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 of the reviewable decision were described in Ant-Dumping Notice No 2025/089 as:

Interchangeable bolted clipping system brackets, whether or not galvanized, whether or not including nut and bolt, including the following brackets:

- ***light hanging bracket with elongated slot and square hole for interlocking coach bolt and nut***
- ***stand-off bracket with elongated slot and square hole for interlocking coach bolt and nut***
- ***adjustable stand-off bracket with elongated slot for interlocking coach bolt and nut***
- ***all-thread bracket with elongated slot and square hole for interlocking coach bolt and nut, and***
- ***welded nut bracket with elongated slot and square hole for interlocking coach bolt and nut.***

The interchangeable bolted brackets 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, generally, but not exclusively, tariff subheading 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 2025/089**
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 2025/089

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: / /

Customs Act 1901 – Part XVB

Interchangeable bolted clipping system brackets - 644

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 2025/089

The Commissioner of the Anti-Dumping Commission (the Commissioner) has completed the investigation into the alleged dumping of interchangeable bolted clipping system brackets (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 brackets, whether or not galvanized, whether or not including nut and bolt, including the following brackets:
>
> - light hanging bracket with elongated slot and square hole for interlocking coach bolt and nut
> - stand-off bracket with elongated slot and square hole for interlocking coach bolt and nut
> - adjustable stand-off bracket with elongated slot for interlocking coach bolt and nut
> - all-thread bracket with elongated slot and square hole for interlocking coach bolt and nut, and
> - welded nut bracket with elongated slot and square hole for interlocking coach bolt and nut.

The interchangeable bolted brackets are manufactured from galvanised hot rolled coil.

Further information regarding the goods the subject of the application can be found in ADN No 2024/040.[1]

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 of the *Customs Tariff Act 1995*:

- 7326.90.90, statistical code 60
- 8302.50.00, statistical code 21.[2]

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[1] Refer to item no 3 on EPR 644, available at www.adcommission.gov.au.

[2] These tariff subheadings and statistical codes 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.

The Commissioner reported his findings and recommendations to me in *Anti-Dumping Commission Report No 644* (REP 644). In REP 644, 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.

Exporter	Dumping margin	Rate of interim dumping duty	Method to establish dumping margin
Ningbo Fenghui Metal Products Co., Ltd	71.2%	47.6%	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	80.0%	54.4%	

Table 1: Dumping margins and rates of interim dumping duty

The above table also lists the effective rates of interim dumping duty, which differ to the dumping margins for all exporters.[5] This is due to the application of the lesser duty rule, pursuant to section 8(5B) of the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act). Under the lesser duty rule, consideration is given to the desirability of imposing duties at less than the full dumping margins if a lesser amount of duty is adequate to remove injury to the Australian industry.

I, TIM AYRES, the Minister for Industry and Innovation and Minister for Science, have considered and accepted the Commissioner's recommendations in REP 644. 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 644.

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 six 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

[3] On 11 August 2025, the Commissioner terminated the investigation into alleged subsidisation of the goods exported from China. *Termination Report No 644* sets out the reasons for the termination. This report is also available at www.adcommission.gov.au.

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

[5] The effective rate of duty for all exporters is an amount worked out in accordance with the *ad valorem* duty method.

- 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 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 644 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

In the Anti-Dumping Review Panel

Application by AC Plumbing Supplies Pty Ltd for review concerning Minister's decision in Investigation 644

Interchangeable bolted clipping system brackets 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 brackets ("brackets") exported from the People's Republic of China ("Investigation 644").

