



Australian Government
Anti-Dumping Review Panel

ADRP Report No. 103

Steel Pallet Racking exported from the People's
Republic of China and Malaysia

August 2019

<https://www.adreviewpanel.gov.au>

Contents

Contents	2
Abbreviations.....	3
Summary.....	5
Introduction	5
Background.....	6
Conduct of the Review	7
Grounds of Review.....	11
Consideration of Grounds.....	12
Like Goods.....	12
Did Dumped Goods Cause Material Injury	28
Abbott	39
JRack.....	40
One Stop.....	51
Recommendations.....	58

Abbreviations

Term	Meaning
Abbott	Abbott Storage Systems
Act	<i>Customs Act 1901</i>
ADA	Anti-Dumping Agreement
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
APC Storage	APC Storage Solutions Pty Ltd
China	The People's Republic of China
CTM	Cost to Make
CTMS	Cost to Make and Sell
Commissioner	The Commissioner of the Anti-Dumping Commission
Dematic	Dematic Pty Ltd, the applicant for the dumping duty notice
Direction	<i>Customs (Extensions of Time and Non-cooperation) Direction 2015</i>
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	the goods described in the report, also referred to as goods under consideration (GUC) and like goods
GOC	Government of China
HRC	Hot rolled coil
IDD	Interim dumping duty

JRack	Jiangsu Jracking Industry Ltd (Jracking Industry), Danyang Hengcheng Metal Products Co., Ltd (Hengcheng), Nanjing Jracking International Ltd (Jracking International), Jracking (China) Storage Solutions Ltd (Jracking Solutions), Jracking (China) Storage Systems Ltd (Jracking Systems), Company X [REDACTED], Meca Racking Solutions Pty Ltd (Meca). These companies are referred to collectively as Jracking Group.
Investigation period	1 October 2016 to 30 September 2017
Manual	Dumping and Subsidy Manual November 2018
Masters	Woolworths Masters Store
Minister	Minister for Industry, Science and Technology
OCOT	Ordinary course of trade
One Stop	One Stop Pallet Racking Pty Ltd
REP 441	The report published by the ADC in relation to the alleged dumping of steel pallet racking exported from the People's Republic of China and Malaysia, dated 5 April 2019.
REQ	Response to Exporter Questionnaire
Review Panel	Anti-Dumping Review Panel
Reviewable Decision	The decision of the Minister to impose dumping duties on exports of steel pallet racking from the People's Republic of China and Malaysia made on 6 May 2019 and published on 8 May 2019.
SEF 441	Statement of Essential Facts Report 441
WTO	The World Trade Organization

Summary

1. This is a review of the decision of the Minister for Industry, Science and Technology (the Minister) to publish a dumping duty notice in respect of steel pallet racking exported from the People's Republic of China (China) and Malaysia (the Reviewable Decision). The applicants for the review are:
 - Abbott Storage Systems (Abbott);
 - Jracking Group (JRack); and
 - One Stop Pallet Racking Pty Ltd (One Stop).
2. The applicants sought review of a total of eight grounds relating to the Reviewable Decision. A number of these grounds related to the issue of 'like goods' and whether material injury was caused to the Australian industry. The remaining grounds concerned normal value determination. None of the grounds succeeded in establishing the Reviewable Decision was not correct or preferable.
3. For the reasons set out in this report, I recommend that the Reviewable Decision be affirmed.

Introduction

4. The applicants applied under s.269ZZC of the *Customs Act 1901* (the Act) for a review of the decision of the Minister to publish a dumping duty notice pursuant to s.269TG(1) and (2) of the Act in respect of steel pallet racking exported from China and Malaysia.
5. The applications were accepted and notice of the proposed review, as required by s.269ZZI of the Act, was published on 28 June 2019. Grounds that were considered non-reviewable were rejected pursuant to s.269ZZG(5) of the Act and the relevant applicants advised by letter.
6. Pursuant to s.269ZZK of the Act, a report must be provided to the Minister no later than 60 days following the publication of the notice of review, that is, 27 August 2019.

7. The Senior Member of the Anti-Dumping Review Panel (Review Panel) directed in writing that the Review Panel be constituted by me in accordance with s.269ZYA of the Act.

Background

8. On 25 August 2017, Dematic Pty Ltd (Dematic) lodged an application under s.269TB(1) of the Act with the Commissioner of the Anti-Dumping Commission (ADC) for the publication of a dumping duty notice in respect of steel pallet racking exported from China and Malaysia. The application was not rejected by the ADC, and on 13 November 2017, notice of the initiation of the anti-dumping investigation was published by the ADC.
9. The investigation period was stated as 1 October 2016 to 30 September 2017 (Investigation period) with the injury analysis period commencing from 1 October 2013.
10. The goods to which these applications relate are:

Steel pallet racking, or parts thereof, assembled or unassembled, of dimensions that can be adjusted as required (with or without locking tabs and/or slots, and/or bolted or clamped connections), including any of the following - beams, uprights (up to 12m) and braces (with or without nuts and bolts).

Further information:

The goods are adjustable static racking structures capable of carrying and storing product loads, and components used to make static racking structures.

Adjustable racking is a structure typically made from cold-formed or hot rolled steel structural members and includes components such as plates, rods, angles, shapes, sections, tubes and the like. Welding, bolting or clipping are the typical methods to assemble them. It may be racking installed within a building.

A typical storage configuration comprises upright frames perpendicular to the aisles and independently adjustable, positive locking beams parallel to the aisle, spanning between the upright frames, and brace designed to support unit load actions.

The racking layout and components used are designed to get the best efficiency for the shape and volume of the items stored. The applicable Australian Standard is AS 4084-2012.¹

11. On 5 November 2018, the Commissioner published the statement of essential facts (SEF 441).² It noted that SEF 441 was originally due to be placed on the public record on 3 March 2018. The Commissioner extended the due date to publish the SEF (and also the final report) on a number of occasions indicating it was related to the complexity of the case. A preliminary affirmative determination was made on 18 June 2018.
12. The ADC made its final report (REP 441) on 5 April 2019.³ The ADC recommended that the Minister determine that a dumping duty notice be published on exports of steel pallet racking from China and Malaysia.
13. The Minister accepted the recommendations of the Commissioner on 6 May 2019 and this decision was published on 8 May 2019 in ADN 2019/45.

Conduct of the Review

14. In accordance with s.269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, if satisfied that the decision is the correct or preferable one or revoke it and substitute a new specified decision. In addition, s.269ZZK(1A) of the Act requires that, if the Review Panel is recommending a new specified decision, it must be materially different from the reviewable decision.
15. In undertaking the review s.269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister in like manner as if it

¹ Confidential Attachment One of REP 441 includes an extract of the relevant Australian Standard AS 4084-2012.

² SEF 441 – Statement of Essential Facts report on exports of steel pallet racking from China and Malaysia.

³ REP 441 Alleged Dumping of Steel Pallet Racking exported from the People's Republic of China and Malaysia on 5 April 2019.

were the Minister having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

16. Subject to certain exceptions,⁴ the Review Panel is not to have regard to any information other than relevant information pursuant to s.269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister. In addition to relevant information, the Review Panel may have regard to conclusions based on relevant information contained in the application for review and any submissions received under s.269ZZJ of the Act.
17. A notice under s.269ZZG(1) of the Act was issued to One Stop on 6 June 2019 requesting the provision of further information in relation to the grounds of its application. A copy of this notice was placed on the public file.
18. If a conference is held under s.269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. Two conferences were held pursuant to s.269ZZHA and were conducted prior to the initiation of the review. These are summarised at Appendix One. Both conferences were held to clarify the grounds submitted in the applications for review. A non-confidential summary of the information obtained at the conferences was made publicly available in accordance with s.269ZZX(1) of the Act.
19. In conducting this review, I have had regard to:
 - applications and documents submitted with the applications;
 - submissions received pursuant to s.269ZZJ of the Act insofar as they contained conclusions based on relevant information. Appendix Two outlines a listing of the submissions received;
 - REP 441 and its confidential attachments and information referenced in the report, including information created during the investigation, such as

⁴ See s 269ZZK(4)

verification reports, submissions to Investigation 441, SEF 441 and confidential attachments; and

- relevant information obtained at the conferences and any conclusions reached at the conference based on relevant information.

20. In this report, I have not necessarily referred to each individual submission unless it provides a particular issue not already dealt with in REP 441 or by the applicants in their review applications. In other words, if a submission merely affirms what was said in REP 441 or restates comments from the review applications, I have not repeated these comments.
21. On 5 July 2019, Abbott emailed the Review Panel indicating its willingness to provide a physical demonstration of the characteristics and features of its pallet racking system.
22. There is no specific legislative provision allowing or prohibiting such an examination. In preparing a report to the Minister the process generally adopted by the Review Panel is to examine information from the evidence before the Commissioner (as well as the review application and submissions) as outlined in s.269ZZK of the Act. The Review Panel must determine the matter in a like manner as if the Minister, and have regard to the considerations the Minister would be required to have regard to.⁵ I decided that it was appropriate to review the information regarding the goods based on the documentary evidence before the Minister, subject to the additional information provided in the application for review and submissions made under s.269ZZJ of the Act. On this basis, I decided that a physical inspection would be unnecessary.
23. In circumstances where two or more applicants have raised the same (or similar) grounds and submitted similar claims, I have chosen to deal with it as a standalone issue. This has been done in relation to the grounds raised by Abbott and One Stop on 'like goods', and, whether dumping caused material injury to the Australian industry.

⁵ Section 269ZZ(1) of the Act.

24. I consider it worth repeating the words of the former Senior Panel Member (The Hon. Michael Moore) discussing the role and powers of the Review Panel, as outlined in the Report on Power Transformers:⁶

It seems to me that having regard to the fact that the Panel will ordinarily have to undertake a review in a comparatively short time frame against a background where the Commissioner will have ordinarily undertaken an extensive process of investigation and reporting, and also having regard to the fact that the Panel can require the Commissioner to reinvestigate, the Panel's role in a review does not entail full reinvestigation of matters considered by the Commissioner and raised by interested parties in the application for review. The investigation by the Commissioner will often entail the evaluation by the Commissioner of material gathered in the investigation both from overseas and domestically. That evaluation may involve subsidiary conclusions or decisions involving assessment and judgment. I do not see the Panel's role as involving this type of evaluation afresh.

Rather the Panel's role includes, by way of illustration, assessing whether there has been inappropriate reliance on particular data to the exclusion of other data, assessing whether relevant data has been ignored, assessing whether there has been miscalculations or the misconstruction or misapplication of the Act or relevant regulations.

