

Canberra
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
ACT 2609 Australia
+61 2 6163 1000

Brisbane
Level 4, Kings Row Four
235 Coronation Drive
Milton, Brisbane
QLD 4064 Australia
+61 7 3367 6900

Adelaide
Level 21
25 Grenfell Street
Adelaide
SA 5000 Australia
+61 8 8424 2352



commercial + international

1 August 2024

**The Director – Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601**

By email

Dear Director,

Investigation 644 – interchangeable bolted clipping system brackets No basis to impose measures on the subject goods from China

This submission is made on behalf of A C Plumbing Supplies Pty Ltd (“ACP”) in accordance with section 269TC of the *Customs Act 1901* (“Customs Act”).

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A Introduction

ACP is an importer, wholesaler and distributor of interchangeable bolted clipping system brackets (the subject goods, “the goods”) in Australia. ACP operates nationwide to provide plumbing, bathroom and hardware products to its customers in the plumbing industry. ACP has been named by Abey Australia Pty Ltd (the Australian industry, “Abey”) as a relevant importer in Investigation 644. ACP has reviewed the application made by Abey in this investigation and is concerned with several aspects of the narrative that Abey presents to support its call for protection.

This submission provides critical context with respect to the claims made by Abey. Our client queries the accuracy of several propositions and statements made by Abey with respect to the alleged material injury it has experienced. In this submission, we demonstrate that when the legal standard for the imposition of measures is considered, Abey's claims to be suffering material injury cannot stand.

B Threshold for the imposition of measures

The legal standard for the imposition of measures is contained in section 269TG of the Customs Act.

The Commission would naturally be aware of the relevant threshold. Reiterating same highlights just how far Abey has to go to demonstrate that it actually has suffered injury, in circumstances that the Australian anti-dumping system can address.

Section 269TG provides that measures may only be imposed where the Minister is satisfied that:

- dumping has occurred; AND
- that, "*because of that dumping*", there is or has been material injury to the Australian industry, or is a threat of material injury.

We note that Abey alleges it *has* suffered material injury.¹ The material injury that must have been suffered by Abey must be greater than is likely to occur in the normal ebb and flow of business.² It must also be established that dumping caused material injury, and not some other factor or cumulation of other factors. In this way, if the Chinese imports are "dumped" that *dumping* must have *caused* Abey to suffer material injury.

The fact that the Anti-Dumping Commission ("Commission") has found, on a *prima facie* basis, that there are "*reasonable grounds for the publication of a dumping and countervailing duty notice...*" is an assessment that has been made on the basis of "*the matters contained in the application and to any other information that the Commissioner considers relevant*". It is not a finding made on the basis of a full appreciation of the circumstances applicable to the question of whether dumping has caused material injury to this particular industry. It is to that proposition that the investigation is directed.

In Consideration Report 644 ("CON 644"), the Commission notes "*there appear to be reasonable grounds to support the claims that the Australian industry has experienced injury*" in the form of loss of sales volume, lower production volumes, reduced market share, reduced assets, reduced capacity utilisation, reduced capital investment and reduced wages.³

Notably, the Commission has reached its *prima facie* assessment on material injury being made out purely on the basis of Abey's application.⁴ That information cannot be conclusive, and is not conclusive, with respect to the proposition that Abey has suffered material injury to the degree required by the test for the imposition of measures.

¹ EPR1, Application, pg 51.

² Australian Customs Dumping Notice.2012/24, "*Ministerial direction on material injury 2012*".

³ EPR 2, CON 644, pgs 24-29.

⁴ For example, ABF import data for the subject goods was not able to be used. See EPR 2, CON 644, pg 24

For the reasons outlined below, we reject the proposition that Abey has suffered any material injury due to dumped Chinese imports over the investigation period.

C The timing of Abey’s material injury claims is problematic

It is evident from Abey’s application that it is seeking to rely on “evidence” of “material injury” (and dumping) outside the investigation period. This is problematic.

In its application, Abey regularly refers to the “injury” it is has suffered from supposedly dumped imports pre-April 2023.⁵ The investigation period is from 1 April 2023 to 31 March 2024, so Abey’s claims that it has suffered injury pre-April 2023 are outside the investigation period.