The initiation of Investigation was a consequence of an application lodged by Abey Australia Pty Ltd ("Abey") which has been found by the Commissioner ("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 Commissioner recommended to the Minister that he impose anti-dumping duties on brackets 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 644,"* 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 REP644*."[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 644 recommends, and the Minister accepted the recommendation, that normal values be determined under s 269TAC(6) of the Act.[2] Australian Consolidated Plumbing submits 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 ("Qiniyan"). That is to say, where goods can be identified as being 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. 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.[3] 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"). Relevantly, 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 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*

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1 *Report No 644 – Alleged Dumping of Interchangeable Bolted Clipping System Brackets Exported from the People's Republic of China* (12 September 2025) ("Report 644").

2 Report 644, page 84.

3 The application for the investigation (EPR 644, item 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 brackets) are not sold on the Chinese domestic market.*

> *be ascertained under the preceding sections, the commission has determined the normal value under section 269TAC(6), having regard to all relevant information.*[4]

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.*[5] [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 relevant regulation in this respect is r 43 of the *Customs (International Obligations) Regulations 2015* ("the Regulations").[6] Inter alia, this provides:

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4 Rep 644, page 37.

5 Report 644, page 37.

6 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*".

(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,[7] 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,[8] and which through the process of verification the Commission concluded were "accurate", "complete" and "relevant".[9]
- 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".[10] 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 1.5%. This indicates that there was only a slight degree of difference between the costs as recorded and the competitive benchmark Accordingly, we consider it inferable that Qinyan's costs "reasonably reflected"

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7 *Verification Report Cixi Guanhaiwei Qinyan Hardware Factory, Investigation 644* ("Verification Report"). Document No. 22 on the EPR.

8 Verification Report, page 8.

9 Verification Report, page 4.

10 Verification Report, page 7.

11 *Termination Report No. 644, Alleged Subsidisation of Interchangeable Bolted Clipping System Brackets Exported from the People's Republic of China* ("the Subsidy Termination Report"), page 29. Document No. 35 on the EPR.

> 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 (Document No. 22 on the EPR) 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.*

Qinyan's response is 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 Quinyan. Accordingly, it was not permissible to determine normal values under s 269TAC7 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 based 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 644 notes at page 37 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 the *Exporter Verification Report - Ningbo Fenghui Metal Products Co., Ltd – 644* ("Exporter Verification Report"), Document No. 23 on the EPR, 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 the 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 644 notes that the products that Fenghui sold domestically fall within the "same general category" as the goods exported to Australia, being the category of "brackets".[22] The Commission has identified the amount of SG&A incurred by Fenghui on these sales, across the period of investigation.[23] 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 based 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).[24] 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.[25] As the goods are not sold for home consumption in the country of export, there is no data that fits this description, so the requirements of s 45(2) cannot be met.[26]

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 644 indicates that r 45(3)(a) can be applied. Report 644 find that Fenghui sells the same general category of goods in China, and an amount of profit on those sales has been identified.[27] We are of course cognizant of the strict reading the Federal Court of Australia has applied to this regulation, [28] 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 644, page 39.

23 Report 644, page 37.

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

25 s 269TAAD(1)(i) and (ii).

26 Noting, in particular, that Qinyan's Verification Report states that "…Qinyan did produce or sell like goods for home consumption in China", at page 6.

27 Report 644, page 41.

28 *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 r 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.[29] 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 variously as "brackets" and "plumbing products" and "products used in plumbing applications".[30] It is also worth noting that these categories reflect "all domestic sales" by Fenghui.[31]

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.[32] 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".[33] There is ample institutional knowledge within the Commission to form 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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29 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*" at paragraph 91.

30 Report 644 at, respectively, pages 39, 41 and 36.

31 Report 644, page 40.

32 Report 644, page 24.

33 Report 644, 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 s 269TAC prescribes after this designed to arrive at proxy for that 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….*[34]

Nowhere in the Act or the regulations is there a requirement that the exporter be the producer. What is required 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.

Qinyan’s cost of production information has been verified to their accounting system and source documents; 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

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34 *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.

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 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*.

This is how the grounds set out at 9 support the making of the correct and preferable decision.

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]

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 that the Act requires.

