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23 May 2025

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

By email

Dear Director,

Investigation 645 – ACP response to the PAD

A C Plumbing Supplies Pty Ltd ("ACP") has reviewed the Commission's preliminary affirmative determination published through Anti-Dumping Notice No 2025/021 ("PAD 645") on 12 March 2025 and provides this submission in response.

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PUBLIC RECORD

A Introduction

As you know, we represent ACP in this matter. To say that ACP was surprised by the publication of PAD 645 is an understatement. The essential findings in PAD Report 645 appear to be as follows:

- Abey has not sold the products profitably at any point since at least 2020;[1]
- Abey has not lost actual sales volumes;[2]
- Abey's alleged losses of market share and hypothetical sales volume have not been verified; and[3]
- the preliminary market share and price undercutting findings relate to customers that represent only 5% of Abey's sale.[4]

Given these findings, the Commissioner's position that there is a *prima facie* basis for the imposition of anti-dumping measures is confusing. A fair reading of these findings supports ACP's previous submissions: there is no basis to impose anti-dumping measures on imports of interchangeable bolted clipping system clip heads ("the goods") into Australia.

It is apparent that the bulk of the material injury findings are premised on Abey's allegation it has lost market share. Abey has been unable to provide verifiable information to support that allegation.[5] In our view, that should be the end of the consideration. Abey is calling for the Australian government to intervene in the Australian market for the goods; such intervention will impose higher costs on Australian wholesalers, retailers and consumers; it is incumbent upon Abey to provide evidence to justify their call for such intervention.[6] As of writing, the public record suggests they have not done that. This is significantly concerning for ACP.

ACP appreciates that the PAD is preliminary in nature. ACP hopes that the extended timeline the Commission was granted when the PAD was made has allowed it time to fully consider the evidence before it, and to reflect upon whether it actually illustrates that the Australian industry producing like goods has suffered material injury because of the goods. For the reasons discussion in this submission, we submit it does not.

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1 PAD 645, page 15.

2 PAD, 645 page 14.

3 PAD 645, page 13.

4 PAD 645, page 19.

5 PAD 645, page 13.

6 Section 269TAE(2AA) actively rejects the proposition that an injury determination can be based on "allegations".

B The dumping finding is based on a non-comparable normal value

For obvious reasons, it is difficult for ACP to provide a detailed critique of the dumping margin calculations used in PAD 645. This difficulty is exacerbated by the use of the discretionary powers in s 269TAC(6) of the *Customs Act 1901* ("the Act") to determine a normal value on the basis of "all relevant information". ACP is only able to make submissions based on the limited detail in the PAD 645, being that the normal value was based upon:

- *the cost of production of the goods in China, having regard to Qinyan's cost of production, plus Qinyan's selling, general and administrative (SG&A) expenses and profit on its sales of the goods to the exporter of the goods (Fenghui), plus*
- *Fenghui's profit on all its domestic sales in China during the investigation period (being the profit that Fenghui was likely to achieve had it sold brackets for domestic consumption in China), plus an amount for its SG&A and other adjustments to ensure that the normal value is properly comparable to the export price.*[7]

We note that the purpose of determining a normal value is to find a comparable price to the export prices of the goods.[8] We note that PAD 645 provides that "adjustments" have been made to ensure the normal value is properly comparable to the export price, but these are not detailed. We would of course appreciate further disclosure regarding those adjustments and, in light of ACP's understanding of the export transactions, an opportunity to provide comment.

What is of concern is the use of Fenghui's profit "on all its domestic sales in China". We note the following from Fenghui's website:[9]

> *"It specializes mainly in producing brass mixers, brass plumbing fittings, brass tap series, brass-zinc alloy bathroom accessories, and other relevant products..."*

And that:

> *"All of the products supplied by this company are exported to foreign countries."*

What this suggests is that Fenghui is an export-oriented business and so that sales to the Chinese domestic market are not something that occurs in the ordinary course of trade. This suggests that any profit on transactions within the domestic market would not be the profit likely to be achieved on domestic sales of the goods. Secondly, given the broad product categories Fenghui specialises in, it is not

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7 PAD 645, page 9.

8 Article 2.1 of the Anti-Dumping Agreement provides:

> *2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.*

9 http://www.chinachitong.com/about.html (accessed 20 May 2025).

apparent that a profit on all domestic sales of those goods would necessarily be comparable with profit achievable on the profit related to the goods subject to this investigation.

