Australian Government
Anti-Dumping Review Panel

ADRP Report No. 174

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

February 2026

https://www.adreviewpanel.gov.au

Contents

Abbreviations

Term	Meaning
Abey	Abey Australia Pty Ltd
ABF	Australian Border Force
ACP/ Applicant	AC Plumbing Supplies Pty Ltd
Act	*Customs Act 1901*
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice 2025/090
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organisation
China	People's Republic of China
CIO Regulation	*Customs (International Obligations) Regulation 2015*
CTMS	Cost to Make and Sell
Commissioner	Commissioner of the Anti-Dumping Commission
Couta	Couta Group Pty Ltd
Dumping Duty Act	*Customs Tariff (Anti-Dumping) Act 1975*
Dumping Duty Notice	Notice of the Reviewable Decision published on 2 October 2025, ADN 2025/090
Fenghui	Ningbo Fenghui Metal Products Co., Ltd
GAAP	Generally accepted accounting principles
Goods	Interchangeable bolted clipping system clip-heads, with galvanized or powder coating finish, in the size range 12 to 150 mm (i.e. 0.5 inch to

	6 inch) diameter, with elongated emboss and square hole for interlocking coach bolt and nut.
IDD	Interim dumping duty
Injury Examination Period	From 1 April 2020
Investigation period	1 April 2023 to 31 March 2024
Manual	Dumping and Subsidy Manual November 2018
Minister	Minister for Industry and Innovation and Minister for Science
NIP	Non-injurious price
Qinyan	Cixi Guanhaiwei Qinyan Hardware Factory
Radius	Radius Supply and Service Pty Ltd
RIQ	Response to Importer Questionnaire
REQ	Response to Exporter Questionnaire
REP 645	The report published by the ADC in relation to Investigation 645 and dated 12 September 2025
Review Panel	Anti-Dumping Review Panel
Investigation Period	1 April 2023 to 31 March 2024
Reviewable Decision	The Minister for Industry and Innovation and Minister for Science's decision under sections 269TG(1) and (2) of the Act in respect of interchangeable bolted clipping system clip heads exported from China
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SEF 645	Statement of Essential Facts 645
SG&A	Selling, general and administration expenses
USP	Unsuppressed selling price

WTO	The World Trade Organization
Zhenli	Guanhaiwei Zhenli Hardware Factory

Summary

1. This is a review of the decision of the Minister for Industry and Innovation and Minister for Science ('the Minister') to publish a dumping duty notice pursuant to s 269TG(1) and (2) of the Customs Act 1901[1] ('the Act') in respect of interchangeable bolted clipping system clip heads ('the goods') exported from China ('Reviewable Decision'). The applicant for this review is AC Plumbing Supplies Pty Ltd ('ACP' or 'the Applicant').

2. For the reasons set out in this report, I recommend that the Minister revoke the reviewable decision and substitute a specified new decision to;

    - determine a different normal value for Ningbo Fenghui Metal Products Co., Ltd ('Fenghui'); and

    - taking into account this revised normal value, to vary Dumping Duty Notice No. 2025/090, by altering the dumping margin for Fenghui from 22.2% to 21.9%.

Introduction

3. On 31 October 2025, ACP applied under s 269ZZC of the Act for a review of the Reviewable Decision.

4. On 13 November 2025, the Senior Member of the Anti-Dumping Review Panel ('Review Panel') directed in writing that the Review Panel be constituted by me in accordance with s 269ZYA of the Act.

5. The application was accepted and notice of the proposed review, as required by s 269ZZI, was published on 10 December 2025.

Background

6. On 25 June 2024, the Commissioner of the Anti-Dumping Commission ('the Commissioner') initiated an investigation into the alleged dumping and subsidisation of the goods exported from China ('Investigation 645'),[2] following an application by

[1] *Customs Act 1901* (Cth).
[2] ADN 2024/041.

Abey Australia Pty Ltd ('Abey'). Abey is the sole manufacturer of the goods in Australia.

7. The Commissioner established an investigation period of 1 April 2023 to 31 March 2024 ('Investigation period') and examined the Australian industry and Australian market for the purposes of the injury analysis from 1 April 2020 ('injury analysis period').

8. A Statement of Essential Facts ('SEF 645') was published on 27 June 2025.

9. On 11 August 2025, the Commissioner terminated the investigation relating to the application for publication of a countervailing duty notice.[3] The investigation relating to the application for the publication of a dumping duty notice continued.