When the normal value is determined under s 269TAC(1), it is done so based on 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]

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

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35 Report 644, page 37.

36 Report 644, page 36.

37 Section 269TAAD(1)(a).

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 relevant costs and profit can be determined. None of those involve using the profit from two different entities.[40] 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.

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 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

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38 *Statement of Essential Facts – SEF 644* (Document No.28 on the EPR), page 33 – 34

39 Report 644, footnote 65.

40 Even to the extent that adjustments are permissible under s 269TAC(9), those adjustment are relevant to the "determination of costs" not to the amount of profit determined.

trade price. Put another way, when the Minister is assessing which of the relevant information should inform his 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 in two aspects.

Firstly, as the base used is the price between Fenghui and its suppliers, presumably there should be some consideration as to whether those prices are representative of "ordinary course of trade" prices. The simple logic being where the base of a value is not representative of the "ordinary course of trade" how could the value claim to be? The Commission's policy has long been that the concept of ordinary course of trade also relaters to the nature of the sale. The Dumping and Subsidy Manual states as follows with respect to "ordinary course of trade":

> *Depending on the circumstances, profitable sales may not be in the ordinary course of trade. These circumstances may include sample sales, promotional sales made at special prices, end of season sales, low quality sales, or sales in other unusual circumstances.*[41]

It is not clear that regard was had to this in determining the normal value. Take for example the following from Fenghui's to the investigation dated 17 July 2025:

> *Taking a step back, even if assuming the commission may use Qinyan's profit on its sales of the goods to Fenghui when constructing the normal value, we are of the view the commission shall delete the sale of [CONFIDENTIAL TEXT DELETED – Name of Product and Invoice Number], as this sale is unusual. It is obvious to see that the unit price of the product [CONFIDENTIAL TEXT DELETED – Name of Product] for this sale is [CONFIDENTIAL TEXT DELETED – Sales Price] and the unit price of the product [CONFIDENTIAL TEXT DELETED – Name of Product] for other sales is [CONFIDENTIAL TEXT DELETED – Sales Price]. The reason for this unusual price is that this is the first time for Qinyan to produce this model and Fenghui agreed to accept this unusual price in gratitude for Qinyan's good effort in supplying products in time and for supporting Qinyan as a newly established enterprise, which is not based on the product reason or the market reason. Since this sale does not happen in the normal trade situation, we request the Commission with respect to delete this sale accordingly.*[42]

From this submission it is observable that Fenghui has identified particular sales at the products and invoice level that had "unusual" prices. On our interpretation, these prices were not set having regard to the either the nature of the product nor the dynamics of the market. Indeed, it would appear that the price paid for those products was set for purposes other than commercial purposes. We would submit, based on the policy set out in the Manual, that such a circumstance would render this sale as not being in the ordinary course or trade. That being the case, it should be excluded from the normal value determination.

We do not know what information has been gathered by the Commission with respect to this sale, and we note that the opportunity to provide further information is limited in an ADRP review. Nonetheless, given the Commission has been able to determine a profit on these sales, they must at least have price and cost information. They are therefore in a position to determine where the price charged on this invoice for this good is in-line with other transaction for the same products across the investigation period. If not, that would support Qinyan's position that the relevant sale was not normal and, we would submit, would then require that it be removed from the price-base used to determine the normal value.

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41 *The Dumping and Subsidy Manual*, page 26.

42 Document No. 31 on the EPR, page 7.

The second aspect relates 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.*[43]

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".[44] A price that breaks-even is an ordinary course of trade price. By adopting what appears 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.

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43 Document No. 25 on the EPR.

