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ANNEXURE

Detailed statement regarding the circumvention activities in relation to the original notice that have occurred

1. Legislative Provisions – Slight Modification of Goods

This application concerns the slight modification of goods, as relevant to subsection 48(2) of the *Customs (International Obligations) Regulation 2015*.[1] This subsection prescribes the circumstances which must apply for there to be a circumvention activity. It requires that each of the following criteria be satisfied:

a) goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies;

b) before that export, the circumvention goods are slightly modified;

c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;

d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and

e) section 8 and/or 10 of the *Dumping Duty Act*[2] does not apply to the export of the circumvention goods to Australia.

Subsection 48(3) provides that, for the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice (**the goods** and/or **the subject goods**), having regard to any factor that the Commissioner considers relevant, including any of the following factors:

a) each good's general physical characteristics;

b) each good's end use;

c) the interchangeability of each good

d) differences in the processes used to produce each good;

[1] References to legislative provisions, are references to provisions of the *Customs (International Obligations) Regulation 2015* (**the Regulation**) unless expressly stated.
[2] *Customs Tariff (Anti-dumping) Act 1975* (**Dumping Duty Act**).

e) differences in the cost to produce each good;

f) the cost of modification;

g) customer preferences and expectations relating to each good;

h) the way in which each good is marketed;

i) channels of trade and distribution for each good;

j) patterns of trade for each good;

k) changes in the pricing of each good;

l) changes in the export volumes for each good; and

m) tariff classifications and statistical codes for each good.

Each of these factors is further examined below.

2. The Circumvention Goods and Trade Flows

The circumvention goods can be described as pre-galvanised swaged circular or octagonal HSS[3] that has been modified in a minor way by the addition of drill holes, either (or both) along the full length of the steel pipe or at the ends. Drilling involves creating holes in the steel tube using a drill bit. It can be undertaken manually or is automated (for example, via a CNC drilling process).

Referred to as ***torque tube*** within the Australian industry, the drill holes permit solar panels to be fitted (bolted or screwed) to the HSS during assembly of solar panel installations.

The Australian industry achieves torque tube HSS characteristics by supplying its HSS (with identical dimensions to the equivalent circumvention goods) to steel processors, who then drill and swage the like goods, to then supply Australian original equipment manufacturers (**OEMs**) in the solar sector.

Given the recent and substantial increase in demand for renewable energy projects in Australian (which Orrcon's HSS is supplied into) Orrcon has observed an increased presence of imported HSS torque tube in the Australian market. Orrcon understands that these imports are of Chinese origin, to which the existing HSS Notice applies.

The applicant's assessment of available import data suggests that this increased Australia/China import/export trade in HSS torque tube is not classified to the tariff sub-headings and statistical codes to which the HSS Notice applies. Orrcon estimates that certain solar OEM's are importing sizeable torque tube volumes, in the order of [*XXX*] tonnes annually.[4]

However, while identical in all aspects to Chinese HSS subject goods except for the drill holes, the marked increase in Australian imports of Chinese HSS torque tube are absent from the relevant statistical codes to which the Chinese HSS Notice applies (i.e. tariff subheading 7306). The below shows HSS Australian imports declared to this subheading, both from all origins and separately China:[5]

[3] The existing Notice covers swaged HSS. Swaging HSS is a process of reducing the diameter of a steel tube by deforming it through compression. This is undertaken using a swaging machine.
[4] Confidential Attachment 1, p. 13.
[5] Confidential Attachment 2.

[***Confidential chart deleted:*** *Confidential Chart 1: 7306 HSS imports (all origins); Jan. 2020 – Jan. 2025*]

[***Confidential chart deleted:*** *Confidential Chart 2: 7306 HSS imports (China); Jan. 2020 – Jan. 2025*]

As will be evidenced below, the trade in the Chinese circumvention goods is being classified outside of the statistical codes to which the existing HSS notice applies.

3. Assessment of Circumstances in Subsection 48(2)

This section examines whether the circumstances of the Regulation have been satisfied.

3.1 Are circumvention goods exported to Australia from a foreign country in respect of which the notice applies?

The circumstances in paragraph 48(2)(a) are that goods (the circumvention goods) are exported to Australia from a foreign country in respect of which the notice applies.

The relevant notice, dated 12 June 2012,[6] applies to exports of the goods from China.

To evidence that circumvention goods have been exported to Australia, the applicant provides Confidential Attachment 3 – documentation detailing [***confidential text deleted:*** *evidence of the alleged circumvention*].

3.2 Before that export, are the circumvention goods slightly modified?

The circumstances in paragraph 48(2)(b) are that the circumvention goods are slightly modified before export.

Orrcon alleges that the Australian importers are importing HSS goods that are slightly modified in China before export to Australia. Specifically, the slightly modified goods exported to Australia from China have been drilled, which is not within the description of the goods covered by the original notice.

