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 4 3367 6900

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

moulislegal
commercial + international

17 July 2025

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

By email

Dear Director,

Investigation 645 – ACP response to Statement of Essential Facts

A C Plumbing Supplies Ltd ("ACP") has reviewed the Commission's Statement of Essential Facts in this investigation ("SEF 645") and provides this submission in response per s 269TEA(3)(iv) of the *Customs Act 1901* ("the Act").

A Introduction

While ACP welcomes the Commission's findings concerning the de minimis nature of any alleged subsidisation in SEF645, ACP does disagree with the preliminary findings and proposed recommendations concerning the allegations that dumping has occurred during the investigation period, and that, because of that, Abey has suffered material injury.

We do disagree with the dumping finding, for the reasons stated in our submission of 23 May 2025. That noted, we are not able to provide a detailed critique of the dumping margin methodology. However, ACP does not believe the case for "material injury" has been made out, for the reasons discussed below.

1 The "market share" conclusions are porous

The starting point of the preliminary injury findings is that Abey's sales did not grow in proportion to the growth of the Australian market during the investigation period. Not that the sales volumes did not grow: SEF645 is clear they did. The three key points from the SEF are as follows:

- *during the investigation period, the Australian market expanded by approximately 7%*
- *despite the expansion in the Australian market in the investigation period, the Australian industry captured only around 25% of the growth, with imports from China capturing around 75%*
- *there has been a significant increase in the volume of imports from China since FY 21, and particularly in the investigation period, more than doubling the market share of Chinese imports over that time* [our emphasis].[1]

To be clear, this is not a case where the industry's sales did not increase: SEF645 is clear in stating they did.[2] It is also clear from SEF645 that Abey is clear and away the dominant supplier in the market. What is unclear is how much of an increase the SEF considers should have occurred to have avoided the industry being materially injured; apparently achieving 25% of the market growth is too little, what would be enough? One is forced to wonder, in the Commission's view, what level of sales growth would be sufficient to avoid the conclusion that the industry has been injured?

In any respect the analysis that supports the conclusion that there was an increase in market size is not without issue. We will address each of the dot points above separately:

a 7% expansion of what?

As a fundamental question, what does SEF645 find the Australian market expanded by 7% in comparison too? We understand this is a reference to the analysis set out in Figure 6 in SEF645, which appears to compare investigation period sales to FY23. But of course, there was cross-over between FY23 and the investigation period, so that is not a useful measure. Figure 2 in the SEF compares market share in FY24 (up until 31 March), with roughly the same pattern; but one assumes that it cannot be the basis for the 7% figure, focusing, as it does, on market share rather than sales volumes.

---

1 SEF645 page 56.

2 SEF645 page 46.

As we discuss immediately below, we are concerned with estimate of the Australian market generally; so, we do not consider the 7% figure is necessarily sound; based on how it is described in the SEF, the utility of this 7% figure is entirely obtuse.

b An assessment based on approximately half the "Australian market"

The SEF's preliminary conclusion regarding market share is based upon data from three market participants: ACP, Radius and Abey. Abey itself has identified four main competitors: ACP, Aztec, Couta and Flexistrut.[3] We also cannot discount the possibility that there may be other suppliers in the market that sell direct to end-customers. The Australian market for like goods necessarily encompasses all buyers and sellers of those goods.

This means there are significant questions regarding the accuracy of the preliminary conclusions drawn in the SEF about the growth of the Australian market for like goods, or even market share within that market. We understand that the Commission does not have access to the information of the other competitors and sympathizes with the difficulties of an investigator in such a situation. Nonetheless, market share is but one of the many factors identified in the Act as being relevant to the determination of material injury; alone it is not decisive of the question of material injury. If Abey considers it lost market share in the Australian market for like goods – and to be clear, we have not seen them articulate such a position – it should provide evidence to support that claim.[4] They have not done that.

The problem with an incomplete picture of the market is that if even one of these competitors was selling less during investigation period, then it may be the case that the market has not grown at all. If the market has not grown in the investigation period, this would suggest that the Australian industry has actual gained market share, and so the entire injury theory would fall away. So too would the need for measures. SEF 645 does not consider this possibility at all.