44 Section 269TAAD(1)(a).

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:

- Firstly, excluding prices of the goods that Fenghui has described as not being in the ordinary course of trade from the base of the normal value;
- Secondly, 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;
- Thirdly, 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.[45] The determination of material injury is bound by the following requirements:

- it must be based on facts, and not merely on allegations, conjecture or remote possibilities;[46] and
- injury that was suffered by the Australian prior to the period of investigation cannot be attributed to dumping;[47]
- injury caused by other factors cannot be attributed to the dumped goods; and[48]
- the injury determination must be based on positive evidence and an objective examination.[49]

During the period of investigation, Abey increased its total sales volume,[50] its unit price,[51] and its profit and profitability.[52] Further, Abey has not suffered material injury in the form of price suppression or price depression.[53] Despite this, the Australian industry was determined to have suffered material injury, on the basis that firstly, the Australian market for the goods grew in the period of investigation; secondly, despite increasing its sales volumes, Abey's market share decreased. This leads Report 644 to conclude:

> *The growth in imports displaced the Australian industry's sales volumes and led to a material reduction in its market share over the injury period including in the investigation period. The commission estimates that the reduction in the Australian industry's market share in the investigation period led to the Australian industry forgoing profit of over a tenth of the profit achieved by the Australian industry in the investigation period, which the commission considers to be material.*[54]

As we interpret this conclusion, Report 644 finds that the "injury" is the decline in market share, which is said to be material because of the profit determined to have been "foregone" as a consequence. Neither of these decisions are "correct or preferable".

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45 Section 269TG(2) of the Act.

46 Section 269TAE(2AA) of the Act.

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

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

49 Paraphrasing Article 3.1 of the Anti-Dumping Agreement.

50 Report 644, page 45.

51 Report 644, page 46.

52 Report 644, page 47.

53 Report 644, page 46.

54 Report 644, page 73.

As an initial point, it is important to consider the role that market share plays in an injury determination. It is but one of ten "relevant economic factors" identified in section 269TAE(3) of the Act.[55] Those "relevant economic factors" are but one of ten other considerations identified in s 269TAE(1) of the Act. In any injury determination the Minister is not obligated to consider, or have regard to, the industry's market share. Indeed, the *Ministerial Direction on Material Injury 2012* notes:

> *As in all cases, a loss of market share cannot alone be decisive. I direct that a loss of market share should be considered with a range of relevant injury indicators before material injury may be established.*

Yet, in this instance the supposed loss of market share is treated as decisive.

a Assessment of the Australian market

Report 644 notes that the market is an "estimate" and a "reasonable approximation" based upon "available information".[56] That is hardly a ringing endorsement as to the accuracy of the assessment of market share. The concern increases when one considers the "available information" used to approximate the market, being:

- Sales Australian Consolidated Plumbing, Radius and Abey to estimate market size and share; and
- ABF data concerning imports by another entity, Couta.[57]

As a starting proposition, we note that a "market" necessarily connotes that the goods are sold in Australia. It is not clear that all imports by Couta are part of the market in Australia for the goods. It may be the case that upon import, the goods were not sold. Or, for example, if Couta produced products which included the goods, then the goods would not enter the Australian markets for those additional goods. We understand that these imports may be relevant to the s 269TAE(1)(a) or (b) but not to market share.

Beyond this, however, is the concern regarding the accuracy of the information used to Couta's market share. Australian Plumbing has raised this issue during the investigation.[58] For verification, the Commission used the same data to select a sample of Australian Consolidated Plumbing's import consignments. One of the nine sampled imports the Commission initially requested from Australian Consolidated Plumbing did not contain the goods.[59] Further, from the samples verified by the Commission, many of the import entries provide the description "pipe clips", which can include, variously, the goods relevant to Investigation 644, those relevant to Investigation 645 and goods that are irrelevant to either of the investigations. Report 644 does not explain in any detail how it has been able to verify four years of ABF data to ensure it relates only to the goods relevant to Investigation 644, as opposed to other items. If there are errors that have compounded across the injury analysis period, that could substantially impact the approximation of the size and growth of the Australian market and of participants shares in that market. This appears to be the implicit reason for characterizing the marker as a "reasonable approximation".