10. On 12 September 2025, the Commissioner made a report to the Minister ('REP 645') recommending that the Minister publish a dumping duty notice in respect of the goods exported from China.

11. On 24 September 2025, the Minister accepted the Commissioner's recommendations in REP 645 and notice of the decision was published on 2 October 2025 ('the Dumping Duty Notice').[4]

Conduct of the Review

12. Pursuant to s 269ZZK of the Act, a report must be provided no later than 60 days beginning on the day of the publication of the notice of review, unless a reinvestigation is required under s 269ZZL(1) of the Act.[5]

13. In accordance with s 269ZZK(1) of the Act, the Review Panel must recommend that the Minister either affirm the reviewable decision, or revoke it and substitute a new specified decision. Section 269ZZK(1A) of the Act requires that the Review Panel may only make a recommendation to revoke and substitute a new specified decision if the new decision is materially different from the reviewable decision.

[3] ADN 2025/075.
[4] ADN 2025/090.
[5] Pursuant to s 269ZZK(3) of the Act.

14. In undertaking the review, s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it were the Minister, and having regard to the considerations to which the Minister would be required to have regard if the Minister was determining the matter.

15. Subject to certain exceptions,[6] the Review Panel is not to have regard to any information other than relevant information pursuant to s 269ZZK, i.e. information to which the ADC had regard or ought to have had regard when making its findings and recommendations to the Minister.

16. If a conference is held under s 269ZZHA of the Act, then the Review Panel may have regard to further information obtained at the conference to the extent that it relates to the relevant information, and to conclusions reached at the conference based on that relevant information. A list of the conferences held during the course of this review is available at Appendix A.

17. A conference was held for the purpose of obtaining further information in relation to the application with ACP's Legal Representative on 20 November 2025 pursuant to s 269ZZHA of the Act ('the First Conference'). A non-confidential summary of the information obtained at the First Conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the First Conference Summary'). A conference was held for the purpose of obtaining further information in relation to the application with ACP's Legal Representative on 1 December 2025 pursuant to s 269ZZHA of the Act ('the Second Conference'). A non-confidential summary of the information obtained at the Second Conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Second Conference Summary'). A conference was held for the purpose of obtaining further information in relation to the review with the ADC on 12 January 2026 pursuant to s 269ZZHA of the Act ('the Third Conference'). A non-confidential summary of the information obtained at the Third Conference was made publicly available in accordance with s 269ZZX(1) of the Act ('the Third Conference Summary').

18. In conducting this review, I have had regard to the application (including documents submitted with the application) and to submissions received pursuant to s 269ZZJ of the Act insofar as they contained conclusions based on relevant information. I have

[6] See s 269ZZK(4).

also had regard to REP 645 and SEF 645 and documents and information relevant to the review which were referenced in REP 645 and SEF 645. I have also had regard to further information obtained at conferences related to relevant information and to conclusions reached at the conferences based on relevant information.

19. Australia's anti-dumping and countervailing system implements the following WTO agreements to which Australia is a party:

    a) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994[7] ('Anti-Dumping Agreement') – which prescribes rules for the conduct of anti-dumping investigations and the application of measures to address dumping, including how member countries may: initiate cases, calculate dumping margins, determine injury, enforce remedial measures and review past determinations; and

    b) Agreement on Subsidies and Countervailing Measures[8] ('SCM Agreement') – which regulates measures designed to remedy material injury caused by subsidised imports, along similar lines to the Anti-Dumping Agreement.

20. The Act and the *Customs Tariff (Anti-Dumping) Act 1975*[9] are the principal legislation relating to anti-dumping measures in Australia. The Review Panel will interpret and apply the legislation, as far as its language permits, so that it is in conformity, and not in conflict, with Australia's international obligations. In practice, this means where the legislation is ambiguous the Review Panel will favour a construction that is consistent with the Anti-Dumping Agreement and the SCM Agreement and the obligations which they impose (see *Pilkington (Australia) Ltd v Minister of State for Justice & Customs* (2002) FCAFC 423 [25]-[27]).

