Australian Government
Anti-Dumping Review Panel

Application for review of a Ministerial decision

Customs Act 1901 s 269ZZE

This is the approved[1] form for applications made to the Anti-Dumping Review Panel (Review Panel) on or after 20 October 2025 for a review of a reviewable decision of the Minister.

Any interested party[2] may lodge an application to the Review Panel for review of a Ministerial decision.

All sections of the application form must be completed unless otherwise expressly stated in this form.

The Review Panel maintains a public record for reviews of decisions of the Minister. If a review is initiated, a copy of the application will be placed on the Review Panel's website.

Please note that the existence of applications will be disclosed on the Review Panel's 'Pending Applications and Duty Assessments' webpage prior to initiation, including the following information:

- Relevant reviewable decision
- Country and goods to which the application relates
- Number of applications
- Status (e.g. application/s under consideration)

Time
Applications must be made within 30 days after public notice of the reviewable decision is first published.

Conferences
The Review Panel may request that you or your representative attend a conference for the purpose of obtaining further information in relation to your application. The conference may be requested any time after the Review Panel receives the application for review and before beginning to conduct a review. Failure to attend this conference without reasonable excuse may lead to your application being rejected. See the Review Panel website for more information.

Further application information
You or your representative may be asked by the Member to provide further information in relation to your answers provided to questions 9, 10, 11 and/or 12 of this application form (s 269ZZG(1)). See the Review Panel website for more information.

[1] By the Senior Member of the Anti-Dumping Review Panel under section 269ZY *Customs Act 1901*.
[2] As defined in section 269ZX *Customs Act 1901*.

Withdrawal
You may withdraw your application at any time, by completing the withdrawal form on the Review Panel website.

International Trade Remedies Advisory (ITRA) Service
Small and medium enterprises (i.e., those with less than 200 full-time staff, which are independently operated and which are not a related body corporate for the purposes of the *Corporations Act 2001*), may obtain assistance, at no charge, from the ITRA Service.

For more information on the ITRA Service, visit www.business.gov.au or telephone the ITRA Service Hotline on +61 2 6213 7267

Contact
If you have any questions about what is required in an application refer to the Review Panel website. You can also call the Review Panel Secretariat on (02) 6276 1781 or email adrp@industry.gov.au.

PART A: APPLICANT INFORMATION

1. Applicant's details

Applicant's name: **AC Plumbing Supplies Pty Ltd ("ACP")**
Address: **32-34 Riverside Rd** **Chipping Norton** **New South Wales 2170**
Type of entity (trade union, corporation, government etc.): **Corporation**

2. Contact person for applicant

Full name: **Edward Su**
Position: **Managing Director**
Email address: **edsu@acpsales.com.au**
Telephone number: **1300 020 269**

3. Set out the basis on which the applicant considers it is an interested party:

ACP is directly concerned with the importation into Australia of like goods, to the goods the subject to the reviewable decision. ACP is also the applicant for this review.

4. Is the applicant represented?

Yes ☒ **No** ☐

If the application is being submitted by someone other than the applicant, please complete the attached representative's authority section at the end of this form.

It is the applicant's responsibility to notify the Review Panel Secretariat if the nominated representative changes or if the applicant become self-represented during a review.*

PART B: REVIEWABLE DECISION TO WHICH THIS APPLICATION RELATES

5. Indicate the section(s) of the *Customs Act 1901* the reviewable decision was made under:

☒Subsection 269TG(1) or (2) – decision of the Minister to publish a dumping duty notice

☐Subsection 269TH(1) or (2) – decision of the Minister to publish a third country dumping duty notice

☐Subsection 269TJ(1) or (2) – decision of the Minister to publish a countervailing duty notice

☐Subsection 269TK(1) or (2) decision of the Minister to publish a third country countervailing duty notice

☐Subsection 269TL(1) – decision of the Minister not to publish duty notice

☐Subsection 269ZDB(1) – decision of the Minister following a review of anti-dumping measures

☐Subsection 269ZDBH(1) – decision of the Minister following an anti-circumvention enquiry

☐Subsection 269ZHG(1) – decision of the Minister in relation to the continuation of anti-dumping measures

Please only select **one** box. If you intend to select more than one box to seek review of more than one reviewable decision(s), **a separate application must be completed**.

6. Provide a full description of the goods which were the subject of the reviewable decision:

The goods that are the subject the reviewable decision were described in Anti-Dumping Notice 2025/090 as:

Interchangeable bolted clipping system clip-heads, with galvanized or powder coating finish, in the size range 12 to 150 mm (i.e. 0.5 inch to 6 inch) diameter, with elongated emboss and square hole for interlocking coach bolt and nut.

The interchangeable bolted clip heads are manufactured from galvanised hot rolled coil

7. Provide the tariff classifications/statistical codes of the imported goods:

The tariff classification/statistical codes of the imported goods is 7326.90.90 (statistical code 60) in Schedule 3 of the Customs Tariff Act 1995.

8. Anti-Dumping Notice details:

Anti-Dumping Notice (ADN) number: **ADN 2025/090**
Date ADN was published: **2 October 2025**

Attach a copy of the notice of the reviewable decision (as published on the Anti-Dumping Commission's website) to the application

Please refer to Attachment 1 – ADN 2025/090

PART C: GROUNDS FOR THE APPLICATION

If this application contains confidential or commercially sensitive information, the applicant must provide a non-confidential version of the application that contains sufficient detail to give other interested parties a clear and reasonable understanding of the information being put forward.

Confidential or commercially sensitive information must be highlighted in yellow, and the document marked '**CONFIDENTIAL**' (bold, capitals, red font) at the top of each page. Non-confidential versions should be marked '**NON-CONFIDENTIAL**' (bold, capitals, black font) at the top of each page.

- Personal information contained in a non-confidential application will be published unless otherwise redacted by the applicant/applicant's representative.

For lengthy submissions, responses to this part may be provided in a separate document attached to the application. Please check this box if you have done so: ☒

Please note: Failure to adequately and accurately respond to questions 9 – 12 below may result in the application or ground/s being rejected pursuant to s 269ZZG(2) or s 269ZZG(5) of the *Customs Act 1901*. Where there are multiple grounds of review, it is important to address each of the questions below for each ground.

9. **Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision:**

Note: Each ground should be articulated as a short, clear statement. Reasons to support the ground of review should be included in Question 11.

Please refer to Attachment 2 to this application.

10. **Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

Please refer to Attachment 2 to this application.

11. **Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

Please refer to Attachment 2 to this application.

12. Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

Do not answer question 12 if this application is in relation to a reviewable decision made under subsection 269TL(1) of the Customs Act 1901.

Please refer to Attachment 2 to this application.

13. Please list all attachments provided in support of this application:

Attachment 1 – AND 2025/089

Attachment 2 – Grounds for the Application – Confidential

Attachment 2 – Grounds for the Application – Public Record

Attachment 3 – Letter of Authority

PART D: DECLARATION

The applicant's authorised representative declares that:

- The applicant understands that the Review Panel may hold conferences in relation to this application, either before or during the conduct of a review. The applicant understands that if the Review Panel decides to hold a conference *before* it gives public notice of its intention to conduct a review, and the applicant (or the applicant's representative) does not attend the conference without reasonable excuse, this application may be rejected; and
- The information and documents provided in this application are true and correct. The applicant understands that providing false or misleading information or documents to the Review Panel is an offence under the *Customs Act 1901* and *Criminal Code Act 1995*.

Signature: 

Name: **Alistair Bridges**

Position: **Special Counsel**

Organisation: **Moulis Legal**

Date: **31 October 2025**

PART E: AUTHORISED REPRESENTATIVE

This section must only be completed if you answered yes to question 4.

Provide details of the applicant's authorised representative:

Full name of representative: Alistair Bridges
Organisation: Moulis Legal
Address: **6/2 Brindabella Circuit** **Brindabella Business Park** **Canberra International Airport** **ACT 2609** **Australia**
Email address: alistair.bridges@moulislegal.com
Telephone number: (02) 6163 1000

Representative's authority to act

Please refer to Attachment 3 to this application.

