



Australian Government
**Australian Customs and
Border Protection Service**

TRADE MEASURES ISSUES PAPER

THE GOODS AND LIKE GOODS

CERTAIN HOLLOW STRUCTURAL SECTIONS

FROM

CHINA & MALAYSIA

TRADE MEASURES CASE 144

PURPOSE

Issues papers afford interested parties the opportunity to comment on the issues raised in an investigation. By providing issues papers, Customs and Border Protection aims to consider significant issues in detail before publishing the statement of essential facts (SEF).

Customs and Border Protection will take into account all interested parties' comments, whether provided previously, obtained in the course of the investigation or made in response to this paper that are received in a timely manner, before issuing the SEF.

BACKGROUND

The investigation¹ was initiated following an application from the two Australian manufacturers of HSS: Orrcon Operations Pty Ltd (Orrcon) and OneSteel Australian Tube Mills Pty Ltd, trading as Australian Tube Mills (ATM).

In the application ATM and Orrcon requested that the Minister for Home Affairs (the Minister) publish dumping and countervailing duty notices in respect of certain hollow structural sections (HSS) exported to Australia from the People's Republic of China (China) and a dumping duty notice in respect of certain HSS exported to Australia from Malaysia.

The goods were described in ACDN 2008/45 as follows:

The goods the subject of the application are certain electric resistance welded pipes 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). In market terms, the goods are collectively known as HSS (hollow structural sections) and they are commonly used in structural and mechanical applications.

All HSS regardless of finish is included in the application. Finish types for the goods include in-line galvanised (ILG), pre-galvanised, hot-dipped galvanised (HDG) and non-galvanised HSS. Non-galvanised HSS is typically of painted, black, lacquered or oiled finished coatings.

Sizes of HSS covered by the application are:

- *for CHS, those exceeding 21 mm up to and including 165.1 mm in outside diameter; and,*
- *for RHS and other non-circular cross-sections, those up to and including 1277.3 mm in perimeter.*

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

The following categories are excluded from the goods subject of the application:

- *conveyor tube (made for high speed idler rolls on conveyor systems, with inner and outer weld 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 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 is produced from cold-rolled coil);*
- *RHS made from cold rolled coil; and*
- *air heater tubes to AS 2256.*

¹ Refer to Australian Customs Dumping Notice (ACDN) No 2008/45 - Initiation of an investigation.

THE ISSUE

The Australian Steel Association Inc (ASA), representing certain importers of the goods, stated in a submission placed on the public record² on 17 February 2008 that it believed that the local producers (ATM and Orrcon) may have included goods in the GUC (goods under consideration) when in fact they may not be producing like goods.

The ASA alleged that ATM and Orrcon's production of like goods was limited as follows:

1. production of RHS to a maximum of 200mm square perimeter (i.e. a total of 800mm in perimeter) and up to 6mm in thickness;
2. production of HDG CHS in the size range 20nb to 100nb (i.e. 26.9mm to 114.3mm in outside diameter (OD)); and
3. the extra light grade (a measure of the thickness of the HSS) of HDG CHS is no longer being produced (a table listing the commonly understood dimensions for "extra light grade" products is at **attachment A**).

Another interested party, Palmer Steel Trading (PST) has also questioned whether the Australian HSS industry produced like goods to:

- powder coated HSS; and
- HDG HSS in rectangle, square and oval profiles.

Customs and Border Protection understands powder coated HSS to be HSS coated in a thermoset or thermoplastic powder, with a minimum thickness of 60 microns over the whole exterior surface of the HSS.

Customs and Border Protection considers that the goods referred to by PST meet the description of the GUC.

PST submitted that powder coated HSS is not produced by the Australian industry, is significantly more expensive than other HSS finishes, and the powder coating cannot be stripped for galvanising or painting and must be ground off for welding.

PST claimed that it understands the Australian industry does not produce powder coated HSS or HDG HSS with a rectangle, square or oval profile.

LEGISLATION

Part XVB of the *Customs Act 1901*³, and the *Customs Tariff Anti-Dumping Act 1975* provide for the Minister to impose anti-dumping and countervailing measures where dumping or subsidisation has caused, or threatens to cause, material injury to an Australian industry producing like goods.

Customs and Border Protection considers that the Minister has a discretion to exclude certain kinds of goods from a dumping or countervailing duty notice if, for example, he was satisfied that the Australian industry did not produce like goods.

² File 2009/ 00462701 – Folio 5

³ References to legislation in this paper refer to provisions of the *Customs Act 1901* unless explicitly expressed otherwise.

Like goods are defined in section 269T of the Act 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 goods under consideration.

