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Anti-Dumping Review Panel Secretariat
GPO Box 2013
Canberra City ACT 2601

adrp@industry.gov.au

Public File

Hollow structural sections from China, Korea, Malaysia, Taiwan – Anti-Circumvention Inquiry No. 685

1. Introduction

Orrcon Manufacturing Pty Ltd (**Orrcon**) makes this submission to the Anti-Dumping Review Panel (**Review Panel**) in response to the notice published under section 269ZZI of the *Customs Act 1901 (the Act)*¹ on 7 August 2026. The notice concerns the Review Panel's review of the decision made by the Minister for Industry and Innovation and Minister for Science under section 269ZDBH(1) of the Act in relation to hollow structural sections exported from the People's Republic of China, the Republic of Korea, Malaysia and Taiwan (**Reviewable Decision**).

The Anti-Dumping Commission (**the Commission**) published the Reviewable Decision on its website on 5 June 2026 in Anti-Dumping Notice No. 2026/064 (**ADN 2026/064**). It gave effect to the recommendations of the Commissioner of the Anti-Dumping Commission (**the Commissioner**) in Anti-Dumping Commission Report No. 685 (**REP 685**).²

Orrcon is an Australian producer of like goods and was the applicant for Anti-Circumvention Inquiry No. 685 (**Inquiry 685**). Orrcon is an interested party in relation to the Reviewable Decision within the meaning of section 269ZX of the Act and is eligible to make this submission under section 269ZZJ.

Orrcon lodges this submission on 7 September 2026. The 30-day period specified in the notice ended on Sunday, 6 September 2026. Section 36(2) of the Acts Interpretation Act 1901 permits the submission to be lodged on the next day that is not a Saturday, Sunday or holiday.³

2. Support for the Reviewable Decision

Orrcon supports the Reviewable Decision, including the findings and conclusions in REP 685, the alteration to the description of the goods subject to the original notices, and the date from which the alteration applies.⁴

Orrcon submits that the Reviewable Decision is the correct or preferable decision and requests that the Review Panel recommend that the Minister affirm the Reviewable Decision.

This submission addresses the principal matters raised by Nextpower Australia Pty Ltd (**Nextpower**) and Gransolar Construction Australia Pty Ltd (**Gransolar**) in their applications for merits review. For the reasons set

¹ All legislative references in this submission are to the Customs Act 1901 unless otherwise specified. See also Anti-Dumping Review Panel, *Notice of Intention to Conduct a Review*, 7 August 2026.

² ADN 2026/064; REP 685, sections 1.3 and 1.4.

³ Acts Interpretation Act 1901, section 36(2).

⁴ REP 685, sections 4.3, 5.1 and 6.2.

out below, Orrcon submits that those matters do not establish that a different decision is the correct or preferable decision.

3. Statutory framework and evidentiary record

3.1. Statutory framework

Section 48(2) of the Customs (International Obligations) Regulation 2015 (**Regulation**) prescribes the circumstances that must apply for the slight modification of goods to constitute a circumvention activity. In determining whether a circumvention good is slightly modified, section 48(3) requires the Commissioner to compare the circumvention good and the good subject to the notice, having regard to any factor the Commissioner considers relevant, including the factors specified in that subsection.⁵

The Review Panel must determine whether the Reviewable Decision was the correct or preferable decision by reference to the grounds on which it decided to conduct the review and the relevant information it may take into account under the Act.⁶

3.2. Evidentiary record

Orrcon's anti-circumvention application provided evidence supporting reasonable grounds for an inquiry into alleged circumvention activity. The application alleged that hollow structural sections (**HSS**) were modified before export by the addition of holes and, as a consequence, classified outside the tariff classifications specified in the original notices. This submission uses the term torque tube where appropriate to describe HSS prepared for relevant solar applications.