A separate letter of authority may be attached in lieu of the applicant signing this section

The person named above is authorised to act as the applicant's representative in relation to this application and any review that may be conducted as a result of this application.

Signature:
(Applicant's authorised officer)

Name:

Position:

Organisation:

Date: / /

Australian Government
Department of Industry, Science and Resources

Anti-Dumping Commission

Customs Act 1901 – Part XVB

Interchangeable bolted clipping system clip heads - 645

Exported from the People's Republic of China

Findings in relation to a dumping investigation

Public notice under sections 269TG(1) and (2) of the Customs Act 1901

Anti-Dumping Notice (ADN) No 2025/090

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of interchangeable bolted clipping system clip heads (the goods) exported to Australia from the People's Republic of China (China).

The goods the subject of the investigation are:

> Interchangeable bolted clipping system clip-heads, with galvanized or powder coating finish, in the size range 12 to 150 mm (i.e. 0.5 inch to 6 inch) diameter, with elongated emboss and square hole for interlocking coach bolt and nut.

The interchangeable bolted clip heads are manufactured from galvanised hot rolled coil.

Further information regarding the goods the subject of the application can be found in ADN No 2024/041.[1]

The goods are generally, but not exclusively, classified to tariff subheading 7326.90.90 (statistical code 60) in Schedule 3 of the *Customs Tariff Act 1995*.[2]

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No 645* (REP 645). In REP 645, the Commissioner sets out the investigation findings and recommends the publication of a dumping duty notice in respect of the goods. The report is available at www.adcommission.gov.au.[3]

Particulars of the dumping margins established, and the methods used to compare export prices and normal values to establish each dumping margin, are set out in Table 1.

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[1] Refer to item no 3 on EPR 645, available at www.adcommission.gov.au.

[2] The tariff subheading and statistical code may include goods that are both subject and not subject to this investigation. The listing of these tariff subheadings and statistical codes are for convenience or reference only and do not form part of the goods description.

[3] On 11 August 2025, the Commissioner terminated the investigation into alleged subsidisation of the goods exported from China. *Termination Report No 645* sets out the reasons for the termination. This report is also available at www.adcommission.gov.au.

Exporter	Dumping margin and rates of interim dumping duty	Method to establish dumping margin
Ningbo Fenghui Metal Products Co., Ltd	22.2%	Weighted average export prices were compared with weighted average corresponding normal values over the investigation period in accordance with section 269TACB(2)(a) of the *Customs Act 1901* (the Act).[4]
All other exporters	26.3%	

Table 1: Dumping margins and rates of interim dumping duty

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science, have considered and accepted the Commissioner's recommendations in REP 645. I have considered the reasons for the recommendations, the material findings of fact on which the recommendations are based, and the evidence relied on to support those findings in REP 645.

As to the goods that have been exported to Australia, I am satisfied that the amount of the export price of the goods is less than the normal value of those goods and because of that, material injury to the Australian industry producing like goods might have been caused if the security had not been taken. Therefore, under section 269TG(1) and section 45 of the *Customs Act 1901* (the Act), I DECLARE that section 8 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) applies to:

(i) the goods; and
(ii) like goods that were exported to Australia four months prior to the publication of this notice.

I am also satisfied that:

- the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and
- the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods, and, because of that
- material injury to the Australian industry producing like goods has been or is being caused.

Therefore, under section 269TG(2) of the Act, I DECLARE that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia from China after the date of publication of this notice. This declaration applies in relation to all exporters of the goods and like goods from China.

The considerations relevant to my determination of material injury to the Australian industry caused by dumping are the size of the dumping margins, the effect of dumped imports on prices in the Australian market in the form of price undercutting and the consequent impact on the Australian industry including reduced sales volumes, market share and profit.

In making my determination, I have considered whether any injury to the Australian industry is being caused or threatened by factors other than the exportation of dumped

[4] All legislative references in this notice are to the *Customs Act 1901* (Cth) (the Act), unless otherwise specified.

goods, and have not attributed injury caused by other factors to the exportation of those dumped goods.

Interested parties may seek a review of this decision by lodging an application with the Anti-Dumping Review Panel, in accordance with the requirements in Division 9 of Part XVB of the Act, within 30 days of the publication of this notice.

Particulars of the export prices, non-injurious prices and normal values of the goods (as ascertained in the confidential tables to this notice) will not be published in this notice, as they may reveal confidential information.

Clarification about how measures and securities are applied to 'goods on the water' is available in Australian Customs Dumping Notice No 2012/34, available at www.adcommission.gov.au.

REP 645 and other documents included on the public record are available at www.adcommission.gov.au.

Enquiries about this notice may be directed to the case manager on telephone number +61 3 8539 2424 or email investigations2@adcommission.gov.au.

Dated this 24th day of September 2025

TIM AYRES
Minister for Industry and Innovation and Minister for Science

PUBLIC RECORD

moulislegal

In the Anti-Dumping Review Panel

Application by AC Plumbing Supplies Pty Ltd for review concerning Minister's decision in investigation 645

Interchangeable bolted clipping system clip heads exported from the People's Republic of China

31 October 2025

A Introduction

By way of notice published on 25 June 2024 the Commissioner of the Anti-Dumping Commission ("the Commissioner") initiated an investigation concerning the imposition of anti-dumping and countervailing measures on interchangeable bolted clipping system clip heads ("clip heads") exported from the People's Republic of China ("Investigation 645").

The initiation of Investigation was a consequence of an application lodged by Abey Australia Pty Ltd ("Abey") which has been found by the Commissioner to constitute the Australian industry producing like goods to those which are the subject of the measures.

On 11 August 2025 the investigation concerning subsidy allegations was terminated.

On, or around, 12 September 2025, the Commission recommended to the Minister that he impose anti-dumping duties on clip heads exported from China.

The Minister accepted the Commission's recommendation, declaring on 24 September 2025, by way of notice made under Section 269TG(1) and (2) of the *Customs Act 1901* ("the Act") and published on 2 October 2025, that he had *"considered and accepted the Commissioner's recommendations in REP 645,"* and that he had "*considered the reasons for the recommendations, the material findings of fact on which the recommendations are based, and the evidence relied on to support those findings in REP645*."[1]

AC Plumbing Supplies Pty Ltd ("Australian Consolidated Plumbing"), being an interested party in relation to the reviewable decision, seeks review by the Anti-Dumping Review Panel ("ADRP") of that decision under Sections 269ZZA(1)(a) and 269ZZC of the Act with respect to exports from China.

B Grounds of review

1 First ground – incorrect reliance on s 269TAC(6) to determine the normal value

9	**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision**

Report 645 recommends, and the Minister accepted the recommendation, that normal values be determined under s 269TAC(6) of the Act.[2] We submit that the statutory preconditions necessary to access the discretions available under that section have not been met with respect to the goods produced by one producer: Cixi Guanhaiwei Qinyan Hardware Factory ("Qinyan"). That is to say, where goods have been purchased from Qinyan, the Minister should *not* have been satisfied that sufficient information had not been furnished or was not available to enable normal values to be determined under s 269TAC(2)(c).

The relevant background is that the exporter, Ningbo Fenghui Metal Products Co., Ltd ("Fenghui"), did not have any sales of like goods in the country of export.[3] From the public record, we see no indication that there were other sellers of like goods China, indeed Abey reflects this likelihood in their application.[4] In such a circumstance, s 269TAC(2)(b) directs that the normal value be determined under s 269TAC(2)(c). However, Report 644 elected not to use s 269TAC(6). This was because while Fenghui was found to be the exporter of the goods, it did not produce those goods. Fenghui purchased the goods from two manufacturers – Qinyan and Guanhaiwei Zhenli Hardware Factory ("Zhenli"). In this respect, Report 644 finds that:

> *The other manufacturer (Zhenli) did not provide information with respect to the cost of production of the goods in China and therefore the commission has not been furnished with*

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1 *Report No 645 – Alleged Dumping of Interchangeable Bolted Clip Heads from the People's Republic of China* (12 September 2025) ("Report 645").