The Commission has made *prima facie* findings of “injury” in CON 644, with respect to things such as:

- a decrease in sales volumes – “*sales volumes have decreased year on year from 2020 to 2022, with a stabilisation of sales volumes in 2023*”;⁶
- lower production volumes – “*production volumes experienced a sharp decline in 2022, before a slight increase in 2023 (albeit below production levels of 2020 and 2021)*”;⁷
- lower market share – “*experiencing declines in market share in both 2022 and again in 2023*”;⁸ and
- reduced wages – “*reduced wages from 2021 onwards (across the company and not specific to interchangeable brackets)*”.⁹

However, only one of these allegations clearly relates to the investigation period, being “*lower market share*” and there is no trend graph or similar in the application to demonstrate at all, or with any particularity, the timing and direction of any trend in the investigation period. Accordingly, there is no evidence that these factors were actually present during the investigation period, nor as to their severity or otherwise in that period. For example, the Commission conversely notes that Abey’s sales volumes stabilised in 2023, and that costs fell in 2023, and that Abey maintained its prices.¹⁰ These circumstances cannot indicate that material injury was suffered due to dumped imports during the investigation period.

Under section 269TACB of the Customs Act, it is only dumping occurring during the investigation period that is relevant to determining whether measures should be imposed. A determination on dumping regarding goods exported prior to the investigation period is not permitted.¹¹ The existence of material injury caused by dumped imports in the investigation period is a prerequisite to the imposition of

⁵ i.e. see EPR 1, Application, pgs 51-52.

⁶ EPR 2, CON 644, pg 25.

⁷ EPR 2, CON 644, pg 26.

⁸ EPR 2, CON 644, pg 26.

⁹ EPR 2, CON 644, pg 29.

¹⁰ EPR 2, CON 644, pg 27.

¹¹ Customs Act, s 269T(2AE).

measures. Abey's claims regarding the material injury it has suffered due to dumped imports pre-April 2023 are interesting but do not establish the case.

As outlined in the Anti-Dumping Commission's *Dumping and Subsidy Manual*, the injury examination period (from 1 April 2020), is purely for the purposes of assessing alleged indicators of injury over a period of time so that benchmarks/trends may be established to assess the materiality of any injury occurring *in* the investigation period.¹² It is not a timeframe within which the Commissioner determines that dumping *has* occurred.¹³ A reduced level of financial performance in the period prior to an investigation period establishes the platform at the start of the investigation period for the Commission to work out whether things are "better" or "worse" than before. Alleged "injury" occurring in the period before the investigation period cannot satisfy the prerequisites for a determination to impose measures.

As such, we remind the Commission that Abey's claims of dumping and material injury occurring pre-April 2023 cannot be *the* basis upon which injury can be considered to have occurred. As acknowledged by the *Dumping and Subsidy Manual*, that period provides an understanding of the position of the Australian industry prior to the time in which dumping is proven to have existed.

D Abey's previous sales reductions are linked to its drop in production

Abey's loss of sales volume and market share is not an indicator of "injury". It is a consequence of Abey decreasing its own production volumes in 2022. As demonstrated below, the lowering of production volumes does not have any demonstrated link to (dumped) imports, so in such circumstances, there can be no inference that any loss in sales volume or market share is tied to (dumped) imports too.

Abey has claimed that it lost a significant volume of sales and market share to Chinese exporters, due to its customers sourcing cheaper goods from China beginning in 2014-15.¹⁴ Abey states that this caused it to experience a decline in production and capacity utilisation following 2021, as exports displaced sales of local production.¹⁵ According to its application, production volumes in 2023 "*are approximately 10.5 per cent below the levels of 2021*".¹⁶

This is an interesting claim to make because it is natural for a manufacturer that lowers production to experience lower sales and a smaller market share, as these are simple flow-on consequences of the manufacturer producing less. Abey's claim that it lowered production volumes, due to dumped imports, is not accurate, based on the information presented and the information available to us.

In Abey's own words, Abey experienced a decline in production volumes following 2021,¹⁷ while its sales volumes "*improved*" during COVID-19.¹⁸ It was not until 2022 that its sales volumes supposedly fell.¹⁹ So, why would Abey's production volumes fall in 2021 if it was experiencing higher sales volumes over this period? One would naturally expect a manufacturer to actually increase production volumes to meet

¹² Anti-Dumping Commission, *Dumping and Subsidy Manual*, pg 99.

¹³ Customs Act, ss 269TACB and 269T(2AD).

¹⁴ EPR 1, Application, pg 17.

¹⁵ EPR 1, Application, pg 25.

¹⁶ EPR 1, Application, pg 25.

¹⁷ EPR 1, Application, pg 25.

¹⁸ EPR 1, Application, pg 17.

¹⁹ EPR 1, Application, pg 17.

the growing sales volumes. This indicates that the reduction in production presaged and was responsible for Abey's fall in market share and sales.

In addition, Abey's sales volumes stabilised in 2023, when there were still imports, which further supports the view that Abey's production volumes are not tied to the existence of imports in the Australian market.

So, something must have occurred in 2021-22 to result in Abey producing less. Whether reduced production may have been due to manufacturing plant shutdowns (say, due to COVID-19 lockdowns), an inability to source raw material or something else is a moot point. The relevant point is that all the supposed injury flowing from reduced production volumes and capacity utilisation (which led to reduced sales) is not a result of imports. No correlation is evident.

