

PUBLIC RECORD

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Director – Investigations
Australian Trade Remedies Commission
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By email: investigations@adcommission.gov.au

Dear Director

Hollow Structural Sections from China – Accelerated Reviews 711, 712, 714, 715 and 717 – Submission by Nextpower Australia Pty Ltd

Introduction

- 1 We act for Nextpower Australia Pty Ltd (**Nextpower**). Nextpower makes this submission as an interested party in relation to accelerated reviews 711, 712, 714, 715 and 717. Those reviews concern exporters of hollow structural sections (**HSS**) from China that supply, or intend to supply, steel torque-tube elements used in utility-scale solar tracking systems.
- 2 This submission responds to the submissions made by Austube Mills Pty Ltd (**Austube**)¹ and Orrcon Manufacturing Pty Ltd (**Orrcon**)² as Australian industry participants in these reviews. It principally addresses the appropriate form of interim dumping duty, but also responds to other aspects of Orrcon's submissions, including as to the methodology by which the Australian Trade Remedies Commission (**Commission**) should approach the determination of variable factors for each applicant.

Appropriate form of interim dumping duty

- 3 Austube has requested that the Commission recommend use of the combination of fixed and variable duty method under subsections 5(2) and 5(3) of the *Customs Tariff (Anti-Dumping) Regulation 2013* (**Regulation**) for the accelerated review applicants.
- 4 Nextpower respectfully submits that the circumstances of these reviews instead support the application of an exporter-specific ad valorem dumping duty rate under subsection 5(7).

The legislation provides a number of permissible duty methods

- 5 Section 5 of the Regulation provides four separate methods for working out interim dumping duty, including:

¹ Submissions dated 28 August 2026 in accelerated reviews 711, 712, 714 and 715, and submissions dated 18 September 2026 in accelerated review 717.

² Submissions dated 31 August 2026 in accelerated reviews 711, 712, and 714, submissions dated 4 September 2026 in accelerated review 715,, and submissions dated 28 September 2026 in accelerated review 717.

- (a) combination of fixed and variable duty;
 - (b) floor price duty;
 - (c) fixed duty; and
 - (d) ad valorem duty.
- 6 Under the ad valorem method in subsection 5(7), the difference between the ascertained export price and normal value is expressed as a proportion of that export price and that rate is then applied to the actual export price of subsequent imports.
- 7 The legislation therefore does not establish the combination method as an automatic consequence of an exporter obtaining an accelerated review. The appropriate method is to be selected having regard to the circumstances of the goods and the relevant market.

The Commission's Guidelines support ad valorem duty where prices fluctuate significantly

- 8 The Commission's published Guidelines on the Application of Forms of Dumping Duty are particularly relevant to these goods (**Guidelines**). The Guidelines identify as express advantages of the ad valorem method that it:
- (a) is simple and readily administered;
 - (b) is suitable where there are many models or types with significant differences in prices;
 - (c) has an advantage for goods subject to significant price variations over time; and
 - (d) maintains greater stability in the effective rate of duty as export prices change.
- 9 The Guidelines further recognise that an ad valorem duty is suitable where commodity prices vary significantly over time because the duty applies to the actual export price of the shipment and does not exhibit the same variability in its effective rate as combination or fixed duties.
- 10 That consideration is directly relevant to the goods under these accelerated reviews.

HRC and steel prices are fundamental to the value of the goods

- 11 Australian industry's own submissions recognise that hot-rolled coil (**HRC**) is the principal material input in HSS, including HSS processed or manufactured into solar-tracker torque tubes.
- 12 The value of the subject goods is therefore materially influenced by movements in underlying steel input prices, which are not static over the life of an anti-dumping measure and can move in response to international steel prices, raw-material prices, energy and freight costs, exchange rates, demand conditions and other market factors.
- 13 A duty expressed as a percentage of the actual export value adjusts with those commercial movements.
- 14 By contrast, a fixed dollar amount determined by reference to tonnes or another quantity can progressively become detached from the commercial value of the goods upon which it was originally calculated.