2 Report 645, pages 84 and 85.

3 Report 645, page 35.

4 The application for the investigation (EPR 645, Document No. 1), itself suggest that there are no sales of like goods in the domestic market, noting at page 43 that:

> *Abey Australia understands that the goods the subject of this application (interchangeable bolted clipping system clip-head) are not sold on the Chinese domestic market.*

> *sufficient information to calculate the normal value of goods exported by Fenghui under section 269TAC(2)(c). As sufficient information is not available to enable the normal value of goods to be ascertained under the preceding sections, the commission has determined the normal value under section 269TAC(6), having regard to all relevant information.*[5]

So, instead of applying the disciplines of s 269TAC(2)(c), a normal value was determined under s 269TAC(6), being:

- *the price at which Fenghui purchased the goods from Qinyan and Zhenli, plus*
- *Fenghui's profit on all its domestic sales in China during the investigation period (being the profit that Fenghui was likely to achieve had it sold brackets in China), plus an amount for its SG&A and other adjustments to ensure that the normal value is properly comparable to the export price.*[6] [citations removed]

Australian Consolidated Plumbing has concerns regarding this approach generally, which will be aired in greater detail in Ground 2 to this application. For present purposes, we submit that Report 644 operates on an erroneous basis. Section 269TAC(6) can only be relied upon where the Minister is "satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections…". Inferable from Report 644 is that a "cost of production" could not be determined under s 269TAC(2)(c), because Zhenli did not provide its production records. This rationale is mistaken. The absence of such costs in no way prevents the usage of s 269TAC(2)(c) in relation to the goods that Fenghui purchased from Qinyan.

a There is information relevant to s 269TAC(2)(c)

While it is a somewhat unusual circumstance not to have any sales of like goods in the country of export, the Act is keenly aware that this issue may arise. This potential is expressly identified in s 269TAC(2)(b), and the legislatively prescribed answer to it is provided for in s 269TAC(2)(c). Where s 269TAC(2)(c) applies the normal value is the sum of:

> *(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and*
>
> *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export--such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale*

Our current focus is on s 269TAC(2)(c)(i), as this relates to the cost of production (note, s 269TAC(2)(c)(ii) is addressed below). This section empowers the Minister to "determine" an amount that represents the "cost of production or manufacture of the goods in the country of export". This power is guided by s 269TAC(5A)(a), which directs that the determination of the cost of production or manufacture under subparagraph 269TAC(2)(c)(i), must be "worked out in such manner, and taking account of such factors", as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a). The

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5 Report 645, page 35.

6 Report 646, page 36.

relevant regulation in this respect is r 43 of the *Customs (International Obligations) Regulations 2015* ("the Regulations").[7] Inter alia, this provides:

> *(2) If:*
>
> *(a) an exporter or producer of like goods keeps records relating to the like goods; and*
>
> *(b) the records:*
>
> *(i) are in accordance with generally accepted accounting principles in the country of export; and*
>
> *(ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;*
>
> *the Minister must work out the amount by using the information set out in the records.*

It is not without relevance that the regulations identify that the relevant costs may be from an "exporter or producer of like goods". This is important to note, because s 269TAC(1) focusses primarily on the "exporter" as the entity in relation to which the normal value may be derived. That notwithstanding, the regulations confirm that the cost of production need not be derived from the exporter's records but instead may be derived from a producer's records. In this instance, there was information that met the standards required by r 43(2). When regard is had to the Verification Report for Qinyan,[8] the following is observable:

- Qinyan produces the like goods in China;
- Qinyan keeps records relating to the like goods;
- Those records include cost to make data, which the Commission was able to verify to Qinyan's accounting system and source documents,[9] and which through the process of verification the Commission concluded were "accurate", "complete" and "relevant".[10]
- We note the claims that costs of hot rolled coil – which are presumably included in the cost of production, do not "reasonably reflect competitive market costs". We do not have detailed information to address this claim, however in the terminated subsidy investigation, we note that the Commission did assess whether Qinyan and Fenghui received a benefit under "Program 7", which involved an assessment of the "fair market value" of hot rolled steel in China. This involved using a benchmark for galvanised steel prices based on prices from the Korean and Taiwanese market.[11] Noting that the subsidy margin, based on receipt of seven subsidies including Program 7, amounted to a *de minimis* margin of only 1.1%. This indicates that there was only a slight degree of difference between the costs as recorded and the competitive

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7 This is expressly recognized at regulation 43(1)(a) which states that "*the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the amount) to be the cost of production or manufacture of like goods in a country of export*".

8 *Verification Report Cixi Guanhaiwei Qinyan Hardware Factory, Investigation 645* ("Verification Report"). Document No. 19 on the EPR.

9 Verification Report, page 8.

10 Verification Report, page 4.

11 *Termination Report No. 645, Alleged Subsidisation of Interchangeable Bolted Clipping System Clip Heads Exported from the People's Republic of China* ("the Subsidy Termination Report"), page 29.

benchmark Accordingly, we consider it inferable that Qinyan's costs "reasonably reflected" competitive market costs, for the purpose of r 43(2)(ii).[12] We would therefore submit that the relevant information confirms that Qinyan's production costs reasonably reflect the competitive market costs associated with the production or manufacture of like goods in China.

The only ambiguity in the Verification Report is whether the costs of production recorded by Qinyan are kept in accordance with Chinese generally accepted accounting principles ("GAAP"). Qinyan states that they are.[13] The Verification Report notes that "the commission could not establish whether Qinyan's costs records are kept in accordance with the GAAP in China." The Commission's policy in this respect is that confirmation would tend to "come from the auditor's statements".[14] The difficulty would appear to arise because Qinyan is not required to have its accounts audited; and is not required to report cost information in its tax report.[15] In our view, absent any positive indication that Qinyan's production records are not kept in accordance with GAAP, the findings that they are otherwise accurate, complete and relevant, along with finding that their sales records comply with GAAP,[16] should preclude any negative inference being drawn.

If that position were not to be accepted, we note that there is numerous times where it has been established that simple a failure to meet the requirements of r 43 does not preclude the exercise of the Minister's power under s 269TAC(2)(c)(i), nor does it enliven s 269TAC(6). As noted in *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20, regulation 43 is not an exhaustive statement regarding the determination of production costs under s 269TAC(2)(c)(i).[17] If the requirements of the Regulation are not met, then s 269TAC(2)(c)(i) "remains applicable on its own terms".[18] This should be no surprise, as it is the justification for the cost replacement methodologies frequently used when the Commission determines that an exporters' costs records "do not reasonably reflect the competitive market costs associated with the production or manufacture of like goods". Even if there is a basis to consider Qinyan's costs are not kept in accordance with Chinese GAAP, the fact that they have been verified as being accurate, complete and relevant means they are a suitable basis for determining costs of production in China under s 269TAC(2)(c)(i). This is supported by the fact that Report 644 has not recommended that these records are "unreliable"

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12 Further, at page 29 the Subsidy Termination Report explains that "[t]*he commission considers that normal competitive market conditions, absent the GOC's distortions or influence, prevail in the Korean and Taiwanese domestic markets for galvanised steel, and that purchases of galvanised steel in these markets are not influenced by prices in China. The commission therefore considers that purchases of HRC in these markets are suitable for the purposes of assessing whether galvanized steel is proved in China at less than fair market value (i.e. at less than adequate remuneration)*."