The Commissioner did not base the findings in REP 685 solely on the prima facie case in Orrcon's application. During Inquiry 685, the Commission examined Australian Border Force import data, visited Orrcon's manufacturing facilities, considered Nextpower's questionnaire response and associated import documents, issued questionnaires to identified importers and exporters, and considered submissions from interested parties.⁷ The Commissioner assessed the available evidence against the circumstances in section 48(2) and the comparison factors in section 48(3) of the *Regulation*. The Commissioner's findings were therefore based on material considered during the inquiry, including material obtained from sources other than Orrcon, rather than solely on the allegations contained in Orrcon's application.⁸

The evidentiary record had limitations, including the absence of exporter questionnaire responses, limited importer participation and constraints in identifying potentially relevant imports from Australian Border Force descriptions. Orrcon submits that those limitations affect the weight and completeness of particular evidence, but do not displace the Commissioner's findings when the evidence in REP 685 is considered as a whole.⁹

4. Circumvention findings

Gransolar contends that the Commissioner compared the circumvention goods with too narrow a subset of the goods subject to the original notices, namely HSS used in solar mounting systems.¹⁰

Section 48(3), however, required the Commissioner to compare the circumvention goods with the goods subject to the notices, having regard to any relevant factor. REP 685 identifies the statutory comparison as one between the circumvention goods and the goods subject to the original notices. In applying that comparison, the Commissioner assessed whether the HSS underlying the examined circumvention goods would, absent the addition of holes, have been subject to those notices.¹¹

⁵ Customs (International Obligations) Regulation 2015, sections 48(2) and 48(3); REP 685, sections 2.5 and 4.2.

⁶ Customs Act 1901, sections 269ZZI, 269ZZJ and 269ZZK; ADRP Notice of Intention to Conduct a Review, 7 August 2026.

⁷ REP 685, sections 3.2 and 3.3.1–3.3.5.

⁸ REP 685, sections 3.1–3.3 and 4.1.

⁹ REP 685, sections 3.3.3, 3.3.4, 4.2.1, 4.2.2.10 and 4.2.2.12.

¹⁰ Gransolar application, Ground 2 and Attachment B, paragraphs 20–23.

¹¹ REP 685, sections 4.2.2, 4.2.3 and 4.2.4.

The Commission's references to solar applications arose in the course of applying the section 48(3) factors to the particular goods under examination. Those references were relevant to end use, interchangeability, production processes, customer expectations and related factors. Orrcon submits that those references do not, of themselves, demonstrate that the Commissioner replaced the statutory comparator with a narrower category of solar-specific HSS. Rather, they reflect the context in which the identified circumvention goods were being supplied and used, and the matters the Commissioner was required to consider when applying the factors in section 48(3).

The relevant question is not whether the Commissioner discussed solar applications when considering those factors. The relevant question is whether the Commissioner ultimately compared the circumvention goods with the goods subject to the notices for the purposes of section 48(3). Orrcon submits that REP 685, read as a whole, demonstrates that the Commissioner applied that statutory comparison.

Nextpower contends that the holes are integral to torque tube and that project-specific hole patterns demonstrate that torque tube is not a slightly modified form of HSS.¹² Nextpower also relies on more than 700 torque-tube variants designed for different module requirements.¹³

The Regulation does not prescribe a separate or determinative test based on whether a modification is described as important, commercially significant or engineering-critical. Evidence concerning those matters may nevertheless be relevant to the factors identified in section 48(3) and to the separate use-or-purpose requirement in section 48(2)(c). The question under section 48(3) is whether the modification is slight, having regard to the relevant factors. The Commissioner found that the underlying section retained the dimensions, material composition and overall form of HSS; that both goods underwent the same tube-forming process until the final processing step; and that the additional processing involved creating holes after tube formation. The Commissioner also considered the cost of modification, end use, interchangeability, customer expectations, marketing, channels and patterns of trade, pricing, volumes and tariff classification.¹⁴

REP 685 also recognised relevant differences. In particular, undrilled HSS required further processing before it was fully interchangeable with finished torque tube, finished torque tube could be supplied directly to an installation site, and undrilled HSS was unlikely to be marketed as torque tube. REP 685 included those differences in the Commissioner's overall assessment under section 48(3).¹⁵

On the evidence examined in Inquiry 685, the Commissioner was satisfied that the addition of holes constituted a slight modification of HSS. The fact that the holes enable finished torque tube to meet project-specific installation requirements does not displace the Commissioner's findings concerning the underlying physical characteristics, production process and other section 48(3) factors.