The Panel's powers to revoke or recommend the revocation of a number of types of reviewable decisions only arises if the reviewable decision was either not the correct decision (when there has been a decision which does not involve the exercise of a discretion) or, alternatively, not the preferable decision (when there has been a decision involving the exercise of a discretion). It is tolerably clear this is the statutory test having regard to the obligation (at various points in Division 9 of Part XVB) on an applicant for review to identify in the application reasons for believing that the decision was

⁶ Extract from ADRP Report No. 24: Power Transformers – Former Senior Panel Member of the Anti-Dumping Review Panel, The Hon. Michael Moore.

not the correct or preferable decision and the power of the Panel to reject an application if this is not done. [emphasis added]

Grounds of Review

25. The grounds of review relied upon by the applicants, which the Review Panel accepted, are as follows:

a) Abbott:

(a) The making of the reviewable decision was an improper exercise of power as the Minister erred in deciding there are goods or 'like goods' being dumped and causing material injury to the Australian industry as the goods the subject of the notice do not exist in the Australian market and are unable to be manufactured in Australia.

(b) The goods supplied by Abbott do not fall within the description of like goods (in terms of characteristics and features of Abbott's goods: including whether the dimensions can be adjusted as required) and are not like goods as described in the section 269TG(1) and (2) notices signed by the Minister.

(c) The Minister erred in determining that any 'like goods' caused/cause material injury to the Australian steel pallet racking industry.

b) JRack:

(a) The Minister erred in accepting the ADC's suggestion by identifying JRack Group as an uncooperative exporter.

(b) The Minister made an incorrect decision to accept the ADC's assessment and determinations with respect to JRack's cost data.

(c) The Minister erred in accepting the ADC's suggestion of selecting unreasonable data to compute the Ascertained Normal Value (ANV) for JRack.

c) One Stop:

(a) The Minister erred in being satisfied that there is an Australian industry producing like goods and whether imports of like goods have been or is being caused or is threatening material injury to the Australian industry. In particular, whether the imports are 'like goods', whether the Australian industry has been correctly identified and whether material injury was caused to the Australian industry by factors other than dumping.

(b) The Minister erred in determining that dumping occurred given the decision regarding the determination of normal value being based on section 269TAC(2)(c) of the Act, when it should have been determined under section 269TAC(1) of the Act.

26. The Review Panel proposes to conduct a review of the Reviewable Decision in relation to the above grounds.

Consideration of Grounds

Like Goods

27. Abbott and One Stop have expressed similar claims in relation to their grounds relating to 'like goods'. This report will highlight any specific claims or submissions from each of the applicants if considered relevant.

28. Subsection 269T(1) defines 'like goods' as:

Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

29. For an application for anti-dumping measures to proceed an Australian industry must either produce identical goods to the imported goods or that are 'like' the imported goods.
30. Analysis of 'like goods' has been undertaken in Section 3 of REP 441. The Commissioner concluded that steel pallet racking produced by the Australian industry was like goods to the goods exported to Australia from Malaysia and China.

The description of the goods the subject of the investigation (and the Reviewable Decision) are described in paragraph 10 above.

Claims:

31. Abbott contends the goods it imports are not 'like goods' to the goods described in the goods description in REP 441 (and subject to the Minister's decision). It suggests that the goods described in the notice are not manufactured in Australia and do not exist in the Australian market. On this basis, it claims that the exported goods could not be causing material injury to the Australian industry and should not be subject to a dumping duty notice.

32. Abbott submits that the product it imports and supplies in Australia is described as:

*steel pallet racking storage system comprising upright frames perpendicular to the aisles and **independently adjustable**, positive locking pallet beams parallel to the aisles, spanning between the upright frames, and designed to support unit load actions. The system and/or parts of the system (whether assembled or unassembled) are not of dimensions that can be adjusted as required. **Any adjustment capacity of the system is distinctly restricted from being adjusted "as required" by incremental limitation, engineering limitation, other physical limitation and/or applicable standards.** Every required adjustment that does not exactly match the incremental limitation of the system and fall within the engineering and physical limitations of the system (and fall within the criteria of any applicable standard that may form part of the requirement) cannot be performed or cannot be performed without remanufacture. (my emphasis)*

33. Abbott claims that as 'its imports are 'adjustable to only limited premanufactured fixed adjustment points of one component only in one single axis direction and the engineering limitation pertaining to permissible loads and safety as prescribed by the Australian Standard AS4084-2012 prevent a user of the goods to adjust the system "as required", its goods do not meet the description of the goods the subject of the investigation'.

34. Abbott also considers that the ADC did not acknowledge in REP 441 that JRack (an exporter) had modified its view from its initial response to the exporter questionnaire (REQ) stating its steel pallet racking is adjustable but is not 'of dimensions that can be adjusted as required'.⁷ Abbott further notes that other parties also support its position that the exports of steel pallet racking do not meet the goods description.
35. Abbott expresses a concern that 'importers undertaking self-assessment (in the importation clearance process) are bending and extending the scope of the description of the goods in order to make certain goods fit and are taking this overly cautious (but wrong) approach for fear of otherwise incurring penalties.'
36. One Stop suggests that 'like goods' has been incorrectly determined. It claims the goods it imports, are not of dimensions that can be adjusted as required, as the length, width and height or depth of all its beams, bracing and uprights are fixed. On this basis it considers its imports do not meet the goods description and are not covered by the Reviewable Decision.
37. One Stop also claims that Dematic's steel pallet racking is not interchangeable with other pallet racking and the frames cannot be 'flipped'. It proposes that these differences impact both purchase choice and whether the Dematic products can be considered 'like goods' to those imported by One Stop.

ADC findings

38. The ADC indicated that during the investigation it received numerous submissions from interested parties relating to the scope of the 'goods description' and the determination of like goods. As a result, it published an 'Issues Paper: The Goods and Like Goods' and invited interested parties to make submissions.⁸ This paper outlined the submissions the ADC had received, its analysis of these submissions together with the Commissioner's assessment of 'like goods'. Further submissions were made in response to the Issues Paper and the Commissioner outlined his final findings in REP 441.

⁷ EPR 441/094 letter from JRack to the ADC dated 24 December 2018.

⁸ Issues Paper: The Goods and Like Goods published by the ADC on 4 February 2019.

39. The ADC stated that the main issues being raised in submissions related to whether the goods the subject of the goods description exist as described and are produced in Australia. It considered that this related to the phrase in the goods description ‘of dimensions that can be adjusted as required’.
40. The ADC commented in the Issues Paper that the ADC had viewed Abbott’s website to examine the brochure on for ‘Selective Pallet Racking’.⁹ It noted that the pallet racking products consist of uprights, beams and bracing that can be adjusted. The adjustments are incremental based on the spacing of the slots in the uprights. It noted that while not ‘infinitely adjustable, are able to be adjusted to a high degree’ and commented that this enabled the end user to have the pallet racking adjusted to their particular needs. The ADC stated that it ‘considered any steel pallet racking components that are adjustable as required, regardless of whether an item is limited in its adjustability, fall within the scope of the goods description’.¹⁰
41. In relation to whether the exported goods are like those manufactured by the Australian industry, REP 441 found that the steel pallet racking produced in Australia by Australian industry members have characteristics closely resembling those of the goods under consideration and are ‘like goods’ to the goods exported to Australia.¹¹ It based this decision on the following:

‘Physical likeness: both the imported and locally produced steel pallet racking, once assembled are manufactured to meet Australian Standard AS 4084-2012.

Commercial likeness: both the imported and locally produced steel pallet racking directly compete in the same markets. This was confirmed by reference to tenders whereby buyers are willing to switch between Australian and imported steel pallet racking.

⁹ Issues Paper: The Goods and Like Goods, 4 February 2019 page 7.

¹⁰ Issues Paper: The Goods and Like Goods, 4 February 2019 page 7.

¹¹ REP 441, Section 3.7

Functional likeness: steel pallet racking is used primarily for the storage of palletised goods. Both the locally produced and imported steel pallet racking are used in this manner.

Production likeness: the ADC confirmed during its verification visits to Chinese and Malaysian exporters and the Australian industry members visited that steel pallet racking is produced in a similar manner and using similar raw materials.’

42. The ADC found that the steel pallet racking produced by Dematic possesses the same essential characteristics as the imported steel pallet racking. It commented that this is regardless of whether individual components are readily interchangeable. On this basis, it considered that the Australian industry produced like goods to the exported goods from China and Malaysia.
43. The ADC found that the goods imported by One Stop and by Abbott, are the goods subject to the investigation and the Australian industry, Dematic, produces like goods.
44. The ADC referred to a number of submissions from various interested parties (including Abbott and One Stop) in both the Issues Paper and REP 441.¹² The Commissioner also noted that the overseas supplier of steel pallet racking participated in this investigation (referred to by Abbott), and in its REQ, identified the goods exported to Australia and purchased by importers as goods subject to the application.
45. The ADC also commented that ‘the purpose of a steel pallet racking system is to assemble it in a multitude of configurations that can be adjusted as required. The Australian Standard AS 4084-2012 defines adjustable pallet racking and the Commissioner notes that Abbott Storage claims that its pallet racking is adjustable and is manufactured to AS 4084-2012.’
46. Abbott’s submission in response to the Issues paper claims that the ADC has made a number of errors. It disputes that: its braces, beams and uprights can be adjusted

¹² Issues Paper: The Goods and Like Goods, 4 February 2019, pages 3 to 4 and pages 6 to 7.

to a high degree: it says ‘the majority of dimensions and aspects of the system are not able to be adjusted at all’.¹³ It claims that the uprights cannot be adjusted, the physical dimensions of the beams cannot be adjusted, the height position of the beams can be adjusted in a distinctly limited way once assembled, the dimensions of the braces cannot be adjusted. It claims that the word ‘adjustable’ is not in the goods description as the exact wording is ‘can be adjusted as required’.

47. The ADC finding in REP 441 is that ‘it is the steel pallet racking that is of *dimensions that can be adjusted as required*, not the individual components’ (ADC emphasis). The ADC further stated ‘The requirement for the pallet racking to be *adjustable as required* does not necessitate the ability to infinitely position and reposition beams and braces at specific precise heights. All pallet racking systems observed by the Commission, including Abbott Storage’s, feature evenly spaced slots along the upright upon which beams, and braces can be placed at the required height and adjusted to a different height as required’.¹⁴
48. The ADC indicated it was satisfied that the steel pallet racking imported by Abbott Storage and by One Stop are the goods subject to the investigation and are as described in the Reviewable Decision.

Submissions

49. Abbott and One Stop have made a number of submissions to the Review Panel with similar claims:
- questioning whether Dematic’s application is an ‘ambit claim’ made against a ‘range of goods’ which it claims is not the intention of the Act (s.269TB(1)). Both propose that Dematic did not reference any particular consignment in its application and questions whether the Reviewable Decision, that is, whether dumping caused material injury can be addressed, if the primary

¹³ EPR 441/105 Letter from Abbott dated 22 February 2019 to the ADC.

¹⁴ REP 441 Sections 3.5.1 and 3.5.7

question of whether there was a particular consignment was not properly dealt with.¹⁵

- claiming that the Commissioner has not applied the correct tests in assessing the 'likeness' of the goods. Abbott and One Stop both state that its imports are not like goods to the steel pallet racking manufactured by Dematic.¹⁶
- The goods the subject of the investigation (see paragraph 10 above for the description of the goods), do not exist and thus the description of the goods in the dumping duty notice is fundamentally flawed.