13 Question A-3(8) of the Exporter Questionnaire Response asks as follows:

> *8. Do your accounting practices differ in any way from the generally accepted accounting principles in your country? If yes, please provide details.*

In Qinyan's response, they state as follows

> *No, Qinyan's accounting practices do not differ from the generally accepted accounting principles in China.*

14 Dumping and Subsidy Manual, page 34.

15 Verification Report, page 6.

16 Verification Report, page 6.

17 At paragraph 108.

18 *Ibid*.

under s 269TAC(7) – to the contrary, they have been used as the basis to determine the normal value on a limited basis.[19]

In this instance, we respectfully submit that the "cost of production" can and must be determined under s 269TAC(2)(c)(i) because, either:

- Qinyan's records meet the requirements of r 43 and so the Minister "must" use them to determine the cost of production or manufacture under s 269TAC(2)(c)(i); or
- If the ADRP does not accept that they reflect generally accepted accounting principles, they still represent an appropriate basis for determination of the costs of production in China, as they have been verified as being accurate, complete and relevant. Moreover, there is no suggestion that those records are "unreliable" so as to allow them to be disregarded under s 269TAC(7).

In any circumstance, we submit that Report 644 was wrong to recommend the Minister be satisfied that "sufficient information has not been furnished or is not available" to enable the determination of normal values under s 269TAC(2)(c) for goods that were unambiguously produced by Qinyan. Accordingly, it was not permissible to determine normal values under s 269TAC(6) having regard to "all relevant information" for those goods. That decision was neither correct nor preferable.

10 Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:

The correct or preferable decision was that there was sufficient information to determine normal value for the goods purchased by Fenghui from Qinyan under s 269TAC(2)(c). As discussed directly above, there are records that allow for a determination of the cost of production of those goods under s 269TAC(2)(c)(i). That determination being possible, the Act then directs the decision-maker's attention to s 269TAC(2)(c)(ii) – which requires the determination of administrative, general and selling costs ("SG&A") and profit. Fortunately, these normal value elements can also be determined on information that was before the Commission in the investigation. As is the case with s 269TAC(2)(c)(i), the elements in (ii) are primarily guided by the regulations.

We address SG&A costs and profit below.

b SG&A can be determined on relevant information

The Commission has gathered SG&A costs from both Fenghui and Qinyan. Fenghui's align with GAAP in China,[20] but it is unclear the degree to which the same can be said for Qinyan's.[21] In any respect, while Fenghui does not sell like goods directly, we submit that Fenghui's selling cost records should be the

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19 Report 645 notes at page 36 that:

> *Where there were no purchases by Fenghui of particular models or types of brackets exported in a particular quarter, the commission had regard to the purchase price of that particular bracket type in the previous quarter, or if there were no purchases in the previous quarter of that particular bracket type, the commission constructed the purchase price having regard to Qinyan's cost to make for the particular bracket type, and applied an amount for Qinyan's profit and SG&A.* [our emphasis]

20 Page 7 of Fenghui's Verification Report, which notes: [b]*ased on Fenghui's completed tax returns, Fenghui's accounting records for the investigation period appear to comply with the generally accepted accounting principles of China and there is no evidence to suggest otherwise.*

21 Page 4 of Qinyan's verification report, which notes that they were "accurate with material revisions" but also that they "may…exclude relevant data".

basis for the determination of SG&A expenses. This is because Fenghui has been identified as the "exporter", and so as the relevant entity for which the normal is to be determined.

Of course, "like goods" are not sold for home consumption in China, so r 44(2)(b)(ii) cannot be satisfied. However, the drafters of the regulations were cognizant of this possibility and so included alternate methodologies for determining SG&A costs r 44(3).

Report 645 notes that the products that Fenghui sold domestically fall within the "same general category" as the goods exported to Australia, being the category of "clip heads".[22] The Commission has identified the amount of SG&A incurred by Fenghui on these sales, across the period of investigation. As noted, that amount is derived from accounts kept in accordance with GAAP, and which have been reconciled to Fenghui's tax returns and accounting system. This suggests that the costs may be sufficient to be used under r 43(3)(a), although we note neither the Minister nor the Commissioner have considered that in detail. In any respect, this amount could instead be adopted under r 43(3)(c), as it is reasonable, and represents a verified amount of SG&A incurred in domestic sales in the country of export.

c Profit can be determined on relevant information

Prima facie under r 45(2) directs the Minister must determine profit by using data relating to the production and sale of like goods by the exporter or producer of the goods in the "ordinary course of trade". The reference to "ordinary course of trade" is a reference to the test set out in s 269TAAD(1).[23] This focusses on domestic, arm's length sales, of like goods sold either for home consumption in the country of export, or for exportation to a third country.[24] As the goods are not sold for home consumption in the country of export, there is no data that fits this description, so the requirement of s 45(2) cannot be met.[25]

In these circumstances the regulation directs the Minister to r 45(3), which sets out three different methodologies for determining the profit. There is no hierarchy to these methodologies, it is open to the Minister to elect the which one to use depending on the available information.

Report 645 indicates that r 45(3)(a) can be applied. Report 645 find that Fenghui sells the same general category of goods in China, and an amount of profit on those sales has been identified.[26] We are of course cognizant of the strict reading the Federal Court of Australia has applied to this regulation, [27] in particular to the term "actual amounts realised", and we note that this has not specifically been addressed in Report 644.

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22 Report 645, page 35.

23 This understanding aligns with the Commission's policy, as set out in the *Dumping and Subsidy Manual*, per page 38.

24 s 269TAAD(1)(i) and (ii) of the Act.

25 Noting, in particular, that the Verification Report states that "…Qinyan did not produce or sell like goods for home consumption in China", at page 6.

26 Report 645, page 38.

27 *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 ("Steelforce") which, at para 92, notes that "'actual amounts realised' requires attention to a real world figure that was actually realised…"

If an alternative methodology is needed, we note that "any other reasonable method having regard to all relevant information" is available under Regulation 45(3)(c). This is subject to the operation of s 45(4) which requires that, if,

> *(b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;*
>
> *the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.*

We understand that the Commission traditionally treats this as something of an impasse to the application of 45(3)(c) in circumstances where there is only one exporter. Based on the language adopted in the regulation, it is unclear why this would be the case under Australian law.[28] But, that consideration can be put aside for now, what is important for current purposes in the determination of the cap has some inbuilt flexibility, and so can be adopted to many different scenarios.

The term "same general category of goods" is not used in the Act and is not defined in the regulations. It is, in our view, a concept with some inherent flexibility. A particular class of like goods could fall within several different and overlapping "general categories of goods" of varying degrees of specificity. This flexibility is reflected in Report 644, where the same "general category" of goods as the like goods has been identified as "clip heads" and "plumbing products" and "products used in plumbing applications".[29] It is also worth noting that these categories reflect "all domestic sales" by Fenghui.[30]

Of course regulation 45(4) requires that the cap be based on amounts "realised by *other* exporters and producers on goods of the same general category of goods". This is where the flexibility arises. The Minister is required to determine a profit. The Minister has the flexibility to inform himself regarding what the relevant general category of goods is, and what profits are normally realised on their sales in China. The Commission has a vast repository of information concerning the profitability of sales of a broad range of steel products sold for home consumption in China. For example, the goods are derived from hot rolled coil ("HRC") and are typically sold to retailers and wholesalers.[31] The Commission has investigated numerous products that are produced from HRC and sold in China, including, but not limited to, hollow structural sections, zinc coated (galvanised steel) and steel corner beads and angles. Report 644 notes that regard has been had to "the commission's previous findings with respect to the steel industry and markets in China".[32] There is ample institutional knowledge within the Commission to determine a view regarding the appropriate cap under r 45(3)(c).

If we are wrong in that, the view could be very easily formed that the "profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export" is zero. Such an outcome in this case would be appropriate given that the like goods do not appear to be sold for home consumption in China. Therefore the inference should be that a general category of those goods is not sold in China, and so that the profit normally achieved on those

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28 We note that there is no judgement supporting such a position. The one instance where it was pertinent, in Steelforce, his Honour Perram J, explicitly noted "*I would decline to express a concluded view on whether it is correct that the methodology in reg 45(3)(c) cannot be applied if the cap in reg 45(4) cannot be determined. Resolution of that issue should await a case in which it is squarely raised*" per Perram J at Para 91.