A fixed \$/tonne component creates a material risk of over-remedy in a falling market

- 15 This concern is expressly recognised in the Commission's Guidelines. In discussing combination duties, the Guidelines recognise that in a falling market the duty collected can become punitive under a combination measure, whether the fixed element is expressed as an amount per unit or as an ad valorem component operating within the combination method.

- 16 The Guidelines' examples demonstrate the problem. As actual export prices change, the effective percentage burden produced by fixed, floor-price and combination methods can move substantially, while the effective rate under a pure ad valorem method remains constant.
- 17 That characteristic is particularly significant for steel products.
- 18 If, for example, international HRC prices materially decline after the variable factors have been ascertained, a fixed \$/tonne dumping duty calculated during a higher-price period would not automatically adjust to those changed market circumstances. The result could be an effective dumping-duty burden materially greater than the exporter-specific rate determined by the Commission during the review.
- 19 An ad valorem rate avoids that distortion because the duty moves proportionately with the actual export value of the goods.

Significant differences between torque-tube products also favour ad valorem treatment

- 20 The torque tubes involved in these accelerated reviews are not necessarily a single homogeneous product sold at a uniform value per tonne.
- 21 Individual products may vary according to matters such as:
- (a) diameter and wall thickness;
 - (b) steel grade and yield strength;
 - (c) galvanising or other finish;
 - (d) cut length;
 - (e) hole configuration;
 - (f) swaging and other end-forming;
 - (g) manufacturing and processing requirements; and
 - (h) project-specific specifications.
- 22 Orrcon itself asks the Commission to verify characteristics including composition, dimensions, finish, hole configuration and other physical characteristics in determining the relevant goods.
- 23 The Commission's Guidelines identify this type of situation as an advantage of the ad valorem method: where there are numerous models or types and significant price differences, an ascertained floor or fixed amount may not be meaningful across the product range.
- 24 A common fixed dollar-per-tonne amount may consequently impose materially different effective duty percentages across different torque-tube configurations. An exporter-specific ad valorem rate avoids that outcome.

New-exporter status does not of itself establish a likelihood of price manipulation

- 25 Austube argues that a combination method is warranted because an accelerated review concerns a new exporter and the Commission therefore cannot have the same confidence regarding future pricing behaviour as it might have for an established exporter.
- 26 Nextpower respectfully submits that new-exporter status alone should not be treated as evidence of price manipulation or circumvention risk.
- 27 The Commission's Guidelines identify combination duty as potentially suitable where there is, for example, a likelihood of price manipulation associated with complex related-party structures or a proven case of price manipulation. The appropriate approach should therefore be applicant-specific.
- 28 If the Commission verifies the applicant's export sales, production costs, corporate relationships, export price and normal value and establishes reliable exporter-specific variable

factors, the mere fact that the exporter is a new exporter does not demonstrate that its future export prices will be manipulated.

- 29 The Guidelines also recognise the potential disadvantage of ad valorem duties where an exporter deliberately reduces prices to minimise duty but note that such conduct can be identified through monitoring and addressed through anti-circumvention processes.
- 30 The Guidelines observe that price-manipulation reviews in jurisdictions using ad valorem measures had been limited and that such behaviour was not widespread.

Anti-Circumvention Inquiry 685 does not establish exporter-specific price manipulation

- 31 Nextpower recognises that the goods now covered by the HSS measures were affected by the alteration following Anti-Circumvention Inquiry 685 (**Inquiry 685**).
- 32 However, that circumstance should not itself be treated as evidence that each applicant in accelerated reviews 711, 712, 714, 715 or 717 is likely to manipulate its export price following completion of its accelerated review. Inquiry 685 was a goods-scope proceeding and its purpose was to determine whether the description of the subject goods under the HSS measures should be extended to capture certain additional products. It was not a proceeding directed at the export pricing conduct of any particular exporter, and it made no finding of price manipulation against any of the applicants in these reviews.
- 33 The Commission is now undertaking exporter-specific reviews for the purpose of determining whether different variable factors should apply to those exporters.
- 34 Orrcon itself recognises that the variable factors should be determined by reference to reliable information relevant to each applicant and the current review period, including verified information where available.
- 35 Nextpower agrees with that applicant-specific approach. Historical Commission findings can provide relevant context, but they should not replace the Commission's assessment of current, verified exporter-specific information.

