Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (Review Panel) on or after 20 October 2025 for a review of a reviewable decision of the Minister.

Any interested party[2] may lodge an application to the Review Panel for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

The Review Panel maintains a public record for reviews of decisions of the Minister. If a review is initiated, a copy of the application will be placed on the Review Panel's website.

Please note that the existence of applications will be disclosed on the Review Panel's 'Pending Applications and Duty Assessments' webpage prior to initiation, including the following information:

- Relevant reviewable decision
- Country and goods to which the application relates
- Number of applications
- Status (e.g. application/s under consideration)

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
The Review Panel may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application. The conference may be requested any time after the Review Panel receives the application for review and before beginning to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the Review Panel website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the Review Panel website for more information.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the Review Panel website.

International Trade Remedies Advisory (ITRA) Service
Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service.

For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267

Contact
If you have any questions about what is required in an application refer to the Review Panel website. You can also call the Review Panel Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: Nextpower Australia Pty Ltd
Address: Level 8, 815 Pacific Highway, Chatswood NSW 2067
Type of entity (trade union, corporation, government etc.): Corporation

2. Contact person for applicant

Full name: Emma Canuto
Position: Corporate Counsel, Commercial Contracts
Email address: ecanuto@nextpower.com
Telephone number: 0434 355 961

3. Set out the basis on which the applicant considers it is an interested party:

Nextpower Australia Pty Ltd (**Nextpower**) is an "interested party" under paragraph (c)(ii) of section 269ZX of the *Customs Act 1901* (Cth) (**Act**) as an importer of goods the subject of the reviewable decision.

Nextpower imports torque tube units (**TTUs**) – HSS classified to tariff subheading 7308.90.00 (statistical code 65), which are the goods to which the reviewable decision applies. The reviewable decision extended the anti-dumping and countervailing duty measures on HSS to include goods classified to tariff subheading 7308.90.00 with retrospective effect from 4 September 2025, directly imposing interim dumping and countervailing duties on Nextpower's TTU imports.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the Review Panel Secretariat if the nominated representative changes or if the applicant become self-represented during a review.

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☐Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☒Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods subject to the Reviewable Decision are described in Anti-Dumping Notice No. 2026/064 dated 5 June 2026 as follows:

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited.*

and

Certain electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00 (statistical code 65), comprising circular and non-circular hollow structural sections (HSS), including circular or oval hollow sections (CHS) with other than plain ends, such as threaded, swaged and shouldered, and any sections with holes (including those created by drilling, punching, piercing, cutting or otherwise) at the end of the section or along its length (or both).

7. Provide the tariff classifications/statistical codes of the imported goods:

The relevant tariff classifications/statistical codes, as provided in Final Report 685, are as follows:

Tariff subheading	Statistical code	Description
7308	STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, LOCK-GATES, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, SHUTTERS, BALUSTRADES, PILLARS AND COLUMNS), OF IRON OR STEEL; PLATES, RODS, ANGLES, SHAPES, SECTIONS, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES, OF IRON OR STEEL:	
7308.10.00	01	Bridges and bridge-sections
7308.20.00	Towers and lattice masts	
	03	*Tubular, whether or not tapered*
	04	*Other*
7308.30.00	Doors, windows and their frames and thresholds for doors	
	04	*Of stainless steel*
	Other	
	05	*.Windows and their frames*
	06	*.Thresholds for doors*
	07	*.Other*
7308.40.00	05	Equipment for scaffolding, shuttering, propping or pit-propping
7308.90.00	Other	
	Columns, pillars, posts and beams, girders, bracing, gantries, brackets, struts, ties and similar structural units:	
	.Roll formed structures:	
	52	*..Hot rolled*
	53	*..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness less than 1.2 mm*
	54	*..Plated or coated with zinc or with aluminium-zinc alloys, of a thickness of 1.2 mm or more*
	55	*..Other*
	56	*.Other*
	57	*Steel grating, stairways and treads*
	58	*Racking and shelving*
	59	*Sheet-metal roofing, siding, flooring and roof drainage equipment (or rainwater goods)*
	60	*Handrails and stanchions*
	62	*Guard rails and road barriers, prepared for use on bridges and roads*
	63	*Sectional components, prepared for use in towers and lattice masts*
	64	*Lintels, prepared for use with doors and windows*
	65	*Other*

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: 2026/064
Date ADN was published: 5 June 2026

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

Please note: Failure to adequately and accurately respond to questions 9 – 12 below may result in the application or ground/s being rejected pursuant to s 269ZZG(2) or s 269ZZG(5) of the *Customs Act 1901*. Where there are multiple grounds of review, it is important to address each of the questions below for each ground.

9. Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:

Note: Each ground should be articulated as a short, clear statement. Reasons to support the ground of review should be included in Question 11. Please refer to **Attachment B**.

10. Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

Please refer to **Attachment B**.

11. Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

Please refer to **Attachment B**.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901. Please refer to **Attachment B**.

13. Please list all attachments provided in support of this application:

1. **Attachment A –** Anti-dumping notice 2026/064
2. **Attachment B –** Grounds for review of Minister's decision

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Review Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Review Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the Review Panel is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature:

Name: Andrew Korbel

Position: Partner

Organisation: Corrs Chambers Westgarth

Date: 30/06/2026

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Andrew Korbel
Organisation: Corrs Chambers Westgarth
Address: Level 37, 50 Bridge Street, Sydney NSW 2000
Email address: andrew.korbel@corrs.com.au
Telephone number: 02 9210 6537

Representative's authority to act

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:

(Applicant's authorised officer)

Name: Emma Canuto

Position: Corporate Counsel, Commercial Contracts

Organisation: Nextpower Australia Pty Ltd

Date: 30/06/2026

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

Anti-Dumping Notice No 2026/064

Customs Act 1901 – Part XVB

Hollow Structural Sections

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

Findings of Anti-Circumvention Inquiry No 685

Public Notice under section 269ZDBH(1) of the Customs Act 1901

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the anti-circumvention inquiry, which commenced on 4 September 2025, in relation to the slight modification of Hollow Structural Sections (the goods) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Malaysia and Taiwan.

The goods exported from those countries are subject to a dumping duty notice published under section 269TG(2) of the *Customs Act 1901* (the Act) on 3 July 2012 and a countervailing duty notice published under section 269TJ(2) of the Act on 3 July 2012 (collectively, the original notices).[1] The original notices were altered by a notice published under section 269ZDB(1) on 18 March 2016, following anti-circumvention inquiry 291.[2] The goods subject to the original notices as altered on 18 March 2016 are as follows.

Notice under section 269TG(2)

> *Certain hollow structural sections classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.*
>
> *and*
>
> *Certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:*
>
> - *China by Dalian Steelforce Hi-Tech Co.*
> - *China by Tianjin Friend Steel Pipe Co., Ltd*
> - *China by Tianjin Ruitong Iron and Steel Co., Ltd*
> - *China by Roswell S A R L Limited*
> - *Malaysia by Alpine Pipe Manufacturing SDN BHD.*

[1] Special Gazette Notice Nos S106 and S108, published in *Commonwealth Gazette* Notice No GN 27, pp 142-143 and 145-147.
[2] Anti-Dumping Notice No 2016/24 refers.

Notice under section 269TJ(2)

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited.*

Recommendations resulting from the current inquiry, reasons for the recommendations and material findings of fact and law in relation to the inquiry are contained *in Anti-Dumping Commission Report No 685* (REP 685).

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science, have considered REP 685 and have decided to accept the recommendations and reasons for the recommendations, including all the material findings of facts or law set out in REP 685.

Under section 269ZDBH(1) of the Act, I DECLARE, for the purposes of the Act and the *Customs Tariff (Anti-Dumping) Act 1975* , the original notices under section 269TG(2) and section 269TJ(2) of the Act applying to the goods exported to Australia from China, Korea, Malaysia and Taiwan **be altered** to apply to the following goods(with alterations shown in bold):

Notice under section 269TG(2)

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.*
- *China by Tianjin Friend Steel Pipe Co., Ltd*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd*
- *China by Roswell S A R L Limited*
- *Malaysia by Alpine Pipe Manufacturing SDN BHD.*

and

Certain electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00 (statistical code 65), comprising circular and non-circular hollow structural sections (HSS), including circular or oval hollow sections (CHS) with other than plain ends, such as threaded, swaged and shouldered, and any sections with holes (including those created by drilling, punching, piercing, cutting or otherwise) at the end of the section or along its length (or both).