CUSTOMS AND BORDER PROTECTION'S APPROACH

Customs and Border Protection's approach to like goods is set out in the Australian Customs Service Manual Vol.22⁴, Section 4.2, that states:

In the context of like goods, identical goods are goods that are identical in physical characteristics, subject to variations in their presentation due to the need to adapt them to special conditions in the home or export market. If the goods are found to be identical, it is not necessary to further consider other factors such as channels of distribution, process of manufacturing etc. in determining the question of like goods.

If the goods are found not to be identical, it is necessary to determine whether the goods would still fall within the ambit of goods having characteristics closely resembling those of the goods under consideration. To determine whether the goods are goods having characteristics closely resembling those of the goods under consideration, Customs' practice is to have regard to the factors outlined below.

Physical likeness

- *Assess which physical characteristics are similar, and identify the extent of differences. Examples to consider:*

<i>size</i>	<i>Shape</i>	<i>Content</i>
<i>weight</i>	<i>Appearance</i>	<i>Taste</i>
<i>grade</i>	<i>Standards</i>	<i>Age</i>
<i>strength</i>	<i>Purity</i>	

- *Are the goods classified to a matching tariff classification?*

Commercial likeness

Commercial likeness refers to attributes identifiable from market behaviour.

- *Are the goods directly competitive in the market? e.g. do the goods compete in the same market sector? Within a market sector, are the goods similarly positioned?*
- *To what extent are participants in the supply chain willing to switch between sources of the goods and like goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability.*

⁴ Available on the Internet at www.customs.gov.au follow the anti-dumping links to reference material.

- *How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognised by the market.*
- *Are the distribution channels the same?*
- *How similar is the packaging used? Does different packaging reveal significant differences in the goods, or highlight different market sectors?*

Functional likeness

Functional likeness refers to end-use. End-use will not of itself establish like goods, but may provide support to the assessment of physical and commercial likeness.

- *Do the goods have the same end use? To what extent are the two products functionally substitutable? e.g. both a shovel and an earthmoving machine can move earth.*
- *To what extent are the goods capable of performing the same, or similar functions? e.g. an earthmoving machine is capable of moving earth more rapidly than a shovel.*
- *Do the goods have differential quality? Quality claims can be subjective. Objective evidence has higher probative value e.g. by standards, or the extent consumers are willing to use the goods to perform the required functions.*
- *Is consumer preference likely to change in the future? Consider consumer behaviour in other markets/ countries?*

Production likeness

Different production processes may produce identical goods. However, different production processes may be used to create different product characteristics. A comparison of production process will not of itself establish like goods, but may highlight differences or provide support to the assessment of other considerations.

- *To what extent are the goods constructed of the same or similar materials?*
- *Have the goods undergone a similar manufacturing process? If different, what is the impact of those differences?*
- *Are there any patented processes or inputs involved?*

Other considerations

- *Matters raised by interested parties,*
- *Matters that Customs identifies during the course of the investigation,*
- *How similar is the marketing of the goods?*

INTERESTED PARTIES' CONSIDERATION

Customs and Border Protection seeks the views of interested parties on whether the Australian HSS industry can produce or currently produces or, if not, when it last produced like goods to the following:

- *RHS above 800mm in perimeter and above 6mm in thickness;*

- HDG CHS above 21mm OD and below 26.9mm OD (20 nb);
- HDG CHS above 114.3mm OD (100 nb) up to 165.1mm OD;
- HDG CHS in extra light thickness (as per **attachment A**);
- HDG RHS and HDG oval HSS;
- powder coated HSS.

Please note that Customs and Border Protection is seeking views on whether the Australian industry produces like goods to the above, not necessarily whether the industry produces identical goods. Interested parties should refer to the context of like goods mentioned above.

Customs and Border Protection will also have regard to matters raised by interested parties and matters that Customs and Border Protection identifies during the course of the investigation.

Your response may also include examples or analysis, but should include evidence where applicable. Should your response be confidential, a non-confidential version must also be provided or Customs and Border Protection may disregard your response. The non-confidential version will be placed on the public file for this investigation. The non-confidential version must be in sufficient detail to allow a reasonable understanding of its content.

RESPONSES TO THIS PAPER

Responses to this paper should be lodged no later than **17 April 2009** and addressed to:

Director
Operations Group 1
Trade Measures Branch
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

or by facsimile to (02) 6275 6888 or by email to tmops1@customs.gov.au .

ATTACHMENT A

EXTRA LIGHT GRADE HDG CHS

Dimensions		
Diametre	Thickness	Nominal size
mm	mm	NB DN
26.9	2.0	20 XL
33.7	2.0	25 XL
42.4	2.0	32 XL
48.3	2.3	40 XL
60.3	2.3	50 XL
76.1	2.3	65 XL
88.9	2.6	80 XL
101.6	2.6	90 XL
114.3	3.2	100 XL
139.7	3.0	125 XL
165.1	3.0	150 XL