Tonnage information does not require a tonne-based duty

- 36 Nextpower also wishes to distinguish between:
- (a) the Commission collecting quantities expressed in metric tonnes for verification and calculation purposes; and
 - (b) the Commission selecting a fixed or combination duty expressed by reference to tonnes.
- 37 The former does not require the latter.
- 38 Tonnage information can properly assist the Commission in:
- (a) reconciling sales quantities;
 - (b) reconciling production and inventory;
 - (c) analysing raw-material consumption;
 - (d) calculating unit manufacturing costs;
 - (e) checking cost-to-make information; and
 - (f) comparing products on a common physical basis.
- 39 However, the availability of metric-tonne information is not in itself a reason for converting an exporter-specific dumping margin into a fixed \$/tonne duty.
- 40 The form of duty should instead be determined by reference to the characteristics of the market and the goods. For the reasons outlined above, those characteristics favour an ad valorem method.

Summary of response to Austube's combination-duty submission

- 41 Austube submits that a combination duty provides greater protection against future reductions in export prices and should therefore apply to the accelerated review applicants.
- 42 Nextpower respectfully submits that this approach gives insufficient weight to the countervailing considerations expressly identified in the Commission's Guidelines. In particular:
- (a) these are steel-based goods whose principal material input is subject to significant market price movement;
 - (b) the subject torque tubes encompass differing models, specifications and unit values;
 - (c) a fixed quantity-based component can produce materially different effective rates when market prices change;
 - (d) in a falling market, the Commission's own Guidelines recognise that a combination duty can become punitive;
 - (e) a pure ad valorem rate preserves the exporter-specific dumping percentage as market prices change; and
 - (f) there is no basis for assuming, merely from an applicant's status as a new exporter, that the applicant will engage in future price manipulation.
- 43 Accordingly, the concerns identified by Austube do not warrant displacing the ad valorem method in these reviews.
- 44 Austube further submits that a pure ad valorem outcome is inappropriate because the relevant goods were brought within the HSS measures as a consequence of Inquiry 685, and that the practical remedy must therefore be tied to actual export pricing through a combination structure. Nextpower submits that this reasoning conflates the goods-scope extension effected by Inquiry 685 with a finding of circumvention conduct by these individual applicants.
- 45 The alteration to the operative goods description following Inquiry 685 extended the scope of the measures to capture certain additional products; it did not establish that any of the applicants in these reviews engaged in, or is likely to engage in, conduct that warrants the additional protection afforded by a combination or fixed duty.
- 46 To adopt a combination duty as the default for all new exporters supplying goods captured by the post-Inquiry 685 description, regardless of the verified exporter-specific evidence, would be to apply a precautionary measure unsupported by any exporter-specific finding and inconsistent with the Commission's own Guidelines.

Requested outcome

- 47 For these reasons, Nextpower respectfully requests that the Commission:
- (a) determine the export price, normal value, dumping margin and other relevant variable factors separately for each accelerated review applicant using verified information relevant to the review period;
 - (b) recommend that any exporter-specific dumping duty resulting from accelerated reviews 711, 712, 714, 715 and 717 be imposed using the ad valorem duty method under subsection 5(7) of the Regulation;
 - (c) not recommend a combination, floor-price or fixed duty incorporating a fixed dollar-per-tonne component merely because the applicant is a new exporter or because the Commission has collected information expressed in metric tonnes; and
 - (d) in selecting the form of duty, give particular weight to the Commission's published guidance concerning significant commodity price variation, model diversity and the potentially punitive effect of combination duties in a falling market.

Status as new exporter

- 48 Contrary to what has been suggested by Austube, new exporter status should be assessed by reference to whether the goods that were the subject of the original application for measures, or like goods, were exported during the original investigation period. Subsequent amendments to the scope of the operative measures do not retrospectively alter that statutory inquiry.
- 49 Nextpower notes that the information presently available in relation to Jiangsu Zhenjiang New Energy Equipment Co., Ltd (**Zhenjiang**), the applicant in accelerated review 717, indicates that its first shipment to Australia occurred in March 2017, well after the original investigation period.