21. Subsection 269ZZG(5) of the Act deals with what must occur if the Review Panel does not reject an application and is satisfied that one or more grounds contained in the application under s 269ZZE(2)(b) of the Act are reasonable grounds for the

[7] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) annex 1A ('*Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*') ('Anti-Dumping Agreement').
[8] *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995) ('*Agreement on Subsidies and Countervailing Measures*') ('SCM Agreement').
[9] *Customs Tariff (Anti-Dumping) Act 1975* (Cth).

reviewable decision not being the correct or preferable decision. In that context, s 269ZZG(5)(c) of the Act provides that the Review Panel "*must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds".*

22. In *Yara AB v Minister for Industry, Science and Technology*,[10] the Federal Court considered the operation of s 269ZZG(5)(c) of the Act. In the course of resolving Ground 5 of Yara AB's application, Wigney J observed that it was "*clear*", having regard to s 269ZZG(5)(a)-(c), that "*the review is not a de novo review or a merits review which is entirely at large*" and that "[*t]he Review Panel must restrict itself to a consideration of the grounds that it accepted were reasonable grounds for the reviewable decision not being the correct or preferable decision*".[11]

His Honour observed at [182] to [185]:

> *…the Review Panel's conduct of the review, including its consideration of whether the Minister's decision was the correct or preferable decision, is confined and constrained in certain respects. In particular, the Review Panel must conduct the review in relation to the reviewable grounds and no other grounds. It must also only have regard to certain information, that information essentially being the information that the Commission had regard to, or was required to have regard to, as well as any reinvestigation report. The Review Panel cannot conduct its own investigations or obtain and use further information.*
>
> *The fact that the Review Panel is required to conduct the review only in relation to the reviewable grounds is particularly significant, especially given that the criterion for determining whether a ground is a "reviewable ground" is whether it is a "reasonable ground for the reviewable decision not being the correct or preferable decision". What that means, as a practical matter, is that it might reasonably be expected that the Review Panel's report, and the reasoning contained therein, will largely focus on the merits or otherwise of*

[10] [2022] FCA 847.
[11] Ibid at [172].

the reviewable grounds and the submissions advanced in support of those grounds…

Grounds of Review

23. The grounds of review relied upon by the applicant, which the Review Panel accepted as reviewable grounds, are as follows:

    1) Ground 1 - Incorrect reliance on s 269TAC(6) to determine the normal value.

    2) Ground 2 - Normal values not in "ordinary course of trade".

    3) Ground 3 - Erroneous determination of material injury, based on the following factors:

        a) Price undercutting

        b) Market size and composition

        c) Loss of sales volumes to mutual customers

        d) Profit effects, and

        e) The size of the dumping margins.

Consideration of Grounds

Ground 1: Incorrect Reliance on s 269TAC(6) to Determine Normal Value

ACP's Claims and Supporting Arguments

24. In its application for review, ACP referred to the recommendation in REP 645, that the Minister accepted, that normal values be determined under s 269TAC(6) of the Act. ACP submitted that the statutory preconditions necessary to access the discretions available under that section had not been met with respect to the goods produced by one producer, Cixi Guanhaiwei Qinyan Hardware Factory ('Qinyan').

ACP clarified that where goods had been purchased from Qinyan, the Minister should *not* have been satisfied that sufficient information had not been furnished or was not available to enable normal values to be determined under s 269TAC(2)(c).[12]

25. ACP stated that the relevant background was that the exporter, Fenghui, did not have any sales of like goods in the country of export and, from the public record, there was no indication that there were other sellers of like goods in China. The Applicant submitted that in such a circumstance, s 269TAC(2)(b) directs that the normal value be determined under s 269TAC(2)(c). The Applicant submitted further that REP 645, however, elected to use s 269TAC(6) because one of the two manufacturers from which the exporter, Fenghui, purchased the goods, being Guanhaiwei Zhenli Hardware Factory ('Zhenli'), did not provide information with respect to the cost of production of the goods in China. ACP submitted that therefore the ADC had found in REP 645 that it had not been furnished with sufficient information to calculate the normal value of goods exported by Fenghui under s 269TAC(2)(c), and that as sufficient information was not available "to enable the normal value of goods to be ascertained under the preceding sections", the ADC determined the normal value under s 269TAC(6), having regard to all relevant information."[13]

26. ACP submitted that 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 was properly comparable to the export price.[14]

[12] See Attachment 2 to application for review, 2nd page (unpaginated).
[13] See Attachment 2 to application for review, 2nd-3rd pages (unpaginated), where reference was made to a passage on page 35 of REP 645.
[14] See Attachment 2 to application for review, 3rd page (unpaginated), where reference was made to page 36 of REP 645.

