



Exemption Inquiry Report Number 44

Certain Hollow Structural Sections Exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan

**Applicant:
ThyssenKrupp Mannex Pty Ltd**

October 2016

Table of contents

Abbreviations	3
1. Summary and recommendations	4
1.1 Recommendation.....	4
1.2 Application of law to facts.....	4
1.3 Findings and conclusions.....	5
2. Background	6
2.1 Original investigation.....	6
2.2 The goods subject to measures	6
2.3 Tariff classification	7
2.4 Exemption application.....	8
2.5 Exemption inquiry	8
2.6 Legislative requirements for an exemption	9
3. The goods subject to the exemption inquiry	9
4. Goods subject to Tariff Concession Order (TCO).....	10
4.1 Assessment	10
5. Recommendation	11
5.1 Conclusion.....	11
5.2 Effective date of exemption.....	11
6. Attachments.....	12

Abbreviations

Abbreviations	Full reference
ABF	Australian Border Force
ACBPS	Australian Customs and Border Protection Service
ADN	Anti-dumping notice
Applicant	ThyssenKrupp Mannex or TKM
ATM	Austube Mills Pty Ltd (Australian Industry)
CHS	Circular hollow sections
Commission	the Anti-Dumping Commission
Commissioner	the Commissioner of the Anti-Dumping Commission
DIBP	Department of Immigration and Border Protection
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
Duties	Interim dumping duty, dumping duty, interim countervailing duty and countervailing duty
Exemption goods	The goods the subject of the inquiry, as described in section 2.2 in this report
HDG	Hot-dipped galvanised
ILG	In-line galvanised
Orrcon Steel	Orrcon Operations Pty Ltd (Australian Industry)
Parliamentary Secretary	The Assistant Minister for Industry, Innovation and Science and Parliamentary Secretary to the Minister for Industry, Innovation and Science
RHS	Rectangular or square hollow sections
TCO	Tariff Concession Order
TKM	ThyssenKrupp Mannex
the Act	<i>Customs Act 1901</i>
the revoked TCO	Tariff Concession Order TC 1439520
the new TCO	Tariff Concession Order TC 1609617

1. Summary and recommendations

This report sets out the findings of the Anti-Dumping Commission (the Commission) in response to an application made by ThyssenKrupp Mannex (TKM) requesting an exemption from interim dumping duty and dumping duty and interim countervailing duty and countervailing duty (the duties), under paragraphs 8(7)(b) and 10(8)(aa)¹ of the *Customs Tariff (Anti-Dumping) Act 1975*² (the Dumping Duty Act) in relation to the export of certain hollow structural sections (HSS) from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan.

This report sets out the Commission's findings upon which the Commissioner of the Anti-Dumping Commission (the Commissioner) relied to make a recommendation to the Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science (the Parliamentary Secretary)³ on whether or not to exempt the goods from the duties.

1.1 Recommendation

The Commission has found that for the goods the subject of the inquiry (the exemption goods), Tariff Concession Orders (TCO) under Part XVA of the *Customs Act 1901* (the Act) are in force. Accordingly, the Commission considers the conditions of paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act are satisfied.

The Commissioner recommends to the Parliamentary Secretary that the exemption goods be exempted from the duties as set out in this report.

1.2 Application of law to facts

1.2.1 Authority to make the decision

Subsections 8(7) and 10(8) of the Dumping Duty Act set out, amongst other things, the matters to be considered by the Parliamentary Secretary in deciding whether to exercise their discretion to exempt goods from the duties.

1.2.2 Initiation of inquiry

On 4 January 2016, Xpress Trade Consulting on behalf of TKM, submitted an application to the Commission requesting an exemption from dumping duty and countervailing duty in relation to its imports of certain HSS. TKM applied for an

¹ That a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

² 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.

³ The Minister for Industry, Innovation and Science has delegated responsibility with respect to anti-dumping matters to the Parliamentary Secretary, and accordingly, the Parliamentary Secretary is the relevant decision maker. On 19 July 2016, the Prime Minister appointed the Parliamentary Secretary to the Minister for Industry, Innovation and Science as the Assistant Minister for Industry, Innovation and Science.

exemption under subsections 8(7)(b) and 10(8)(aa) of the Dumping Duty Act. The particular TCO claimed in TKM's application was TC 1439520 (the original TCO).