Notice under section 269TJ(2)

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10) in Schedule 3 of the Customs Tariff Act 1995.

and

Certain hollow structural sections (the goods) classified to tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90) exported from:

- *China by Dalian Steelforce Hi-Tech Co.;*
- *China by Tianjin Friend Steel Pipe Co., Ltd;*
- *China by Tianjin Ruitong Iron and Steel Co., Ltd;*
- *China by Roswell S A R L Limited.*

and

Certain electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00 (statistical code 65), comprising circular and non-circular hollow structural sections (HSS), including circular or oval hollow sections (CHS) with other than plain ends, such as threaded, swaged and shouldered, and any sections with holes (including those created by drilling, punching, piercing, cutting or otherwise) at the end of the section or along its length (or both).

I also DECLARE under sections 269ZDBH(1) and 269ZDBH(8) that the alterations specified in this declaration are taken to have been made to the original notices with effect on and after 4 September 2025.[3]

REP 685 has been placed on the public record, which may be examined at the Anti-Dumping Commission office during business hours by contacting the case manager using the contact details provided below. Alternatively, the public record is available at www.adcommission.gov.au

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel (www.adreviewpanel.gov.au), in accordance with the requirements in Division 9 of Part XVB of the Act within 30 days of the publication of this notice.

Enquiries about this notice may be directed to the Case Manager on telephone number +61 2 6213 7047 or investigations2@adcommission.gov.au

Dated this Fifth day of June 2026

TIM AYRES
Minister for Industry and Innovation and Minister for Science

[3] The Commissioner published an inquiry notice under section 269ZDBE(4) about the conduct of an anti-circumvention inquiry on 4 September 2025.

CORRS CHAMBERS WESTGARTH

THIS IS 'ATTACHMENT B' TO THE APPLICATION FOR REVIEW OF A MINISTERIAL DECISION RECORDED IN ANTI-DUMPING NOTICE 2026/064, FOLLOWING INQUIRY 685, CONCERNING HOLLOW STRUCTURAL SECTIONS EXPORTED TO AUSTRALIA FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA, MALAYSIA AND TAIWAN

Introduction

1 This document accompanies the application by Nextpower Australia Pty Ltd (**Applicant**) for review by the Anti-Dumping Review Panel (**Review Panel**) of the decision of the Minister for Industry and Innovation (**Minister**) published in Anti-Dumping Notice 2026/064 on 5 June 2026 (**Reviewable Decision**). The Reviewable Decision was made under s 269ZDBH(1) of the *Customs Act 1901* (Cth) (**Act**).

2 The Reviewable Decision, made at the conclusion of Anti-circumvention Inquiry 685, was to alter and extend the description of certain hollow structural sections (**HSS**) in the notices by which anti-dumping and countervailing measures are applied to those goods, as exported from China, Korea, Malaysia and Taiwan (**Notices**).

3 In summary, this document sets out the grounds on which the Applicant respectfully submits that the Reviewable Decision was not the correct or preferable decision within the meaning of s 269ZZF of the Act. The decision retrospectively extended the HSS measures to exports from China of torque tubes classified to tariff subheading 7308.90.00 (statistical code 65). It did so notwithstanding that those goods were not within the scope of the original HSS measures, are prepared structural components used in solar tracking systems, and were not shown to have been exported by the Applicant's Chinese suppliers as part of any circumvention activity. If any alteration was open, it should have been confined to proven circumvention goods exported by proven circumvention exporters, applied prospectively only, and should not have captured the Applicant's identified Chinese suppliers.

9 Grounds on which the Applicant believes that the Reviewable Decision is not the correct or preferable decision

9.1 Ground 1: Torque tubes have never been covered by the HSS measures and there is no evidence of circumvention to warrant the extension of the measures to them now

1 The HSS measures have always described the goods to which they apply by reference to particular tariff sub-headings. In turn, torque tubes have always been classified to tariff subheading 7308.90.00 (statistical code 65), which has never been within the scope of the HSS measures prior to the Reviewable Decision. It is not clear that the Commission found that any torque tubes were produced or modified to avoid the application of the HSS measures, and if not there was no proper basis to expand the measures to include a whole subset of goods to which the measures have otherwise never applied.

9.2 Ground 2: No circumvention by the Applicant or its exporters

2 The Applicant's Chinese suppliers have manufactured and exported torque tubes incorporating pre-drilled precision holes to the same specifications and using the same production processes throughout the entire period of importation by the Applicant into Australia. There has been no change to the design, physical characteristics, manufacturing process or tariff classification of torque tubes in response to, or in order to avoid, the HSS measures – and accordingly no circumvention activity by the Applicant, its customers, or the exporters supplying torque tubes to them.

9.3 Ground 3: Detrimental impact on broader Australian industry and achievement of renewable energy targets

3 The extension of anti-circumvention measures to torque tubes imposes substantial and disproportionate commercial burdens on Australian businesses without any corresponding benefit to the domestic steel industry. Torque tubes are not manufactured in Australia at any commercial scale. The Reviewable Decision cannot practically achieve its intended protective objective and may jeopardise investment in Australia's renewable energy sector.

9.4 Ground 4: Altered measures should not have been applied retrospectively

4 The Reviewable Decision applies the HSS measures retrospectively to torque tubes which were legitimately and correctly classified to tariff subheading 7308.90.00 (statistical code 65) throughout the period since the initiation of Inquiry 685. Neither the Applicant nor its exporters engaged in any conduct warranting the imposition of retrospective duties, and the retrospective application of the altered notices creates significant and inequitable consequences for importers who imported torque tubes between the initiation of Inquiry 685 and the date of the Reviewable Decision.

9.5 Ground 5: Denial of natural justice – final goods description materially broader than the SEF proposal

5 The final goods description adopted by the Minister in the Reviewable Decision was materially broader than the alteration proposed in the Statement of Essential Facts (**SEF**) in Inquiry 685, expanding coverage to carbon or other alloy steel and to holes created by methods beyond drilling. The Applicant and its Chinese suppliers were not afforded a fair opportunity to respond to the expanded formulation, and key aspects of the Commission's reasoning relied on material not disclosed in a form permitting meaningful testing by interested parties.

9.6 Ground 6: Inaccuracies and incorrect information in the Statement of Essential Facts

6 The SEF contains inaccuracies and incorrect information, and those matters appear to have informed the reasoning that led to the Commissioner's recommendation and the Minister's decision. The SEF records factual propositions not supported by the material before the Commission in relation to matters going to the character of the goods, mischaracterises the goods, the significance of the drilling process, and the commercial comparability analysis, and as a result the reliability of the Reviewable Decision is undermined.

10 Correct or preferable decision

1 The Applicant respectfully submits that the correct or preferable decision, having regard to the grounds of review set out in section 9 and the supporting reasons set out in section 11, is one or more of the following alternatives (depending upon which ground/s of review the Review Panel accepts):

(a) the Notices not be altered;

(b) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65) but only insofar as those goods are torque tubes produced by specific exporters found by the Commissioner:

(i) to have exported torque tubes with drilled holes, and

(ii) to have previously exported the identical products to Australia without drilled holes;

(c) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65) but the alteration be expressed not to extend to torque tubes exported by the following exporters who supply torque tubes to the Applicant and its customers:

(i) Jiangsu Youli Intelligent Equipment Co.,Ltd;

(ii) Jiangsu Zhenjiang New Energy Equipment Co., Ltd;

(iii) Hongkong Hao Yuan Sheng Trading Company Limited;

(iv) Suzhou Baojia New Energy Technology Co., Ltd;

(v) Yueqing Yihua New Energy Technology Co., Ltd; and

(vi) Jiangsu JinRun Intelligent Equipment Co., Ltd; or

(d) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65) but only with prospective effect from the date of publication of the Reviewable Decision (not with retrospective effect to 4 September 2025); or

(e) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65), but with the description of the goods limited in the way described in the SEF.

11 The grounds of review support the making of the proposed correct or preferable decision

11.1 Ground 1: Torque tubes have never been covered by the HSS measures and there is no evidence of circumvention to warrant the extension of the measures to them now

1 Since the original notice putting in place the HSS measures in 2012, the goods to which the measures applied have been described in the Notices by reference to specific tariff subheadings, namely, HSS falling within tariff subheadings 7306.30.00 (statistical codes 31, 32, 33, 34, 35, 36 and 37), 7306.61.00 (statistical codes 21, 22 and 25) and 7306.69.00 (statistical code 10). For specific exporters who were found to have engaged in circumvention activity, the Notices were altered so that the HSS measures were extended to goods falling within tariff subheadings 7306.50.00 (statistical code 45) and 7306.61.00 (statistical code 90).