c 2021 remains a misleading base-year for market share analysis

We note that the reference to FY21 fails to recognize significant market distortions that occurred in 2021. The SEF seems to consider this to be irrelevant because Abey's sales volumes were similar in FYs 2021 and 2022 to what they were in FYs 2017 and 2018.[5] We have some difficulty with this explanation, because it is not apparent from Abey's verification report that its sales figures from FY2017/18 were verified, so there are some questions as to whether those figures are accurate. More significantly, SEF 645 does, perhaps begrudgingly, accept that global pandemic did lower import levels in FY21.[6] If, the market is made up of Abey's sales and imports, lower import volumes will necessarily increase Abey's market share, whether or not Abey's sales volumes are similar to the volumes Abey says it achieved historically and whether or not import volumes remained "significant" as the SEF states (whatever is intended to be meant by that descriptor). So, the proposition that Chinese imports increased significantly "since FY21" should be understood and should be reported in that context; growth between FY21 and

---

3 Page 8 of Abey's Verification Report

4 Abey's concerns seem to be with losing market share to particular customers. We would note, of course, customers are not a market.

5 SEF645, page 47.

6 As it should. Abey states as such in its application; the Consideration Report mentions it too.

FY22 was a return to the pre-pandemic norm. We do not believe anything adverse can be drawn from this, nor given that context, is the "doubling" of market share since FY21 particularly troublesome.

d No appropriate basis to find loss of market share

The preliminary finding that the market grew in the investigation period is based on speculation and is not as certain as the SEF presents it to be. We are concerned that the SEF hyper-focuses on this one single factor of economic performance without considering the industry's performance as a whole. For example, Figure 6 shows that between FY23 and the investigation period, imports from China increased, but in that same period Abey increased its sales volume.[7] This tends to suggest that Abey's sales volumes are not linked to imports from China.

Further, Abey has stated that it faces competition from ACP, Aztec, Couta and Flexistrut. This means there are at least five main suppliers in the Australian market. If it is the case that the Commission's estimates are reasonable and reliable, then Abey obtained over a quarter of the growth in that market, which seems more than proportionate.

2 The SEF's profit conclusions are assumptive

Our appreciation of the reasoning in SEF 645 is based on the following sentiment:

> *The commission considers that the Australian industry sought to arrest or mitigate the decrease in its sales volumes by reducing its prices in response to increasing competition from goods exported from China in the investigation period.*[8]

We do have some concerns regarding this consideration, which we address below. However, as an initial point, we are curious as to whether Abey has suggested it ever sold these goods profitably? It was clearly not the case in the injury analysis period, including when import from China were limited. We note that the Commission has been provided some level of detail regarding Abey's historic sales volumes. Has Abey provided, or has the Commission asked for, similar with respect to their profit? We would respectfully recommend that as a relevant line of inquiry in this investigation.

e What caused lower prices in the investigation period?

We note that SEF645 explains that Abey negotiates prices with its customers on a case-by-case basis.[9] The SEF does not state whether Abey provided the Commission with any examples of this process during the period of investigation which support the Commission's "consideration" regarding Abey's intent in decreasing prices. If that consideration is supported by evidence, we would appreciate it if the Commission could state so specifically; similarly, if it is not, that too should be reflected to interested parties.

---

7 SEF645, page 47.

8 SEF645, page 59.

9 SEF645, page 53.

Without the privileges of the Commission's information, we at least consider there is a disconnect between the explanation for the lower prices in the investigation period and the SEF's interpretation of the reasons behind that.

Indeed Figure 4 shows that prices were marginally lower during the investigation period than they were during the 12 months prior. It is unclear from public record information how often Abey negotiates with its customers to set prices. We are not certain if the Commission has that information, but in the abstract, it would be possible that some of the prices achieved in the investigation period were negotiated even two years beforehand, when Abey's sales volumes were higher. Obviously, in such a case, the lower prices achieved in the investigation period would not be brought about in response to lower sales volumes in the 12 months prior.

Noting that price in the investigation period is only marginally lower than the year previous is it possible there is some other factor at play here. Did a big customer achieve a different form of rebate that had been negotiated in prior years? Is there a different products mix in the period of investigation that favors lower priced goods over higher priced goods?[10] Unless such possibilities are explored, we submit there is no basis to simply assume that Abey lowered its prices to capture more sales.

f Assumptions regarding price sensitivity have not been tested

We again reiterate our points from our submission of 23 May 2025. We do not believe the Commission has given this submission adequate consideration. It is the case that ACP sells a significant and broad range of products. It is the case that in the randomly sampled sales that the Commission verified, at no point did the goods represent the only items purchased by the customer. It is the case that, on average, the goods represented only 13% of the value of the invoice. It is also the case that each of the competitors identified by Abey also sells a range of products above and beyond the goods under consideration.[11]

The SEF continues to treat customers' decisions about the purchase of the goods in isolation from all other products. The SEF seems satisfied to conclude that the price of the goods would, in any case, be a factor in the decision making. We have not suggested it is not a factor, what we have suggested is it is not determinative. One cannot assume a lower price equals more sales.[12]

---

10 This is a very real possibility. Per ACP's verified records, it selling prices for the goods varied between **[CONFIDENTIAL TEXT DELETED - price]** per piece and **[CONFIDENTIAL TEXT DELETED - price]** per piece, depending on the MCC. If, in one year, it sold less of the higher priced good, that would of course make its average price lower.