29 Report 645 at, respectively, pages 35 and 39.

30 Report 645 at page 39.

31 Report 645, pages 20 and 21.

32 Report 645, page 12.

goods is "zero". Zero is an amount. Using a zero amount of profit under s 269TAC(2)(c)(ii) is permissible and is a contextually sound choice when there are no sales of the like goods for home consumption in the country of export.

11	**Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

The need for anti-dumping duties, and the size of those duties, has been driven by the normal value determined under s 269TAC(6). Essentially, this was the price which Fenghui purchased brackets, plus the SG&A and profit that Fenghui achieved during the period of investigation on sales of the same general category of goods in China. Reflexively, this may appear to be a reasonable approach to assessing the normal value. One may expect that the exporter would sell the goods profitably in China, and that is an appropriate basis to determine whether dumping has occurred.

But that is not what the legislation calls for. *Prima facie*, under s 269TAC(1) the normal value is the price derived from sales of like goods in arms length transactions in the ordinary course of trade in the domestic market of the country of export. Every method prescribed after this in s 269TAC is designed to arrive at proxy for that same value.

The concept of "ordinary course of trade" is informative as to what *is* an acceptable price in the country of export. Per sections 269TAAD, prices will not be in the ordinary course of trade where they are sold for less than the "cost of such goods" and are unlikely to be recovered over a reasonable period. The cost of such goods is defined to be:

> *(a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and*
>
> *(b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.*

The determination of those amounts is in accordance with the regulations, being the same regulations that are relevant to the determination of the normal value under 269TAC(2)(c). As noted, while 269TAC(1) focusses on the "exporter" as the primary actor in the determination of the normal value, regulation 43 allows for the cost of production from records of the producer. As the ADRP has noted previously:

> *…Section 269TAC(1) contemplates that an exporter of goods might not sell goods on the home market and that the normal value is to be determined under s 269TAC(1) by reference to sales of like goods by persons other than that particular exporter. This has the consequence that the comparison is not between the price which an exporter can get for goods it produces and the cost of producing that producer's goods…*[33]

Nowhere in the Act or the regulations is there a requirement that the exporter be the producer. What it requires is an ascertainment of a price that would have been received in the ordinary course of trade, as that term is defined by the Act.

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[33] *ADRP Report No 130 - Steel reinforcing bar exported from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co., Ltd)* at paragraph 85.

Qinyan's cost of production information has been verified to their accounting system and source documents;[34] through the process verification the Commission concluded those records were "accurate", "complete" and "relevant". Nowhere has there been a finding that it is "unreliable" so as to justify it being disregarded under s 269TAC(7). Accordingly, to the extent that the goods have been purchased by Fenghui from Qinyan, there is a basis to determine a cost or production under s 269TAC(2)(c)(i). The legislative disciplines that flow on from that need to be adhered to. That has not occurred.

This investigation deals with a circumstance in which like goods are not sold in any transaction for home consumption in the country of export. As we have noted, the Act recognises that possibility and prescribes the answer: being s 269TAC(2)(b) and the non-ordinary course of trade SG&A and profit regulations. Nowhere in this is there a suggestion that the determination of the normal value is based on the assumption that the exporter's hypothetical domestic market prices be profitable. The guiding question is whether they are in the ordinary course of trade, which is based on the *cost of production* determined by the Minister, not the exporters' *cost of purchase*.

12	**Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

Report 644 primarily determines a normal value under s 269TAC(6) in the following manner:

- *the price at which Fenghui purchased the goods from Qinyan and Zhenli, plus*
- *Fenghui's profit on all its domestic sales in China during the investigation period (being the profit that Fenghui was likely to achieve had it sold brackets in China), plus an amount for its SG&A and other adjustments to ensure that the normal value is properly comparable to the export price.*[35]

As noted in Report 644, the use of the price paid by Fenghui as the base was driven by the logic that "[t]he price paid by Fenghui for these goods is essentially the cost of the goods as incurred by Fenghui".[36]

At first blush the Commission's logic may have appeal; but it is not the logic of the Act that is being applied. When the normal value is determined under s 269TAC(1), it is done so on the basis of sales that are in the "ordinary course of trade" and "arms length". The use of ordinary course of trade sales requires that those sales be compared to the costs of production as determined under regulation 43. As we have noted, there is space within the regulation to allow the Minister to use either the cost of production of an exporter or a producer in determining the cost of production.

The Act places the cost of production as the starting point for the assessment of the appropriateness of the price for inclusion in the determination of the normal value. The question is whether the price in the country of export is more than the cost of production and the cost of sale or, if not, then whether it is recoverable over an extended period of time. It is worth noting that this means that for sales to be in the ordinary course of trade they need only be not "less than the cost of such goods"; put another way, break-even sales would be in the ordinary course of trade.[37]

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34 Verification Report, page 8.

35 Report 645, page 36.

36 Report 645, page 35.

37 Section 269TAAD(1)(a) of the Act.

Where there are no sales in the domestic market for home consumption in the country of export, the Act sets out alternative methodologies used to determined a proxy of the s 269TAC(1) amount. This again requires the use the same records that would otherwise be used to determine whether prices are in the ordinary course of trade plus an amount of profit determined in accordance with the regulations.

In the Statement of Essential Facts for this investigation, a different methodology was used to determine the normal value. For all products exporter to Australia, irrespective of manufacturer, Qinyan's CTM was used as a base, plus Qinyan's SG&A expenses and profit on its sales of the goods to the exporter of the goods (Fenghui), plus "Fenghui's profit on all its domestic sales in China during the investigation period (being the profit that Fenghui was likely to achieve had it sold brackets in China), plus an amount for its SG&A and other adjustments to ensure that the normal value is properly comparable to the export price."[38] As noted in Report 644, the use of Fenghui's costs and profit was because "*…effectively, this was the price of the goods manufactured by Qinyan and sold to Fenghui*."[39]

This highlights the issue. The normal value effectively has two levels of SG&A and two levels of profit, which is not what the legislation calls for. This has the effect of inflating the normal value and is likely the result of the significant dumping margins observed in the reviewable decision. This outcome has arisen because the normal value has been determined apart from the disciplines imposed by the Act and the Regulations.

Put simply, the position adopted in Report 644 is based on assumption – for example, the assumption that an exporter can purchase and sell the goods in China profitably despite there being no evidence on the public record that the goods have ever been resold in China, whether profitably or otherwise. The Act and Regulations do not allow for such an assumption – they provides disciplines through which a profit can be determined. None of those involve using the profit from two different entities. In terms of impact, we consider that a normal value constructed under s 269TAC(2)(c) would result in a lower, or even no-dumping, margin. This would be a materially different outcome.

2 Second ground – normal values not "ordinary course of trade"

9	**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision**

Please note – Australian Consolidated Plumbing's first ground above relates to the determination of the normal value for goods purchased from Qinyan. Australian Consolidated Plumbing's second ground relates to all normal values determined under s 269TAC(6). We note the ADRP's consideration of Australian Consolidated Plumbing's first ground will dictate whether that is all goods, or merely those purchased by Fenghui from Zhenli.

As explained in Australian Consolidated Plumbing's first ground, a key determinant in assessing a normal value under s 269TAC(1) is whether the price was in the "ordinary course of trade". The normal value, as assessed in Report 644, is not correct or preferable, because it was not determined with a view to achieving a value akin to a price achievable in the ordinary course of trade.

Section 269TAC(1) sets out what is understood to be the "normal value". One of the fundamental principles in determining a normal value under that section is whether the sales were in the ordinary course of trade. Similarly, where an alternative method is required for determining a normal value under

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38 *Statement of Essential Facts No. 645*, pages 32 – 34.