Further, the narrative that Abey presents conveniently misses the reality that its sales volumes actually stabilised in 2023.²⁰ This is particularly relevant as 2023 forms the majority of the relevant investigation period. So, if anything, any "injury" supposedly suffered by Abey was actually alleviated during the investigation period, rather than being caused in the investigation period.

In these circumstances, Abey has not demonstrated that it has suffered a loss of sales volume, market share or production volumes due to dumped Chinese imports during the investigation period.

E Abey's price undercutting claims are opaque

Noting that the Commission has found there to be no demonstrated evidence of price injury,²¹ price undercutting arguments are not particularly pertinent to the investigation. Nevertheless, ACP wishes to discuss the opacity of Abey's price undercutting claims, given that Abey specifically refers to ACP and its "undercut"²² pricing.

In its application, Abey refers to confidential data that supposedly shows the pricing Abey offered to customers in March 2022 undercut Abey's selling prices.²³ ACP does not have a copy of this information, or a meaningful summary of same, so cannot respond to this adverse submission or comment on the accuracy of the figures obtained by Abey.

Nevertheless, we reiterate that the Commission has not found Abey to have suffered from any price suppression or depression due to import pricing.²⁴ In CON 644, the Commission notes that:

- where the pricing for the raw material used to make the subject goods has fluctuated, Abey has been able to pass these increased costs onto customers;
- Abey maintained its prices when raw material costs decreased in 2023.²⁵

In such circumstances, what is the mechanism through which Abey claims it has suffered price injury?

²⁰ This has not missed the attention of the Commission. See EPR 2, CON 644, pg 25.

²¹ EPR 2, CON 644, pg 27.

²² EPR 1, CON 644, pg 33.

²³ EPR 1, Application, pg 32-33.

²⁴ EPR 2, CON 644, pg 27.

²⁵ EPR 2, CON 645, pg 27.

We also wish to make clear that this period was prior to the investigation period, so regardless of whether the claimed prices are accurate or not, this example cannot bear any relevance to whether measures should be imposed.

During the investigation period, ACP had over ■■■ [confidential text deleted – number] customers, belonging to ■■■ [confidential text deleted – number] industry groups. Given Abey’s prevailing market dominance, it is safe to infer that Abey surely would have had bigger customers, and likely very many more. Surely the price ACP offered to one customer, in a sale or sales over a year before the investigation period commenced, cannot be a cause of ongoing material injury? If it is, then Abey would appear to be facing severe and systemic problems that the anti-dumping system is incapable of addressing.

F Implications of sources of raw materials

In its application, Abey notes that it sources HRC from third parties. According to Abey, the third parties are “local suppliers who source the coils from overseas and domestic suppliers”.²⁶ No further information has been provided on who these specific suppliers might be, or the destinations from which they source HRC.

China is the world’s largest steel producer and a major exporter of HRC into Australia.²⁷ Australia’s sole manufacturer of HRC, BlueScope, itself imports HRC into Australia.²⁸ Abey makes subsidy and market situation allegations with respect to HRC. These claims are relevant to the case at hand, but not in support of the proposition that dumping of interchangeable bolted clipping system brackets, being the goods under consideration, has occurred or has caused material injury to Abey:

Firstly, the goods under consideration are not HRC, so Abey’s claims of low priced inputs only serve to emphasise Abey’s belief that Chinese exporters have a lower cost of production. Secondly, it would be grossly hypocritical if Abey was in fact using Chinese HRC in its production and receiving the same alleged benefits that it complains Chinese producers of the goods receive. Of course, the Commission may find that the suppliers are in other low cost countries, such as Türkiye, which has been found by the Commission to have steel “benchmark” prices comparable to those of China.²⁹

G Conclusion

As we have outlined above, there is no demonstrated evidence of Abey suffering material injury due to dumped Chinese imports during the investigation period.

With respect to the subject goods, Abey is profitable, having experienced the highest levels of profitability in 2023 since 2021.

As such, we submit that Abey has not substantiated its calls for protection.

²⁶ EPR 2, CON 645, pg 11.

²⁷ See TRINDEX, available at <https://www.industry.gov.au/publications/trade-remedy-index-trindex> (accessed 25/07/2024).

²⁸ Refer to Anti-Dumping Commission Investigation 400, EPR 27, pgs 4 and 8.

²⁹ Anti-Dumping Commission Investigation 632, EPR 25, pg 104.

Please do not hesitate to contact me if the Commission requires any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alistair Bridges', with a long horizontal flourish extending to the right.

Alistair Bridges

Special Counsel and Head of Regulatory

+08 8424 2352

alistair.bridges@moulislegal.com