In evaluating whether the circumvention goods are slightly modified before export, the applicant has compared the circumvention goods and the goods the subject of the original notice in the below-tabled analysis, having regard to the factors listed in subsection 48(3). The factors outlined in subsection 48(3) are not an exhaustive list of factors that may be considered, and regard may be had to any other factor the Commissioner considers relevant.

For the sake of completeness, the applicant has presented its analysis in the below table based on a consideration of all the factors listed in subsection 48(3). However, the applicant considers that the Commissioner does not have to be satisfied that all such factors indicate that the circumvention goods are slightly modified.

Circumvention factor	Analysis
Each good's general physical characteristics: Paragraph 48(3)(a)	The existence of drill holes, either along the length of or at the end of the steel pipe and tube, is the only physical characteristic that differentiates the circumvention goods from the goods covered by the measures.
Each good's end use: Paragraph 48(3)(b)	The goods and the circumvention goods are both ultimately used for the same end use application – being as the supporting structural steel framework for solar panels.
The interchangeability of each good: Paragraph 48(3)(c)	In terms of the Australian channels to market for HSS torque tube, the goods and circumvention goods are interchangeable. That is, the customer (the

[6] EPR Folio No. 416/177.

	renewables/solar sector OEM) can substitute the purchase of undrilled Chinese HSS with drilled Chinese circumvention goods.
Differences in the processes used to produce each good: Paragraph 48(3)(d)	The only additional processing step undertaken to produce the circumvention goods is that of drilling holes – either (or both) along the length of, or at the end of, the steel HSS tube.
Differences in the cost to produce each good: Paragraph 48(3)(e)	As the goods and the circumvention goods are identical except for the presence of drill holes, the only difference in cost relates to the further drilling process (discussed below).
The cost of modification: Paragraph 48(3)(f)	The cost of modifying the goods to form the circumvention goods is infinitesimal when compared to, or as a percentage of, the total manufacturing cost of torque tube HSS. On a per metric tonne basis, the cost to add drill holes to Australian HSS like goods is approximately AU$[*XX*]/tonne.[7] The current full cost to make HSS by Orrcon is AU$[*XX*]/tonne,[8] making the minor modification drilling cost approximately [*XX*] percent of the total cost to make. Given that manufacturing and labour costs in China are substantially lower than that of Australia, Orrcon expects the additional drill processing cost in China to be less than the above. This immaterial drilling cost supports the conclusion that there has been a slight modification of the goods.
Customer preferences and expectations relating to each good: Paragraph 48(3)(g)	As the final end use customer of the goods and the circumvention goods is the same, they have identical preferences and expectations relating to each of the goods – that is, torque tube HSS for application within solar panel installations. Therefore, as the goods and circumvention goods belong to the same channel to market, having identical end use customers, customer preferences and expectations are identical.
The way in which each good is marketed: Paragraph 48(3)(h)	The HSS Australian like goods, the Chinese subject goods, and the circumvention goods are manufactured in compliance with AS/NZS 1163/2009. At Confidential Attachment 1,[9] marketing and technical literature is provided regarding the use of the Australian like goods by Australian OEM's in solar applications.[10] Given the identical nature of the Chinese subject goods and the Chinese circumvention goods (excepting the drill holes), the applicant submits that any similar marketing of the circumvention goods by the OEM's would be the same.
Channels of trade and distribution for each good: Paragraph 48(3)(i)	For the supply of HSS for solar applications, Orrcon sells the goods to steel processors who then undertake the drilling process. The torque tube goods are then sold to OEM's. Chinese exporters can supply the subject goods and circumvention goods directly to Australian solar OEM's – the only difference being the requirement to add drill holes to the subject Chinese HSS once imported.

[7] Confidential Attachment 5.
[8] Confidential Attachment 6.
[9] Confidential Attachment 1, p. 9-10.
[10] Refer also [***confidential text deleted:*** *renewable energy project details*].