39 Report 645, footnote 62.

Sections 269TAC(2)(c), (d) or 269TAC(4), the "ordinary course of trade" is explicitly a relevant consideration.

From this context where the Minister is determining a "normal value" under s 269TAC(6), they must be attuned to achieving the same outcome: a value representative of an arm's length, ordinary course of trade price. Put another way, when assessing which of the relevant information should inform the Minister's determination, arriving at an ordinary course of trade price is a relevant consideration. It is not apparent that regard was had to that consideration in determining the normal value. There is nothing in Report 644 that suggests this goal was in mind when the normal value was determined.

This is evident when regard is had to the profit applied to represent a domestic market profit. As we have noted, this is based on the assumption that, if the goods were sold in China, they would achieve the same profit as Fenghui achieved on its domestic sales of other products. This ignores an important piece of relevant information –the goods do not appear to have been sold in China for home consumption. As far back as the application for measures this possibility has been recognised and no information gathered during the investigation points to an alternate conclusion. In that circumstance, why would it be likely that Fenghui would be able to sell the goods subject to this investigation for the same profit margin as products it does sell in China?

Prices are derived from the market; the amount of profit achieved by the seller is a function of that same mechanism. If there is no demand for a product in a market – which appears to be the case here – then a seller has very little leverage to seek a profit on its sales. Yet, this is how Fenghui characterised its domestic sales of other products:

> *…the domestic customers are mostly end users which produce container houses destined to Australia. All those domestic sales are retails sales at a very high price (sometimes even 10 times than its purchase cost) because the purchase volume is very small and these products are low-value parts in the finished decorated container house, and the buyers didn't care such small cost. It makes sense to purchase from Fenghui rather than import from Australia considering the purchase cost, the import cost including the import tariff, the transportation cost and the transportation time. It is noted that each sale in the domestic market was very small and almost all those products are finally destined to Australia. Mostly, the domestic customers used the products to assemble into other large products destined to Australia. Please note that almost all the products sold by Fenghui are only used in Australia. The sales to Australia consist [CONFIDENTIAL TEXT DELETED - Percentage] of all sales. Therefore, we are of the view that it is not suitable to use the profits on its domestic sales in China during the investigation period to construct the normal value, since their volumes and transactions conditions are not comparable to the export products.*[40]

Two things are observable here. Firstly, Fenghui's domestic sales are made in highly specific circumstances, which apparently do not apply to the goods subject to this investigation. Secondly, as a consequence of these specific circumstances, the profit it achieves on the domestic market is significant: "sometimes even 10 times the purchase cost".

As we have noted, for a price to be in the ordinary course of trade it need only not be "less than the cost of such goods".[41] A price that breaks-even is an ordinary course of trade price. By adopting what appears

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40 Document No. 22 EPR 645.

41 S 269TAAD(1)(a) of the Act.

to be a significant profit under s 269TAC(6), Report 644 is requiring significantly more than that to reflect hypothetical domestic ordinary course of trade sales of the goods.

How much of the dumping margin is driven by this choice of profit? Is it wholly responsible for the conclusion that dumping has occurred?

By failing to take into consideration the broader statutory context, the Commission and the Minister have failed to ask the correct question in determining a normal value under s 269TAC(6). Accordingly, they have failed to make the correct or preferable decision in the exercise of that power.

10	**Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

The purpose of s 269TAC(6) is to allow the Minister a method determining a normal value representative of the arm's length ordinary course of trade price in the country of export, where other more prescriptive methodologies are not available. In determining the normal value under that subsection, the Minister should be guided by that purpose.

Report 644 has been adopted by the Minister and represents his statement of facts for his decision to impose anti-dumping measures. There is no indication that the Minister considered whether the normal value determined under s 269TAC(6) represented an ordinary course of trade price, as that concept is understood in the Act and the Commission's stated policy.

As discussed above, it appears that the failure has resulted in a circumstance where the normal value is not representative of an ordinary course of trade value. The correct or preferable decision is that the normal value should represent an ordinary course of trade price. In practice this can be achieved by:

- Assessing, whether any profit needs to be included in the normal value in circumstances where the like goods are not sold in the domestic market in China; and
- If the answer to the second question is affirmative, at least accepting that a profit based on very specific circumstances where the profit margin is "very high" and "sometimes even 10 times than its purchase cost" is not a reasonable exercise of the discretion under s 269TAC(6).

11	**Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:**

The grounds raised in question 9 support the marking of the proposed correct and preferable decision because they illustrate (a) the fundamental nature of the concept of "ordinary course of trade" to a determination of the normal value; (b) describe how regard was not had to that fundamental concept in this case; and (c) illustrate how that failure appears to have resulted in an inflated normal value.

12	**Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:**

The proposed decision is materially different from the reviewable decision because:

- The reviewable decision proceeds on a erroneous understanding of the Minister's power under s 269TAC(6);

- This misunderstanding has resulted in a normal value that appears to be substantially inflated; and
- Correcting for this misunderstanding should lead to a materially lower normal value.

3 Third ground – erroneous determination of material injury

9	**Set out the grounds on which the applicant believes that the reviewable decision is not the correct or preferable decision**

Anti-Dumping measures may only be imposed where the Minister is satisfied that goods are exported to Australia at dumped prices and, because of that, material injury to an Australian industry has been or is being caused, or is threatened.[42] A material injury determination is bound by the following requirements:

- it must be based on facts, and not merely on allegations, conjecture or remote possibilities;[43] and
- injury that was suffered by the Australian prior to the period of investigation cannot be attributed to dumping;[44]
- injury caused by other factors cannot be attributed to the dumped goods; and[45]
- the injury determination must be based on positive evidence and an objective examination.[46]

In this instance, the Report 645 has found that Abey has suffered material injury because of the supposed dumping, on the following basis:

> *…the Commissioner is satisfied that exports of the dumped goods from China caused material injury to the Australian industry producing like goods in the form of forgone sales volumes, loss of market share, price depression, price suppression and reduced profit and profitability.*[47]

This conclusion appears to be based on the following factors:

- Price undercutting;[48]
- Market size and composition;[49]
- Loss of sales volumes to mutual customers;[50]

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42 s 269TG(2)

43 s 269TAE(2AA) of the Act.

44 *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229, para 64.

45 s 269TAE(2A) of the Act.

46 Paraphrasing Article 3.1 of the Anti-Dumping Agreement.

47 Report 645, page 50.

48 Report 645, page 51.

49 Report 645, page 54

50 Report 645, page 52.

- Profit effects; and[51]
- The size of the dumping margins.[52]

As discussed below, each of these considerations is marred. With appropriate context, we submit there is no basis for concluding that Abery has suffered material injury because of any dumping.

a Price undercutting

Price undercutting is given the narrative force in the injury determination. It is used to explain why it is reasonable to conclude that dumping[53] has caused Abey to suffer injury in the form of reduced market share,[54] the loss of sales volumes to mutual customers,[55] and the profit effects (being prices suppression and price depression).[56]

The issue with this analysis is that during the investigation period, there was limited competitive cross-over between the Abey and the imports. For example, Report 645 reveals that while Abey and Australian Consolidated Plumbing share mutual customers, Abey's sales to those customers were only a "small share" or "5%" of their overall sales of the goods.[57] Similarly, the competitive cross-over between Radius and Abey is considered to be "negligible".[58] Despite these limited competitive interactions during the investigation period, Report 645 lays the blame for trends of unprofitability, price depression and price suppression that are observable across the injury analysis period at the hands of the imports. Noting, in particular, that:

> *…the commission found that ACP and Radius significantly undercut Abey's prices on almost all its sales during the investigation period. This undercutting led to Abey losing market share in the investigation period to its largest competitors that supplied dumped goods imported from China. Further, the loss of Abey's market share in the investigation period is a continuation of the trend observed over many years during which imports from China increased their market share while Abey's market share decreased.*[59]

The problem with this is two-fold. Firstly, the degree of price undercutting appears to be open to interpretation. For example at a high level:

- the three largest product codes sold during the investigation period, representing 55% of all sales by the Australian industry and Australian Consolidated Plumbing – the prices are found to be "comparably priced".[60] Indeed, Report 645 notes that these models are "within a 4% price

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51 Report 645, page 62.