11 Details of Aztec product range can be accessed here: https://www.aztecau.com.au/. Details of Flexistrut's product range can be accessed here: https://www.flexistrut.com.au/products/. Details of Couta's product range can be accessed here: https://coutagroup.com.au/.

12 We note with some concern, references to confidential attachment 1 to ACP's submission of 1 August 2024 seem to focus almost entirely on references to prices. We do not consider that is a fair reading of that evidence. **[CONFIDENTIAL TEXT DELETED – details of material in confidential attachment, noting, in particular it discusses a wide range of goods and indicates that price of the goods is not a key determinant]** This supports our proposition that customers are not simply after lower prices on the goods subject to this investigation. Their decisions are much more complex than the SEF allows for.

It is clear on Abey's website that it offers products well beyond those subject to this investigation, as do each of the competitors Abey has identified.[13] Is there any evidence to suggest the goods under consideration are commonly purchased without any other item? If not, then clearly a customer is going to consider the price of all of the items they purchase.

To drive this point home, during the investigation period ACP's three biggest customers represented approximately **[CONFIDENTIAL TEXT DELETED – number]** of the gross value of the sales of the goods under consideration. ACP has extracted its total gross sales to these customers of all goods during the investigation period.

[CONFIDENTIAL TEXT DELETED – table with sales figures for certain customers]

Note, on average, the percentage of revenue attributable to the goods subject to this investigation is just **[CONFIDENTIAL TEXT DELETED – number]**.

Implicitly the position presented in the SEF is an assumption that demand for the goods under consideration is significantly more sensitive to price than any other item offered by market participants. But such an assumption is not realistic - it is like expecting that a person will choose a café for brunch because it charges less for sparkling water, without considering any other factor such as the content of the menu, the prices of the meals or the quality of coffee.

Put another way, the SEF assumes that ACP's top three customers made sourcing decisions for the other **[CONFIDENTIAL TEXT DELETED – big number]** of their spend based on the price for just **[CONFIDENTIAL TEXT DELETED – small number]** of the goods they need. That is not a reasonable assumption.

g Category offerings are relevant to customer choice

ACP has obtained a product coverage analysis from **[CONFIDENTIAL INFORMATION DELETED – source]** According to this list, ACP is able to supply **[CONFIDENTIAL INFORMATION DELETED – ACP's range]**, whereas Abey is only able to supply **[CONFIDENTIAL INFORMATION DELETED – range]**. We note this was provided to, and discussed with, the Commission's verification team during ACP's verification. If it has become lost, we are happy to provide it once again.

This data is highly relevant to the Commission's assessment of market behavior and competitive dynamics. ACP's customer base primarily consists of family-owned and owner-operated plumbing supply shops. These businesses, by their very nature, tend to prefer sourcing from suppliers who can offer a broader product mix, as doing so reduces transaction costs, simplifies logistics, and improves supply reliability.

It follows that a supplier's ability to meet a greater proportion of a customer's overall needs—rather than the price of an individual item—plays a significant role in purchase decisions. This non-price factor should be recognized as a key determinant of customer loyalty and supplier selection.

Regrettably, the Commission has not meaningfully considered this dimension of the market. By disregarding the importance of product range and its influence on customer purchasing behavior, the Commission has drawn an overly narrow and incomplete picture of the competitive environment. This

---

13 https://www.abey.com.au/?srsltid=AfmBOooOrTvG6lB0flSrWQNnETscZCE9n8503vQ2BqL-0wJ9Sci42YDO

leads to a flawed assumption that price was the sole or primary reason Abey may have missed out on sales, an assumption we respectfully submit is unsupported by evidence.

h Conclusion

Once again, we respectfully request that the Commission depart from the assumption that lowering prices 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 ACP's imports have not caused Abey injury, and so this investigation should be terminated.