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55 Specifically at s 269TAE(3)(j), which identifies the following a relevant economic factor "the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry".

56 Report 644, Page 55.

57 Report 644, page 55.

58 Document No. 32, EPR 644.

59 Australian Consolidated Plumbing Verification Report (Document No. 23, EPR 644), page 11.

There is a second issue that arises. Abey identified another entity as a key competitor, Flexistrut.[60] According to Report 644, Flexistrut did not import the goods into Australia.[61] The exact meaning of this finding is unclear. However, we note the following:

- Abey identified Flexistrut as a major competitor during their verification in November 2024; and
- It is apparent from Report 644 that imports of the goods from China are Abey's only source of competition in Australia.[62]

If Flexistrut was, at one point, competitive with Abey this suggests that they, at one point, imported the goods from China. Given they were cited as a competitor as recently as November 2024, this competition must have been recent. If it stopped importing the goods, then a natural consequence would be that other market participants' market shares would change. If these variations in market participant behavior are not captured in the market share determination, then how can any conclusion regarding market share, or the decline of the same, be accurate?

b Underlying assumptions concerning the maintenance of market share

The second concern relates to the assumptive nature of the finding that profit foregone because of the supposed decline in market share was material. In this regard Report 644 notes as follows:

> *As depicted in Figures 2 and 6 in this report, it is evident that from YE 31 March 2023 to YE 31 March 2024 (with YE 31 March 2024 being the investigation period), Abey's market share decreased. The commission was able to determine the percentage point reduction in Abey's market share in the investigation period compared to Abey's market share in the previous year.*
>
> *There were no assumptions made about the prices or sales volumes that Abey should have been able to achieve during the investigation period because the estimate was based on the actual reduction in its market share in the investigation period. As the commission has information on Abey's prices and profit margin in the investigation period, the commission was able to use the percentage point reduction in Abey's market share to estimate the profit forgone due to the reduction in Abey's market share in the investigation period.*[63]

Noting that Abey's sales increased in the investigation period, we interpret this as meaning that to assess the injury Report 644 has determined that (a) Abey's sales volumes should have grown at the same rate as the market and (b) they should have done so at the same price(s) Abey achieved during the investigation period. The rationale for either assumption is not explained In Report 644.

To illustrate the issue with respect to the volume of sales foregone, please refer to the following table:

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60 Report 644, page 75.

61 Report 644, page 27.

62 Report 644, pages 50, 60 and 66.

63 Report 644, page 63.

	Year 1		Year 2	
	Sales volume	Market share	Sales volume	Market share
Australian industry	80	80%	81.69	72%
Imports	20	20%	31.31	28%
Market	100		113	

As we understand it the "injury" arises because in Year 2 the industry's market share is 72%, despite the increase in its sales volume. The suggestion appears to be that Abey was injured because it was unable to maintain its market share. This suggests that they would have avoided injury if, in Year 2, their market share remained 80%. Taking the above scenario as a step further, the non-injurious outcome in Year 2 would be as follows:

	Year 1		Year 2	
	Sales volume	Market share	Sales volume	Market share
Australian industry	80	80%	90.4	80%
Imports	20	20%	22.6	20%
Market	100		113	

As can be observed, for the industry to maintain its market share of 80% in Year 2 it needs to supply the majority (80%) of the additional market demand. The "injury" is apparently the delta between the 81.69 sales volume it achieved in the first example and the 90.4 in the second example.

But this is an arbitrary assumption. It is not clear why anything less than a sales volume that maintains market share is injurious. More significantly, the assumption is not objective. It favours the interests of the Australian industry, requiring not only that their sales grow, but that their growth be significantly greater than their competitors to avoid injury. This assumption conveniently side-steps the fact that imports – even dumped imports – can enter Australia without causing injury to the local industry, instead assuming that the very fact of importation is injurious.