	As such, there is no material difference in the channels of trade and distribution between the goods and the circumvention goods. Ultimately, the same end users are supplied with the same (circumvention) goods, namely the Australian industry solar OEM's.
Patterns of trade for each good: Paragraph 48(3)(j)	The applicant's analysis of the available export trade data supports the view that the overall volumes of the goods are absent from the relevant statistical codes to which the notice applies. They are nonetheless entering the Australian market, are circumventing the measures by virtue of the minor modification, and are causing material injury to the Australin industry. Orrcon also understands that [***confidential text deleted:*** *HSS import trade flow assessment*].[11] This further supports Orrcon's circumvention goods assessment that whichever way classified and whether or not drilled, the goods nonetheless remain HSS and should be subject to the measures.
Changes in the pricing of each good: Paragraph 48(3)(k)	The circumvention goods do not attract interim dumping duty calculated using a combination of the fixed and variable duty method. This leads the circumvention goods to have a price advantage over the Australian like goods in the marketplace. As exports of the circumvention goods have only recently entered the Australian market, Orrcon has not been privy to FOB and/or landed prices with which to make a comparison between the unit price for the circumvention goods and the subject goods. The difficulty also stems from [***confidential text deleted:*** *import data tariff subheading assessment*]. Therefore, the applicant provides at Confidential Attachment 4 a price assessment of details contained within Confidential Attachment 3. This analysis shows not only that the circumvention goods are being sold at an estimated substantial loss to the estimated full cost to make and sell (a loss of approximately AU$[*XX*]/metric tonne), but that the assessed import price is materially below the equivalent Australian industry price. The analysis also highlights that the estimated selling price for the circumvention goods is highly correlated with current pricing for HSS subject goods from China – the $AU import price at Confidential Attachment 4 equates, on conversion, to a similar $AU subject goods price reflected in Confidential Chart 2 above.
Changes in the export volumes for each good: Paragraph 48(3)(l)	Importers are substituting the goods covered by the measures with the circumvention goods. Analysis of export trade data that shows an absence of trade in the statistical codes to which the original notice applies, and is categorically confirmed in Confidential Attachment 3 that goods, as having been slightly modified, are classified elsewhere. This is evidence of a change in the export volumes for each good. That is, there has not been an increase in the subject goods trade categories, and, at the same time, it can be shown that there has been an increase in the circumvention goods.
Tariff classifications and statistical codes for each	As shown above, the circumvention goods and the goods the subject of the original notice are classified to different tariff subheading and statistical codes:

[11] Confidential Attachment 3.

good: Paragraph 48(3)(m)	[***confidential text deleted:*** *import data tariff subheading assessment*].

3.1.1 Summary – are the circumvention goods slightly modified?

Having compared the circumvention goods and the subject goods, after having regard to the factors in subsection 48(3), the applicant considers that:

- the general physical characteristics for each good are the same, being circular and non-circular HSS;
- the circumvention goods and the goods have the identical end use, namely for use in solar panel applications;
- the production process for the circumvention goods and the goods is the same, up until when the goods are slightly modified by way of the addition of drill holes;
- the cost of the subject goods account for the overwhelming majority of the cost to produce the circumvention goods;
- the end-use customer has identical preferences and expectations relating to each of the goods;
- the goods are marketed in Australia in the same/similar ways;
- the goods and circumvention goods belong to the same channels of trade and distribution to the OEM's in the Australian market;
- the patterns of trade for the circumvention goods and the goods indicate a high degree of interchangeability between each good, i.e. an OEM customer can purchase either the subject goods or the circumvention goods;
- the circumvention goods are comparably priced to the FOB export price of the subject goods;
- the export of circumvention goods has affected the export volume of the subject goods; and
- the circumvention goods and the subject goods are classified to different tariff subheadings and statistical codes.

After noting the above factors in common between the goods and the circumvention goods, the applicant considers that while the circumvention goods and the goods have the same general physical characteristics, the circumvention goods are slightly modified to a different form compared to the goods.

Therefore, the applicant considers that the circumvention goods are slightly modified, with the modification taking place in China before export.

3.2 Is the use or purpose of the circumvention goods the same before, and after, they are so slightly modified?

The circumstances in paragraph 48(2)(c) are that the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified.

As noted in the table above, Orrcon has concluded that the goods and the circumvention goods are used for the same purpose, and that each good can be used interchangeably.

3.3 Had the circumvention goods not been so slightly modified, would they have been the subject of the original notice?

The circumstances in paragraph 48(2)(d) are that had the circumvention goods not been so slightly modified, they would have been the subject of the original notice.

The circumvention goods fall outside this description because drill holes have been added.

The applicant considers that, had the circumvention goods not been so slightly modified, they would have been subject to the original notice.

3.4 Do sections 8 or 10 of the Dumping Duty Act apply to the circumvention goods?

Sections 8 and 10 of the Dumping Duty Act refer to dumping duties and countervailing duties, respectively. The circumstances in paragraph 48(2)(e) are that sections 8 and 10 of the Dumping Duty Act do not apply to the circumvention goods (otherwise, the circumvention goods would already be subject to the original notice).

With the exception of certain exporters, both Sections 8 and 10 apply to the Chinese subject goods.

Orrcon considers that the circumvention goods are not subject to the original notice under subsection 269TG(2) and subsection 269TJ(2) of the *Customs Act 1901*, by virtue of the circumvention goods falling outside of the goods description. Therefore, section 8 and 10 of the Dumping Duty Act does not apply to the export of the circumvention goods to Australia.

Conclusion

Orrcon submits that:

- the circumvention goods are exported to Australia from a foreign country (China) in respect of which the dumping duty notice applies;
- before that export, the circumvention goods are slightly modified;
- the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
- had the circumvention goods not been so slightly modified, they would have been the subject of the notice; and
- section 8 and 10 of the Dumping Duty Act do not apply to the export of the circumvention goods to Australia.

Accordingly, Orrcon considers that a circumvention activity, in relation to the original notice, occurred in the circumstances prescribed in subsection 48(2) of the Regulation.