2 The Applicant is an Australian company that imports torque tubes, which are purpose-engineered structural steel components manufactured to precise tolerances and used exclusively in the assembly of solar-tracking systems for utility-scale solar farms. Torque tubes are not standard HSS. They have always been classified to tariff subheading 7308.90.00 (statistical code 65), a classification that, prior to the Reviewable Decision, was not covered by the HSS measures.

3 By the Reviewable Decision the Notices were altered to extend the measures to include "*certain electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00 (statistical code 65), being goods comprising HSS including sections with holes created by drilling, punching, piercing, cutting or otherwise at the end of or along the length of the section*".

4 The justification by the Commission and the Minister for this extension was said to be circumvention activity involving slight modification of the goods (by drilling holes in the tubes). However, torque tubes (or at least those imported by the Applicant) have always incorporated pre-drilled holes as an integral manufacturing and functional feature. They were not incorporated recently, or at any time, as a post-manufacture modification to avoid the HSS measures. Nor did the Commission make any finding to that effect.

5 Torque tubes are purpose-engineered components that have always been distinguished from standard HSS (and fallen into a tariff sub-heading that was not described in the HSS measures) by, among other things:

(a) the presence of precision holes along the length of the tube to locate and attach module rails, reducing on-site labour and enabling precision assembly;

(b) holes at the ends that allow torque tubes to be connected to each other and to HSS as part of a dedicated solar-tracking structural system; and

(c) drilling to tolerances of half a degree or less, undertaken in a controlled factory environment to a standard of technical specification and quality control that is not achievable through post-manufacture or on-site modification.

6 The Australian Border Force (**ABF**) had previously issued rulings classifying torque tubes under tariff heading 7308 as structural components prepared for use in structures, consistent with their longstanding classification by the Applicant.

7 The technical and commercial character of solar tracker torque tubes has also been recognised in comparable overseas scope rulings. In January 2024, the United States Department of Commerce determined that 15 models of torque tubes imported by a related entity of the Applicant from China were outside the scope of the United States anti-dumping and countervailing duty orders on circular welded carbon quality steel pipe from China. That determination followed an earlier 2019 scope ruling concerning 123 torque tube models imported by the related entity of the Applicant into the United States.

8 While those US rulings are not binding in Australia, they are instructive because they concerned materially similar Chinese-origin solar tracker torque tubes with customised specifications, swaged ends, drilled and deburred holes, and OEM supply. Applying the US scope analysis under 19 CFR 351.225(k)(2), Commerce considered the physical characteristics of the goods, the expectations of the ultimate purchaser, the ultimate use of the goods, the channels of trade and the manner in which the products were advertised and displayed.

9 Commerce found that the torque tubes were made-to-order components used in solar tracking systems, sold to an OEM, not advertised or sold as ordinary pipe, and possessed characteristics consistent with mechanical tubing rather than standard or structural pipe. The same reasoning is consistent with the Applicant's position in this review. The Applicant's torque

tubes are not ordinary HSS that have been slightly modified by drilling, swaging or end preparation to avoid measures. They are prepared, purpose-engineered solar tracker components manufactured to precise project specifications, with holes and end preparation integral to their function.

10 The US rulings therefore provide persuasive comparative support for the conclusion that solar tracker torque tubes should not be treated as ordinary HSS merely because they are steel tubular products with holes or prepared ends. The relevant inquiry should focus on the commercial and engineering character of the goods and whether there is evidence of actual circumvention conduct by the relevant exporters.

11 The Commission's power to recommend alteration of the notices under s 269ZDBH(1) is predicated upon a finding that circumvention activity has occurred within the meaning of s 269ZDBB of the Act. The concept of circumvention in section 269ZDBB is directed at conduct that is intended to, or that has the effect of, undermining the effectiveness of existing measures, for example, by slightly modifying goods that were previously covered by the measures to take them outside the scope of those measures.

12 Report 685 does not identify evidence that torque tubes were developed or modified to avoid the application of the HSS measures. Instead, it seems to proceed on an <u>assumption</u> that because torque tubes have drilled holes and are (properly) classified to a tariff sub-heading that falls outside of the scope of the HSS measures, those holes must have been drilled to bring them into that sub-heading and outside the scope of the measures.

13 The Commission also mischaracterised the function of the holes in the torque tubes. For the Applicant's solar tracker systems, the holes are not superficial or incidental. They are functionally determinative engineering features that allow the torque tubes to be assembled with precision into a solar tracking system. Without those holes, the product is not a usable torque tube for the Applicant's projects.

14 The character of the goods should be assessed in their commercial and engineering context. Even if there were any evidence (which there is none) of the Applicant or other importers previously being supplied with torque tubes without holes, to treat the holes as a slight modification is to fail to give proper effect to the distinction between generic HSS and a prepared structural component used in a sophisticated solar tracking system. In the US ruling referred to above, the authority cites, and agrees with, the assessment of US Customs and Border Protection that torque tubes manufactured for Nextpower's solar tracking systems meet the definition of "mechanical tubing", namely they are "*not intended for the transmission of fluids, except in fluid power applications and [are] produced to exact rather than nominal OD or wall dimensions, and to exacting tolerances*."

15 The Reviewable Decision operates, in substance, as a de facto new measure on goods classified to tariff subheading 7308.90.00 (statistical code 65) without a fresh assessment of dumping, subsidisation or injury for that class of prepared structural goods. An anti-circumvention inquiry can operate without a full new dumping investigation, but it should not be used to capture goods that were never within the original measures, were not part of the original investigation, and were not shown to have displaced subject goods to any significant degree.

16 Where the alteration captures a legitimate structural component classified to tariff subheading 7308.90.00, there is a risk that the anti-circumvention process operates as a product-extension mechanism rather than a genuine circumvention remedy.

17 If torque tubes were never within the scope of the HSS measures, as evidenced by their consistent classification to tariff subheading 7308.90.00 (statistical code 65) prior to the Reviewable Decision and their recognition by the ABF as structural components prepared for

use in structures, then there was no statutory foundation under section 269ZDBH(1) for the notices to be altered to capture those goods.

18 Taking all of those matters into account, the correct or preferable decision by the Minister was not to make any alteration to the Notices.

11.2 Ground 2: No circumvention by the Applicant or its exporters

19 The anti-circumvention provisions in Part XVB, Division 5A of the Act are directed at conduct that undermines the effectiveness of existing anti-dumping or countervailing measures by, among other conduct, slightly modifying the goods subject to those measures.

20 The allegation of circumvention underlying Inquiry 685 was that certain exporters had begun drilling holes in goods (specifically torque tubes) that would otherwise have been captured by the existing HSS measures, thereby allowing those goods to be classified to tariff subheading 7308.90.00 (statistical code 65) and avoiding the application of the measures.

21 The anti-circumvention provisions allow an alteration to notices to be framed by reference to different goods, different countries, exporters and variable factors. Those options exist so that a circumvention remedy can be targeted to the conduct found, rather than operating as a general extension of measures to unrelated exporters, goods and supply chains. The practice of the Commission and the Minister in previous anti-circumvention inquiries has consistently been to alter notices, and so extend measures, only to the extent that circumvention activity has been identified in respect of particular exporters.

22 In the case of the HSS measures, this is illustrated by the alterations to the description of the goods to which the measures applied following Anti-Circumvention Inquiry 291. Those alterations are recorded at section 2.2.2 of the Commission's Report 685 issued at the conclusion of Inquiry 685. As can be seen, those alterations extended the measures to certain goods classified to tariff sub-headings 7306.5 and 7306.61 exported by four named Chinese exporters, and one Malaysian exporter.

23 In contrast, and for reasons that have not been explained, in Inquiry 685 the Commission has recommended, and the Minister has made, an alteration to the Notices which applies to all exporters in all countries covered by the Notices. As discussed in the context of ground 1 above, the alteration has the effect of extending the notice to an entire category of goods that is not classified as HSS, and in respect of which anti-dumping and countervailing measures were not sought by the Applicant when the Commission originally investigated whether dumping was occurring. Accordingly, absent evidence of circumvention activity there was no justification for the alteration of the measures in this way.

24 Even if the Commission found evidence of circumvention activity, consistent with its usual practice it should have recommended, and the Minister should have decided, that any alteration to the Notices would only apply to particular exporters, from particular countries, who have engaged in circumvention activity.

25 In the case of torque tubes imported by the Applicant and its customers, exporters have manufactured torque tubes incorporating pre-drilled precision holes to the same specifications and using the same production processes throughout the entire period of importation into Australia (10 years or more). There has been no change to the design, physical characteristics, manufacturing process, or tariff classification of torque tubes in response to, or in order to avoid, the HSS measures.