50. Abbott provided an additional submission regarding statements made in the Dematic submission.¹⁷ Abbott clarifies comments made by Dematic and restates that its imports into Australia are pallet racking and that Abbott is challenging whether the goods described in the Reviewable Decision exist and are in the Australian market.

51. One Stop submission states that:

the 'dimensions' of a pallet racking system and importantly, the dimensions of the parts of a pallet racking system (eg, beams uprights and bracing etc.) cannot physically or otherwise be 'adjusted as required'. The 'dimensions' are what they are and cannot be adjusted any more than the 'dimensions' of any other product can be 'adjusted'.

The shelving of a pallet racking system may be varied upwards or downwards but the horizontal and vertical beams cannot be adjusted. They are physically fixed and, consequently, as is the pallet racking system in this regard.¹⁸

¹⁵ Submission One from Abbott dated 26 July 2019 and submission from One Stop dated 15 July 2019.

¹⁶ Submission Two from Abbott dated 26 July 2019 and submission from One Stop dated 25 July 2019.

¹⁷ Ibid.

¹⁸ Submission from One stop dated 15 July 2019.

52. The ADC, in its submission, indicates that it disagrees with One Stop's position that the ADC applied the wrong test when assessing 'like goods'.¹⁹ It refers to the judgment in *GM Holden Ltd v Commissioner of the Anti-Dumping Commission* which stated 'the definition of "like goods" in section 269T(1) allowed for two alternate assessments, goods which are identical in all respects or, although not alike have characteristics closely resembling the goods under consideration. She continued that it was apparent that the second part of the definition focusses on an assessment of physical characteristics such as composition, raw materials used in composition and their outward appearance and commercial use.'²⁰
53. The ADC stated that it examined whether the goods produced by Dematic possessed physical, commercial, function and production likeness in its assessment of whether there was a close resemblance of Dematic's goods to those being imported (goods under consideration), in its report to the Minister. It considers this follows the reasoning in *Mortimer, J. judgment in GM Holden*.
54. There were four individual submissions that were identical in text as follows:

Based on our experience and knowledge of the industry and of Steel Pallet Racking itself, we are supportive of grounds raised and in particular we affirm the following:

- *Steel Pallet Racking is not able to be matched to the "description of the goods" subject of the Reviewable Decision (ADN 2019/45); and*
- *the goods as described in the "description of goods" the subject of the Reviewable Decision (ADN 2019/45) do not actually exist, are not able to be manufactured; and*
- *Steel Pallet Racking that actually exists, including that which is manufactured abroad, is correctly described and accurately represented below:*

¹⁹ Submission from the ADC dated 29 July 2019, page 11.

²⁰ *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 124.

Steel pallet racking storage system comprising upright frames perpendicular to the aisles and independently adjustable, positive locking pallet beams parallel to the aisles, spanning between the upright frames, and designed to support unit load actions. The system and/or parts of the system (whether assembled or unassembled) are not of dimensions that can be adjusted as required. Any adjustment capacity of the system is distinctly restricted from being adjusted “as required” by incremental limitation, engineering limitation, other physical limitation and/or applicable standards. Every required adjustment that does not exactly match the incremental limitation of the system and fall within the engineering and physical limitations of the system (and fall within the criteria of any applicable standard that may form part of the requirement) cannot be performed or cannot be performed without remanufacture.²¹

I note that this wording mirrors the words used in Abbott’s review application: see paragraph 32 above.

55. Abbott provided additional clarification regarding its view that the ‘goods description’ is flawed in the Reviewable Decision.²² It emphasises the dimensions of any steel pallet racking system and its component parts are determined prior to manufacture. It states that these are unchangeable once manufactured and can only be changed with re-engineering. It goes on to state:

Whilst the as-built layout of some steel pallet racking systems can be adjusted to suit particular end user needs by moving beam levels upwards or downwards into pre-determined fixture points, subject to acceptable engineering and safety constraints, including as set out in Australian Standard AS 4084-2012, this is a very different matter to the ‘dimensions’ of the pallet racking system itself being adjustable as required.

Abbott also highlights that the Australian Standard imposes safety restrictions on the adjustable pallet racking system and prohibit it from being adjusted as required.

²¹ Submissions from Tong Li Equipments Co., Ltd, Modular Storage Systems, Instant Racking and Steel Shelving, and Central Storage Systems Int. Group Pty Ltd – see Appendix Two.

²² Submission from Abbott dated 26 July 2019.

Analysis

56. The primary issues claimed by both Abbott and One Stop regarding like goods is whether the goods the subject of the goods description in the Reviewable Decision:
- exist as described;
 - are manufactured in Australia;
 - are the goods exported to Australia from China and Malaysia; and
 - whether the Australian produced goods are like goods to those exported from China and Malaysia.
57. While it appears the applicants agree that the goods exported to Australia are adjustable steel pallet racking, the main thrust of their claims relates to whether the inclusion of the words in the goods description 'of dimensions that can be adjusted as required' can be construed to have the same meaning as adjustable steel pallet racking. Their claim is that this phrase impacts the entire goods description. One Stop (and supported by Abbott) has also raised some additional aspects relating to whether the examination by the ADC of the characteristics was the correct legal approach and whether there was sufficient focus on the differences between its steel pallet racking system and Dematic's.
58. As stated in *GM Holden* 'like goods' is a key decision in the consideration of s.269TG(1) as it involves consideration as to whether any consignment of goods to which the application in s.269TB relates have been dumped and caused material injury to an Australian industry.²³ It is therefore important to examine what the applicant specified as the 'consignment of goods'.
59. Dematic's application describes the goods the subject of the application and includes as part of that description 'additional supporting information'.²⁴ These

²³ *GM Holden Limited v Commissioner of the Anti-Dumping Commission and others* [2014] FCA 708, Mortimer, J., 4 July 2014 VID 555 of 2013, paragraph 29.

²⁴ Extract from Dematic's application, section A-3, EPR 441/001.

words have been mirrored in the public notice initiating the investigation in REP 441 and in the Reviewable Decision (see paragraph 10 above).

60. The description of the goods was provided to all exporters. I examined a sample of the REQ (from cooperating exporters and JRack). Each had responded to the ADC indicating that they did supply goods meeting the above goods description. As referred to above, JRack subsequently made a submission indicating that it exported adjustable steel pallet racking. It did not supply products that had 'dimensions that can be adjusted as required'. Therefore, at least initially, it was commonly understood by the exporters that the steel pallet racking they were exporting to Australia were the goods under consideration.
61. The relevant standard (referred to in the goods description) has similar wording to the goods description used in Investigation 441. An extract of AS 4084 – 2012 is outlined as follows: 'adjustable static pallet racking made of cold rolled or hot rolled steel structural members. It covers racking installed within a building, outside a building and racking that forms part of a frame of a building.' It also states that the, 'storage system comprising upright frames perpendicular to the aisles and independently adjustable, positive locking pallet beams parallel to the aisles, spanning between the upright frames, and designed to support unit load actions.'²⁵
62. I considered earlier judgments that dealt with the issue of 'like goods'. While neither dealt with the exact issue being raised in this review, they both provide guidance on the principles of interpretation of 'like goods'. In the Marine Power Australia judgment, Lockhart, J. stated that:

The expression "like goods" defined in s.269T should not be interpreted in a narrow or restrictive manner. It means goods of the same general category.'
and

'Words in statutes should be taken to have been used by the legislature in their ordinary sense unless there is something in their context, phrasing or the

²⁵ Extract of the AS 4084-2012 Sect 1 cl 1.1 [partial]; Cl 1.3 subclause 1.3.1. © Standards Australia Limited. Copied by the Department of Industry, Innovation and Science with the permission of Standards Australia and Standards New Zealand under Licence 1909-c071.

*subject matter with which they deal to lead to the conclusion that they are intended to assume a technical meaning or to be used in a specialised or trade sense.*²⁶

63. In GM Holden judgment, Mortimer, J., considered, amongst other matters, the proper construction and application of the term ‘like goods’. She stated that:

*...the assessment whether there is an “Australian industry producing like goods” (ss269TG(1)(b)(i) and 269TJ(1)(b)(i)) is but one of many factual determinations for the Minister which arises in the course of his consideration whether to exercise the power to issue notices or not.*²⁷

‘This is reinforced by the use of the word “characteristics” in the alternative assessment of the goods themselves, including but not limited to their appearance. Characteristics would include, for example, the composition of the goods, the materials used to manufacture them, their outward appearance and the uses for which they were suitable in a commercial and practical sense.

‘The statutory question was a practical one to be answered by a comparison predominantly of the physical characteristics of and uses for the products produced by the Australian industry...’²⁸

64. Mortimer, J. also considered the manner in which the CEO addressed physical likeness, commercial likeness, functional likeness and production likeness in the decision as to whether the good manufactured by the Australian industry and the goods exported to Australia were ‘like goods’. She concluded *‘that there is nothing in the construction of the phrase “like goods produced by the Australian industry” which precluded the approach taken by the CEO in Report 181...’*²⁹ This framework

²⁶ *Marine Power Australia Pty Ltd and Another v Comptroller General of Customs and others* (1989) FCA, Lockhart, L., 9 June 1989, unreported, paragraph (v) page 562 and page 572.

²⁷ *GM Holden Limited v Commissioner of the Anti-Dumping Commission and others* [2014] FCA 708, Mortimer, J., 4 July 2014 VID 555 of 2013, paragraph 117 and 123.

²⁸ *GM Holden Limited v Commissioner of the Anti-Dumping Commission and others* [2014] FCA 708, Mortimer, J., 4 July 2014 VID 555 of 2013, paragraph 134.

²⁹ *Ibid* paragraph 139.

(an assessment of physical, commercial, functional and production likeness) is the same approach adopted by the ADC in REP 441.

65. *Marine Power* suggests that like goods should not be interpreted too narrowly and that words should be taken as their ordinary meaning unless a contrary intention is expressed. *GM Holden* suggests that a practical approach should be adopted when considering like goods and that the type of framework adopted in that case (same framework as in REP 441) enables a comparison of the characteristics to determine whether the exported goods are like goods to the Australian manufactured goods.
66. As referred to above, while there appears to be general agreement that adjustable steel pallet racking is the goods being exported, the area of dispute focuses on one phrase in the goods description 'dimensions that can be adjusted as required'. I have examined the dictionary meanings of 'dimensions' and 'adjusted' as follows:³⁰ 'Dimension' means a measurable extent of any kind, as length, breadth, depth, area, and volume or a measurement of something in a particular direction, especially its height, length or width. 'Adjusted' means arranged; put in correct order or position or to change something slightly, especially to make it more correct, effective or suitable.
67. A simple construction of these words means steel pallet racking that has length, height, breadth or depth, that can be arranged or changed to be more suitable or correct position. The ordinary reading of the words 'dimensions that can be adjusted as required' supports the view that the goods description conveys the same meaning as adjustable steel racking.
68. I note:
- that both the Australian produced goods and the imported goods from Malaysia and China are said to meet the relevant Australian Standard (AS4084 – 2012 Steel storage racking);

³⁰ The Australian Concise Oxford Dictionary, Fourth Edition, Oxford University Press, 2004 and Cambridge Dictionary.

