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commercial + international

23 August 2024

**Director
Investigations
Anti-Dumping Commission
GPO Box 2013
Canberra
Australian Capital Territory 2601**

By email

Dear Director,

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

As the Commission is aware, we represent A C Plumbing Supplies Pty Ltd (“ACP”) in Investigation 644. ACP has reviewed the submission lodged by Abey Australia Pty Ltd (“Abey”) on 19 August 2024 in response to its submission of 1 August 2024. ACP would like to briefly respond to statements made by Abey in that submission.

Firstly, Abey states:

“the notion of an injury finding outside of the dumping period is a given, and one wonders as to the utility of these comments...”¹

Respectfully, we disagree that an “injury finding outside the dumping period is a given”. The *Customs Act 1901* (“the Customs Act”) also disagrees with that position. In particular, section 269T states as follows:

(2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.

(2AE) However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

¹ EPR 6, Abey Australia submission, pg 1.

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Note: Section 269TACB requires a determination of whether dumping has occurred by reference to goods exported to Australia during the investigation period.²

This is relevant because to impose measures under section 269TG(1) and (2) the Minister must be satisfied that, firstly, the goods were dumped, and, secondly, “because of that” the Australian industry producing like goods was materially injured.

Dumping needs to be assessed in the investigation period. Any material injury needs to be “because of that dumping”. A determination that dumping has occurred prior to the investigation period is precluded by section 269T(2AE), hence any injury that the Australian industry suffered prior to the period of investigation cannot be *because of dumping*, and so cannot be used to justify the imposition of anti-dumping measures under section 269TG.³ This point has been accepted by the Commission and the ADRP time-and-time again.⁴

The “utility” of raising this point was to focus on a fundamental issue with Abey’s claims: it is unclear what injury they are citing as necessitating the imposition of measures.⁵ During that period Abey’s production volumes stabilised,⁶ it maintained prices at historically high levels despite falling costs,⁷ and it achieved the highest levels of profit since at least the start of the decade.⁸ It is hard to marry this with the argument that they were *materially injured* by the alleged dumping, and so difficult to understand why they are asking for the Minister to protect them from import competition.

We also wish to respond to another aspect of Abey’s submission. In particular, they comment that “ACP elected to omit comment on the various other Chinese underselling examples, the most relevant of which was its own underselling of Abey as articulated in the May 2023 example”.⁹

To be frank, we did not consider it necessary to provide too much comment on these claims given (a) the majority of them fall outside the period of investigation; and (b) the Commission did not consider Abey had suffered from price injury in the investigation period. Again, during that period, Abey was able to

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

³ This is also reflected in the Commission’s policy, which is to the effect that injury occurring outside the investigation period may be used to establish benchmarks and trends over time, so that the materiality of any injury occurring in the investigation period can be established (Anti-Dumping Commission, Dumping and Subsidy Manual, pg 99).

⁴ See, in particular, ADRP Decision No. 161, which dealt with merchant bar from Taiwan and states at paragraph 29:

Section 269T(2AD) relevantly provides that, for the purpose of determining whether material injury has been caused to an Australian industry, periods prior to the commencement of the investigation period may be examined. Importantly, where the Commissioner examines a period prior to the investigation period, s.269T(2AE) precludes the Commissioner from making a determination that dumping has occurred by reference to imports prior to the commencement of the investigation period. Accordingly, where the Commissioner observed a detrimental or injurious impact on the financial performance of the Australian industry in the period prior to the investigation period, such impact cannot be attributed to, in the present case, exports of the goods from Taiwan. [our emphasis]

⁵ We note that Abey has since provided further detail on the “market share” injury it claims to have suffered during the investigation period; See EPR 6, Abey Australia submission, pg 2. However, given the level of redactions, it is difficult for ACP to respond to these claims; Abey’s claims with respect to suffering material injury during the investigation period remain opaque.

⁶ EPR 2, Consideration Report 644 (“CON 644”), pg 25.

⁷ EPR 2, CON 644, pg 27.

⁸ EPR 2, CON 644, pg 31.

⁹ EPR 6, Abey Australia submission, pg 3.

maintain its historically high prices, leading to its highest profit and profitability in the 2020s.¹⁰ Assuming the price undercutting allegations are accurate – which, as noted in our initial submission, is not something we have any ability to explore because of the sweeping confidentiality claims in the application – they do not seem to have impacted the Australian industry at all.

During the investigation period ACP entered into over **[CONFIDENTIAL TEXT DELETED - number]** transactions regarding the subject goods with over **[CONFIDENTIAL TEXT DELETED - number]** customers.¹¹ We assume Abey, holding the lion's share of the market, would be several magnitudes beyond this. If the Commission sees fit to provide us additional information so that ACP can actually understand the allegations that Abey is making, we would be happy to make submissions in defence of ACP's interests. However, at a high-level, it seems as though this is possibly as little as one transaction to a single customer during a 12 month period in which the Australian industry was highly profitable. The surrounding context does not exactly scream "material injury".

Finally, we note that Abey's submission does not clarify where it sources its HRC from. We trust the Commission will explore this and allow interested parties to comment on its findings at an appropriate juncture in this investigation.

We respectfully reiterate that Abey has not substantiated its calls for protection. Please do not hesitate to contact me if the Commission requires any further information.

Yours sincerely



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¹⁰ EPR 2, CON 644, pg 27 concludes as follows:

...the Commissioner does not consider that there appear to be reasonable grounds to conclude that Australian industry has suffered injury in the form of price depression and suppression.

¹¹ Please refer to ACP's C-2 Sales spreadsheet of its Importer Questionnaire Response.