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9 February 2026

Mr P Afshar
Senior Member
Anti-Dumping Review Panel
GPO Box 2013
Canberra ACT 2601
Australia

By email

Dear Senior Member,

Review 2025/173
Interchangeable bolted clipping system brackets from the People's Republic of China

As you know, we represent AC Plumbing Supplies Pty Ltd ("ACP") in this matter. We make this submission under s 269ZZJ of the *Customs Act 1901* ("the Act").

1 The consequences of an incorrect dumping determination

In grounds 1 and 2 of its application ACP articulates its position that the normal values determined by the Minister under s 269TAC(6) of the Act have been significantly and incorrectly inflated. This inflation has resulted in the substantial dumping margins found in Report 644, which resulted in the imposition of anti-dumping measures. These inflated values also undergirded the conclusion that any such dumping had caused material injury for the purposes of s 269TG(2)(b) of the Act. This is observable in the following aspects:

- at page 50, Report 644 considers that the "…*magnitude of dumping provided exporters with the ability to offer the goods to importers at lower prices than would otherwise have been the case*".
- at page 53, Report 644 contextualises its price undercutting analysis within the "size of the dumping margin" noting that "[g]*iven that the goods exported from China had dumping margins of at least 71.2%, the price paid by importers for undumped goods would have been up to 28% more expensive than what was in fact paid"*. This logic is repeated at pages 59 and 61.

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- at page 58, Report 644 considers that the level of dumping identified "*has entrenched the price advantage importers enjoy relative to Abey in respect of those common customers that have shifted sourcing away from Abey in favour of imported goods*". This language is adopted again on page 59, page 72 and page 74 when concluding that injury is material.

- at page 73, Report 644 cites the "*size of the dumping margins"* as being a factor in determining whether injury was material.

As we have noted in the application, a normal value – irrespective of the legislative power under which it is determined – is intended to represent the ordinary course of trade price for the exported goods in the domestic market of the country of export. The propulsive force given to the dumping margin in the injury analysis illustrates why it is important to hew closely to that purpose when determining a normal value.[1] There are two aspects to the reviewable decision in which that discipline has been departed from, which we discuss below.

a The normal value must be based on market prices

The reviewable decision was premised on normal values which were built up from the prices that Ningbo Fenghui Metal Products Co., Ltd ("Fenghui") paid its suppliers for the goods. We do not believe it is contentious that the normal value is intended to represent the ordinary course of trade price for like goods in the market of the country of export. We do not believe it to be contentious that the decision maker should have that goal in mind when determining a normal value. For that reason, we submit that it is unreasonable, and certainly not correct or preferable, to premise the normal value on prices that were not derived in the ordinary course of trade.

As noted in ACP's application the normal value included prices that were "unusual" and "not based on the product reason or the market reason". From the public record, it appears the relevant invoice was identified to the Commission. We would assume, also, given that these were sales of the like goods, that the relevant product would be identifiable at the model control code ("MCC") level.

Consequently, it is possible to confirm Fenghui's submission that the price in this identified sale is not related to the good itself but informed by broader considerations. For example, the unit price in the identified invoice could be compared with prices Fenghui paid for other items in the same MCC. If the unit price from the identified invoice differs significantly then this would give credence to Fenghui's submission that it should not be included in the normal value determination, as it is not representative of an ordinary course of trade price in the country of export.

b Selecting the correct and preferable profit requires active consideration

The construction of a normal value under s 269TAC(2)(c) or 269TAC(6) can be significantly impacted by the selection of the methodology for the determination of profit. A higher profit makes it more likely that dumping will be found to have occurred. Given the potential impact of a significant profit, say 10% or more, the profit determination should be scrutinised carefully when there is discretion as to what profit, if

[1] This undergirding principle is also relevant when considering which of the profit methodologies is to be adopted under s 45(3) of the Regulations.

any, should be adopted. In circumstances where an ordinary course of trade profit is not available, then the choice of methodology should be guided by what best represents that kind of profit. We say this both when a profit is being determined under s 269TAC(6), or when a methodology is being selected under r 45(3); in that latter circumstance there is no hierarchy to the three methodologies set out.