Nextpower also contends that the drilled holes change the functional and commercial application of the goods. REP 685 separately considered whether the use or purpose of the circumvention goods was the same before and after modification. The Commissioner found that undrilled HSS and drilled torque tube served the same structural function within a steel support assembly and that the holes facilitated installation without changing the essential purpose of the tube as a structural component.¹⁶

Nextpower's conference evidence explains the importance of precision-drilled holes to the operation and installation of its particular tracker design. The conference summary records Nextpower's position that torque tubes without precision-drilled holes cannot be used for the purpose for which Nextpower uses the product in solar-tracker infrastructure and that the holes are a fundamental component of the system design rather than a minor feature.¹⁷ That evidence does not, by itself, determine whether the addition of holes is a slight modification under section 48(3) or whether the underlying structural use or purpose remains the same under section 48(2)(c). Orrcon submits that the distinction between the requirements of Nextpower's particular tracker system and the

¹² Nextpower application, Grounds 1 and 6; REP 685, sections 4.2.2.1 and 4.2.2.4.

¹³ Nextpower application, Ground 1.

¹⁴ Customs (International Obligations) Regulation 2015, sections 48(2)(c) and 48(3); REP 685, sections 2.5 and 4.2.2.

¹⁵ REP 685, sections 4.2.2.1 to 4.2.2.9 and 4.2.2.14.

¹⁶ REP 685, section 4.2.3; ADRP Conference Summary, 20 August 2026, Question 3 and Commission response.

¹⁷ ADRP Conference Summary, 27 August 2026, "Use and Purpose of Torque Tubes", "Functional Difference" and "Tracker Alignment".

statutory question of whether the use or purpose of the circumvention goods remained the same before and after the addition of holes is central to this issue.

Orrcon notes that the 27 August 2026 conference summary records submissions and factual assertions made by Nextpower during the conference. Although Orrcon refers to certain aspects of those submissions for the purpose of addressing the issues raised in this review, Orrcon does not accept the factual accuracy of all statements attributed to Nextpower in the conference summary. Orrcon has not addressed those matters in this submission because they are not necessary to respond to the grounds currently before the Review Panel. To the extent necessary, Orrcon may provide separate comments concerning those matters.

Nextpower also relies on the Commission's findings that it had not identified significant displacement of trade and that the reliably identified volume of circumvention goods was extremely small relative to imports of goods subject to the measures.¹⁸ Those findings formed part of the Commission's assessment. Section 48(3), however, does not make either significant trade displacement or a minimum import volume a condition of a slight-modification finding. The Commissioner was required to consider relevant factors and reach an overall conclusion on whether the circumvention goods were slightly modified.¹⁹

REP 685 also explained the limitations of the available volume data. The Commission could reliably identify only imports expressly described as "torque tube", and the absence of questionnaire responses from exporters and most identified importers limited its ability to identify or estimate the total volume of modified goods. The identified volume was therefore evidence of the imports captured by that methodology, but not necessarily a complete measure of all HSS with holes imported under tariff subheading 7308.90.00, statistical code 65.²⁰

Orrcon does not submit that the total volume was necessarily materially higher than the reliably identified volume. Orrcon submits only that the identified data limitations prevent that volume from being treated as a complete measure of all potentially relevant imports.

5. Form and scope of the alteration

The Reviewable Decision altered the description of the goods the subject of the original notices by specifying additional goods classified to tariff subheading 7308.90.00, statistical code 65. The alteration is goods-based rather than exporter-specific. It does not constitute a finding that every exporter from each country covered by the notices engaged in circumvention.

Nextpower contends that the alteration should have been confined to exporters found to have engaged in circumvention and refers to what it describes as the Commission's usual practice.²¹

REP 685 identified exports of circumvention goods from China and Korea and did not identify equivalent exports from Malaysia or Taiwan. In Orrcon's submission, however, a goods-based alteration across the existing notices was appropriate because the modification found was a physical characteristic of the goods and not inherently confined to a particular producer or exporter.²²

Consistent with that approach, the alteration amended the existing notices by reference to the characteristics of the goods rather than by reference to named exporters. Accordingly, Orrcon submits that the alteration did not depend upon a separate finding that circumvention activity had been established in relation to every exporter or that equivalent exports of circumvention goods had been identified from every country covered by the existing notices.