52 Report 645, page 51.

53 Please note, Australian Consolidated Plumbing does not accept that there was dumping, for the reasons discussed in Grounds 1 and 2.

54 Report 645, page 56.

55 Report 645, page 58.

56 Report 645, page 62.

57 Report 645, page 58.

58 *Ibid.*

59 Report 645, page 61.

60 Report 645, page 52.

band", which suggests in some instances Australian Consolidated Plumbing's prices might even be greater than Abey's.

- Australian Consolidated Plumbing sold 36 different MCCs during the investigation period, of these only 31 were mutually sold by Australian Consolidated Plumbing and Abey, and only 21 of those were found to be undercut. Report 645 indicates that the other 10 models Australian Consolidated Plumbing's clip heads were "more expensive" then Abey's.[61]

We have not been afforded the benefit of knowing what models have been found to undercut Abey's. However, we can make some estimations to model what these factors look like.

Assuming the three largest product codes are also Australian Consolidated Plumbing's three largest product codes, then this would mean they are MCCs **[CONFIDENTIAL INFORMATION DELETED - models]**. These represent **[CONFIDENTIAL INFORMATION DELETED - percent]** of the units sold by Australian Consolidated Plumbing in the investigation period.[62] If correct, **[CONFIDENTIAL INFORMATION DELETED - percent]** Australian Consolidated Plumbing's sales did not undercut Abey's.

Following on from this, only **[CONFIDENTIAL INFORMATION DELETED - percent]** of Australian Consolidated Plumbing's sales may relate to goods with prices that undercut Abey's. Given that we know there were only 31 MCCs that were mutually sold MCCs, and only 21 of those were found to be undercut, we can then model what they may look like. If we disregard the sales of Australian Consolidated Plumbing's top three largest selling models, and then apply a ratio of 33/19, then we are left with the following outcome:

[CONFIDENTIAL INFORMATION DELETED – calculation]

Clearly this is just an estimate. We are limited by virtue of the information available to us and would be happy to provide a more detailed and tailored calculation if the relevant "price undercutting" MCCs could be identified to us. But as an estimate, this suggests that only a minority of the goods (approximately **[CONFIDENTIAL INFORMATION DELETED - percent]**) were sold at prices that undercut Abey's.

It does not appear that a similar exercise has been undertaken for Radius, and it is clear that no such exercise could be undertaken for other market participants. And yet, price undercutting is blamed for the reduced market share,[63] the loss of sales volumes to mutual customers,[64] and the profit effects (being prices suppression and price depression , all of which were observable across the injury analysis period and were features of Abey's performance even before they claim they were injured by dumping in 2022.[65]

We note that Report 645 continues its analysis by focussing on smaller and smaller segments of Australian Consolidated Plumbing's sales, to the point where it finds undercutting in relation to customers that only represent a "small share" of Abey's overall sales. Australian Consolidated Plumbing is

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61 *Ibid*.

62 This figure has been derived from "645 ACP Appendix 1 – profitability of imports" which was an attachment to *Australian Consolidated Plumbing*'s Verification Report. This was "relevant information" and we are happy to provide an amended version of that spreadsheet evidencing that value.

63 Report 645, page 56.

64 Report 645, page 58.

65 Report 645, page 62.

concerned this degree of narrow focus has obscured the larger picture – which is that the vast majority of Abey's sales have not been undercut.

Further, Report 645 fails to grapple with the simple fact - the price of the goods is not determinative of a customer's choice of supplier. This is self-evidently the case. According to Report 645, Abey's sales to customers of Australian Consolidated Plumbing represent only a small share of Abey's overall sales of the goods: this means that the majority of Abey's customers have elected not to purchase from Australian Consolidated Plumbing. This is despite the grave way in which price undercutting is explained in Report 645. What this means is that a generic potential customer, when faced with a sourcing decision in the investigation period is, more likely to pick Abey's over Australian Consolidated Plumbing's despite what is portrayed as decisive differences in pricing. This suggests, as Australian Consolidated Plumbing has advocated throughout the investigation, that price is not a key determinant in a customer's sourcing decisions. Abey, Australian Consolidated Plumbing and other market participants are not solely sellers of clip-heads – they supply the plumbing industry generally. Australian Consolidated Plumbing has reinforced this point across submissions, by:

- emphasising the content of 10 invoices that the Commission randomly selected and verified which illustrated that, in no case, were the goods the sole item purchased and on a weighted average basis represented on **[CONFIDENTIAL INFORMATION DELETED - percent]** of the total value of those invoices;[66]

- providing information concerning all products sold to Australian Consolidated Plumbing's three largest customers that illustrated the goods represented a minority of the items purchased from Australian Consolidated Plumbing in the investigation period, representing only **[CONFIDENTIAL INFORMATION DELETED - percent]** of the total value of the goods sold to these customers in the investigation period;[67] and

- providing links to the websites for other market participants showing that, similar to Australian Consolidated Plumbing, they offer a broad range of plumbing supplies above and beyond the goods.[68]

Report 645 appears to accept this point, noting that "there may be non-pricing factors that influence customers purchasing decisions…". However, nothing is done with this. There is clear evidence that customers choose a supplier who can address there many needs, which on that evidence, eclipse the need for the goods. How, then, can it be positively proved that the small degree of price undercutting has caused material injury?

b Market-size and competition

During the period of investigation, Abey increased its total sales volume in comparison to the previous 12 months.[69] Yet, because Report 645 finds the Australian market grew 11%, and that Abey only captured 30% of that growth, Abey suffered a loss of market share.[70] Again, fault for this is placed on price undercutting.[71]

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66 Document No. 21 on EPR 645.

67 Document No. 29 on EPR 645.

68 *Ibid.*

69 Report 645, page 45.

70 Report 645, page 56.

71 *Ibid.*

We are concerned that the estimate of the market is incorrect. Clearly, it does not include data of one participant, Couta,[72] so it is not a full representation of the market. It seems as though, instead, the market size has been based on sales data from three market participants: Abey, Australian Consolidated Plumbing and Radius. Given Abey's share of the growth of the market is roughly a third of the growth from that sample, we are not certain what the supposed injury is.

As we have noted above, when appropriate context is considered it is apparent that price undercutting is not rampant in the market. In any respect, as reflected in Report 645, prices of the goods are not singularly the only determinant a customer has regard to in selecting who to purchase from. Accordingly, we do not believe it can simply be assumed that (a) Abey should have been entitled to greater growth in sales during the investigation period; and (b) the failure to achieve that was because of price undercutting.

We do not consider Report 645 establishes that Abey has lost market share in any injurious manner. It sold a higher volume in the period when dumping has been determined to have occurred. Moreover, on a measure of three market participants, it achieved approximately a third of the market growth. We do not consider this evidence material injury.

c Loss of sales to mutual customers

Australian Consolidated Plumbing is deeply concerned regarding the use of the analysis of a "loss of sales to mutual customers" to support the injury determination. There are several aspects to this concern.

Firstly, it appears to relate to a loss of sales prior to the investigation period and as far back as FY2018.[73] Any loss of sales to these customers in the investigation period appears to be limited in nature,[74] and, indeed, did not reverse the trend of growing sales reported by Abey in the investigation period. It appears as though the loss of sales to these customers happened before the commencement of the injury analysis period and before Abey claims to have been injured by dumping in 2022.[75] It might be that this analysis is intended to be contextual, but it is also explicitly a factor in the material injury recommendation which cites an inability to "reclaim market share in respect of sales to common or mutual customers" as a reason to impose the anti-dumping measures.[76]

Anti-dumping measures are required to respond to material injury caused by dumping, which is only established to occur during the period of investigation. The Federal Court of Australia that a corollary of this is there is no statutory basis on which injury observed during the prior period could be attributed to dumping.[77] The loss of sales to particular customers over the six years leading up to the investigation period – nor an inability to reclaim those lost sales during the investigation period – is not a permissible consideration under the disciplines required by the Act.

