



Conference Summary

Review No. 182 - Hollow Structural Sections exported to Australia from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan.

Panel Member	Paul O'Connor
Review type	Review of Minister's decision
Date	Thursday 27 August 2026
Participants	<u>Nextpower Australia Pty Ltd (Nextpower)</u> • Peter Wheale, General Manager • Justin Leung, Director of Operations • Roman Klimenko, Trade and Compliance Manager • Emma Canuto, Regional Counsel <u>Applicant's Representatives (Corrs Chambers Westgarth)</u> • Andrew Korbel, Partner • Aamna Ahmed, Lawyer • Neha Kalele, Lawyer
Time opened	10:00am AEST
Time closed	10:50am AEST

Purpose

The Anti-Dumping Review Panel (Review Panel) opened the conference with an Acknowledgment of Country.

The purpose of this conference was to obtain further information in relation to the review before the Anti-Dumping Review Panel (Review Panel) in relation to Hollow Structural Sections exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan.

The conference was held pursuant to section 269ZZHA of the *Customs Act 1901* (the Act).

In the course of the conference, I was able to ask parties to clarify any argument, claim or specific detail contained in their application or submission. The conference was not a formal hearing of the review and was not an opportunity for parties to argue their case before me.

In accordance with section 269ZZHA(2), in making a recommendation under subsection 269ZZK(1), I may have regard to:

- (a) further information provided at this conference to the extent that it relates to "relevant information" within the meaning of section 269ZZK(6) of the Act;



(b) any conclusions reached at this conference based on “that relevant information”.

At the time of the conference, I advised the participants:

- That the conference was being recorded and transcribed by Microsoft Teams (as facilitated by the Review Panel’s Secretariat), and that the recording would capture everything said during the conference.
- That the conference was being recorded for the Review Panel to have regard to when preparing a conference summary. The conference summary would then be published on the Review Panel’s website.
- Any confidential information discussed during the conference would be redacted from the conference summary prior to publication.

Prior to the conference, participants were provided with a copy of the Review Panel’s Privacy Statement. The Privacy Statement outlines who the conference recording and transcript may be disclosed to. The Privacy Statement is available on the Review Panel’s website [here](#). The participants indicated that they understood the Privacy Statement and consented to:

- The recording of the conference; and
- The recording being dealt with as set out in the Privacy Statement.

Further information requested

The specific information that the Review Panel sought in this conference was:

- **Australian Manufacturing Capability:** The Review Panel sought clarification from Nextpower about whether Orrcon could produce the precision-drilled torque tubes, and Nextpower explained that the drilling capability depended on a Nextpower-supported third-party joint venture because the required tolerances were technically and commercially difficult to achieve at volume.
 - **Drilling Capability:** Nextpower said Orrcon is currently the only Australian facility able to manufacture the relevant torque tubes. The facility was established with Nextpower and a third party, and the initial assessment was that the required drilling and swaging tolerances were too tight for Orrcon to



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deliver commercially and technically at production volume.

- **Joint Venture Arrangement:** Nextpower explained that Orrcon supplies the tube, while Nextpower facilitated a third party to install and operate the drilling and swaging line at the facility. Nextpower clarified that the third party is a joint-venture partner of Orrcon, meaning the observed processing capability reflected a shared investment rather than an independently available Orrcon capability.
- **Commercial Viability:** Nextpower confirmed that swaging itself should not be technically problematic, although it had previously been a commercial issue in achieving a price that made tenders viable. The clarification was that precision drilling was the main capability issue relevant to the Review Panel's question.
- **Capacity Constraints:** Nextpower said there is a newly commenced live project, the largest solar farm in the country, that will require approximately 150,000 torque tubes produced at the Orrcon facility. This will take up Orrcon's entire capacity at that facility for 12 to 18 months. Nextpower also noted that it has approximately 70 live projects at present, not all of which are in the production phase, however unable to draw from local production capacity.
- **Use And Purpose Of Torque Tubes:** The Review Panel tested Nextpower's interpretation of Ground Six and regulation 48 by focusing on whether precision-drilled holes objectively change the goods' use or purpose, and Nextpower said the holes are fundamental because they enable the torque tubes to function in Nextpower's solar-tracker systems.
 - **Regulation 48 Framework:** The Review Panel explained that regulation 48(2) requires each specified paragraph to be satisfied before an alteration can occur, with paragraph 2(c), concerning use or purpose, potentially being determinative. The Review Panel also noted that the factors listed in regulation 48(3) are indicative rather than exhaustive and that use or purpose should be assessed objectively rather than by examining subjective intent.
 - **Ground Six Interpretation:** The Review Panel asked whether Ground Six principally criticised the Commission's treatment of factual matters and its



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interpretation of the use-or-purpose provision (Reg. 48(2)(c)), including its reliance on the proposition that the goods remain structural steel despite the drilling. Nextpower agreed that this accurately captured the argument: the factual issues raised in Ground Six bear on the assessment required under paragraph 2(c).