On 19 February 2016, after examining the application, the Commission published the application and ADN 2016/16 on its website, initiating the exemption inquiry. During the exemption inquiry, the Australian Border Force (ABF) revoked the original TCO on 15 February 2016. The ABF subsequently issued TC 1609617 (the new TCO) with effect from 16 February 2016, which applied to a similar classification of goods. As a result, the Commission considered both the original TCO as well as the new TCO during the exemption inquiry.

1.3 Findings and conclusions

Having regard to the application, the information received by interested parties and other information considered relevant (as detailed in section 3 of this report), the Commission has found that the following TCOs under Part XVA of the Act in respect of the exemption goods are in force:

- TC 1439520 (in force until 15 February 2016); and
- TC 1609617 (in force from 16 February 2016).

Based on this finding, the Commissioner recommends to the Parliamentary Secretary that the exemption goods be exempted from the duties as follows:

- in relation to the goods described in TC 1439520, from 4 January 2016 to 15 February 2016; and
- in relation to the goods described in TC 1609617, from 16 February 2016 until such time as TC 1609617 is revoked.

2. Background

2.1 Original investigation

On 7 June 2012, the Commissioner completed an investigation⁴ into the alleged dumping and subsidisation of certain HSS exported to Australia from China, Korea, Malaysia and Taiwan.

On 3 July 2012, the then Minister for Home Affairs accepted the Commissioner's recommendations and imposed anti-dumping measures, in the form of dumping duty and countervailing duty notices, on certain HSS exported to Australia from China, Korea, Malaysia and Taiwan. The dumping duties are applicable to all exporters of certain HSS from China, Korea, Malaysia and Taiwan, and countervailing duties are applicable to all exporters of certain HSS from China except for those exported by Huludao City Steel Pipe Industrial Co., Ltd (Huludao), Qingdao Xiangxing Steel Pipe Co., Ltd (Qingdao Xianxing) and Dalian Steelforce Hi-Tech Co., Ltd (Dalian).⁵

Anti-Dumping Notice (ADN) 2012/31⁶ and the final report REP 177 contains details of the measures, including a description of the goods subject to measures.

The reasons for the then Minister's decision in this case are contained in *International Trade Remedies Report No. 177*.

2.2 The goods subject to measures

The goods exported from China, Korea, Malaysia and Taiwan, covered by the current dumping duty and countervailing duty notices 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 in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS.

Sizes of the goods are, for circular products, those exceeding 21mm up to and including 165.1mm in outside diameter and, for oval, square and rectangular products those with a perimeter up to and including 1277.3mm. Categories of HSS excluded from the goods are conveyor tube; precision RHS with a nominal thickness of less than 1.6mm and air heater tubes to Australian Standard (AS) 2556.

The final report (REP177) includes the following information to clarify the nature of the goods.

⁴ See original investigation, details at: <http://adcommission.gov.au/cases/Pages/ArchivedCases/ITR177.aspx>

⁵ On 6 June 2012, the then Australian Customs and Border Protection Service terminated the subsidy investigation in relation to Huludao and Qingdao Xianxing. For further details please refer to *Termination Report No. 177* at www.adcommission.gov.au. On 17 February 2016, the former Parliamentary Secretary revoked the decision to publish the countervailing duty notice, and substituted a new decision not to publish a countervailing duty notice in relation to Dalian.

⁶ See ADN 2012/31 at: <http://adcommission.gov.au/notices/Documents/2012/120607ACDN-HSS-FinalMeasures.pdf>

Finishing

All HSS regardless of finish is included in the goods description.

Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

CHS with other than plain ends (such as threaded, swaged and shouldered) are also included in the goods description.

Standards

HSS is generally produced to either the British Standard BS 1387 or the Australian Standard AS 1163 or international equivalent standards (including ASTM/JIS and KS).