- the definition of adjustable pallet racking in the Australian Standard is very similar to that used in the description of the goods in the Reviewable Decision and that expressed by Abbott (paragraph 32);
- the goods description includes two sections, the initial description and further information. This has been used in all documentation relating to this investigation. It is appropriate to consider the entire goods description in assessing whether goods produced by the Australian industry are like goods to those exported to Australia, not just the initial description;
- the goods description makes clear that adjustable steel pallet racking are the goods under consideration, notwithstanding that one phrase includes words that the 'dimensions can be adjusted as required'. This accords with the ordinary meaning of the words;
- the interpretation expressed by the ADC in REP 441 is that it is the steel pallet racking that is of dimensions that can be adjusted as required, not the individual components;³¹
- all pallet racking systems observed by the ADC featured evenly spaced slots along the upright upon which the beams and braces can be placed at the required height and adjusted to a different height as required. I also note that Abbott's statements that once installed that it should not be altered. Abbott refers to the Australian Standard in this regard. It does not, however, mean that the goods are unable to be adjusted to different heights, if undertaken in accordance with the Australian Standard;
- the analysis undertaken in relation to like goods in the Issues Paper on Like Goods explored the various issues raised by different parties;
- that certain pallet racking systems do have slightly different design features. This does not detract from the fact that these goods all compete in the same market and are classed as adjustable steel pallet racking; and

³¹ REP 441 page 17.

- that the exporters who completed the REQ, responded with details of the goods they considered met the good description as described in Dematic's initial application.
69. While it may be argued that some of the wording in the 'goods description' is awkwardly expressed, it is my view that the goods description should be read in its entirety. If this is done, it is apparent that adjustable steel pallet racking (or parts thereof, assembled or unassembled) is the goods being considered in REP 441 and the subject of the Reviewable Decision.
70. I do not consider the phrase 'dimensions that can be adjusted as required' is meant to restrict the goods covered or specify a particular type of pallet racking system. As *Marine Power* suggests 'like goods' 'should not be interpreted in a narrow or restrictive manner'. In my view it is meant to convey that the pallet racking system can be adjusted, that is, it has some dimensions that can be changed, if not all of them. Accordingly, I do not think one phrase should detract from the overall and ordinary meaning conveyed by the goods description. There is no clear intent to provide a specialised meaning to these words in the goods description. In this case, adjustable steel pallet racking are the intended goods.
71. For the reasons outlined above I do not agree with Abbott or One Stop that the goods exported to Australia are not the goods as described in the 'goods description'. Additionally, I do not agree that the use of the words 'dimensions that can be adjusted as required' in the goods description means that the steel pallet system do not exist and cannot be manufactured, particularly when it is commonly agreed that steel pallet racking is adjustable.
72. In relation to whether the assessment in REP 441 of whether the goods produced by Dematic are 'like goods' to those exported from China and Malaysia, I have examined the information analysed by the ADC. As expressed in the *GM Holden* judgment, the approach taken by the ADC to assess, physical, commercial, functional and production likeness provides a valid means to assess whether the goods are 'alike'.
73. The ADC discussed the legislative framework and the criteria it used, that is 'likeness tests' to assess whether the goods manufactured by the Australian

industry are like the goods imported into Australia (see paragraph 41 above). I do not consider the ADC failed to consider relevant information or placed inappropriate reliance on particular information in its consideration of the issue of like goods.

74. I have reviewed this information (referred to in paragraph 41) and agree with the ADC findings as to similarities in characteristics and this enables the goods produced by Dematic to be considered 'like goods' to those exported to Australia from China and Malaysia. Accordingly, I do not agree with Abbott or One Stop that the ADC asked the wrong legal question or adopted an inappropriate approach to its assessment of whether the goods manufactured by Dematic were like goods to the goods exported to Australia.
75. Both One Stop and Abbott also submitted that due to the flawed goods description the investigation should not have been accepted. The Review Panel is required to review the Reviewable Decision only. It does not have jurisdiction to assess the correctness of the initiation process. However, it can deal with whether 'like goods', the subject of the Reviewable Decision, has been correctly determined. This has been addressed in the earlier paragraphs. Therefore, I make no further comment on the initiation of the investigation.
76. In relation to the issue raised by Abbott regarding whether the ADC had properly considered the submission by a supplier (identified as JRack from submission EPR 441/094) relating to its statement that while it did export adjustable steel pallet racking it did not consider its steel pallet racking is not of 'dimensions that can be adjusted as required.'³²
77. In the Issues Paper, the ADC did footnote that one of the submissions it had considered was that of JRack (EPR 441/094). However, the ADC did not specifically refer to the JRack comments in REP 441.
78. I do not agree with Abbott's comment that this lack of acknowledgement by the ADC is of note. These statements made by JRack were similar to comments made by other parties. These claims were specifically dealt with in the Issues Paper on Like Goods. The ADC subsequently invited further submissions and provided opportunity

³² EPR 441/094 Submission to the ADC from JRack dated 24 December 2018.

for parties to provide further comment on its findings in relation to like goods. A number of parties did so, including Abbott and One Stop.

79. It appears to me that the ADC considered the contents of JRack's comments as well as other parties and concluded that it is the pallet racking system that is adjustable not necessarily individual components. This issue has been considered by the ADC and is not outstanding.
80. Abbott also raised an issue about the potential during the import clearance process of declaring whether the goods being imported meet the goods description. This is not an issue relating to the Reviewable Decision. On this basis, I make no further comment except to flag that the ADC provided comment on this process in REP 441.³³
81. For the reasons outlined in the preceding paragraphs, I do not agree that either Abbott or One Stop have demonstrated that the goods produced by Dematic are not 'like goods' to those exported to Australia from China and Malaysia. I also do not agree that the interpretation of the goods description should be read to mean that each of the dimensions of the pallet racking system need to be able to be adjusted as required. I agree with the ADC conclusion that it is the pallet racking system that is adjustable that gives effect to the wording in the goods description. For this reason, I do not agree that the goods the subject of the goods description do not exist or are not manufactured in Australia. On this basis, the grounds from Abbott and One Stop relating to like goods fails to establish that the Minister's decision was not correct or preferable.

Did Dumped Goods Cause Material Injury

82. Abbott and One Stop have made similar claims in relation to whether dumped 'like goods' caused material injury to the Australian industry. For this reason, this report will deal with these claims together and will highlight any specific issues from parties.

³³ REP 441 Section 3.5.1, page 18.

83. In order to impose dumping duties, s.269TG requires that the Minister must be satisfied that, because of the dumping, material injury has been, or is being caused, or has been threatened to the Australian industry producing like goods.

Claims:

84. One Stop proposes that there is contradictory evidence in the analysis of sales revenue and price undercutting that does not support the ADC findings that the Australian industry experienced material injury from dumped exports. It suggests that while Dematic may have experienced a downturn in sales revenue, the other Australian industry member who provided information, APC Storage Solutions Pty Ltd (APC Storage) did not. One Stop proposes that the investigation period chosen followed a period of high growth of Dematic sales and what followed may have been a natural downturn in view of other factors in the market.
85. One Stop suggests that other factors, such as:

- the close-down of Masters;
- the associated re-sale of second-hand steel pallet racking; and
- quality/functionality/style of the product and the lack of interchangeability of 'Colby' uprights and beams with other pallet racking systems that impact purchasing decisions;

may have impacted the Australian market and was the cause of injury to Dematic, rather than dumped exports.

86. Abbott's claim is that as the goods it imports are not 'like goods' to that described in the Minister's decision, its imports could not be causing material injury to the Australian industry. See also the earlier ground related to 'like goods'.

ADC findings

87. The ADC in REP 441 indicated that Dematic accounted for around two thirds of the Australian production volume and value of steel pallet racking during the investigation period. It therefore considered Dematic's economic performance likely

to be representative of the entire Australian industry. It also included APC Storage data in its analysis when this information was available.

88. In assessing the Australian market, the ADC noted there were two sectors of the steel pallet racking: the Project and the Distribution sectors.³⁴ A major portion of Dematic's sales were to the Project sector and all APC Storage sales were to this sector. It noted the vast majority of goods imported from China and Malaysia were sold into the Project sector. The ADC identified some issues in its analysis of Project Sector sales as this included other charges, for example, project management and installation. However, it selected certain projects developed from a list of projects (from importers and the Australian industry members) and drilled down to price information for the steel pallet racking only to address such issues.
89. The ADC advised that its analysis of material injury focused primarily on sales in the Project sector, as:
- *small volumes of steel pallet racking imported at dumped prices were sold into the distribution sector; and*
 - *the volume of steel pallet racking sold by the Australian industry into the distribution sector was considerably lower than its sales into the project section over the injury analysis period.*³⁵
90. The ADC indicated that APC Storage's sales revenue increased from YE Sept 2014 to YE Sept 2015 and remained stable for the remainder of the injury analysis period. During this period, Dematic's sales revenue increased also from YE Sept 2014 to YE Sept 2015 then decreased in YE Sept 2016 and continued this decline in YE Sept 2017. When aggregated, the total sales revenue for Dematic and APC Storage was lower in the investigation period than in the previous year of the injury analysis period.
91. The ADC assessed whether injury was caused by factors other than dumping. The ADC considered the impact of the closure of the Masters stores in December 2016

³⁴ The ADC noted that sales into Project Sector are generally for larger warehouse storage solutions and are significantly greater than sales into the distribution sector (REP 441 Section 5.3).

³⁵ REP 441, pages 72 to 73.

and the sales of the 'second-hand' steel pallet racking from these stores. The ADC acknowledged 'that the volume of second-hand steel pallet racking in the market may have caused some injury to the Australian industry, particularly in the distribution market'.³⁶ However, the ADC indicated that the evidence suggested that there are differences between the second-hand market and the 'new' market. In addition, it noted that 'material injury was apparent in relation to the Project sector where Dematic and APC Storage compete directly with the dumped imports from China and Malaysia'.

92. The ADC also commented that Masters had not opened any new stores since early in 2015. It considered that while its closure may have had some adverse impact on Dematic's sales volume in the injury analysis period, there was evidence that Dematic had lost sales volumes in the investigation period, unrelated to Masters.
93. The ADC concluded that dumping of steel pallet racking from China and Malaysia caused material injury to the Australian industry during the investigation period as:
 - the margin of dumping was between 4.6 per cent to 110.3 per cent, and these enabled exports of steel pallet racking to be offered at lower prices than would otherwise been the case;
 - the volume of dumped goods from China and Malaysia increased by approximately 135% during the injury analysis period (and this growth continued in the investigation period) and accounted for approximately two thirds of the Australian market in the investigation period;
 - there were significant decreases in the market share of the Australian industry (44 per cent to 26 per cent between YE Sept 2016 and YE Sept 2017); and
 - there was evidence of Australian industry selling at prices that were depressed and suppressed by competition with dumped goods.

³⁶ REP 441 page 79.