Consequently, we consider that the dumping margin is significantly overstated. We respectfully request that the Commission reconsider whether the normal value, in all aspects, is properly comparable to the export price.

C Abey has not suffered material injury

ACP's initial submissions raised a critical issue with respect to Abey's injury claims. In particular, that the bulk of the claims related to events that occurred outside the period investigation period and that such injury cannot be considered to have been caused by dumping. PAD 645 did not heed this concern. It refers, without dissenting comment, to Abey's claim "that material injury caused by dumped and subsidised imports commenced in 2022."[10] Obviously, this no position from which to start an injury analysis. The Federal Court of Australia itself has noted as follow:

> *63. Thus although the Minister may examine periods prior to the investigation period for the purpose of determining whether material injury has been caused to an Australian industry, that examination cannot be undertaken to support an inference, or on the basis of a presumption, that dumping had occurred during that earlier period. The earlier period may be used to assess whether material injury has been caused by dumping during the investigation period but without an examination of any dumping margin on the exported goods during that earlier period.*
>
> *64. The Review Panel correctly concluded that there was no statutory presumption that goods exported prior to the investigation period had been dumped. In the absence of such a statutory presumption and given the statutory prohibition on examining whether goods in that prior period had been dumped, there was no statutory basis on which injury observed during the prior period could be attributed to dumping…*[11]

The starting proposition, that Abey has suffered injury "caused by dumped and subsidised imports" commencing from 2022 cannot be correct. There is a statutory presumption that any imports prior to 1 April 2023 were not dumped or subsidised. The purpose of the injury analysis period is only for determining whether injury has been caused during the investigation period.

The preliminary injury finding in PAD 644 can be summarised in the following statement:

> *sufficient grounds to conclude that brackets exported from China at dumped **prices have undercut** the Australian industry's prices **causing** [injury in the form of] a material reduction in sales volume and **market share**.*[12] [our emphasis]

For reasons explained in detail below, we submit that these conclusions are incorrect and based largely on assumption that are easily rebutted by facts on the record. We discuss these below.

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10 PAD 645, page 12.

11 *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229

12 PAD 645, page 20.

1 Price suppression, depression and profit effects

As we have noted previously, the alleged price suppression, depression and profit effects are an ongoing feature of Abey's sales of the goods. We note in particular:

- Abey has been selling the goods unprofitably every year since 2020;[13]
- the indicators that PAD 645 consider imply Abey has suffered price depression have been evident since 2020;[14]
- the indicators that PAD 645 consider imply that Abey has suffered price suppression have been evident since the twelve months between April 2021 and March 2022;[15] and
- the investigation period is April 2023 to March 2024.

The clear implication is that these trends were evident prior to the investigation period and so cannot simply be considered to have been caused by any alleged dumping. Even if there was not a statutory assumption preventing any conclusion that dumping had occurred prior to the investigation period, by Abey's own reckoning it had not been impacted by dumping and subsidisation until calendar year 2022. So, these trends predate any found dumping and, by Abey's own admission, any purported impact of the imports on its sales.

The Commission needs to investigate why Abey was selling the goods at a loss prior to this period. The Commission needs to investigate whether those conditions continued across the injury assessment period and into the investigation period. If the Commission finds that to be the case, the Commission needs to take steps to avoid attributing such injury to the imports from China.[16]

For its part, ACP is concerned that PAD 645 does not adequately reckon with the restraints Abey faces in its ability to pass on prices. In particular, Abey creates "customer specific" price lists.[17] These prices are negotiated with a customer on a "case-by-case" basis.[18] Our understanding is that these price lists would be for the entire suite of Abey's products rather than limited to the goods under consideration. Evidently, Abey cannot just *click* a button and increase its prices in response to increased costs on one of its products. If the costs of one product were to increase, they would need to ascertain whether that was sufficient to undertake the process of renegotiation each customer specific price list. That is a time, and therefore money, intensive process in and of itself. This is a recognised economic concept, known as the "menu cost."[19] The basic principle is that when menu costs are high, price adjustments are usually

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13 PAD 645, page 16.

14 PAD 645, page 14 – 15.

15 *Ibid*.