Simply put, the anti-dumping mechanism has been in place in Australia for decades. It was open to Abey to apply for anti-dumping measures at any point when sales to these customers were declining more significantly – say between FY2018 and FY2019 when the sharpest decline is observed. As the anti-dumping mechanism is implemented in Australia it is not concerned with righting historic perceived

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72 Report 645, pages 24 and 25.

73 Report 645, Figure 7 at page 58.

74 Based on the presentation of the sales figures in Figure 7 between FY2023 and FY2024.

75 Report 645, page 42.

76 Report 645, page 74.

77 *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229, para 64.

wrongs. It focuses on the investigation period and the effect of dumping established in that period. This is not case where material injury is claimed to be "threatened" – the relevant period for establishing injury is the investigation period.

In the investigation period Abey's sales to these customers were only a small share of their overall sales. It has not been shown that Abey lost material volumes of sales to these customers in that period. Focusing on what is a small part of the overall performance of the Australian industry has resulted in a skewed conclusion regarding the impact of the imports.

We also wish to note that it is unclear from Report 645 what information was used to establish that the historic declines in sales to select customers are a result of Australian Consolidated Plumbing or Radius' sales. It appears a major, perhaps sole, consideration in this aspect is that Australian Consolidated Plumbing and/or Radius supplied these customers in the investigation period. No space is given for the potential that some other intervening factor could have arisen in the years prior that would change the customer's need for the products; no consideration has been given that the customers, in all likelihood, purchase more products than just the clip heads subject to this investigation. There may be any number of factors that explain this trend. This is an issue Australian Consolidated Plumbing raised in its submission of 17 July 2025. The response in Report 645 is:

> *ACP has not presented any evidence to demonstrate that Abey's sales to mutual customers were impacted by other factors, and the commission did not find any evidence to suggest that Abey's sales volumes were impacted by other factors.*[78]

Please note, Australian Consolidated Plumbing has not been informed as to the identities of these customers. It is not clear, on what basis, Australian Consolidated Plumbing *could* make meaningful submissions about those customers choices dating back to FY2018. As far back as its submission of 1 August 2024, Australian Consolidated Plumbing noted that it did not have a copy of the information used by Abey to make price undercutting allegations, nor a meaningful summary of the same, which harmed its ability to respond to those allegations.[79] That position was not improved across the life of the investigation.

Ultimately, during the investigation period Abey's sales to these customers were a small portion of their overall sales. Whatever happened historically, and for whatever reason, is not relevant to whether injury was suffered in the investigation period. The "mutual customers" analysis should be disregarded in assessing whether to impose measures.

d Profit effects

It is notable that Abey has not sold the goods profitability during the injury analysis period.[80] Report 645 allows as follows:

> *While there may be other factors that may also have caused the price suppression and loss of profit over the years, increasing competition from dumped goods and the subsequent loss of market share was one of the factors that contributed to the increasing price suppression and a marked deterioration in profit and profitability observed in the investigation period…*[81]

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78 Report 645, page 61.

79 Australian Consolidated Plumbing's submission of 1 August 2024, page 5 (Document No 5 on EPR 645).

80 Report 645, page 48.

81 Report 645, page 63.

We have addressed the market share finding above. It suffices to say that it is not apparent that Abey did lose market share. What concerns us is the reference to "increasing competition from dumped goods". It is unclear what is meant by this. As noted above, to the degree that Abey and Australian Consolidated Plumbing sell to the same customers, Abey's sales to these customers are but a small share of its overall sales of the goods. Abey's sales to these specific customers has apparently declined since FY2018. If this is the field of competition, it is apparently starkly limited in nature – so where does the sense "competition" is "increasing" come from.

We again note the majority of Australian Consolidated Plumbing's sales did not undercut Abey's prices. We again note, customers rarely, if ever, buy the goods singularly, but rather, along with many other plumbing supplies. We again note that the majority of Abey's customers do not purchase the goods from APC or Radius.

Where, then, is this "growing competition"? We see no evidence of it. If that is the case, then the conclusion must surely be that price suppression and loss of profit is the result of "other factors", as is acknowledged is a possibility in the above extract. What other factors? We cannot say – we do not represent Abey, we are not the Commission, we do not have access to the same information that would allow us to interrogate that point. We do however note that the Minister is required to undertake a non-attribution exercise under s 269TAE(2A). Having accepted that other factors might be causing this injury, the Minister is obligated to ensure such injury is not attributed to the exports. This exercise has not occurred. Accordingly, there is no basis to consider that the "profit effects" have been shown to be because of dumping and not because of other factors.

e Size of the dumping margins

For the reasons discussed with respect to Grounds 1 and 2 we do not consider the dumping margins are accurate. The normal values have been determined outside the disciplines set out in s 269TAC of the Act and do not recreate an "ordinary course of trade" price reflective of the fact that these goods are not sold in China. As a consequence, we consider the dumping margins are significantly inflated.

In any respect, we have significant concern regarding the narrative employed in Report 645 in this respect. For example, that Report uses terminology such as "the price advantage ACP achieved sourcing dumped goods from China…".[82] What is this advantage? These goods have only been found to have been dumped because of the choices made in determining a normal value, choices that appear to include a substantial degree of assumed profit. Australian Consolidated Plumbing had no insight into the methodologies the Commission would eventually adopt when it chose to source goods from China. The conceit that Australian Consolidated Plumbing has obtained any pricing advantage should be disregarded.

10	**Identify what, in the applicant's opinion, the correct or preferable decision (or decisions) ought to be, resulting from the grounds raised in response to question 9:**

The material injury was based on the "totality" of the matters critiqued above.[83] Many of them offend a statutory conditions imposed on the injury determination power; many of them incorrectly assess the facts that were available. The correct or preferable decision is that the Minister should not be satisfied that any dumping ultimately established to have occurred caused material injury to Abey. As a consequence, the measures should not have been imposed.

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82 Report 645, page 52.

83 Report 645, page 74.

11 Set out how the grounds raised in question 9 support the making of the proposed correct or preferable decision:

The grounds raised in question 9 establish that:

- The injury that Abey has suffered is ongoing and predates the period of investigation;
- The factors cited as supporting the conclusion that this injury was because of dumping are individually and collectively erroneous, including;
  - A narrative that gives explanatory force to price undercutting when the majority of assessed import sales do not appear to have been at prices that undercut Abey's;
  - A focus on historic sales volumes to mutual customers that predate the injury analysis period, the point at which Abey indicates it has been injured by imports and the investigation period;
  - A conclusion that Abey has lost market share despite the fact that the market share analysis only considers three market participants and Abey gained approximately 30% of the market growth in the period of investigation
  - A finding that Abey lost profit despite allowance that this could be caused by other factors;
  - Repeated citation of an "advantage" from sourcing dumped goods when the normal value has been incorrectly determined;

12 Set out the reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision:

The proposed decision is materially different from the reviewable decision because it would necessitate the revocation of the measures.

C Conclusion and request

The Minister's decision to which this application refers is a reviewable decision under s 269ZZA of the Act.

Australian Consolidated Plumbing is an interested party in relation to the reviewable decision.

Australian Consolidated Plumbing's' application is in the prescribed form and has otherwise been lodged in accordance with the Act.

We submit that the application is a sufficient statement setting out Australian Consolidated Plumbing s reasons for believing that the reviewable decision is not the correct or preferable decision, and that there are reasonable grounds for that belief for the purposes of acceptance of this application for review.

The correct and preferable decision that should result from the grounds that are raised in the application is dealt with and detailed above.

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