Submissions

94. One Stop made a submission regarding whether the report to the Minister addressed the issue of whether there are goods imported into Australia that meet the description of the goods the subject of the notice.³⁷ It also questioned whether the analysis undertaken of price undercutting and causation of injury is valid. It claims that the imports by One Stop do not undercut Dematic's prices but rather Dematic is undercutting One Stop's prices and this information was supplied to the ADC and to the Review Panel. It suggests that the prices to end-users should have been examined by the ADC.
95. One Stop made an additional submission that draws attention to the analysis undertaken by the ADC in Section 7 of REP 441. It suggests that the ADC had not addressed the differences in sales revenue performance between Dematic and APC (Australian industry) properly. One Stop restates its claims addressed in its review application.³⁸
96. In its submission, the ADC restated its findings from REP 441 relating to material injury with specific reference to the grounds in One Stop's review application.³⁹ It indicated that One Stop has reiterated claims made during the ADC's investigation of the matter. The ADC further stated that the available evidence revealed there was limited competition between the second-hand market and the new steel pallet racking markets. It confirmed its findings that material injury was caused by dumped imports from China and Malaysia.

Analysis

97. Abbott's claim relies on its view that the goods described in the Minister's decision do not exist and are not manufactured in Australia. On this basis Abbott states that such goods could not be causing material injury. Given my conclusions in the earlier ground that the goods manufactured in Australia are like goods to those exported from China and Malaysia and that such goods meet the goods description in the

³⁷ Submission from One Stop dated 25 July 2019.

³⁸ Submission from One Stop dated 26 July 2019.

³⁹ Submission from ADC dated 29 July 2019, pages 9-12.

Reviewable Decision, this claim fails. Its claim remains as to whether the dumped goods caused material injury.

98. Whether dumping caused material injury has been considered in a number of judgments. As stated by the Full Court in *ICI*⁴⁰:

'The provisions of the subsection, read with s.269TG(1), make clear that the subject matter of s.269TG(1) is not material injury to an Australian industry in the abstract, but material injury causally connected to, "by reasons of" or "because of" dumping.' and

'Where the Australian industry under consideration has suffered detriment from a number of causes, it will be necessary for the Minister to be satisfied that the industry has suffered detriment sufficient to meet the description "material injury" within the meaning of the legislation in consequence of the dumping of goods that have been exported to Australia, and to quantitatively separate that material injury from detriment caused by other factors.' and

'Whether the Australian industry has suffered detriment from a number of probable causes the section requires a determination whether there was separate material injury, or any material incremental injury (as to which see CA Ford Ltd trading as Caford Castors v Comptroller-General of Customs and Anti-Dumping Authority at 16-17), caused by the dumping over and above detriment caused by other factors.'

99. In *Swan Portland Cement*, Lockhart, J. indicated:

*'...it is essentially a practical exercise designed to achieve the objective of determining whether, when viewed as a whole, the relevant Australian industry is suffering material injury from the dumping of goods.'*⁴¹

100. The Ministerial Direction on Material Injury 2012 provides additional guidance on the interpretation of material injury. It states that consistent with Australia's obligations

⁴⁰ *ICI Australian Operations Pty Ltd v Donald Fraser and Others* [1992] FCAFC 564, Black CJ, Neaves and Von Doussa JJ, 106 ALR 257 pages 264 to 265 and page 271.

⁴¹ *Swan Portland Cement Limited v Minister for Small Business and Customs* [1991] FCA 49, 28 FCR 135, paragraph 144.

under the World Trade Organization (WTO) ADA, it should be shown that the industry is suffering injury that is material (not immaterial, insubstantial or insignificant) and it must also be greater than that likely to occur in the normal ebb and flow of business. The Direction also states: *'However, I direct that dumping or subsidisation need not be the sole cause of injury to the industry'*.⁴²

101. For the purposes of s.269TG(1) of the Act (the Reviewable Decision), the investigation period is the one to be assessed for the purposes of establishing whether dumping has caused material injury as expressed in Pilkington.⁴³ Section 269T(2AD) makes clear that for the purposes of determining whether material injury has been caused earlier periods than the investigation period may be examined.

Sales revenue and the market

102. One Stop's first claim is that the ADC did not correctly analyse the sales revenue information as Dematic shows a decrease in sales revenue, but APC Storage was showing an increase. It suggests that sales revenue for the Australian industry was increasing and hence this does not demonstrate the Australian industry was experiencing material injury. One Stop suggests that Dematic had previously been experiencing a high growth period and the decline is part of the natural ebb and flow of business.

103. The ADC, in REP 441, stated that the 'aggregate sales revenue for Dematic and APC Storage domestic sales of steel pallet racking was lower in the investigation period than in any previous year of the injury analysis period'.⁴⁴ The ADC noted that Dematic's total sales volumes declined significantly in the investigation period when compared with the previous year.

104. I have reviewed the evidence used to develop the Australian industry sales revenue analysis. There does not appear to be any error in the calculation of the total revenue of the Australian industry, nor in the analysis of trends. It is apparent that total sales revenue decreased in the investigation period and was lower than the

⁴² Ministerial Direction on Material Injury 2012.

⁴³ *Pilkington (Australia) Ltd v Minister of State for Justice and Customs* [2002] FCAFC 423, paragraph 108.

⁴⁴ REP 441, Section 8.91, page 77.

earlier years. This is consistent with the ADC's comments in REP 441. Therefore, I do not agree with One Stop's claim that the Australian industry's aggregated revenues were increasing during the investigation period.

105. I also observed that the Australian market (in terms of volumes) was increasing during the period, that is, between YE Sept 2015 to YE September 2017.

106. It is apparent that Dematic sales revenues commenced decreasing in YE 2016 and continued in YE 2017, against a background of a growing Australian market. During the investigation period, the market share of dumped imports from China and Malaysia moved to approximately two thirds of the Australian market.⁴⁵ This suggests that the Australian industry was losing market share to the exports from China and Malaysia.

107. In addition, the ADC observed evidence of lost sales relating to tenders and supply contracts from exports from China and Malaysia during this period. The ADC noted that the Australian industry looked to maintain or decrease prices during this period to meet the prices of the dumped goods but continued to experience decreasing sales revenue. The information relating to market share, sales volumes and prices is included in Confidential Attachment 6 to REP 441. On this basis, it is reasonable to conclude that dumped exports from China and Malaysia were impacting the Australian industry sales and market.

108. As referred to in paragraph 101 above, it is appropriate for the ADC (and the Minister) to consider whether the dumped goods have caused material injury during the investigation period. The fact that earlier periods may have been higher growth periods does not preclude an assessment of material injury being caused by dumped goods during the investigation period. The Ministerial Direction makes clear that while the injury 'must be greater than that likely to occur in the normal ebb and flow of business'⁴⁶, it has to be considered in the circumstances of the particular case. This requires judgements to be made regarding the overall situation in the market during the investigation period.

⁴⁵ REP 441 Section 8.5 Volume Effects, page 75.

⁴⁶ Ministerial Direction on Material Injury 2012, paragraph 6.

109. One Stop suggests that there was a natural ebb and flow in operation as Dematic had been experiencing higher sales in earlier periods. However, it is apparent that the decline in sales revenue had commenced earlier in the injury analysis period and increased substantially in the investigation period. It is not apparent that this is the normal ebb and flow of the market, particularly in the context of an increasing market size. I find no error in the ADC assessing the total sales revenue in the investigation period and comparing this to the injury analysis period.
110. In relation to One Stop's claim that there was price undercutting by Dematic during the period in question, its claim appears to be centred on one transaction involving a Dematic product where it indicates that it paid more for an imported product than the Australian product.
111. It is difficult to draw any conclusions from this information as it is only one instance with limited details regarding the level of trade or circumstances of the sale.
112. I have considered the price undercutting analysis undertaken in Confidential Attachment 6 Price Effect – Assessment of Material Injury (REP 441). This reveals the evidence analysed by the ADC relating to tenders won and lost during the investigation period. This suggests that Dematic was decreasing its prices to meet the market and that price undercutting was occurring due to the dumped exports from China and Malaysia. I do not consider that the ADC ignored relevant evidence relating to price undercutting. The evidence does not suggest that Dematic was undercutting prices as proposed by One Stop.
113. One Stop also made a claim that prices to end-users should have been examined. I am somewhat uncertain as to what this refers. I have assumed it relates to whether the correct level of trade was evaluated by the ADC in assessing sales by importers and the Australian industry.
114. I have examined Confidential Attachment 6 Price Effect – Assessment of Material Injury (REP 441) which summarises for the investigation period the list of projects considered with pricing information for steel pallet racking (from importers and the Australian industry members) and the tenders won and lost. It is apparent that the ADC identified some level of trade differences in the information and incorporated these differences in its analysis. Therefore, it appears that the ADC has made

comparisons of sales at the appropriate level of trade for importers and the Australian industry and these were primarily to end users.

115. I also examined the information relating to increasing unit costs for Dematic during investigation period and the trends in profits and profitability during the injury analysis period and the investigation period. This evidence supports the findings in REP 441 regarding material injury being experienced by Dematic.

116. One Stop claims that insufficient focus was placed by the ADC on its concerns regarding the quality and functionality of the Australian industry product and whether this impacted purchasing decisions of end users rather than exports from China and Malaysia. No specific evidence was provided by One Stop in this respect. The ADC addressed this issue in its commentary on price effects.

117. As a general observation, it is normal behaviour in the market for end users to have preferences for particular products. Without specific instances of quality concerns, it is not possible for the Review Panel to draw any conclusions on this claim.

Second-hand market

118. One Stop claims that the ADC has not properly considered the impact of the availability of second-hand pallet racking on the market following the closure of Masters stores.

119. The ADC described the market and indicated its reasons for focusing on the Project sector of the Australian market in its assessment of material injury. The ADC noted the differences between the Project and Distribution sectors for steel pallet racking. It found that these sectors service different end-users in the market and concluded that second-hand steel pallet racking was more likely to affect the Distribution Sector.⁴⁷ It noted that there may be some injury to Australian industry caused by the second-hand market, but the impact was primarily in the Distribution market. Given the description of the differences between the Project and Distribution sectors, I agree with the ADC's conclusion that buyers in the Project sector were not necessarily going to seek to purchase the second-hand racking.

⁴⁷ REP 441, Section 8.10.1, page 79.

120. The ADC proposed that given:

- the majority of Dematic's sales;
- all of APC Storage's sales; and
- the majority of goods imported from Malaysia and China

were to the Project sector this should be the focus of the material injury analysis.⁴⁸

121. I have reviewed the ADC assessment of the Project sector and do not consider this approach was unreasonable. The evidence of decreasing sales revenue in this sector in the investigation period (and the extent of the changes when compared with the injury analysis period) supports the conclusions drawn by the ADC that the Project sector is a major market for both Dematic and APC Storage and that the second-hand steel pallet racking sales are unlikely to have had a major impact on the Project sector of the market.

122. However, it is not unreasonable to conclude that there may have been some impacts on prices between the Distribution and the Project sectors due to an increase in the second-hand racking being available as markets are dynamic and respond to a variety of influences.

123. Section 269TG requires the consideration of whether the dumped goods caused material injury. It does not preclude other causes of injury see the comments in paragraphs 98 to 99 from the judgments in ICI and Swan Portland.