HSS can also be categorised according to minimum yield strength. The most common classifications are 250 and 350 mega Pascals (MPa).

HSS may also be referred to as extra-light, light, medium or extra heavy according to its wall thickness.

Excluded goods

The following categories of goods are not subject to the anti-dumping measures:

- 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 1.6mm (is not used in structural applications); and
- air heater tubes to AS.2556.

'Structural' sections

For clarification, the goods subject to the measures include all electric resistance welded pipe and tube made of carbon steel meeting the above description of the goods (and exclusions), regardless of whether or not the pipe or tube meets a specific structural standard or is used in structural applications.

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*:

- 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37)
- 7306.61.00 (statistical codes 21, 22 and 25)
- 7306.69.00 (statistical code 10)

As a result of anti-circumvention measures imposed through ADN 2016/24 on 18 March 2016 the goods subject to measure may also be classified under the following subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7306.61.00 (statistical codes 90)
- 7306.50.00 (statistical code 45)

2.4 Exemption application

On 4 January 2016, Xpress Trade Consulting, on behalf of their client TKM, submitted an application to the Commission requesting an exemption from the duties in relation to its imports of certain HSS (**Non Confidential Attachment 2**).

TKM's application outlined the following grounds in support of its application for an exemption from the duties:

- *Paragraphs 8(7)(b) and 10(8)(aa) of the [Dumping Duty Act]*
- *Tariff Concession TC 1439520 is currently in place for the subject goods*

2.5 Exemption inquiry

The Commission accepted TKM's letter as an application for an exemption of certain goods from the duties. On 19 February 2016, after examining the application, the Commissioner initiated an exemption inquiry and published ADN 2016/16 on its website to notify of the initiation. The ADN provided details of the goods subject to the inquiry and outlined the procedures to be followed during the inquiry.

The Commission identified members of the Australian industry pertaining to the exemption goods and invited them to complete the 'response to exemption application' questionnaire (the questionnaire). On 19 February 2016, the questionnaire was provided to the Australian Industry, with responses requested by 11 March 2016. The specific companies identified as members of the Australian industry included Orrcon Operations Pty Ltd (Orrcon Steel), Australian Pipe & Tube and Austube Mills Pty Ltd (ATM). Australian Pipe & Tube did not respond to the industry questionnaire sent by the Commission. Submissions by ATM⁷ and Orrcon Steel⁸ were received on 10 March 2016 and 11 March 2016 respectively, outlining their objections to the exemption application (Attachments 3 and 4). ATM and Orrcon Steel objected to the exemption on the ground that it had applied for revocation of TC 1439520, on which the exemption application was based.

In the Gazette published on 23 March 2016, the Department of Immigration and Border Protection revoked TC 1439520 with effect from 15 February 2016 and issued TC 1609617 in its place with effect from 16 February 2016.

On 18 April 2016, the Commission sought the Australian industry's views on exempting the goods described in the new TCO from the duties on the basis that the new TCO appeared to apply to goods that came within the description of the goods subject to measures, but to a narrower subset of the goods described in the now revoked TCO. Submissions were received from ATM and Orrcon Steel

⁷ Related-party of Onesteel.

⁸ Related party of BlueScope Steel Group.

on 18 April and 16 May 2016 respectively,⁹ indicating that they had ‘no objection’ to such an exemption as no substitutable goods as described in the new TCO are manufactured by Australian Industry.

2.6 Legislative requirements for an exemption

TKM has applied for an exemption pursuant to paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act.

Subsection 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:
 - ...
 - (b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

Subsection 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:
 - ...
 - (aa) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

In determining whether a TCO in respect of the exemption goods is in force, regard is had initially to whether the exemption goods are correctly classified to the tariff heading to which the TCO is linked. Close scrutiny will then be made of the terms of the TCO to ensure that the exemption goods meet each of those terms. If the goods do more than what is described in the TCO, but otherwise meet its terms and are classified correctly to the tariff heading to which the TCO is linked, legal authority supports the eligibility of those particular goods for that TCO.¹⁰

TKM requests the Parliamentary Secretary exercise their discretion to exempt the exemption goods from the duties on the basis that there is a TCO under Part XVA of the *Customs Act 1901* in respect of the goods is in force.