16 Section 269TAE(2A) of the Act.

17 Application, page 20.

18 Abey verification report, page 8.

19 See here for a high-level overview of the concept: https://www.investopedia.com/terms/m/menu-costs.asp

infrequent. The fact that Abey's prices have not immediately tracked changes in underlying costs, likely reflects the lagged way Abey sets its prices: nothing more.

2 Loss of market share analysis based on a negligible portion of Abey's sales

The finding that there was a loss of market share is somewhat perplexing. It appears to be driven by Abey's following allegation:

> *…its likely market share held on its sales to certain customers that stock both imported goods and Abey's goods. Abey claims that from 2020 to 2024, its market share has declined by about 25%, while the market share of goods imported from China increased.*[20]

This is not the main point, but it is important. 2020 is a poor base for assessing the normal structure of the market. In 2020 Covid-19 significantly diminished international trade and impacted imports into Australia. Abey recognises this in its application[21] and the Commission does so in its Consideration Report, the latter noting that "[w]hile Abey Australia was able to increase sales volumes and market share in 2021 when importers had difficulty sourcing Chinese goods due to Covid-19, imports from China returned to pre-pandemic levels in 2022, resulting in reduced sales volumes and market share.[22] Given this, the comment that Abey's volumes remain below the levels achieved in "the YE 31 March 2021 and YE 31 March 2022" seems to be irrelevant as to whether Abey has suffered material injury in the investigation period.[23] A failure to match sales volumes in a period that was, by Abey's own statement, impacted by an unprecedented and wide-ranging effects of Covid-19 does not evidence injury.

In any respect, at the time of the PAD, Abey was unable to provide positive evidence of its allegations.[24] Unperturbed, PAD 645 seeks to "corroborate Abey's claims".[25] This is done based on Abey and ACP verified data.[26] But such an exercise does not provide any insight into the Australian market for these goods. The market is more than just these two entities; Abey itself identifies four "main competitors" including ACP.[27] It is entirely possible that one or more of these entities had diminished sales during the period of investigation, which presumably would increase the market share of sellers who increased their sales volume in that same period. All of which is to say, the analysis undertaken does not represent the Australian market; does not support the conclusion that the Australian market was growing, nor does it support a conclusion that Abey lost market share. Abey's claim is not corroborated by PAD 645.

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20 PAD 645, page 13.

21 Application, pages 17 and 18.

22 Consideration report, page 31.

23 PAD 645, page 14.

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

27 Abey Verification Report, page 8.

This is doubly-so in light of PAD 645's findings that Abey's sales to customers it shares with ACP are equivalent to only 5% of Abey's total sales.[28] So, PAD 645 actually does not find Abey lost a share of the Australian market, its analysis is in fact limited to sales to customers that represent only a small proportion of its revenue. You cannot infer any loss of market share in the market for the goods in Australia based on such a small sample size. In the case of ACP, its net revenue on the sale of the goods in the investigation period was only **[CONFIDENTIAL TEXT DELETED – revenue on the goods]**, which represents approximately **[CONFIDENTIAL TEXT DELETED – a small number]** of Abey's overall revenue in FY2024.[29] Half of this would represent only **[CONFIDENTIAL TEXT DELETED – a smaller number]** of Abey's total revenue. At this point, one must wonder, how small must any inferred injury be to be negligible?

3 Abey has not lost actual sales volumes in the investigation period

Abey's sales volume increased in the investigation period.[30] Contrary to these facts, PAD 645 finds that Abey lost sales volumes and was injured in doing so. PAD 645's counterfactual finding is based on the concept that Abey "lost sales in a growing market".[31] This conclusion appears to be based on assumption. In particular, PAD 645 does not consider any recognisable market. The only analysis appears to be a comparison between Abey's sales and ACP's sales, to customers that represent 5% of Abey's sales of the goods. The assumption that Abey "lost" sales volumes appears to be based on the idea that, if not for the alleged price undercutting (which we address below), these customers would not have purchased any products from ACP.

We note that focussing on customer who represent 5% of Abey's sales, the PAD 645 fails to consider or recognise that there is apparently no evidence of any impact on the remaining 95% of Abey's sales.