In selecting the profit margin in this instance, the following are important considerations:

- generally, an ordinary course of trade price can be break-even (i.e, no profit is gained on the sale);
- in this case specifically, there is no market for the goods in China; and
- in this case specifically, the profit rate presently used is derived from Chinese sales of "products used in plumbing applications" which the exporter characterised as being "*at a very high price*" and "*sometime even 10 times than its purchase cost*" (sic).[2]

Considering this, we respectfully request that the Senior Member identify the profit rate used in the normal value determination. We assume this would be in Confidential Attachment 3 to Report 644 but, if not, it will have been included in the "relevant information" that has been provided to you in this matter. When identified, we ask that the Member consider whether that profit margin is a reasonable gauge for assessing what an ordinary course of trade price would be for like goods, particularly in circumstances where there is no demand for those goods in China.

The Minister wields significant power to determine both the normal value and to form a view regarding the impact of that normal value on the Australian market. This is why the disciplines set forward in s 269TAC need to be closely adhered to. Even in circumstances where a normal value is assessed under s 269TAC(6), the goal should be to determine an ordinary course of trade price for the goods, and all information used in that pursuit should be assessed against that goal.[3]

2 The injury determination prefers assumptions over facts

Report 644 found Abey had suffered only one form of injury: loss of market share.[4] This was determined to be material when measured in terms of the profit that would have been made had Abey maintained its

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2 Document No. 25 on the EPR.

3 We would also caution the member to consider carefully circumstances where the discretion under s 269TAC(6) has been described as being exercised to give "effect" to the provisions of s 45(3). For example, r 45(3)(a) requires "*attention to a real world figure that was actually realised*". Further, it has been accepted "*that there may be real world problems in many industries assessing what reg 45(3)(a) calls for…*" (from *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20). If that interpretation has not been adhered to, then they are not giving effect to r 45(3)(a). In such a circumstance, our point remains, that the profit margin should be determined with the goal of assessing the ordinary course of trade price for the goods in China, not based on some loose simulacrum of the regulations.

4 Report 644, page 73.

market share at the levels identified, presumably, in the year prior to the investigation period and at prices and profit levels achieved during the investigation period.[5]

For the reasons expressed in relation to grounds 1 and 2 of its application, and further discussed in this submission, ACP does not accept that the finding that the goods were exported to Australia at dumped prices was the correct or preferable finding. We would further emphasise that Abey's performance was not established to be materially impacted to justify a finding that it had suffered material injury because of those exports. Rather, Report 644 makes the following findings of fact regarding Abey's performance:

Performance of Abey	**Comment**
Increased sales volumes[6]	Typically, an increase in sales volumes is not considered to evidence of injury. We understand that this is based on Abey's sales data which was verified to be accurate, complete and relevant.
Increased unit price[7]	Typically, an increase in unit prices is not considered to evidence injury. We understand that this is based on Abey's sales data which was verified to be accurate, complete and relevant.
Increased profit[8]	Typically, an increase in profits is not considered to evidence injury. We understand that this is based on Abey's sales and cost data, which was verified to be accurate, complete and relevant.
Increased profitability[9]	Typically, an increase in profitability is not considered to evidence injury. We understand that this is based in Abey's sales and cost data, which was verified to be accurate, complete and relevant.
No price suppression[10]	Report 644 explains that "[*p*]*rice suppression occurs when price increases, which otherwise might have occurred, have been prevented*."[11] The finding that there was no price suppression indicates that there was no restraint on Abey increasing its prices.

5 *Ibid*.

6 Report 644, page 45.

7 Report 644, page 46.

8 Report 644, page 47.

9 Report 644, page 47.

10 Report 644, page 46.

11 *Ibid.*

	We understand that this conclusion is based on Abey's sales and cost data, which was verified to be accurate, complete and relevant.
No price depression[12]	Report 644 explains that "[*p*]*rice depression occurs when a company, for some reason, lowers its prices*."[13] The finding that there was no price depression indicates that Abey did not experience any downward pressure on its prices. We understand that this is based on Abey's sales and cost data, which was verified to be accurate, complete and relevant.
Minimal interaction between imports and Australian industry	We understand that this would be based on Abey's and ACP's sales information both of which have been verified to be accurate, complete and relevant. To reiterate, Abey's sales to customers that ACP also sells to represent "*around 1%*" of Abey's sales.[14] Similarly, Report 644 characterises the crossover between Abey and Radius' customers as "*negligible*" during the period of investigation.[15]