3. The goods subject to the exemption inquiry

The exemption application pertains to goods described under Custom’s Tariff Classification 7306.61.00 and covered by the original TCO, TC 1439520. As

⁹ Available at www.adcommission.gov.au.

¹⁰ *Robert Bosch Australia Pty Ltd v Collector of Customs*, AAT, 29 August 1986; *Re Klockner Moeller Pty Ltd v Collector of Customs*, AAT, 18 January 1989.

discussed above in section 2.5, during this inquiry, the original TCO in relation to which TKM applied for an exemption was revoked, and the new TCO was issued. Accordingly, the goods under consideration in this inquiry, i.e. the exemption goods, are the goods described in the now revoked TCO (and TKM's application) and the goods described in the new TCO.

4. Goods subject to Tariff Concession Order (TCO)

4.1 Assessment

The exemption application dated 4 January 2016 sought exemption for the goods described in the original TCO, TC 1439520. This TCO was revoked on 15 February 2016 and a new TCO, TC 1609617, was issued in its place describing a narrower subset of the goods described in the original TCO.

The goods as described in the now revoked TCO and the new TCO are:

For the now revoked TC 1439520

TUBES, square OR rectangular, electric resistance welded, complying with Australian/New Zealand Standard 1163:2009 (AS/NZS 1163:2009), Grade C350L0 OR C450L0, with perimeter NOT less than 950 mm and having EITHER (a) OR (b) as follows:

- 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%*

For the new TC 1609617

TUBES, square OR rectangular, electric resistance welded, complying with Australian/New Zealand Standard 1163:2009 (AS/NZS 1163:2009), Grade C350L0 OR C450L0, with perimeter NOT less than 1,050 mm and having EITHER (a) OR (b) as follows:

- 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%*

The exemption goods are classified to tariff subheading 7306.61.00 in Schedule 3 of the *Customs Tariff Act 1995*.

The exemption application describes the exemption goods as the same as in TC 1439520.

Based on the above, the Commission finds that the following TCOs in respect of the exemption goods are in force:

- TC 1439520, in force until 15 February 2016, and
- TC 1609617, in force from 16 February 2016.

Therefore, the Commission considers that the conditions for granting an exemption from the duties under paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act are satisfied.

5. Recommendation

5.1 Conclusion

Based on the Commission's finding that a TCO in respect of the exemption goods both was and is currently in force, the Commissioner recommends that, pursuant to paragraphs 8(7)(b) and 10(8)(aa) of the Dumping Duty Act, the Parliamentary Secretary exempt the exemption goods from the duties as follows:

- in relation to the goods described in TC 1439520, from 4 January 2016 to 15 February 2016; and
- in relation to the goods described in TC 1609617, from 16 February 2016 until TC 1609617 is revoked.

5.2 Effective date of exemption

TKM's application for exemption, examined in this report, was made on 4 January 2016.

The timing in relation to the granting of an exemption is at the discretion of the Parliamentary Secretary. It is the Commission's policy to recommend that an exemption is backdated to the date of application for that exemption. Accordingly, the Commissioner recommends that the exemption based on the original TCO, TC 1439520, be granted from the date of the application i.e. 4 January 2016, until 15 February 2016.

For the exemption based on the new TCO, TC 1609617, the Commissioner recommends the exemption be granted from the date the new TCO came into force, that is, from 16 February 2016, until such time as TC 1609617 is revoked.

6. Attachments

Attachments	Title	Electronic public record identifier
Non-Confidential Attachment 1	ADN - Initiation	001
Non-Confidential Attachment 2	Exemption Application	002
Non-Confidential Attachment 3	Australian Industry questionnaire response – Orrcon Steel	003
Non-Confidential Attachment 4	Australian industry questionnaire response – Austube Mills Pty Ltd	004
Non-Confidential Attachment 5	Australian industry submission – Austube Mills Pty Ltd	005
Non-Confidential Attachment 6	Australian Industry submission – Orrcon Steel	006