- **Functional Difference:** Nextpower said a torque tube without precision-drilled holes cannot be used for the purpose for which Nextpower uses the product in solar-tracker infrastructure, whereas a tube with the holes can. Nextpower argued that the holes are a fundamental component rather than a minor feature, so the goods' character and use or purpose must be assessed in the context of the slight-modification provision.
- **Tracker Alignment:** Nextpower explained that the precision holes allow the rails carrying the solar modules to be self-aligning, without on-site measurement or jigs. The drawings allow a tolerance of approximately half a degree, and rows can extend to 200 metres with about 170 rails requiring consistent alignment; drilling on site would be very difficult, time-consuming and expensive and could compromise solar yield. Nextpower referred to its rough labour calculation in Ground 6 to emphasise real world cost implication to projects.
- **Tariff Classification Evidence:** The Review Panel and Nextpower discussed the 2017 tariff ruling as indicative of the goods' distinct use and purpose, it maintains that precision-drilled torque tubes have consistently been classified outside the tariff classifications defining the measures.
 - **Tariff Headings:** The Review Panel contrasted tariff heading 7308, which refers to goods for use in structures, with heading 7306, which describes sections of structural pipe in more general terms. The Review Panel raised the 2017 tariff ruling as relevant to an objective assessment of the goods' use and purpose, not as evidence of subjective intent.
 - **Classification History:** Nextpower said torque tubes with precision-drilled holes have consistently fallen under tariff classification 7308.90.00, outside the classifications defining the measures. Nextpower argued that this supports the view that their character, use and purpose differ from the goods



captured by the measures.

- **Commodity Register:** The Review Panel questioned the relevance of the Dumping Commodity Register's so-called normative description. Nextpower agreed that the register was irrelevant to the issue, which is determined by the goods and tariff classifications identified in the notice.
- **Primary Circumvention Argument:** Nextpower reaffirmed that it has always imported torque tubes with precision-drilled holes and therefore has not introduced a modification to circumvent the measures, arguing that any remedy should be limited to exporters for whom actual circumvention is established.
 - **No Modification:** Nextpower said its primary position under Grounds One and Two is that a finding of circumvention requires evidence that a good was previously exported in one form and later exported with a slight modification. Nextpower has always imported its torque tubes with precision-drilled holes, so there was no later introduction of drilling as a means of circumventing the measures.
 - **Exporter-Specific Remedy:** Nextpower referred to two previous circumvention inquiries involving hollow structural sections, where the measures were extended to particular circumvention goods and named exporters. Nextpower argued that, if circumvention were established for other exporters, any alteration should be limited to those exporters rather than applied broadly to Nextpower's products.
 - **Evidence Of Circumvention:** Nextpower said the materials reviewed did not appear to establish that Nextpower's exporters, or other exporters from which Nextpower does not purchase, had changed from exporting undrilled to drilled torque tubes to avoid the measures. Nextpower acknowledged that a different conclusion could be reached if evidence of that conduct existed, but maintained that the current approach appeared to assume circumvention from a tariff-classification change.
- **Retrospective Application Concerns:** Nextpower argued that, even if the measures could be extended to the torque tubes, the Minister should consider applying them prospectively because the dumping margin is 48.3%, the products represent a very small volume, and there is no demonstrated material injury or trade



displacement.

- **Ministerial Discretion:** Nextpower accepted that retrospective application has been used in previous circumvention inquiries but argued that the Minister retains discretion to decide whether to apply measures retrospectively in each case. Nextpower said the Commission and Minister should consider the specific circumstances rather than treating retrospective application as automatic.
- **Practical Assessment Issues:** Nextpower said the short period available to lodge dumping-duty assessments after the Minister's decision would create practical difficulties, particularly when combined with the 48.3% dumping margin. Nextpower submitted that these factors support prospective rather than retrospective application.
- **Market Impact:** Nextpower argued that the relevant precision-drilled torque tubes account for an extremely small volume within the products covered by the measures and that imports have not displaced Australian trade. The Review Panel noted the tension between relying on the products' long market presence to support retrospective treatment while also accepting that their volumes are small; Nextpower agreed that the products are a minuscule part of the overall hollow structural sections covered.
- **Product-Specific Design And Market Context:** Nextpower emphasised that Nextpower's torque tubes are engineered components integrated into a proprietary solar-tracker system rather than commodity tubing, and that the design has been supplied in the region without change since 2014.
 - **Integrated System:** Nextpower said its system uses the torque tubes as the structural spine supporting the modules and requires balanced, precise components specific to each project. Nextpower stated that the torque tubes are not off-the-shelf commodity products shipped without regard to the system design.
 - **Product Continuity:** Nextpower said it has sold the design in the region since 2014 and that the design has not changed. It described the torque tubes as value-engineered components that help optimise clients' capital expenditure and are configured for individual projects.



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- **Conference Follow-Up:** The Review Panel said the conference transcript would support preparation of a draft conference summary for publication and that the Review Panel will circulate the draft to Nextpower for comment and correction before publication, and any confidential information raised would be sanitised or redacted. The Review Panel indicated that no commercial-in-confidence information appeared to have been discussed.

Follow-up tasks:

- **Conference Summary:** Circulate the draft conference summary to Nextpower for review and correction before publication, with any confidential information sanitised or redacted as required.