Section 269ZBDH(2) permits an alteration to specify different goods, countries, exporters or variable factors. In Orrcon's submission, the goods-based form of alteration adopted in Inquiry 685 was consistent with that provision

¹⁸ Nextpower application, Ground 6; REP 685, sections 4.2.2.10 and 4.2.2.12.

¹⁹ REP 685, section 4.2.2.

²⁰ REP 685, sections 4.2.1, 4.2.2.10 and 4.2.2.12.

²¹ Nextpower application, Ground 2 and section 10(b)-(c).

²² Customs Act 1901, section 269ZBDH(2); REP 685, Figure 1 and sections 4.2.1, 4.3, 5.1 and 5.2.

because the identified circumvention activity involved a physical modification to the goods rather than conduct inherently confined to particular exporters.

That feature distinguishes Inquiry 685 from an inquiry in which the identified circumvention activity was confined by its nature to particular exporters and supports the Commissioner's selection of a goods-based alteration.

The Act does not prescribe a single form of alteration for every circumvention inquiry.²³ Inquiry 291 and Inquiry 685 concerned different activities and resulted in different forms of alteration. Inquiry 291 resulted in an exporter-specific extension to additional tariff classifications.²⁴ Inquiry 685 concerned the addition of holes to HSS, a modification not inherently confined to a particular producer or exporter. The outcome of Inquiry 291 therefore does not establish that the alteration following Inquiry 685 was required to be exporter-specific.

The Commission considered whether the wording of the alteration would extend beyond the circumvention activity found.²⁵ It did not adopt the broader narrative description supported by Orrcon and Austube Mills Pty Ltd. Instead, it confined the additional goods to electric resistance welded pipe and tube made of carbon or other alloy steel classified to tariff subheading 7308.90.00, statistical code 65, and having the characteristics specified in the altered description.²⁶

Nextpower separately contends that the final description was materially broader than the formulation in the statement of essential facts and that interested parties did not have a sufficient opportunity to address the changes. The additions of "other alloy steel" and methods of creating holes beyond drilling followed submissions made after publication of the statement of essential facts. Orrcon submits that the final wording remained directed to the presence of holes in HSS, although it extended beyond the drilling method expressly examined during the inquiry. The relationship between the final wording and the activity examined during Inquiry 685 is relevant to assessing the nature and significance of the changes.²⁷

6. Retrospective measures application

Nextpower challenges the retrospective application of the alteration from 4 September 2025.

Section 269ZDBH(8) authorised the Minister to specify 4 September 2025, the inquiry initiation date, as the earliest date from which the alteration could apply. It did not require the Minister to select that date. REP 685 recommended 4 September 2025 because the Commissioner identified circumvention activity occurring before Inquiry 685 and considered that application from the initiation date would bring within the measures relevant goods entered during the inquiry period.²⁸

At the conference on 20 August 2026, the Commission advised that it had considered volume and trade displacement in the section 48 assessment, but had not treated those matters as connected to the separate power to determine the date of effect. The Commission confirmed that its recommendation was based on the finding that circumvention activity occurred before the inquiry.²⁹

Orrcon submits that 4 September 2025 was the correct or preferable date because it gave effect to the Commissioner's finding that circumvention activity had occurred before completion of Inquiry 685 and ensured that relevant goods entered during the inquiry period were not excluded from the operation of the alteration. Orrcon acknowledges the commercial consequences identified by Nextpower but submits that those consequences do not establish that prospective application would be preferable. The relatively low identified volume and absence of significant displacement formed part of the Commission's assessment but, as the Commission explained to the Review Panel, were not treated as relevant to the separate question of the alteration's date of effect.

²³ REP 685, sections 5.2 and 5.7.

²⁴ REP 685, Table 2 at section 2.2.4.

²⁵ REP 685, section 5.7.

²⁶ REP 685, sections 5.6.2 and 5.7.

²⁷ Nextpower application, Ground 5, paragraphs 58-64; REP 685, sections 5.6.2 and 5.7.