It is also not apparent that Abey is selling less to these customers. Again, it appears that the information upon which Abey's allegation is based is unverifiable.[32] So PAD 645 posits a world in which injury arises only because ACP has the temerity to sell products to a small sub-class of Abey's customers.[33] Does the Commission suggest ACP not sell to such customers? We would suggest it frays uncomfortably against various provisions of the *Competition and Consumer Act 2010*. In any respect, the error in PAD 645 is that it treats *any* connection between ACP's sales and Abey's as materially injurious. There is no nuance, there is no reflection injury caused by exports may be negligible, and there is no recognition of the obligation on the Commissioner to terminate the investigation if that is the case.

To reiterate, Abey's sales volumes have in fact increased during the investigation period. Therefore, the Commission's findings related to a loss of sales volumes is purely based on an assumption that dumping

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28 PAD 645, page 19.

29 PAD 645, Page 21.

30 PAD 645, page 14.

31 *Ibid.*

32 PAD 645, page 13.

33 As discussed in further detail below, the evidence before the Commission shows that the goods are generally sold by ACP with other goods. Further, the goods generally do not make up the bulk of the revenue on each invoice.

has caused Abey's growth to be slower than the market as a whole. Ultimately, the PAD does not provide any evidence to estimate what Abey's market share or sales volumes would have been in the absence of the claimed dumping, and this highlights the claim's speculative nature. In the absence of assessing other explanations for Abey's slower rate of growth, we respectfully submit that the Commission's finding is based on an insufficient investigation into the cause of Abey's hypothetical loss of sales volumes.

4 The theory at the heart of PAD 655's injury determination is incorrect

We note that the price undercutting analysis adopted in PAD 645 is based on a limited sample of transactions with a limited number of customers. As we have noted before, if more transparency was to be provided, ACP could provide a more detailed response to Abey's allegations and the Commission's assessment of those allegations. However, noting that the customers to which the findings relate account for approximately 5% of Abey's revenue, we would suggest this is no basis to infer that Abey has been materially injured.

In any respect, the Commission has found ACP's prices to a select number of customers undercut Abey's prices to those same customers. ACP was surprised by this outcome but, assuming it is accurate, does not consider that a basis for a material injury finding. The injury rationale offered in PAD 645 is essentially that if there were no lower-priced goods in the market, Abey would have sold a larger volume and so increased its market share. Not only is this rationale speculative; it is also contradicted by the facts. Abey's habit of selling the goods at a loss is a historic trend, which was observable even when Covid-19 significantly impacted imports, freeing Abey of any and all competitive friction and price pressure. We also, again, note that Abey increased its sales volume in the period of investigation.

In any respect, the price undercutting theory is based on the assumption that "pricing is a key factor taken into consideration by customers and clearly influences customer purchasing behavior".[34] But, no evidence is cited to support this assumption. And, importantly, it is an assumption that flies in the face of evidence before the Commission.

Importantly, PAD 645 does not grapple at all with the way in which the goods are sold. Both Abey and ACP offer their customers a broad range of products above and beyond the goods subject to this investigation. In ACP's case, the goods represent only **[CONFIDENTIAL TEXT DELETED – a small number]** of its overall revenue during the investigation period; we assume it would be similar for Abey. We are not suggesting there is no demand for the goods, but that demand for the goods is *derivative* in nature. Customers do not buy interchangeable bolted clipping system heads simply to own them. Rarely do customers order the goods singularly, rather an order will cover a broad range of products. This is readily evident from the commercial invoices the Commission randomly selected during ACP's verification: in no case were the goods the only item purchased by the customer. Moreover, the goods themselves do not represent a large proportion of the revenue on the invoice; on a weighted-average basis the value of the goods on the sampled invoices only represented **[CONFIDENTIAL TEXT DELETED – a small number]** of the net invoice value:

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[34] PAD 645, page 22.

[CONFIDENTIAL TABLE DELETED – analysis of sampled invoices]

Hopefully the point here is obvious. A buyer is not going to be swayed by relatively cheaper prices on a small proportion of the total products they need. Even if you assume the price of the goods is a factor, the evidence precludes an assumption it is a determinative factor. To the extent that pricing is relevant to choice of a supplier, as opposed to other factors, such a product range, availability and convenience, it will be the price on the invoice overall. Given this evidence, the Commission cannot simply assume that lower prices offered by ACP would result in Abey missing out on real or imagined sales of the goods.