124. I have examined the volumes of dumped goods from China and Malaysia (135% increase during the injury analysis period)⁴⁹ together with the changes in market share held by goods from these countries. When this is considered in conjunction with the level of dumping margins and the evidence that prices, sales revenue and profitability are decreasing for Dematic, it is apparent that material injury is being caused by the dumped goods from China and Malaysia. I consider that the ADC

⁴⁸ REP 441, Section 5.3 Market sectors, page 29.

⁴⁹ REP 441, Section 8,12, page 82.

has been able to 'quantitatively separate that material injury'⁵⁰, through its analysis of the Project sector, and this injury has been shown to be caused by the dumped exports from China and Malaysia.

125. Given what has been described above, I do not agree that One Stop and Abbott have demonstrated that material injury was not caused to the Australian industry during the investigation period by dumped exports from China and Malaysia. On this basis, I do not consider the Minister erred in relation to the Reviewable Decision.

Abbott

Ground (a)

The making of the reviewable decision was an improper exercise of power as the Minister erred in deciding there are goods or 'like goods' being dumped and causing material injury to the Australian industry as the goods the subject of the notice do not exist in the Australian market and are unable to be manufactured in Australia.

126. The analysis of this ground has been incorporated in the sections dealing with 'Like Goods' (paragraphs 56 to 81) and 'Did Dumped Goods Cause Material Injury' (paragraphs 97 to 125 above).

Ground (b)

The goods supplied by Abbott do not fall within the description of like goods (in terms of characteristics and features of Abbott's goods: including whether the dimensions can be adjusted as required) and are not like goods as described in the section 269TG(1) and (2) notices signed by the Minister.

127. The analysis of this ground is included in the 'Like Goods' section (see paragraphs 56 to 81).

Ground (c)

The Minister erred in determining that any 'like goods' caused/cause material injury to the Australian steel pallet racking industry.

⁵⁰ *ICI Australian Operations Pty Ltd v Donald Fraser and Others* [1992] FCAFC 564, Black CJ, Neaves and Von Doussa JJ, 106 ALR 257 page 271.

128. The analysis of this ground is included in the 'Did Dumped Goods Cause Material Injury' section (see paragraphs 97 to 125).

JRack

Ground (a)

The Minister erred in accepting the ADC's suggestion by identifying JRack as an uncooperative exporter.

Claims:

129. The applicant, JRack, contends that it made substantial efforts to co-operate in the steel pallet racking investigation by providing its REQ on 16 January 2018 and in its responses to the deficiency letters from the ADC in relation to the REQ. It met with the ADC in Canberra on 21 August 2018 to clarify the cost information submitted to the ADC. It also provided supplementary information on 30 August 2018 and a submission following the publication of the Statement of Essential Facts (SEF 441). It documented the chronology of correspondence and emphasised its willingness to allow a verification visit.

130. JRack explained that it has a 'sophisticated structure' and attempted to prepare and submit the information requested by the ADC in the format required. It noted the number of individual companies that comprised the Group presented significant challenges in meeting the specified time frames of the ADC.

131. JRack claims that the ADC did not comply with subsection 8(b)(ii) of the *Customs (Extension of Time and Non-cooperative) Direction 2015* (Direction) which it says provides that the 'ADC must determine an entity to be a non-cooperative entity for the purposes of s.269TAACA, on the basis that **no relevant information was provided** in a reasonable period'. (JRack's emphasis)

132. JRack claims that it provided relevant information. It refers to the correspondence with the ADC, dated 7 March 2018, which it says confirms that the ADC considered JRacking Group provided a comprehensive response. It also refers to a finding in REP 441 where the ADC stated that JRack's export information was the most relevant information for determining the export price. It questions how the ADC can

consider its information in relation to export price relevant but then treat its information on normal value as being unreliable and not relevant.

133. JRack does not consider it was an uncooperative exporter and claims it should not have been classified as such for the purposes of establishing the dumping margin.

ADC findings

134. The ADC, in REP 441, indicated that JRack provided a REQ but the Commissioner considered that it did not provide information relevant to the investigation.⁵¹ JRack was notified on 18 June 2018, that the Commission had determined that JRack was an uncooperative exporter in accordance with subsection 8(b)(ii) of the Direction and pursuant to s.269T of the Act.

135. The ADC indicated that it had provided JRack with numerous opportunities to address the deficiencies identified in the REQ and provided reasonable time periods. The ADC acknowledged that JRack had provided responses to the deficiency letters. However, 'the Commissioner assessed those responses and considers that the information provided is unreliable and not relevant to the investigation'.⁵²

136. The ADC conducted a 'benchmark verification' as part of its process to determine if the information provided by JRack was relevant and reliable. Its report 'Benchmark Verification Report – Jiangsu Jracking Industry Ltd and Danyang Hengcheng Metal Products Co., Ltd – June 2018' detailed its findings and was placed on the public file.

137. In REP 441, the ADC found that the export sales data was the most relevant information reliable for export price determination under s.269TAB(3) of the Act. However, the ADC found that the most relevant information for determining the normal value pursuant to s.269TAC(6) of the Act was the highest weighted average normal value for the investigation period from the selected (verified) exporters, adjusted for comparison purposes.

⁵¹ REP 441, Section 6.4.3.

⁵² REP 441, Section 6.4.4, page 41.

Submissions

138. JRack provided a submission and it contains similar information to that expressed in its review application.⁵³

139. In its submission to the Review Panel, the ADC noted that JRack 'continued to make revisions to key information in its responses, including cost data' following four deficiency letters and over a period from January 2018 to 12 June 2018.⁵⁴ The Commissioner considered the identified deficiencies had not been adequately addressed and was satisfied that JRack did not provide information considered relevant to the investigation within a reasonable period as outlined in REP 441.

Analysis

140. Section 269T of the Act defines 'uncooperative exporter':

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

(d) the Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or

(e) the Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry.

141. Section 8 of the Direction provides additional guidance in the assessment of whether an exporter is uncooperative:

Relevant information – section 269T:

⁵³ Submission from JRack dated 26 July 2019.

⁵⁴ Submission from ADC dated 29 July 2019, page 6.

- a) *When determining if an exporter is an uncooperative exporter, the Commissioner must consider the legislated period for providing a response to be reasonable period.*
- b) *The Commissioner must determine an exporter to be an uncooperative exporter, on the basis that no relevant information was provided in a reasonable period, if that exporter:*
 - i. *fails, within the legislated period, to:*
 - a) *provide a response; or*
 - b) *request a longer period to provide a response: or*
 - ii. *provides a response within the legislated period that the Commissioner considers did not provide information relevant to the case.*

142. JRack suggests that the test requires ‘no relevant information’ to have been provided. It considers it did provide relevant information.

143. An earlier report by the Review Panel has also dealt with similar circumstances to that expressed by JRack in relation to being treated as an uncooperative exporter. In that case, the exporter provided information and actively communicated with the ADC but was considered by the Commissioner to have provided information that was deficient in some respects.⁵⁵ That report considered the definition of uncooperative exporter in s.269T and noted ‘the definition depends, in substantial part, on the opinion of the Commissioner’. Further, this opinion is formed on the ‘character’ of the particular information before the Commissioner.

144. Subsection 8(b)(ii) of the Direction when read in full provides that the Commissioner must determine an exporter to be uncooperative, on the basis of **no relevant information** being provided if the **exporter does not provide relevant information to the case**. The finding of no relevant information is based on the

⁵⁵ ADRP Report No. 24 Power Transformers exported from the Republic of Indonesia, Taiwan, the Kingdom of Thailand and the Socialist Republic of Vietnam, 30 September 2015, paragraphs 19 to 29.

Commissioner being satisfied that the exporter did not provide information relevant to the case. (emphasis added)

145. The Commissioner formed the opinion that JRack 'did not provide information relevant to the case' which enabled the determination under subsection 8(b)(ii) of the Direction. The full wording of this provision must be read, not only the initial phrase.

146. The Review Panel's role in such circumstances in assessing 'this opinion' is to consider whether there has been inappropriate reliance on particular data or relevant information has been ignored.

147. I have examined the information in REP 441 Confidential Attachment 3, JRack's REQ, the deficiency letters and the responses to those letters from JRack. I am satisfied that:

- the Commissioner provided adequate timeframes (within the statutory period);
- provided suitable deficiency advice to enable JRack to address the gaps in the REQ on multiple occasions;
- assessed and responded to each response from JRack with remaining gaps in the required information; and
- was not unreasonable in its assessment of whether the information required as relevant was appropriate information necessary for the case.

148. While it is apparent that JRack did provide information to the case and endeavoured to be cooperative during the investigation, information gaps remained. The Commissioner indicated that concerns remained as to its reliability and relevance of the information provided given the 'revisions to key information' in its responses to the deficiency letters.⁵⁶ I find that the Commissioner took a reasonable approach to the assessment of whether there was sufficient relevant information provided in

⁵⁶ Submission to the ADC dated 29 July 2019 page 6.

exercising the discretion to treat JRack as an uncooperative exporter pursuant to subsection 8(b)(ii) of the Direction and s.269T of the Act.

149. I do not consider the Commissioner misapplied the relevant Direction or did not properly consider the information submitted by JRack. On this basis, I am satisfied that it was open for the Commissioner to determine that JRack was an uncooperative exporter and this finding was made in accordance with s.269T of the Act and the relevant Direction.

150. This ground fails to establish that the Minister erred in treating JRack as an uncooperative exporter.

Ground (b)

The Minister made an incorrect decision to accept the ADC's assessment and determinations with respect to JRack's cost data.

Claims:

151. JRack submits that the ADC disregarded its costing information (from JRacking Industry and Hengcheng, the two manufacturing arms of JRack) on the basis, that in the comparison with costs for other verified exporters, JRack's costs to make and sell (CTMS) were lower. The ADC then concluded JRack's costs were unreliable. JRack claims this is unreasonable and impacts whether the correct dumping margin was determined.

152. It draws the Review Panel's attention to Article 2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (ADA) that refers to authorities being required to use the records of costs of exporters/producers in circumstances where such records are in accordance with generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated the production and sale of such goods.

153. It states that both JRack Industry and Hengcheng records are in accordance with GAAP of China and are the costs associated with the production and sales of steel pallet racking. It claims it is unreasonable for the ADC to find its costs unreliable and disregard its costs due to being comparatively low cost to other exporters.

ADC findings

154. JRack was initially identified as one of the exporters to be used as part of the sample to be examined, by the ADC. The Commissioner considered that the information provided by JRack, in its REQ and subsequent responses, to be unreliable and not relevant to the investigation. This led to the finding that JRack was an uncooperative exporter.
155. The ADC indicated JRack provided certain information regarding export and domestic sales. This information was used by the ADC to undertake a benchmarking assessment to determine whether the information was reliable and relevant for the purposes of determining a normal value and export price.⁵⁷
156. The ADC found that in relation to normal value, the cost to make (CTM) for goods exported to Australia by the JRack Group was significantly lower than other Chinese exporters. JRack subsequently amended (following a clarification request) the CTMS spreadsheet for Hengcheng goods exported to Australia. The ADC stated that given the omissions and in the context of the benchmark analysis undertaken, the ADC found the CTMS information for the goods exported to Australia unreliable.
157. In REP 441, the ADC indicated that following its assessment of the costing information (from the benchmark report) it considered this information unreliable for the purposes of determining a normal value.