²⁸ Customs Act 1901, section 269ZDBH(8); REP 685, sections 6.1 and 6.2.

²⁹ ADRP Conference Summary, 20 August 2026, question 2 and Commission response.

7. Broader economic considerations

Nextpower relies on asserted consequences of the Reviewable Decision, including that:

- it does not provide a corresponding benefit to the Australian industry;
- it may affect investment in Australia's renewable-energy sector; and
- it imposes costs on downstream users.³⁰

Those contentions concern the consequences of the Reviewable Decision rather than whether the circumstances prescribed by section 48 of the Regulation occurred. REP 685 records that Inquiry 685 did not determine whether the circumvention goods were themselves dumped or subsidised, or whether imports of those goods caused injury to the Australian industry.³¹ The anti-circumvention provisions applicable to Inquiry 685 do not prescribe a separate public-interest test.³²

The asserted economic consequences do not, without a demonstrated connection to the prescribed circumstances, establish that the Commissioner's findings under section 48 were incorrect. The weight to be given to those assertions depends on the evidence supporting them and their connection to the issues arising for determination under the Act.

Orrcon's application included evidence concerning the effect of the alleged circumvention activity on Orrcon. Orrcon does not contend that proof of injury is an element of the circumvention activity prescribed by section 48.

8. Gransolar's grounds

Gransolar advances three principal grounds:³³

- the Commissioner unreasonably declined to have regard to its submission dated 17 April 2026;
- the Commissioner incorrectly applied the comparison required by sections 48(2) and 48(3) by comparing the circumvention goods with HSS used in solar mounting systems rather than with the goods subject to the notices; and
- the altered goods description includes goods that were not investigated, particularly octagonal hollow sections, and should be confined to circular, oval, square and rectangular sections.

The first ground concerns the Commissioner's exercise of the discretion under section 269ZDBG(3). Orrcon does not make a submission on whether the Commissioner should have exercised that discretion differently.

Orrcon has nevertheless considered the substantive arguments in Gransolar's excluded submission. For the reasons set out in this submission, those arguments do not displace the findings in REP 685, irrespective of whether the Review Panel concludes that the Commissioner should have considered the submission.

As to the second ground, REP 685 identified the goods subject to the original notices as the statutory comparator. Its discussion of solar mounting systems addressed the particular circumvention goods being examined and relevant factors such as end use, interchangeability and customer expectations. It did not expressly redefine the goods subject to the notices as HSS used only in solar applications. Orrcon's application compared drilled torque tube with the undrilled HSS from which torque tube is made. That comparison informed the Commissioner's assessment of whether the addition of holes was a slight modification of the goods examined during the inquiry. Orrcon submits that the Commissioner's use of that comparison did not confine the statutory comparator to a solar-specific subset of HSS.³⁴

As to the third ground, tariff subheading 7306.69.00, statistical code 10, includes other non-circular cross-sections. However, tariff classification alone does not determine whether particular goods fall within the legally operative goods description, and REP 685 recognises that a tariff classification may include goods both within and outside

³⁰ Nextpower application, Ground 3 and paragraphs 3-4.

³¹ REP 685, section 1.1.

³² Customs Act 1901, Division 5A of Part XVB; *Customs (International Obligations) Regulation 2015*, section 48.

³³ Anti-Dumping Review Panel, Notice of Intention to Conduct a Review, 7 August 2026, Gransolar Grounds 1-3.

³⁴ REP 685, sections 4.1, 4.2.2.2, 4.2.2.3 and 4.2.2.14.

the measures. Neither the octagonal shape nor the tariff classification therefore resolves whether Gransolar's undrilled product would have been subject to the original notices. That question requires application of the goods description to the characteristics of the particular goods. Orrcon submits that Gransolar has not established that octagonal sections must be excluded as a class.³⁵

9. Conclusion

For the reasons set out above, Orrcon submits that the Reviewable Decision is the correct or preferable decision and requests that the Review Panel recommend that the Minister affirm the Reviewable Decision.

For and on behalf of Orrcon Manufacturing Pty Ltd.

³⁵ REP 685, section 2.2.2, Table 1 and note 8; section 5.7.1.