26 This can be seen, for example, from **Annexure 1** to this Attachment B, which consists of:

(a) an engineering drawing from 7 February 2015 of the Applicant's torque tubes, showing the precise specifications of the drilled holes in the tube;

(b) a description, in a letter dated 17 August 2017 from a certified engineer, of the Applicant's torque tubes, which includes the fact that they have a minimum of 15 pre-drilled holes in each tube; and

(c) a Tariff Ruling issued by the Australian Government's Department of Immigration and Border Protection on 28 September 2017 in respect of the Applicant's torque tubes contained in that drawing and letter.

27 The US scope rulings referred to in ground 1 above also demonstrate that the presence of holes, swaged ends or other end preparation is not, of itself, evidence of circumvention. In those rulings, those features formed part of the technical design of the solar tracker torque tube and were considered in the context of the product's end use, OEM supply chain, made-to-order manufacture and engineering tolerances.

28 The same logic applies here. The relevant question is not whether the finished torque tubes contain holes, swaging or other prepared ends. The relevant question is whether the Applicant's Chinese suppliers changed or slightly modified goods that were previously covered by the HSS measures for the purpose or effect of avoiding those measures. On the evidence available to the Applicant, they did not. The goods were designed, manufactured and imported as solar tracker torque tubes with those functional features as part of their ordinary specification.

29 The Reviewable Decision also fails to give proper weight to the Applicant's commercial reliance on the proper classification of its torque tubes under heading 7308 as prepared structural components, including past ABF tariff rulings. The Applicant's torque tubes were not entered under 7308 as an artificial avoidance device. They were entered under that heading because they are prepared structural components for use in solar tracker structures. The retrospective expansion of HSS measures to those declarations undermines commercial certainty and penalises lawful classification conduct.

30 As identified in its importer questionnaire response, the Applicant and its customers import torque tubes from six Chinese exporters. The Commissioner's recommendation and the Minister's decision to extend the measures in a manner that captures goods exported to the Applicant and its customers by those six exporters was not supported by the evidence, and was not within the proper scope of the Commissioner's recommendation-making function under section 269ZDBH(1).

31 The Reviewable Decision is therefore not the correct or preferable decision insofar as it extends the HSS measures to torque tubes exported to the Applicant or its customers by those six exporters. Without prejudice to the Applicant's primary position that the Notices should not be altered, if this ground (but not ground 1) is accepted, any alteration should be confined to proven circumvention goods exported by exporters in respect of whom the Commissioner has made a specific finding of circumvention conduct.

32 The alteration should not extend to made-to-order solar tracker torque tubes that are prepared structural or mechanical components manufactured to project-specific specifications, including goods with holes, swaged ends, shouldered ends or other end preparation that is integral to their function in a solar tracking system.

33 Alternatively, the alteration should be expressed not to apply to torque tubes manufactured, exported or supplied through the Applicant's identified Chinese supply chain, including any entity in that supply chain for which the record does not establish a change in product design, classification, manufacturing process or export practice for the purpose or effect of avoiding the HSS measures.

34 Accordingly, if this ground (but not ground 1) is accepted by the Review Panel, the correct or preferable decision is either that:

(a) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65), but only insofar as those goods are torque tubes produced by specific exporters (if any) found by the Commission:

(i) to have exported torque tubes with drilled holes, and

(ii) to have previously exported the identical products to Australia without drilled holes; or

(b) the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65) but the alteration be expressed not to extend to torque tubes exported by the following exporters who supply torque tubes to the Applicant and its customers:

(i) Jiangsu Youli Intelligent Equipment Co.,Ltd;

(ii) Jiangsu Zhenjiang New Energy Equipment Co., Ltd;

(iii) Hongkong Hao Yuan Sheng Trading Company Limited;

(iv) Suzhou Baojia New Energy Technology Co., Ltd;

(v) Yueqing Yihua New Energy Technology Co., Ltd; and

(vi) Jiangsu JinRun Intelligent Equipment Co., Ltd.

11.3 Ground 3: Detrimental impact on Australian industry and achievement of renewable energy targets

35 Even if the Reviewable Decision were otherwise properly made, which the Applicant does not accept, the extension of anti-circumvention measures to torque tubes imposes substantial and disproportionate commercial burdens on Australian businesses, including the Applicant and its downstream customers, without providing any corresponding benefit to the domestic steel industry that the HSS measures were designed to protect.

36 Torque tubes are a specialised product that is not, and has not been, manufactured in Australia at any commercial scale. The Australian steel industry does not currently manufacture torque tubes, and domestic producers, including Orrcon, which supported the circumvention application, are limited: while Orrcon has capacity to produce unfinished torque tubes, it does not have the capability or technology to undertake the further processing required to produce finished torque tubes, including drilling holes and swaging the tube ends, and those processes must be outsourced to another Australian vendor that does not have the required capacity for at least the next two years. Accordingly, the Reviewable Decision cannot practically achieve its intended objective of protecting and developing the local industry, because the domestic industry presently lacks the capacity to supply torque tubes to Australian customers at the volumes required.

37 There are also significant comparative advantages in the overseas production of torque tubes that will persist regardless of the imposition of the measures: the manufacturing process is highly labour-intensive, and Australia's substantially higher labour costs render domestic production commercially inefficient. Imported torque tubes are produced in highly controlled factory environments to exacting tolerances that are not replicated in domestic manufacturing conditions, and product quality differences are likely to cause customers to continue to favour imported torque tubes over domestically produced alternatives even in the presence of dumping and countervailing duties.

38 As a result, the impact of the alteration to the Notices is likely simply to be to increase the price paid by Australian importers for torque tubes, without any other impact on the market.

39 It is important in that context to understand that torque tubes are a critical input in utility-scale solar farm development. The increase in cost, as a result of the imposition of retrospective and ongoing duties, may well have the effect of rendering the financial models for some of those solar projects unviable. In turn, that has the potential effect of jeopardising investment in Australia's renewable energy sector and the nation's ability to meet its renewable energy build-out schedules.

40 In the circumstances, the Reviewable Decision produces an outcome that is disproportionate to its protective purpose and contrary to the broader public interest.

41 In making the Reviewable Decision, the Minister was required under the Act to have regard to the objects of the anti-dumping legislation and entitled to weigh the effects of the decision on Australian industry as a whole (rather than Australian steel producers alone). A decision that imposes cost burdens on downstream users of torque tubes without achieving any protective benefit for domestic steel manufacturers, and which has the potential to impede progress towards national renewable energy objectives, is not the correct or preferable decision.

42 If ground 3 is accepted by the Review Panel, the correct or preferable decision is that the Notices not be altered.

11.4 Ground 4: Altered measures should not have been applied retrospectively

43 Ground 4 is raised for consideration only in the event that grounds 1 to 3 above are not accepted, and that the Notices remain altered in a manner that extends the HSS measures to torque tubes supplied by Chinese exporters to the Applicant and its customers.

44 Under ss 269ZDBH(1) and 269ZDBH(8) of the Act, the Reviewable Decision alters the Notices with retrospective effect from 4 September 2025, being the date on which the Commissioner published notice initiating Inquiry 685. While the Minister has the power to alter the Notices in that way, for the following reasons the Applicant respectfully submits that the exercise of that power in the particular circumstances of this case was not the correct or preferable decision.

45 As explained in the context of Grounds 1 and 2 above, both before and after the initiation of Inquiry 685, torque tubes imported by the Applicant and its customers have been legitimately and correctly classified to tariff subheading 7308.90.00 (statistical code 65), and no anti-dumping or countervailing measures applied to torque tubes.

46 The Applicant and its customers purchase torque tubes from Chinese exporters. At present, exporter-specific dumping and countervailing margins apply in respect of the HSS measures for five named Chinese exporters, at combined rates of 9.4% for four exporters, and 30.4% for the fifth exporter. The combined effective rate for all other exporters (who have not sought specific margins) is 48.3%.

47 None of the six Chinese exporters from which the Applicant and its customers purchase torque tubes have sought or obtained exporter-specific margins for HSS (by means of an Accelerated Exporter Review) from the Commission. As torque tubes were not within the scope of the HSS measures, there was no reason to do so (and, at least in so far as torque tubes were concerned, it would not have been possible to do so).

48 Retrospective application of the measures now exposes the Applicant to the "All other exporters" rate of combined dumping and countervailing duty, which is significantly higher than the rate applying to any of the specific named exporters of HSS. While the exporters which supply the Applicant may now apply for Accelerated Exporter Reviews to obtain individual dumping margins going forward, that will not affect the duty payable before the date of application of the Accelerated Exporter Review.