Submissions

158. JRack provided a submission that contains similar information to that expressed in its review application.⁵⁸
159. In its submission, the ADC indicated that pursuant to s.269TAC(7) of the Act, the Minister may disregard any information considered unreliable.⁵⁹ It advised that in the context of the four deficiency letters sent to JRack in relation to its REQ, the Commissioner remained of the view that not all the deficiencies had been

⁵⁷ EPR 441/043 Benchmark Verification Report – Exporter June 2018 and REP 441, page 41.

⁵⁸ Submission from JRack dated 26 July 2019.

⁵⁹ Submission from the ADC dated 29 July 2019.

addressed. He considered this cost data unreliable, and on this basis, disregarded this information for the purposes of the normal value determination. The ADC noted that JRack had met with the ADC in August 2018 and the non-confidential version of this information was placed on the public file.⁶⁰ The Commissioner was not satisfied with the reasons provided by JRack as to its lower costs.

Analysis

160. The assessment of the costing information led the Commissioner to treat JRack as an uncooperative exporter and this had implications for the determination of its normal value.
161. As referred to in the previous ground, I reviewed the information considered by the Commissioner in the assessment of the reliability and relevance of cost data provided to the ADC. The ADC is required to assess the substantive value of that information for the purposes of establishing the normal value. As referred to earlier, I do not consider the Commissioner erred in relation to the assessment of the gaps in the JRack steel pallet racking CTMS information and its decision that the information was unreliable.
162. Section 269TAC(7) of the Act provides that the Minister may disregard any information considered unreliable for the purposes of establishing the normal value.
163. JRack proposes that, in accordance with the obligations under the ADA, authorities are required to use the records of exporters when cost information is in accordance with GAAP and reasonably reflect the costs associated with the production and sale of such goods. While this is correct, it fails to recognise that it entails a decision by authorities that the information reflects the records.
164. In the circumstances of this case, the ADC was unable to make such a judgement. The Commissioner indicated that concerns remained as to its reliability and relevance of the information provided given the 'revisions to key information' in its responses to the deficiency letters.⁶¹ While this information may have reflected JRack's records the ADC was not in a position to make this judgement given the

⁶⁰ EPR 441/057 Presentation by JRack.

⁶¹ Submission to the ADC dated 29 July 2019 page 6.

particular circumstances of this case. JRack suggests that the decision was based on its costs being lower than other exporters. This does not appear to be the case. The ADC indicated that it was concerned regarding whether all the information deficiencies had been addressed.

165. I do not consider the ADC's assessment of the cost data was in error. In these circumstances, it was appropriate for the Minister to disregard information considered unreliable pursuant to s.269TAC(7) of the Act.

166. Accordingly, this ground fails to demonstrate that the Minister made an incorrect decision to accept the ADC's findings in relation to JRack's cost data.

Ground (c)

The Minister erred in accepting the ADC's suggestion of selecting unreasonable data to compute the Ascertained Normal Value (ANV) for JRack.

Claims:

167. This ground relates to the two previous grounds. JRack claims that the Minister erred in determining the ANV by treating JRack as an uncooperative exporter, disregarding its costing information and using the highest weighted average normal value from the selected cooperating exporters.

168. JRack proposes that the ADC should have used the weighted average cost of the three sampled Chinese exporters, rather than the highest cost exporter.⁶² It noted that the ADC made comment in the SEF 441 that 'The Commission is unable to determine whether an average of the other cooperative Chinese exporters' costs is necessarily indicative of JRacking Group's costs' but then uses the highest cost exporter's normal value. It questions how this is any more reliable or appropriate.

169. JRack claims that the ADC should have had regard to the obligations of the WTO paragraph seven of Annex II of the ADA, that when using secondary source information to establish a normal value, authorities should do so with special circumspection.

⁶² Submission to the ADC dated 27 July 2018.

ADC findings

170. The Commissioner treated JRack as an uncooperative exporter. REP 441 outlines that, pursuant to subsection 269TACAB(1), when an exporter is determined to be 'uncooperative' the export price is to be worked out under subsection 269TAB(3) of the Act, and the normal value is worked out under subsection 269TAC(6) of the Act. Both provisions require that the decision be made having had regard to all relevant information.

Submissions

171. JRack's submission contains similar information to that expressed in its review application.⁶³

172. The ADC indicates that s.269TAC(6) of the Act provides the Minister with a discretion to determine the normal value having considered all relevant information. It also references a Review Panel Report 14:

*'The Anti-Dumping Agreement notes that non-cooperation by a party can lead to "a result which is less favourable to that party than if the party did cooperate". This approach is reflected in recent amendments to Part XVB of the Act dealing with the treatment of uncooperative exporters. The exports of the uncooperative exporters are not examined as part of the investigation and the Minister is authorised by the legislation to ascertain the normal value and export price on the basis of all relevant information. There is a wide discretion and there is no obligation to make the analysis as to the comparability of the normal value and export prices for which the Applicant contends. That this may lead to a more unfavourable result for the exporter is a consequence of being found to be uncooperative.'*⁶⁴

173. The ADC advised that the most relevant and reliable information for JRack was the use of the highest weighted average normal value for the investigation period from selected exporters. It noted that it considered two factors. Firstly, as JRack's cost data was unreliable, it could not ascertain whether an average of cooperating

⁶³ Submission from JRack dated 26 July 2019.

⁶⁴ ADC Submission dated 29 July 2019 referenced ADRP Report 14 paragraph 118

exporters would be a more accurate reflection of its actual costs. Secondly, there was a wide range of normal values found for the cooperating exporters. It also noted that Article 7 in Annex II of the ADA, 'if an interested party does not cooperate and thus relevant information is being withheld from an investigation authority, this situation could lead to a result which is less favourable to the party than if the party did cooperate.'

174. On this basis, the ADC determined that the most relevant information for determining normal value pursuant to s.269TAC(6) of the Act for JRack was the highest weighted average normal value for the investigation period from the selected exporters (as adjusted for comparison purposes).

Analysis

175. As referred to in paragraph 170 above, s.269TACAB provides when an exporter is 'uncooperative' the normal value must be determined under s.269TAC(6) of the Act. Section 269TAC(6) provides that the normal value is determined having regard to all relevant information.

176. In such circumstances, the ADC (and the Minister) is required to consider all relevant information. JRack proposes that it needs to be reliable and appropriate. The provision requires that all relevant information be considered, it does not specify that it be reliable and appropriate. Obviously 'relevant information' may also be reliable and appropriate. However, this will depend as to the character and nature of the information available for consideration in a particular case.

177. In SEF 441, the ADC advised that it did not propose to adopt JRack's proposal to use the average of the cooperating exporters' normal values on the basis that this was not necessarily indicative of JRack's costs. In REP 441, the ADC again stated that as JRack had 'failed to provide reliable cost data' it remained unconvinced that an average of cooperating exporters' normal values would necessarily reflect JRack's costs.

178. I have examined the information that the ADC canvassed in SEF 441 and REP 441 as to the relevant information considered in relation to JRack's normal value. The ADC provided its reason as to why an average of the cooperating exporters' normal

values was not regarded as relevant and I do not consider this explanation unreasonable.

179. I understand that JRack would prefer the average of the cooperating exporters' normal values to be used as this would provide a lower normal value. Its claim that 'special circumspection when using secondary source data' does not help JRack's position. It would seem, in my view, that the use of verified exporter's normal value information would be more relevant than using an average of normal values particularly noting the degree of variance.

180. REP 441 describes the material considered in assessing the relevant information to determine the normal value. The decision to recommend to the Minister that JRack's normal value be the highest weighted average normal value of the cooperating exporters as being the most relevant information was open to the Commissioner. I have also noted the Review Panel's comments in Report 14 (see paragraph 172) that there is a 'wide discretion' available to the assessment of normal value to uncooperative exporters. I find no error in this approach.

181. On this basis, this ground fails to demonstrate that the Minister erred in the Reviewable Decision.

One Stop

Ground (a)

The Minister erred in being satisfied that there is an Australian industry producing like goods and whether imports of like goods has been or is being caused or is threatening material injury to the Australian industry. In particular, whether the imports are 'like goods', whether the Australian industry has been correctly identified and whether material injury was caused to the Australian industry by factors other than dumping

Claims:

182. Aspects of One Stop's claims regarding whether its imports are 'like goods' to the Australian manufactured product are dealt with in paragraphs 56 to 81. The claims regarding whether the dumped goods caused material injury, or the injury was

caused by other factors is dealt with in paragraphs 97 to 125 above. The remaining ground is outlined below.

183. One Stop proposes that the companies who make up the 'Australian industry' have not been properly considered (under Australian consumer law), and challenges whether Dematic, who is owned by a German company, should be considered as an Australian industry and whether the required 'percentage' has been achieved.

ADC findings

184. Chapter Four of REP 441 deals with whether Dematic, the applicant for the measures, can be considered as the Australian industry. An application for anti-dumping measures may only be initiated by the Commissioner, if a sufficient part of the Australian industry supports the application.⁶⁵ Those supporting the application must account for not less than 25% of the total production or manufacture of like goods. To be considered an Australian industry, there must be a person or persons manufacturing like goods to those imported. Further, pursuant to s.269T(2) and (3) of the Act, the like goods produced in Australia must have been wholly or partly manufactured in Australia. If partly manufactured in Australia, at least one substantial process of manufacture must have been conducted in Australia.

185. The ADC identified there were six members of the Australian industry producing like goods (including the applicant Dematic). The ADC visited all six and undertook verification visits with Dematic and APC Storage Solutions Pty Ltd (APC Storage). All six manufacturers provided sales information.

186. The ADC found that Dematic accounted for more than 50% of the Australian production and value of steel pallet racking in the investigation period and therefore could apply for anti-dumping measures.⁶⁶

187. In REP 441, the ADC noted that One Stop (and another interested party) questioned whether Dematic had standing to lodge the application. A number of reasons were provided to the ADC by One Stop.

⁶⁵ Pursuant to Section 269TB(6) of the Act.

⁶⁶ Section 4.3.2 of REP 441.

188. The ADC commented that it had applied the provisions of the Act to determine who comprises the Australian industry. In particular, the requirement to produce or manufacture like goods in Australia, with at least one substantial process in the manufacture being carried out in Australia. It also noted that sections 269TB(6(a) and (6)(b) reflect Article 5.4 of the WTO ADA.

Submissions

189. The ADC submitted that the relevant legislative provisions had been considered in determining whether the Australian industry producing like goods had the requisite support as required by s.269TB(6) of the Act. However, the ADC expressed the view that this is not a ground for which the review has been initiated. The ADC also commented that One Stop could not be classified as part of the Australian industry under the relevant Customs Act provisions, as it does not undertake a 'substantial process of manufacture of the goods' in Australia. It remains of the view that the Australian industry has been correctly determined.⁶⁷

Analysis

190. One Stop made similar claims to the Review Panel as submitted to the ADC regarding the Australian industry. These are:

- whether Dematic had sufficient production volumes to be classed as the Australian industry; and
- under Australian consumer law, One Stop and other importers should be considered as part of the Australian steel pallet racking industry and claimed that only two out of 115 businesses supported the dumping application.