Additionally, we note the references in the PAD 645 to ACP "aggressively undercutting" Abey's prices. We trust this is unfortunate phrasing, rather than illustrative of the Commission's mindset. As the Commission is aware from verification, ACP is in the plumbing supplies business; sales of the goods are a fraction of that business, representing approximately **[CONFIDENTIAL TEXT DELETED – a small number]** of ACP's revenue during the investigation period. ACP has been fully cooperative with the Commission, has explained its position in the market, and the customers it services. ACP rejects any assertion that it intentionally or aggressively has sought to undercut Abey's prices. ACP's concern is with providing its customers high-quality products to meet all their needs in a timely and friendly manner.

For these reasons, we respectfully request that the Commission depart from the assumption that lowering price would lead to higher sales volumes. It is deceptively simple logic, yet it is not supported by the evidence before the Commission. The correct conclusion is that APC's imports have not caused Abey injury, and so this investigation should be terminated.

D Have other factors caused Abey injury?

The Commission's role it to investigate the allegations made in the application. In doing so, it is subject to certain legislative obligations, including that discussed at s 269TAE(2A) of the Act. This imposes on the Minister an obligation, in making an injury determination, to ensure that any injury has not been caused by factors other than the exports. The Commissioner, in making recommendations to the Minister, is required to undertake that consideration.

As we have noted above, the Abey has sold these goods at a loss since at least 2020. That trend is obvious and unarguable. Even in 2021 when, in Abey's words, "imports of the subject goods were difficult to source."[35] Abey sold the goods at a loss. Under s 269TAE(2A) of the Act, the Commission needs to investigate why this trend exists even when, per Abey's statement, customers lacked alternative sources which allowed Abey to increase sales volumes and market share. To the extent it is an ongoing trend that predates the investigation period, it cannot be attributed to dumping. If they did not sell the goods profitably when imports were significantly and artificially diminished, why is it, all of a sudden, the result of the imports?

In administering Part XVB of the Act, the Commission's role is to investigate Abey's allegations. It is required to undertake this role as legislatively prescribed and consistent with Australia's international

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35 Application, page 30.

obligations. These obligations include a requirement that the injury determination must be based on "positive evidence" and an "objective examination" of the impact of imports on domestic producers of like products.[36] It is not purely incumbent upon interested parties to guess at the heavily redacted information Abey has provided to this investigation and guess at what other factors might have been causing Abey injury. The Commission is the investigator; it needs to sift through the information with the same detailed eye as it applies to importers and other interested parties. If, from its privileged view of that information, it considers that there are other factors that may be causing injury, they need to apply s 269TAE(2A) of the Act, to ensure such injury is attributed to the exportation of the goods.

E Conclusion

Abey is calling for protection against imports – the benefit of such protection accrues to Abey alone, while imposing higher costs on Australian wholesalers, retailers and consumers more broadly. We find it odd that Abey has not been able to provide evidence to support its claims; we find it odd that no Australian industry questionnaire has been place on the public record since this investigation was initiated 11 months ago. We note that, after some nine months of investigation, the entire basis for the PAD appears to be a limited analysis of sales to customers who represent only 5% of Abey's overall sales.

The purpose of Part XVB of the Act is nuanced; its architecture is designed to balance the interests of many different parties. As the Federal Court of Australia has noted:

> *…I do not agree… that the purpose of Part XVB of the Act is "to protect Australian industry". The purpose of Part XVB is far more complicated. It is apparent from the scheme of Part XVB that the legislature has sought to strike a balance, as the relevant international agreements no doubt seek to do, between various interests including not only those of Australian industries but also other WTO members and their own domestic industries, Australian consumers (in the broadest sense of that word) who may have an interest in acquiring imported goods at the lowest available prices and Australian exporters that supply their goods to other countries that are also members of the WTO.*[37]

We understand that it is an uncertain time in international trade. But now, more than ever, the costs of imposing tariffs are patently clear. We note that Abey, primarily, needs to make its case for market intervention, and it needs to do so based on evidence. It has not done that. Rather than seeking to corroborate these unevidenced and ill-constructed allegations, we respectfully request that the Commission make an objective assessment on the facts before it. When that is done, it should be clear that Abey has not suffered material injury. This investigation should be terminated.

Yours sincerely

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36 Paraphrasing Article 3.1 of the *Anti-Dumping Agreement*.

37 *Panasia Aluminum (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, per Nicholas J at para 148.

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