3 The "mutual customers" analysis is irrelevant to this investigation

For reasons that remain unarticulated, the SEF considers that ACP has been responsible for the Abey's diminishing sales to certain identified customers since 2019. We note this appears to have been the thrust of Abey's initial complaint, but it does not assist the Minister in his task under the Act. In particular we note the Commission's conclusion that:

> *The commission considers that ACP has gained sales volumes and built market share among these customers at the expense of the Australian industry by significantly undercutting the Australian industry's prices to these customers.*

This seems to imply that ACP is responsible for Abey's inability to maintain its relationship with these customers over a seven-year period. This implication appears to be based "Figure 7" of the SEF which shows Abey's sales to "select customers" declining since 2018. It is exceptionally concerning that the Commission considers (a) this relevant to the exercise of its functions under the Act and that (b) it is a sufficient basis to draw and publish adverse inferences about ACP.

i Irrelevance to this investigation

It is unclear how this analysis is intended to assist the Commissioner in undertaking his statutory task. As the SEF rightly points out, there can be no assumption that dumping occurred prior to the investigation period, and that injury prior to the investigation period cannot be attributed to dumping. To state the obvious dumping may only be determined during the investigation period; and it is only injury caused, by virtue of that determined dumping with respect to which measures may be imposed. The bulk of the analysis in Figure 7 does not relate to the investigation period. Indeed, over the 84 months presented in Figure 7, only 12 relate to the investigation period.

Further the bulk of the decrease in sales occurred prior to the *start* of the injury analysis period.

What concerns us is that the Commission seems to consider it within its domain to redress the trend of falling sales to select customers Abey estimates have occurred since 2018. We note, in particular, the sentiment that Abey should have been able to "reclaim market share in relation to these customers".[14] This is clearly not what the anti-dumping system is for. The bulk of the decline in sales did not occur during the investigation period. Even if every assumption about ACP were correct, it was entirely within Abey's power to apply for anti-dumping protection in FY2018, 2019, 2020, 2021 and 2022, when these sales were being lost. It was also open to Abey, in its application, to ask for an extended investigation period, but they did not do that. In either case, the circumstances would have been considered within the

---

[14] SEF page 58. We again note, market share is a share of the market; a customer is not a market.

disciplines of the Act and the Anti-Dumping Agreement, which is not something the current analysis in the SEF can boast.

j Questionable evidentiary basis

We note that Abey's position has always been that it has lost market share to "select customers". We note that, for example, in the Preliminary Affirmative Determination describes the information that Abey provided concerning its market share to "certain customers" as "estimates".[15] Why, then, are they presented with certainty in the SEF? The PAD was made four months after the Australian industry's verification in November 2024, has something occurred since then to provide these estimates with more credence? If so, what is the justification for the absence of that information from the public record?

More significantly, what is the basis for attributing these decreased sales to ACP? ACP began operations in 2019, by which point the precipitous drop in sales had slowed. Indeed, in 2019, ACP's sales were only **[CONFIDENTIAL TEXT DELETED – number]**. But it appears the only reason to think the trend in Figure 7 is attributable to ACP is because ACP supplied these customers during the investigation period; some five years after the peak of Abey's sales to these customers. The Commission's bold assumption that the reductions in sales volume since 2018 have been because of ACP is difficult to understand and gravely concerning. There is simply no allowance for the possibility that Abey's sales to these customers could have been impacted by any number of factors that may have arisen.

We believe an important line of inquiry would be to ask Abey whether this trend is reflected in all sales of all goods to these customers. If so, then whatever issue Abey has experienced with these customers would likely be outside of anything to do with the goods under consideration.

k Conclusion regarding shared customers

Ultimately, as we have cautioned previously, focusing on individual customers is a mistake. The question in this investigation is whether the Australian industry suffered material injury in the investigation period. Focusing on self-selected case samples to the detriment of other evidence does not serve that inquiry.

In the investigation period, Abey's sales to these customers were a small share of Abey's overall sales. That is the relevant fact for this investigation. In the investigation period, Abey's sales volumes increased; those are relevant facts. The "select customers" analysis and the adverse inferences the SEF seeks to draw from it are not and should be disregarded when considering what to recommend to the Minister.

B Conclusion

We remain concerned that the Commission considers there is a basis to impose dumping duties. We hope the foregoing explains why that concern arises. The imposition of additional costs on the Australian market because of the broad assumptions SEF 645 would be a mistake.

We have made this point before, and the Commission is no doubt aware of it, but 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:

---

[15] PAD 644, page 14.

> *…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.*[16]

We do not believe, in this instance, the case for protection has been made out.

We respectfully request that this investigation be terminated.

Alistair Bridges
Special Counsel

alistair.bridges@moulislegal.com

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