191. The Reviewable Decision relates to whether dumped exports have caused material injury to an Australian industry. It is relevant in such circumstances to consider whether there is an 'Australian industry'.

192. I have reviewed the information and analysis undertaken by the ADC in relation to whether Dematic met the relevant legislative provisions to be considered the

⁶⁷ Submission from the ADC dated 29 July 2019, page 9.

‘Australian industry’. The ADC has applied the correct legislative provisions regarding the composition of the Australian industry. Furthermore, the treatment of Dematic as the Australian industry for the purposes of the Reviewable Decision is valid given its production volumes. I find no error in the ADC’s approach.

193. One Stop’s comments regarding whether under Australian consumer law, One Stop would be classified as a manufacturer, is not a relevant consideration under the Act. I note that the ADC has also commented that One Stop would not be considered to perform ‘a substantial manufacturing process’ in terms of the definition of Australian industry in the Act.

194. On this basis, One Stop has not established that the ‘Australian industry’ was incorrectly determined for the Reviewable Decision, and therefore, this ground fails.

Ground (b)

The Minister erred in determining that dumping occurred given the decision regarding the determination of normal value being based on s.269TAC(2)(c) of the Act, when it should have been determined under s.269TAC(1) of the Act.

Claims:

195. One Stop states that the normal value has not been correctly determined as China has not been treated as a ‘market economy’, noting that Australia made a commitment to do so in 2005. It refers to the China/Australia Free Trade Agreement and the obligations established therein. One Stop also indicates that prices and costs from a third country have been used to work out the normal value and questions how this is a ‘normal’ value for Chinese goods.

ADC findings

196. The ADC indicates that Dematic had claimed that the normal value for exports from China should not be determined under s.269TAC(1) of the Act as a particular market situation existed in relation to Chinese domestic sales, due to the influence of the Government of China (GOC) in the Chinese steel industry.

197. The ADC's analysis of the 'particular market situation' in relation to China is detailed in Appendix Three of REP 441. The ADC found that the major raw material of hot rolled coil (HRC): accounted for approximately 70% of the CTM steel pallet racking. It states that distortions in the Chinese HRC market have had a significant impact on the prices paid for such goods. It also noted recent cases in which a 'particular market situation' had been found in relation to steel and steel related products in China, particularly in circumstances where HRC was the major raw material for the steel products.

198. The ADC determined that the GOC had through its influence on the Chinese steel industry, substantially distorted competitive market conditions and this influenced the domestic prices of steel pallet racking prices in China.⁶⁸

199. The ADC, in Appendix Four, outlined the method it used to establish an appropriate benchmark for HRC. It assessed three options to determine a benchmark for HRC and considered an external benchmark based on the weighted average domestic HRC prices paid by cooperating exporters from Korea and Taiwan (in Reviews 456 and 457) at comparable delivery terms to those observed in China were most appropriate.⁶⁹ It also made adjustments to reflect differences in prices between HRC by Chinese exporters examined in this investigation and the prices paid for HRC by Chinese exporters in the above mentioned reviews.

200. On this basis, the ADC indicated that it had determined normal values for Chinese exporters under s.269TAC(2)(c) of the Act.

Submissions

201. One Stop questions whether the finding in REP 441 of the treatment of China as a 'particular market situation' is correct.⁷⁰ It suggests that the ADC has not established that the HRC prices have been influenced by the GOC and whether this has flowed through to the prices of the steel pallet racking domestic sales. It considers the normal values have been artificially inflated for Chinese exports of steel pallet

⁶⁸ REP 441, Appendix Three Assessment of Particular Market Situation in China.

⁶⁹ The ADC commented that the three options for determining a benchmark, in order of preference based on WTO Appellate Body findings are: private domestic sales, import prices and external benchmarks.

⁷⁰ Submission from One Stop dated 25 July 2019.

racking. It also suggests there should have been an adjustment to take account of the differences in the cost of HRC between the goods sold domestically and those exported to Australia. It suggests that this is a requirement under Article 2.4 of the WTO ADA.

202. The ADC in its submission restates that the Minister could not determine the normal value under s.269TAC(1) of the Act as the Commissioner had made a finding that there was a particular market situation in China. Domestic sales are then considered to not be suitable to establish a normal value.⁷¹

Analysis

203. Notwithstanding the lack of evidence in One Stop's review application regarding whether the Minister has erred in establishing a normal value under s.269TAC(2)(c) of the Act, its submission clarifies that it relates to the finding of a 'particular market situation' for sales of steel pallet racking in China.

204. Subsection 269TAC(1) of the Act provides that, subject to certain conditions, the normal value of the goods is the domestic selling price of like goods in the country of export. However, s.269TAC(1) cannot be used to calculate the normal value of the goods if one of the circumstances in subsections 269TAC(2)(a) or (b) is present. One of these circumstances is when the Minister is satisfied that the normal value could not be based on domestic sales in that market due to the situation in that market. It is generally referred to as a 'particular market situation'. In such cases, the normal value of the goods is to be calculated under either s.269TAC(2)(c) or (d).

205. Subsection 269TAC(2)(c) provides for the normal value to be a constructed amount, being the sum of the cost of production or manufacture of the goods in the country of export, and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade (OCOT) in the country of export instead of being exported, the selling, general and administrative (SG&A) costs and the profit on that sale. In assessing such costs, regard must be had to sections 43 to 45 of the Customs (International Obligations) Regulation 2015.

⁷¹ Submission from ADC dated 29 July 2019, page 12.

206. One Stop has expressed the view that Australia should be treating China as a market economy and should be basing the normal value on domestic selling prices. Its claim is based on its views as to the obligations under the Australia/China Free Trade Agreement, it provides no additional evidence. One Stop's later submission questions whether the ADC has correctly established the domestic selling prices of steel pallet racking and whether they have been influenced by the GOC.⁷²

207. I have reviewed the analysis undertaken in REP 441 (Section 6.5 and Appendix Three – Assessment of a Particular Market Situation – China) by the ADC in terms of the approach adopted in assessing 'particular market situation' and whether it has met the relevant legislative provisions. In the context of little evidence having been provided by One Stop as to particular concerns with the analysis by the ADC, I made a general assessment of the decision-making process. My view is that there has been appropriate information considered in REP 441 to make recommendations to the Minister regarding whether there is a 'particular market situation' in China for steel pallet racking. On this basis, I could not see any error in determining a normal value under s.269TAC(2)(c) rather than s.269TAC(1) of the Act. Likewise, I found no error in the approach to the calculation the normal values.

208. I consider that One Stop has not established that the normal value finding relating to Chinese exports is incorrect. On this basis, this ground fails to establish that the Reviewable Decision of the Minister was not correct or preferable.

⁷² Submission from One Stop dated 25 July 2019.

Recommendations

209. For the reasons set above, and pursuant to s.269ZZK(1)(a) of the Act, I found that the applicants, Abbott, JRack and One Stop, have failed to demonstrate that the decision of the Minister was not correct or preferable in relation to the each of the grounds submitted.

210. Accordingly, I recommend that the Minister affirm the Reviewable Decision.



Jaclyne Fisher
Panel Member
Anti-Dumping Review Panel
27 August 2019

Appendix One

Conferences held pursuant to s.269ZZHA of the Act

Date	Participants	Purpose	Outcome
17 June 2019	One Stop	To seek further information in relation to the grounds in the application.	Grounds clarified.
19 June 2019	Abbott	To seek further information in relation to the grounds in the application.	Grounds clarified.

Appendix Two

List of Submissions received pursuant to s.269ZZJ of the Act (within 30 days of the public notice initiating the review)

Submission from:	Content
<p>Tong Li Equipments Co., Ltd, China, Exporter, 5 July 2019.</p>	<p>Reviewable decision is not correct or preferable and submission is supportive of the grounds raised in the applications for review as follows:</p> <p>Steel pallet racking is not able to be matched to the description of the goods the subject of the reviewable decision:</p> <p>Goods as described in the description of goods the subject of the reviewable decision do not actually exist, and are not able to be manufactured; and</p> <p>Steel Pallet Racking that actually exists, including that which is manufactured abroad, is correctly described and accurate represented below.</p> <p>Steel pallet racking storage system comprising upright frames perpendicular to the aisles and independently adjustable, positive locking pallet beams parallel to the aisles, spanning between the upright frames, and designed to support unit load actions. The systems and/or parts, (whether assembled or unassembled) are not of dimensions that can be adjusted as required. Any adjustment capacity of the system is distinctly restricted from being adjusted as required by incremental limitation, engineering limitation, other physical limitation and/or applicable standards. Every required adjustment that does not exactly match the incremental limitation of the system and fall within the engineering and physical limitations of the system (and fall within the criteria of any applicable standard that may form part of the requirement) cannot be performed or cannot be performed without remanufacture.</p>
<p>Modular Storage Systems QLD 8 July 2019, Importer</p>	<p>Identical wording is used as per Tong Li submission.</p>
<p>Instant Racking and Steel Shelving, WA, Importer, 10 July 2019.</p>	<p>Identical wording is used as per Tong Li submission.</p>
<p>One Stop Pallet Racking NSW 15 July 2019</p>	<p>Elaboration on the definition of like goods and what can be considered like goods and the characteristics of the goods imported by One Stop. Whether the goods the subject of the application exist as the dimensions of the pallet racking system cannot be adjusted (as</p>

	per the goods description), claim that the original application under s.269TB should have been rejected. Proposal that the test of whether the goods produced in Australian industry are identical to or have characteristics closely resembling those of the goods the subject of a consignment imported into Australia is not correct.
Central Storage Systems, Int Group Pty Ltd, Victoria, 19 July 2018	Identical wording is used as per Tong Li submission.
Dematic Pty Ltd. NSW, Australian industry, 25 July 2019.	Provided comments in relation to each of the grounds for all review applicants.
One Stop Pallet Racking, NSW, Importer, 25 July 2019.	Provided similar information to its review application in relation to material injury and causation - like goods, material injury and causation - price undercutting, and material injury and causation – sales volume and alleged dumping - normal value and 'particular market situation treatment of China.
JRacking Group, China, Exporter, 26 July 2019.	Provided similar information to its review application in relation to uncooperative exporter, costings of JRacking Group and determination of ascertained normal value.
Abbott Storage, WA, importer, 26 July 2019	Outlined information in relation to like goods, in particular the goods imported by Abbott Storage and the Australian Standard AS 4084-2012.
One Stop Pallet Racking, NSW, Importer, 26 July 2019	Outlined information regarding sales revenue figures for Dematic and APC and changes in the Australian market.
Abbott Storage, WA, importer, 26 July 2019	Abbott provides comments on the submission made by Dematic (on 25 July 2019) regarding the goods under consideration.
ADC, 29 July 2019	Provided comments on each of the grounds in the review applications.