When regard is had to the facts, they establish that the Australian industry was selling more at higher prices and achieving a greater profit during the investigation period. Premising a material injury finding on the assumption that the Australian industry should have been able to take sales from other market participants, based on what is, at best a rough approximation of the Australian market, is not the correct or preferable decision.

This issue is further exacerbated when one consider how the "loss of market share" has been determined to be material. From the explanation in Report 644, it appears that the theory of injury is based upon the assumption that, had Abey not "foregone" the additional sales necessary to maintain its pre-investigation market share, it would have, could have and should have done so at the same prices and profit levels as those actually achieved during the period of investigation. It is worth noting that:

- in the investigation period Abey's "profit was higher than that achieved in the previous three years because the margin between price and cost increased."[64]

64 Report 644, page 47.

- Abey's prices are not observed to be higher across the injury analysis period than those achieved during the investigation period.[65]

So, the underlying assumption appears to be that Abey is injured if it cannot sell more products at historically high prices and profit margins. Again, such an assumption is not objective. It results in a maximalist determination of the materiality of the alleged injury. Australian Consolidated Plumbing does not accept Abey has lost market share, but it is not the case that it would be injured unless it made additional hypothetical sales at historically high prices.

c Comments concerning price setting

It appears some of the assumptions discussed above appear to be based on a finding of price undercutting. To the extent it is relevant, Australian Consolidated Plumbing wishes to provide some brief comments regarding price-setting in the Australian market. The key approach to this issue in Report 644 is described in the below extract:

> *As the Australian industry's prices were undercut by dumped goods in the investigation period, the Australian industry has forgone sales volumes and market share to imports from China at a time when the market increased. Further, the entrenched price advantage resulting from the high levels of dumping undermined the Australian industry's ability to reclaim market share in respect of sales to common or mutual customers. The commission found that the volume of dumped goods imported from China and sold to mutual customers was equivalent to nearly a third of the total volume of like goods sold by the Australian industry in the investigation period.*[66]

Again, this needs to be understood in the context. Firstly, there is no finding that Abey suffered price depression or prices suppression during the investigation period. Secondly, Abey's sales to these mutual customers represent 1% of their overall sales in the period of investigation.[67] In the investigation period there is limited cross-over between Abey and these "mutual customers". It is not clear that Abey lost material volumes of sales to these customers in the investigation period, nor is it clear that the "growth" in the market related to these customers. It is not clear why Report 644 focusses so specifically on customers that have little to do with Abey's performance in the investigation period.

To the extent that that Report 644 considers injury has occurred because Abey cannot "reclaim market share in respect of sales to common or mutual customers"; to the extent this is a motivating factor in the finding that Abey has suffered material injury or has informed the estimation of what that injury is – it falls into error by doing so. While it is apparent that Abey has lost sales volumes to these customers since 2018,[68] this is an investigation that is considering dumping and material injury during the investigation period (between 1 April 2023 – and 30 March 2024). From Report 644 it is apparent that the majority of that decline occurred before FY2022 which, technically speaking, is outside the investigation period.[69] Abey itself have stated that they only began to suffer injury as a result of the alleged dumping from FY2022.[70] Indeed, the majority of that decline in Abey's sales to these customers occurred between FY2018 and FY2020, a period which only slightly abuts the injury analysis period which began in April

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65 Report 644, page 46.

66 Report 644, page 74.

67 Report 644, page 52.

68 Report 644, page 57.

69 *Ibid*.

70 Report 644, page 43.

2020.[71] To the extent that sales to these customers declined in the investigation period – which is the only period in relation to which dumping can be found, and so the only period in which injury can be found to be caused by dumping - it is apparent that such a decline was not sufficient to reverse the net trend, which was verified to be an increase in Abey's sales at increasing prices.