The lack of price suppression and price depression as well as the lack of competitive crossover with imports are quite significant. These suggest that, even if the dumping margin were accurate, there was no direct impact on Abey's performance. How could there be, if the competitive crossover between Abey's sales and the imports is apparently insignificant? Abey would not face any real pressure to lower its prices, nor any restraint in raising them. Indeed Abey was able to increase its sales volume while increasing prices. Verified information bears this out.

Contrary to this verified information, the material injury determination is based on the following factors:

"Performance" of Abey	**Comment**
Loss of market share	Conclusions regarding market share were based on an "*estimate*" derived from "*available information*".[16] ACP's application makes several critiques of that "*available information*" including that it did not include information from at least one entity that, as late as November 2024, was identified by Abey as a "*main competitor*."[17] One could expect that, if this competitor did not import the goods during the period of investigation, it had recently. One could further expect, if the competitor had left the market, then there would

12 *Ibid*.

13 Report 644, page 45.

14 Report 644, page 52.

15 Report 644, page 57.

16 Report 644, page 55.

17 Abey verification report, page 8.

	naturally be material changes to market share which are not captured by the analysis in Report 644. Further, the finding that Abey lost market share is premised on the assumption that that Abey should have captured most growth in sales volumes in the market, as illustrated by the discussion of ground 3 in ACP's application. This ignores Report 644's acceptance that non-pricing factors can influence customer's purchasing decisions and that pricing is simply one factors taken into consideration by customers.[18]
Profit foregone	The quantification of the "*profit foregone*" is an "*estimate*" that appears to be based on the assumption that (a) but for the exports Abey would have captured most of the additional sales volume in the Australian market in the period of investigation;[19] and (b) they would have done so at the historically high prices and profit margins witnessed during the investigation period.[20] The obverse of these assumptions is that the failure to do so is materially injurious.
Failure to recapture past customers	That Abey did not "*reclaim market share in respect of sales to common or mutual customers*" is cited as a factor in determining the materiality of injury.[21] It is evident that Abey's sales to these customers declined significantly over an extended period of time, prior to the investigation period. Such historic reductions cannot be attributed to the effect of dumped goods.[22] Equally, we do not understand how an inability to reclaim this historic "*market share*" could be said to justify the imposition of measures under s 269TG(1) and (2).

We again recall that the Minister's Direction directs the Commissioner in the following manner:

> *I direct that it is possible to find material injury where an industry suffers a loss of market share in a growing market without a decline in profits. As in all cases, a loss of market share cannot alone*

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18 Report 644, page 71.

19 Report 644, page 73.

20 Report 644 notes at page 63 "[a]*s 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*."

21 Report 644, page 74.

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

> *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.*[23]

This is a case where a loss of market share is being treated, alone, as decisive. In fact, the reviewable decision privileges that loss of market share, based on estimates and an incomplete picture of the market, over verified indicators that establish that Abey has suffered no actual injury.

A determination under s 269TAE(1) as to whether material injury to an Australian industry has been or is being caused *must* be based on facts, and not merely on allegations, conjecture or remote possibilities.[24] The facts establish no injury has occurred; the "*market loss*" conclusion is based on estimates, assumptions and "*available information*", which we submit puts it firmly in the field of conjecture, allegations and remote possibilities. Further, the market loss narrative appears to be impermissibly motivated by reference to events that occurred prior to the period of investigation. Accordingly, the finding that Abey had suffered material injury was not correct or preferable and, consequently, neither was the reviewable decision.

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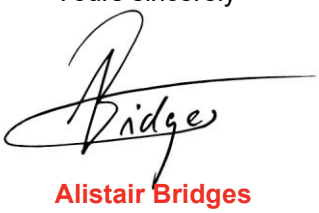
We thank the Senior Member for his consideration of this submission. Please do not hesitate to contact us should you require further detail.

Yours sincerely



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[23] Ministerial Direction on Material Injury 2012 (underlining original).

[24] As required under s 269TAE(2AA) of the Act.