49 In this particular instance, that difficulty is compounded by the time limits applicable to applications for dumping duty assessments. Applications for dumping duty assessments for torque tubes imported in the period from 3 July 2025 to 2 January 2026 must be lodged no later than 2 July 2026 - that is, within approximately four weeks of the publication of the Reviewable Decision on 5 June 2026. The Applicant and its customers could not have known, at the time of those importations, that anti-circumvention measures would be applied to torque tubes. They therefore had no opportunity to take steps to mitigate their exposure or to obtain advance pricing certainty.

50 On 23 June 2026, the Commission issued Anti-Dumping Notice 2026/091 (**Annexure 2** to this Attachment B), bringing to the attention of importers affected by the Reviewable Decision the need to do the following by 5pm on 2 July 2026 (that is, a little over one week later):

(a) lodge amended import declarations for torque tubes (and other goods caught by the alteration to the Notices) imported between 4 September 2025 and 5 June 2026;

(b) pay dumping and countervailing duties in accordance with those amended import declarations; and

(c) *only if the additional duty is paid*, make applications for final duty assessment for imports in the period 4 September 2025 to 2 January 2026.

51 As Notice 2026/091 makes clear, if an importer fails to do those things by 5pm on 2 July 2026 there will be no opportunity to obtain a duty assessment, and to obtain a refund of overpaid duty if it could have been established that the relevant exporters were not dumping, not subsidised, or that the dumping and subsidy margins were lower than 48.3%.

52 Importers will face significant logistical difficulties in amending all relevant import declarations by 2 July 2026, let alone compiling all of the information necessary to lodge a compliant application for dumping duty assessment which will be accepted by the Commission.

53 In this way, the combination of the retrospective duty liability, the “All other exporters” rate, and the extremely compressed timeframe for lodging duty assessment applications creates a significant and inequitable risk that importers will pay interim dumping and countervailing duty substantially in excess of the amount properly payable, with no practical ability to recover the excess.

54 That outcome constitutes a procedural unfairness that is contrary to the objects of Part XVB of the Act, and which is not warranted by the findings of Inquiry 685. In that respect it is worth noting that Report 685 issued by the Commission at the conclusion of Inquiry 685 records that:

(a) the volume of torque tubes identified by the Commission as exported to Australia is extremely small in comparison to the volume of exports of HSS (sections 4.2.2.10 and 4.2.2.12 of the Report); and

(b) the Commission has not identified significant displacement of trade in HSS by torque tubes (section 4.2.2.10 of the Report). In other words, there is little to no evidence of exporters drilling holes in HSS to create torque tubes and take them outside of the application of the HSS measures.

55 The unfairness is particularly acute for the Applicant and its customers because the affected import declarations are China-origin torque tubes that were entered under tariff subheading 7308.90.00 (statistical code 65) on the basis of their objective character as prepared structural components, not as an artificial avoidance device. The Applicant and its customers had no commercial or legal reason to anticipate that those import declarations would later be treated retrospectively as subject to the HSS measures.

56 For those reasons, if the Review Panel considers that the Minister's decision to alter the Notices was correct or preferable, the Applicant submits that the Review Panel should conclude that the decision ought to have applied prospectively only. That approach would address any future avoidance concern while avoiding a disproportionate and commercially destabilising retrospective effect on importers who entered goods in accordance with their apparent tariff character and historical treatment.

57 If grounds 1, 2 or 3 are accepted by the Review Panel, then ground 4 need not be considered. But if grounds 1, 2 and 3 are not accepted, and only ground 4 is accepted by the Review Panel, the correct or preferable decision is that the Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65) but only with prospective effect from the date of publication of the Reviewable Decision (not with retrospective effect to 4 September 2025).

11.5 Ground 5: Denial of natural justice – final goods description materially broader than the SEF proposal

58 The Reviewable Decision was not the correct or preferable decision because the final alteration adopted by the Minister was materially broader than the alteration proposed in the SEF, and the Applicant and its Chinese suppliers were not afforded a fair opportunity to address that expanded formulation.

59 The SEF framed the proposed alteration by reference to carbon steel HSS with drilled holes. The final formulation expanded the description to cover carbon or other alloy steel and holes created by drilling, punching, piercing, cutting or otherwise. That change was not merely a drafting clarification; it broadened the class of goods exposed to retrospective and prospective interim dumping duty and interim countervailing duty.

60 Procedural fairness required affected parties to be advised of the change in the definition and critically to have a meaningful opportunity to respond. The Applicant and its Chinese suppliers were not given that opportunity in relation to the materially broader final wording.

61 The broader final goods description appears to have been adopted after, and in response to, submissions made after the SEF by members of the Australian industry producing like goods. If the Commissioner was minded to accept Orrcon's post-SEF request to expand the description to non-drilling methods and other alloy steel, the affected importers and exporters should have been given notice of that possibility, and a further opportunity to respond.

62 The unfairness is heightened by the retrospective application of the altered Notices. The expanded formulation did not merely affect future imports; it exposed past declarations by importers such as the Applicant and its customers to liabilities that were not reasonably apparent from the SEF formulation.

63 Further, key aspects of the Commission's reasoning appear to have relied on ABF import data and confidential analysis concerning classification, pricing, volume and trade patterns that were not disclosed in a form that allowed the Applicant and its suppliers to meaningfully test the case against them. Confidentiality is accepted in anti-dumping proceedings, but procedural fairness still requires disclosure of the substance of credible, relevant and significant material. Where the substance of adverse material is withheld, the decision-maker should be cautious before adopting a broad and retrospective alteration. That difficulty is compounded by the fact that the Commission also identified limitations in the available information, including the absence of exporter questionnaire responses. Those limitations support a narrower and more cautious outcome.

64 If grounds 1, 2 or 3 are accepted by the Review Panel, then ground 5 need not be considered. If only ground 5 is accepted by the Review Panel, the correct or preferable decision is that the

Notices be altered to extend to goods classified to tariff subheading 7308.90.00 (statistical code 65), but with the description of the goods limited in the way described in the SEF, rather than Report 685. If ground 4 is also accepted, then that alteration to the Notices should only apply prospectively from the date of the Reviewable Decision.

11.6 Ground 6: Inaccuracies and incorrect information in the Statement of Essential Facts

65 The Reviewable Decision was not the correct or preferable decision because the SEF contains inaccuracies and incorrect information, and those matters appear to have informed the reasoning that led to the Commissioner's recommendation and the Minister's decision.

66 The statutory process requires the SEF to identify the material facts on which the Commissioner proposes to base a recommendation. Not every factual inaccuracy will warrant interference with the Reviewable Decision. However, where the SEF contains inaccuracies, mischaracterises the goods, or records factual propositions not supported by the material before the Commission in relation to matters going to the character of the goods, the significance of the drilling process, or the commercial comparability analysis, the reliability of the Reviewable Decision is correspondingly undermined.

67 At section 1.2 of the SEF, the Commission concluded that "*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 slightly modified*", and "*had the circumvention goods not been so slightly modified, they would have been the subject of the notice*". As explained at paragraph 10 under Ground 1, that reasoning mischaracterises the function of the holes in the torque tubes. During interviews conducted by the Commission, the Applicant submitted that those holes formed a critical engineered component of the final solar tracking system design, and supported that submission with a list of more than 700 different torque tube types, each designed with drilled holes to match a particular solar module width.

68 The Applicant has submitted and re-emphasises that:

(a) each pre-drilled hole is actively used as part of the final installation;

(b) the holes serve as structural connection points between components;

(c) the holes provide self-aligning mounting locations for module rails; and

(d) the product cannot be installed in its intended commercial application without these engineered modifications.

69 The Applicant submitted during those interviews that the drilling process materially changes the functional application, commercial application and suitability of the goods.

70 Section 4.2.3 of the SEF states *that "[t]he drilled holes facilitate installation, but they do not alter the essential purpose of the tube as a structural component*". That proposition appears to conflate the fact that the holes facilitate installation with the distinct question whether they alter the essential character of the goods. The Applicant's position is that the engineered drilling and alignment process is substantial and directly affects the viability, cost profile and execution risk of large-scale solar energy projects. By way of illustration, an Australian solar farm in New South Wales of approximately 520MWdc would contain about 120,000 torque tubes and approximately 870,000 module mounting rails.