Ultimately, Report 644 fails to grapple with a simple fact - the price of the goods is not determinative in a customer's choice of supplier. 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 6 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 TEXT DELETED - number]** of the total value of those invoices;[72]

- 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 TEXT DELETED - number]** of the total value of the goods sold to these customers in the investigation period;[73] 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.[74]

Implicitly in the position presented in Report 644 is an assumption that demand for the goods under consideration is significantly more sensitive to price than any other item offered by market participants. But such an assumption is not realistic. Report 644 assumes that Australian Consolidated Plumbing's top three customers made sourcing decisions for the other **[CONFIDENTIAL TEXT DELETED - number]** of their spend based on the price for just **[CONFIDENTIAL TEXT DELETED - number]** of the goods they need. That is not a reasonable assumption.

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:**

A determination of injury is guided by section 269TAE. That section requires that any injury determination be based on facts, and not merely on allegations, conjecture or remote possibilities. This aligns with Australia's obligations that an injury finding be based on positive evidence and an objective examination of such evidence. The facts, which have been verified by the Commission are that in the period in which dumping is considered to have occurred, Abey has increased its sales volume, prices and profits, and has not suffered price suppression or depression. None of these facts suggest that Abey has suffered material injury because of that dumping.

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71 The initiation notice published by the Commissioner in accordance with s 269TC(4) of the Act on 25 June 2024 specifically states "I will examine details of the Australian market from 1 April 2020 for the purposes of injury analysis."

72 Document No. 26 on the EPR.

73 Document No. 32 on the EPR.

74 *Ibid.*

The findings that suggest otherwise do not have claim to the same provenance. The reviewable decision is based on the premise that Abey has suffered material injury because it lost market share. The materiality of that injury is based on a calculation of the additional profit that Abey would have received had it maintained its market share at the price/profit margin available during the investigation period. All of these outcomes are based on conjecture, including:

- an approximation of the Australian market based on "information available" across a four-year period;
- conjecture, based on that approximation, that the market grew in the investigation period;
- the remote possibility that, if not for dumped goods, the Australian industry would have maintained its market share at historically high prices and historically high profit margins; and
- informed by a concern that Abey could not "reclaim market share in respect of sales to common or mutual customers" where the loss of that "marker share" apparently predates the investigation period and, to a material degree, predates the period in which Abey has said it was injured by dumping and the injury analysis period

Section 269TAE does not include any "catch-all" provision. There is no equivalent in that section to s 269TAB(3) or s 269TAC(6) which allows access to "all relevant information". What section 269TAE refers to is "facts". Absent facts that establish material injury has been suffered in the investigation period then no finding of material injury can be made for the purposes of s 269TG(1) and (2).

This may seem severe, but it is not when the broader context of s 269TAE is considered. Market share is but one of a multitude of factors that are cited in that section. It would be a rare case indeed that material injury would be based solely only on a perceived loss of market share. Indeed, market share has specifically been highlighted in the Injury Determination as not being solely decisive to the question of material injury.

Throughout the investigation we have maintained this point – if the Australian industry considers it has suffered injury, it is required to provide positive evidence to support that claim. It has provided evidence that shows that it is selling more at high prices and that it is increasingly profitable. These are the facts on which the injury determination should be based. The finding that Abey lost market is not based on facts, and so cannot factor into the decision to impose duties under s 269TG(1) and (2). As there is no other basis to find that Abey suffered material injury because of the "dumping", the measures should be revoked.

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

The "market share" finding is built upon estimation and conjecture. The materiality of that finding based on remote possibility and assumptions that lack objectivity. It is not an appropriate basis for the Minister to be satisfied under s 269TG(1) and (2) that Abey has suffered material injury.

The verified facts concerning the Australian industry's performance during the investigation period show that the Australian industry has not suffered material injury as a result of any perceived dumping of the goods. Instead, the Australian industry has sold more, at higher prices and at historically high profit margins. Within those facts, there is no basis to determined that the Australian has suffered material injury and so no basis to impose anti-dumping measures.

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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