**Position in Company** : [REDACTED]

**Date** : 12 Aug 2022