71 If the alignment of rails and modules were required to be performed manually on-site, and assuming a highly efficient installation rate of one minute per rail (inclusive of movement between installation locations), the project would conservatively incur approximately 14,500

hours × AUD 65 per hour = AUD 942,500 in additional direct labour costs alone. That estimate does not include:

(a) accommodation and transport costs for site personnel;

(b) living away from home allowance;

(c) insurance and supervisory costs;

(d) additional quality assurance personnel;

(e) rectification and rework costs; and

(f) schedule delays associated with alignment non-conformance.

72 The Applicant's tracker systems operate to a strict installation tolerance of approximately 1.0 degrees. If alignment were instead undertaken manually in the field across a project of that scale, project risk, quality assurance complexity and the likelihood of costly remediation work would materially increase. The Applicant estimates that the engineered drilling and alignment modifications generate cost savings well in excess of AUD 2.5 million on a single large-scale project. In those circumstances, the modifications cannot reasonably be characterised as merely facilitating installation in a minor or insignificant way, as suggested by the Commission's findings in Report 685.

73 Sections 4.2.2.5 and 4.2.2.11 of the SEF appear to proceed on the basis that the only meaningful cost difference between the goods and the alleged circumvention goods relates to the drilling process. Section 4.2.2.11 also suggests, based on Orrcon's confidential submissions, that local pricing is highly correlated with the price of the alleged circumvention goods. The Applicant submits that the Commission has not accurately reflected the commercial reality in this respect. To the extent the Commission relied on confidential pricing assertions without adequate verification, or without disclosing their substance sufficiently to permit meaningful response, that further undermines confidence in the factual premises adopted in the SEF.

74 As appears from the publicly available record of the Applicant's interview with the Commission, the Commission was aware of the Applicant's commercial relationship with Orrcon and had the opportunity to test the pricing information submitted by Orrcon in relation to the manufacture of the goods in Australia. However, there is no indication in the published material that the Commission undertook any such validation before proceeding on the basis that, absent the drilling process, the goods and the alleged circumvention goods were relevantly similar.

75 Local manufacture of the finished goods, inclusive of swaging and drilling, results in an average cost increase of approximately 250% when compared with equivalent imported finished goods. The Commission's conclusion in section 4.2.2.5 of the SEF that the additional costs associated with the goods relate only to labour and overheads oversimplifies the drilling process, given the significant investment in local capability that would be required to achieve the necessary tolerances.

76 The Applicant has previously submitted to the Commission that its required tolerances for torque tubes exceed the relevant Australian manufacturing requirements, and that local industry capability to meet those tolerances was, and remains, limited absent private sector investment. Without such investment, any increase in capability or capacity would likely further widen the disparity between local manufacturing costs and the cost of imported finished goods.

77 Those aspects of the SEF raise concerns about the accuracy of the factual premises on which the Reviewable Decision was made, and in turn the reliability of Report 685 and the appropriateness of the resulting alteration to the Notices.

78 If ground 6 is accepted by the Review Panel, then, to the extent the Reviewable Decision relied on inaccurate, incorrect, or unverified information contained in the SEF, the Review Panel should conclude that the matter ought not to have proceeded on the SEF's stated factual premises. In those circumstances, the correct or preferable decision is that the Notices not be altered.

12 The proposed decision is materially different from the Reviewable Decision

1 Each of the proposed correct or preferable decisions described in section 10 above is materially different from the Reviewable Decision, in one or more of the following respects:

(a) a decision not to alter the Notices would mean that the HSS measures do not apply to torque tubes;

(b) a decision to alter the Notices only in respect of specific exporters found to have engaged in circumvention activity would not extend the HSS measures to exporters of torque tubes which supply those goods to the Applicant or its customers;

(c) a decision to alter the Notices in a manner that specifically excludes exporters that supply torque tubes to the Applicant or its customers would mean that the HSS measures would not extend to torque tubes imported by the Applicant or its customers;

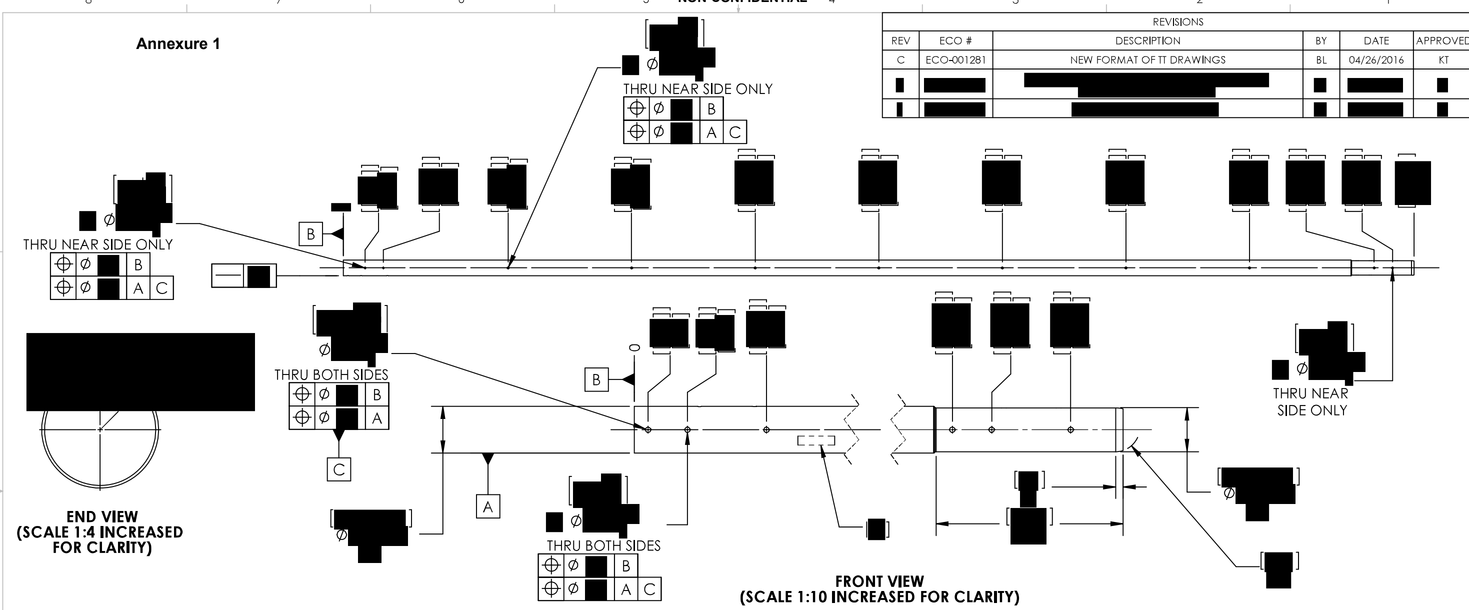
(d) a decision to alter the Notices with prospective effect only would eliminate the retrospective duty liability imposed on the Applicant or its customers for torque tubes imported on or after 4 September 2025 but before the date of the Reviewable Decision; and

(e) a decision to confine the alteration to the Notices to the narrower formulation proposed in the SEF would limit the scope of the measures to carbon steel HSS with drilled holes, rather than the broader final formulation, and would narrow the range of torque tubes to which the HSS measures are extended.

NON-CONFIDENTIAL

Annexure 1

REVISIONS					
REV	ECO #	DESCRIPTION	BY	DATE	APPROVED
C	ECO-001281	NEW FORMAT OF TT DRAWINGS	BL	04/26/2016	KT
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]



END VIEW (SCALE 1:4 INCREASED FOR CLARITY)

FRONT VIEW (SCALE 1:10 INCREASED FOR CLARITY)

NOTES: UNLESS OTHERWISE SPECIFIED

1. [redacted]
2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]
6. MATERIAL: [redacted] MECHANICAL PROPERTIES AND CHEMICAL COMPOSITION TO BE SUBMITTED BY SUPPLIER AND APPROVED BY NEXTRACKER (NX) IN WRITING.
   A. MECHANICAL PROPERTIES OF FINISHED TUBE SHALL BE:
      - [redacted]
      - [redacted]
      - [redacted]
   B. [redacted]
   C. [redacted]
7. FINISH 1: [redacted]
8. FINISH 2: [redacted]
9. FINISH 3: [redacted]
10. FINISH 4: [redacted].
11. FINISH 5: [redacted].
12. MARKING: PART NUMBER, REVISION, AND VENDOR NAME TO BE INDELIBLY MARKED [redacted]. WHERE SHOWN. METHODS OF MARKING MAY INCLUDE [redacted].
13. ALL DIMENSIONS ARE CRITICAL TO QUALITY AND SUBJECT TO INSPECTION.