Response to Orrcon's submissions

- 50 Orrcon's submissions concerning accelerated reviews 711, 712, 714, 715 and 717 principally address:
- (a) the continuing relevance of REP 590;
 - (b) HRC input costs and any particular market situation;
 - (c) applicant-specific sales and cost verification;
 - (d) corporate and production arrangements; and
 - (e) confirmation that the goods fall within the operative HSS description.
- 51 Nextpower does not suggest that reliable applicant-specific information should not be verified. Rather, Nextpower submits that once the Commission has determined the exporter-specific variable factors on the basis of the evidence relevant to the particular accelerated review, the resulting dumping margin should be implemented using an ad valorem rate.
- 52 Verification of the underlying variable factors and selection of the form of duty are separate questions.

WTO obligations and determination of HRC costs

- 53 Orrcon's submissions in each of these accelerated reviews rely on the particular market situation finding in Report No. 590 (**REP 590**) and the associated HRC benchmarking methodology as the relevant analytical starting point for the Commission's determination of variable factors. Orrcon also relies on Report No. 658 (**REP 658**), in which the Commission found that a particular market situation existed in the Chinese domestic market for HRC as more recent contextual support for the proposition that a particular market situation continues to exist.
- 54 Nextpower acknowledges the Commission's previous findings concerning a particular market situation in the Chinese steel market. However, such a finding does not, of itself, determine whether the verified production costs recorded by an individual exporter or producer may be disregarded when constructing normal value. A later finding of a particular market situation concerning HRC likewise does not itself answer the separate question under Article 2.2.1.1 of the Anti-Dumping Agreement of whether the exporter's or producer's recorded costs reasonably reflect the costs associated with the production and sale of the goods under consideration.
- 55 Since REP 590, the WTO Dispute Settlement Body has adopted the Panel Report in *Australia – Anti-Dumping and Countervailing Duty Measures on Certain Products from China* (WT/DS603/R) on 26 April 2024. The Panel found, amongst other matters, that Australia acted inconsistently with Articles 2.2 and 2.2.1.1 where the Commission rejected exporters' recorded steel input costs by applying a "competitive market costs" standard and used uplifted or surrogate costs without adequately establishing that those costs represented the cost of production in China for the exporter concerned. Orrcon's submission asks the Commission to determine whether the recorded HRC and other material input costs "reasonably reflect

competitive market costs". The Panel in DS603 held that that is not the test prescribed by Article 2.2.1.1.

- 56 Article 2.2.1.1 requires consideration of whether the exporter's or producer's records are maintained in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. The relevant inquiry is therefore directed to the costs actually incurred by the exporter or producer, rather than whether those costs correspond to an external conception of a competitive market cost.
- 57 Where information from outside China is relied upon, the WTO Panel confirmed that such information must nevertheless be capable of yielding a cost of production in China and may require appropriate adaptation to the circumstances of the exporter or producer concerned.
- 58 Accordingly, Nextpower submits that the Commission should determine the variable factors applicable to each exporter on the basis of the verified evidence relating to that exporter and the current review period. The HRC benchmarking methodology employed in REP 590 should not be applied automatically, particularly where an exporter's verified accounting records reasonably reflect the costs actually associated with production and sale of the goods.

Accelerated Reviews 714 and 715 – Exporter and producer information

- 59 Orrcon makes submissions about the inquiries that the Commission should make in accelerated reviews 714 and 715 in respect of any distinction between the entities manufacturing and exporting the goods.
- 60 In addition to reviewing the records of the relevant applicant, Nextpower invites the Commission to review Nextpower's records in connection with its transactions with the applicants to assist the Commission to resolve any uncertainty, and to verify the supply chain as required. Nextpower is happy to facilitate access to additional relevant information where needed.

If the Commission has any question in relation to this submission, please let us know.

Yours faithfully



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