NEXTracker
A Flex Company
6200 Paseo Padre Parkway,
Fremont, CA 94555
+1 510 270 2500 /
+1 510 793 8388 (FAX)
www.nextracker.com

UNLESS OTHERWISE SPECIFIED:
DIMENSION UNITS: [redacted]
PRIMARY UNITS ARE METRIC, IMPERIAL DIMENSIONS ARE FOR REFERENCE ONLY

[redacted]

INTERPRET DRAWING PER ASME Y14.100-2004
INTERPRET GEOMETRIC TOLERANCING PER ASME Y14.5-2009
DO NOT SCALE DRAWING

	NAME	DATE
DRAWN BY	SH	07/02/2015
ENG APPROV.	KT	07/02/2015

THIRD ANGLE PROJECTION

MATERIAL: SEE NOTES
FINISH: SEE NOTES

DESCRIPTION
TORQUE TUBE, [redacted]

SIZE	PART NUMBER	REV
B	40717	E

SCALE: 1:30 [redacted] SHEET 1 OF 1

REV E
40717

Member of the Surbana Jurong Group

SMEC Australia Pty Ltd
Level 1, 832 Southport-Nerang Road
Nerang, Qld 4211
Australia

NEXTracker
39 E Esplanade
Manly, NSW 2095
Australia

17th August 2017

Dear Scott,

Re: NEXTracker Structural Circular Hollow Sections Torque Tubes Description and Usage in Solar Farms

Torque Tubes is the naming convention adopted by NEXTracker, which refers to their fabricated Circular Hollow Section (CHS) used in their solar farm industry. Torque Tubes are fabricated [redacted] Circular Hollow Sections (CHS) by [redacted] thick and are used by NEXTracker as horizontal beams supporting the solar panels. Torque Tubes have one swaged end which allow the tube to connect to the slew drive assembly or other tubes and one standard end. The Torque Tubes also have a [redacted] predrilled holes in each tube to facilitate fasteners for these connections. NEXTracker's Torque Tubes have been specifically designed and fabricated to fit their solar tracker system and therefore these tubes cannot be used for any other purpose.

Appendix 1 shows typical details of the Torque Tubes in a solar array and Appendix 2 shows Torque Tubes with swaged and non-swaged ends.

If you required any other information about NEXTracker's Torque Tube usage in the solar farm industry or physical description, please do not hesitate to contact us.

Yours sincerely

Angela Tait
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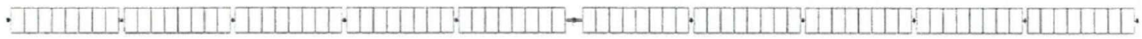
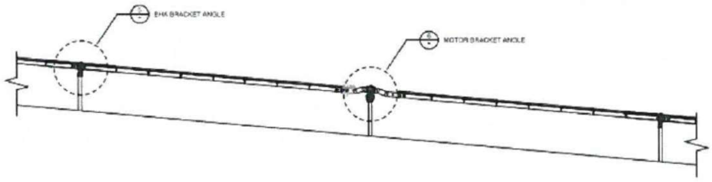
NON-CONFIDENTIAL

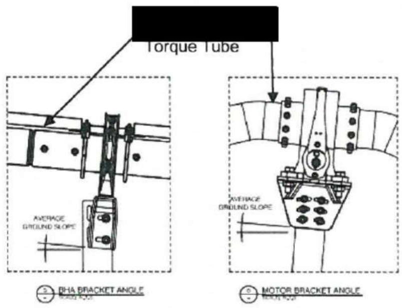
APPENDIX 1 – TORQUE TUBES TYPICAL DETAILS

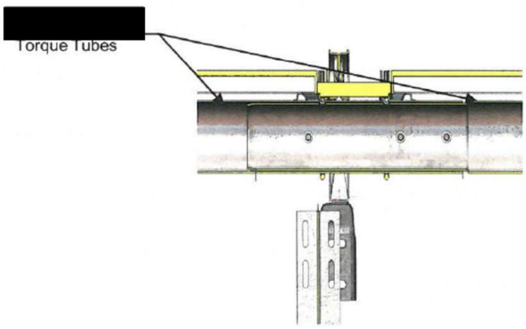


Plan Top View

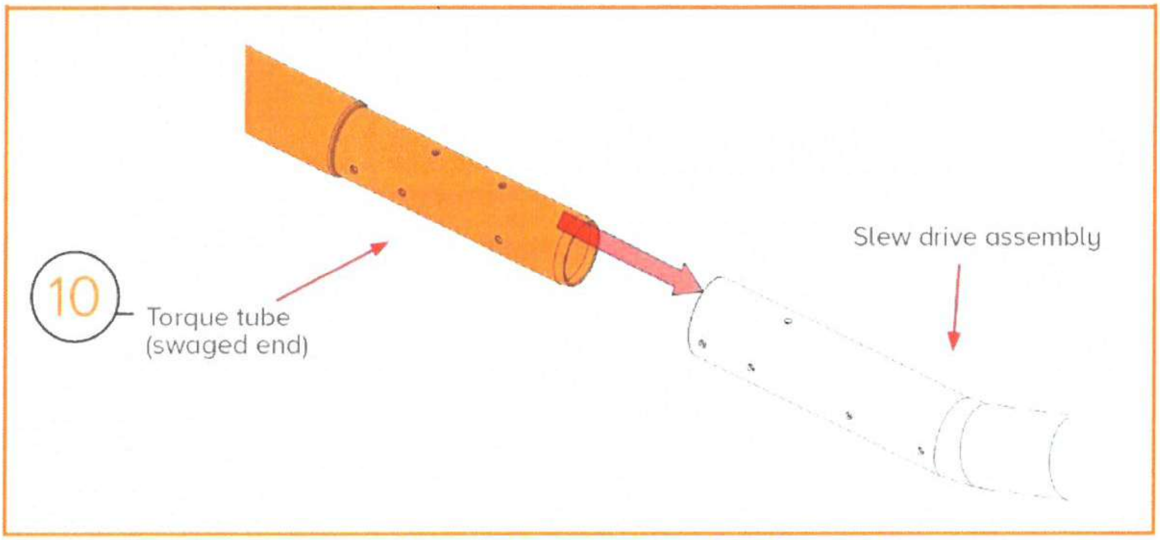


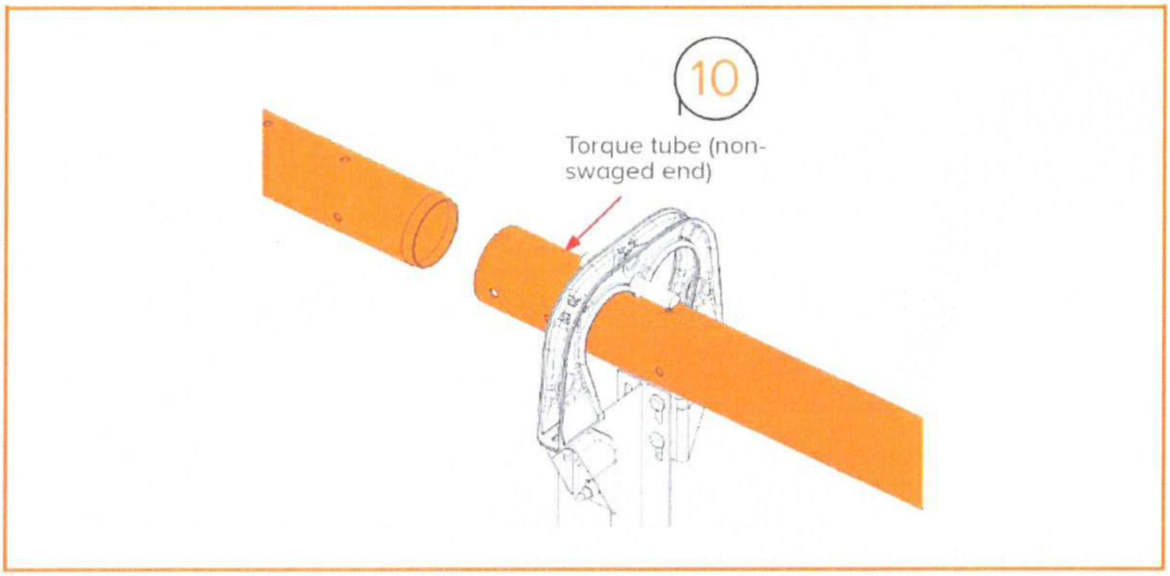
Sectional View





APPENDIX 2 – FABRICATED TORQUE TUBES END DETAILS





Australian BORDER FORCE

TAPIN
Tariff Advance Ruling Application Number 21914800

Tariff Advance Ruling Details:

Previous Advance Ruling №	0
Status	VOID
Changed Status	
Type	TARIFF ADVICE
State	VIC
Confidential	YES
Input Date	18 Aug 2017

Company and Contact Details:

Importer	A.C.N. 003 905 093 PTY LTD		
Importer ABN / CAC	78003905093	**CCID**	
Supplier	NEXTRACKER INC		
Supplier ABN / CAC		**CCID**	CFC3346397R
Applicant	DSV SOLUTIONS PTY LTD		
Applicant ABN / CAC	29000525995	**CCID**	
Applicant Contact Name	AFSHIN PARVAR		
Applicant Phone	02 9317 1173	**EMAIL**	
Applicant Reference	RCR-TRACKER		
Broker Box No			

Goods Details:

Goods Description	Product Identification: Torque Tube is a Steel CHS product cut in certain dimensions ([redacted] at one end and [redacted] at the other), as part of a structural components of a solar tracking system, drilled along the tubing on certain areas of the tube to be fitted with fasteners and centering locators. These tubes are swaged at one end so that they can telescope together. They are completely ready to be assembled and used in single axis solar Tracking System. There will be no additional post-importation manufacturing process at all, apart from simple assembling of the components together. A Tracker or Tracking System is an electric powered and mechanical device that moves to "track" the progress of the sun across the sky, thereby maximizing the energy output. This tracking function could, on average, increase the energy output (kWh) up to [redacted] yearly. The technology continuously refines the tracking algorithm of each individual solar array in response to existing site and weather conditions. See attached IDMs for further details.

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Claimed Tariff Classification	8479.90.90
Claimed Instrument	
Claimed Schedule 4 Item	
Claimed Reasons	Considered headings: 7306.30: Other tubes, welded, circular-section of iron or non-alloyed steel. 7308.90: Parts of structures 8479.90. Parts of Machineries and appliances with individual functions Rejected Headings: 7306.30 The tubes are specifically designed, manufactured, cut in certain dimensions with specific identifiable features which are excluded under Heading Notes 7306 (F). And also they are not tubes for manufacturing the finished products of this nature (such as Torque Tubes itself) rather they are finished component to be assembled in the tracker. 7308.90: The parent structure for this torque tubes are Tracking System rather than a fixed mounting system. If the Structural system for Solar panels was a fixed system then 7308.90 would be considered the correct heading for that. But, a tracker performs certain specific function which cannot be classified under 7308.90, therefore such Torque tubes cannot be classified under 7308.90 as a parts for 7308 structures. Accepted Heading: 8479.90 The Torque Tubes are specific essential component of a Single Tracking System on which the panels are clamped and installed. However, in order to classify these torque tubes as part of a Tracker we need to classify the Tracker itself first. A Tracker or a Tracking system is a machine or device with a specific individual function which cannot be classified anywhere in the nomenclature. Although the fixed component of the whole system (Posts & the gearbox) are fixed to a position permanently but the moving component (Torque Tube) are constantly moving and disqualify the system to be considered as 7308 structures. As described earlier, the tracking technology is a specific function that rotates the torque tubes to the sun direction to maximize the output sun attraction. Therefore, the tracking device performs an individual function which can be classified under 8479.89. Section XVI parts are classified according to XVI Section Note 2. Also, Heading Note 7306 (F) has specifically excluded parts for Section XVI machineries and in line with this exclusion, Section Note XVI (2b) specifically suggest that parts "if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading". The torque tubes are specifically designed (see attached Engineering Drawing) and manufactured for single axis solar tracker. There are a number of easily identifiable features on the torque tubes that make the tubes clearly suitable for use solely or principally with a tracker. These features include; Tubes are cut in certain dimensions to fit the structure. ([redacted] at one end and [redacted] at the other) Tubes are punched/drilled with certain holes as you can see in the attached drawing to be fitted with fasteners and centering locators. The Tubes are swaged at one end so the tubes can telescope together. The Tubes are completely ready to be

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	assembled and use din the structure there will be no additional post-importation process required. Please also refer to the manufacturer statement on the use of these tubes which confirms that these tubes cannot be used for any other purposes. Classification: Drilled Torque tubes cut in specific dimensions and swaged on one end which are specifically designed to be fitted with a Solar Tracker are classified under 8479.90.90 vide IR.1 and XVI Section Note 2(a) and excluded parts under Heading 7306 Notes.

Lodgement Details:

Lodge Date	21 Aug 2017		
Sample Provided	NO		
Illustrative Descriptive Material	YES		
Additional Info Requested	YES	**Requested on**	20170919
Additional Info Received	YES	**Received on**	20170928

Acquittal Details:

Acquit Date	28 Sep 2017
Given Tariff Classification	7308.90.00
Given Instrument	
Given Schedule 4 Item	
Given Reasons	DETAILED DESCRIPTION OF GOODS Goods are Torque Tubes used in the assembly of structures for a solar tracker in a solar farm. Goods are the horizontal beams used to support a solar panel. Goods are fabricated [redacted] circular hollow sections by [redacted] thick. Goods have one swaged end which allow the tube to connect to the slew drive assembly or other tubes and one standard end. Goods have been predrilled to fit the requirements of the solar panel attachment. There is no post importation manufacturing process other than assembly of the structure and the solar panel. IDENTIFICATION OF GOODS A metal tube prepared for use in a structure HEADINGS CONSIDERED 7306 Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel

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	7308 Structures (excluding prefabricated buildings of 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel 8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter HEADINGS REJECTED AND WHY 7306 goods are not of the kind described in this heading. Goods have been further worked to be used for a specific purpose in a structure. 8479 Goods are not described in this heading. Goods are excluded by s15 note 1 (f). Goods are not a machine or part of a machine of S16 as defined in S 16 note 5. APPROPRIATE HEADINGS AND REASONS WHY 7308 IR 1 Terms of heading as a 'tube prepared for use in a structure' APPROPRIATE SUB-HEADINGS AND REASONS WHY 7308.90.00 IR 6 Terms of subheading as 'Other' not specified in an earlier sub-heading. TARIFF CONCESSIONS ORDER OR OTHERWISE AND REASONS WHY No TCO eligibility has been claimed for this advice Please note: this decision applies only to goods as detailed in this Application from the supplier nominated in this application, and imported by the owner nominated in this application. This decision is valid in all Australian ports for five (5) years from the date of this decision.
Decision Officer Name	[redacted]
Decision Officer Phone	1800 053 016
Registry File Number	ADF2017/88932
Multiple Classification	NO
Rejection Reason	

Void Details:

Void Date	21 Oct 2022
Void Reason	EXPIRED

Annexure 2

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

Anti-Dumping Notice No. 2026/091

Hollow Structural Sections

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

Notice to importers of goods classified to tariff subheading 7308.90.00 (statistical code 65) affected by Minister's decision following Anti-Circumvention Inquiry No 685

On 5 June 2026, the Minister for Industry and Minister for Science made a decision to amend the anti-dumping measures applying to Hollow Structural Sections exported from People's Republic of China, Republic of Korea, Malaysia and Taiwan via publication of a notice under section 269ZDBH(1) of the Customs Act 1901 (the Act) (ADN 2026/064).

As a result of the Minister's decision, the following goods classified to tariff subheading 7308.90.00 (statistical code 65) and entered for home consumption on or after **4 September 2025** are subject to dumping and countervailing duties:

> ***Certain electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00 (statistical code 65), comprising circular and non-circular hollow structural sections (HSS), including circular or oval hollow sections (CHS) with other than plain ends, such as threaded, swaged and shouldered, and any sections with holes (including those created by drilling, punching, piercing, cutting or otherwise) at the end of the section or along its length (or both).***

Following the Minister's decision, importers of goods affected by this amendment were required to lodge amending import declarations through the Integrated Cargo System and pay interim duties.

Once importers pay interim duty. they are eligible to apply for an assessment of duty. As set out on page 14 of the Dumping Commodity Register for HSS, the window for the applying for a duty assessment for goods entered into home consumption in the Importation Period 3 July 2025 – 2 January 2026 **closes at 5pm, 2 July 2026**.

If an importer fails, within the time limits available, to seek an assessment of duty, the interim duty paid on the goods is taken to be duty actually payable.

The Application Form can be found on the Commission website **here**.

Importers should review their relevant importations and ensure any duty assessment applications are lodged within the prescribed timeframe to avoid missing the closing date.

You may contact the Commission's Client Support team at clientsupport@adcommission.gov.au for any questions on this change.

David Latina
Commissioner
Anti-Dumping Commission

23 June 2026