27. ACP expressed concerns regarding this approach generally, which it stated would be addressed in greater detail in Ground 2. For the purposes of Ground 1, ACP submitted that REP 645 operated on an erroneous basis. ACP submitted that s 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…". ACP submitted that it was inferable from REP 645 that a "cost of production" could not be determined under s 269TAC(2)(c), because Zhenli did not provide its production records. ACP contended that this rationale was mistaken and the absence of such costs in no way prevented the usage of s 269TAC(2)(c) in relation to the goods that Fenghui purchased from Qinyan.[15]

    a. <u>There is information relevant to s 269TAC(2)(c)</u>

28. ACP submitted that while it is a somewhat unusual circumstance not to have any sales of like goods in the country of export, the Act is aware that this issue may arise. ACP submitted that 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). ACP stated that 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.[16]

29. ACP submitted that the current focus (in Ground 1) is on s 269TAC(2)(c)(i), as this relates to the cost of production (noting that s 269TAC(2)(c)(ii) is addressed in Ground 2 below). ACP submitted that this section empowered the Minister to "determine" an amount that represents the "cost of production or manufacture of the goods in the country of export". ACP submitted further that this power was guided by s 269TAC(5A)(a), which directs that the determination of the cost of production

[15] See Attachment 2 to application for review, 3rd page (unpaginated).
[16] See Attachment 2 to application for review, 3rd page (unpaginated),

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). ACP submitted that the relevant regulation in this respect is reg 43 of the Customs (International Obligations) Regulation 2015 ('the CIO Regulation'), which was stated to, *inter alia*, provide:

> ….. *(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 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*.[17]

30. ACP submitted that it was not without relevance that the regulations identify that the relevant costs may be from an "exporter or producer of like goods". ACP contends that 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. Further, ACP submitted that notwithstanding, reg 43 of the CIO Regulation confirms that the cost of production need not be derived from the exporter's records but instead may be derived from a producer's records. ACP submitted that in this instance, there was information that met the standards required by reg 43(2). In this regard, ACP referred to the Verification Report for Qinyan, and noted, *inter alia,* the following:

- Qinyan kept records relating to the like goods, including cost to make data, which the ADC was able to verify to Qinyan's accounting system and source

[17] See Attachment 2 to application for review, 3rd- 4th pages (unpaginated), where reference was made to reg 43(2) of the CIO Regulations.

documents, and which, through the process of verification, the ADC concluded were “accurate”, “complete” and “relevant”.

- While ACP did not have detailed information to address the claim that costs of hot rolled coil – which ACP stated was presumably included in the cost of production - do not “reasonably reflect competitive market costs”, it submitted that based on Termination Report No. 645 (‘TER 645’),[18] the relevant information confirmed that Qinyan’s production costs reasonably reflected the competitive market costs associated with the production or manufacture of like goods in China.[19]

31. ACP submitted that the only ambiguity in the Verification Report was whether the costs of production recorded by Qinyan are kept in accordance with Chinese generally accepted accounting principles (‘GAAP’). ACP submitted that Qinyan states that they are.[20] ACP submitted that the Verification Report notes that “the commission could not establish whether Qinyan’s costs records are kept in accordance with the GAAP in China.” ACP stated that the ADC’s policy in this respect is that confirmation would tend to “come from the auditor’s statements”.[21] However, ACP submitted that 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. ACP submitted that in its 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, should preclude any negative inference being drawn.[22]

32. ACP submitted that if that position were not accepted, it noted that there were numerous times where it was established that a simple failure to meet the requirements of reg 43 does not preclude the exercise of the Minister’s power under s 269TAC(2)(c)(i), nor does it enliven s 269TAC(6). ACP referred to *Steelforce*

[18] For more details relating to TER 645 and ACP argument in this regard see Attachment 2 to application for review, 4th - 5th pages (unpaginated).
[19] See Attachment 2 to application for review, 4th - 5th pages (unpaginated), where reference was made to the Verification Report for Qinyan and to TER 645.
[20] Reference was made to Question A-3(8) of the Exporter Questionnaire Response..
[21] Reference was made to the Manual, page 34.
[22] See Attachment 2 to application for review, 5th page (unpaginated).

Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science [2018] FCAFC 20 ('the *Steelforce* case'), where it was noted that reg 43 is not an exhaustive statement regarding the determination of production costs under s 269TAC(2)(c)(i).[23] ACP submitted that if the requirements of reg 43 are not met, then s 269TAC(2)(c)(i) "remains applicable on its own terms".[24] ACP submitted that this should be no surprise, as it is the justification for the cost replacement methodologies frequently used when the ADC determines that an exporters' costs records "do not reasonably reflect the competitive market costs associated with the production or manufacture of like goods". ACP submitted further that 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). ACP submitted that this was supported by the fact that REP 645 had not recommended that these records were "unreliable" under s 269TAC(7), but to the contrary, they had been used as the basis to determine the normal value on a limited basis.[25]

33. ACP submitted that in this instance, the "cost of production" can and must be determined under s 269TAC(2)(c)(i) because either:

    - Qinyan's records meet the requirements of reg 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,

[23] At paragraph 108.

[24] *Ibid*.

[25] See Attachment 2 to application for review, 6th page (unpaginated). Reference was also made to the following passage on page 36 of REP 645:

> *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.* [ACP's emphasis]

complete and relevant. Moreover, there is no suggestion that those records are "unreliable" allowing them to be disregarded under s 269TAC(7).

ACP submitted that in any circumstance, REP 645 was wrong to recommend the Minister be satisfied that "sufficient information had not been furnished or is not available" to enable the determination of normal values under s 269TAC(2)(c) for goods that were unambiguously produced by Qinyan. ACP contended that it was not permissible to determine normal values under s 269TAC(6) having regard to "all relevant information" for those goods and that decision was neither correct nor preferable.[26]

34. ACP submitted that 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). ACP submitted further that, as discussed above, there are records that allow for a determination of the cost of production of those goods under s 269TAC(2)(c)(i). ACP submitted further that the Act then directed 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. ACP submitted that these normal value elements could also be determined on information that was before the ADC in the investigation, with the elements of s 269TAC(2)(c)(ii), primarily guided by the regulations, as with s 269TAC(2)(c)(i).[27]

35. ACP then addressed SG&A costs and profit as follows:

    b. <u>SG&A can be determined on relevant information</u>

36. ACP stated that the ADC had gathered SG&A costs from both Fenghui and Qinyan, with Fenghui's aligning with GAAP in China,[28] but it was unclear the degree to which the same could be said for Qinyan's.[29] ACP submitted that in any respect, while

[26] See Attachment 2 to application for review, 6th page (unpaginated).
[27] See Attachment 2 to application for review, 6th page (unpaginated).
[28] Reference was made to Page 7 of Fenghui's Verification Report, which noted:
[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.
[29] Reference was made to Page 4 of Qinyan's verification report, which noted that they were "accurate with material revisions" but also that they "may...exclude relevant data". Section 44(3) of the CIO Regulation provides for alternate methodologies for determining SG&A costs, as follows:

Fenghui does not sell like goods directly, Fenghui's selling cost records should be the basis for the determination of SG&A expenses. This is because Fenghui has been identified as the "exporter", and therefore the relevant entity for which the normal value is to be determined. ACP pointed out that "like goods" are not sold for home consumption in China, so reg 44(2)(b)(ii) could not be satisfied. However, the drafters of the regulations were cognisant of this possibility and so included alternate methodologies for determining SG&A costs in reg 44(3).[30]

37. ACP submitted that REP 645 noted that the products that Fenghui sold domestically fall within the "same general category" as the goods exported to Australia, being the category of "clip heads".[31] ACP submitted that the ADC had identified the amount of SG&A incurred by Fenghui on these sales across the period of investigation and, as noted, that amount was derived from accounts kept in accordance with GAAP, and which have been reconciled to Fenghui's tax returns and accounting system. ACP submitted that this suggested that the costs may be sufficient to be used under reg 44(3)(a), although it was noted that neither the Minister nor the Commissioner had considered that in detail. ACP stated that in any respect, this amount could instead be adopted under reg 43(3)(c), as it was reasonable, and represented a verified amount of SG&A incurred in domestic sales in the country of export.[32]

c. <u>Profit can be determined on relevant information</u>

38. ACP submitted that *prima facie* under reg 45(2) of the CIO Regulation, the Minister must determine profit by using data relating to the production and sale of like goods by the exporter or producer for the goods in the "ordinary course of trade". ACP contended that the reference to "ordinary course of trade" is a reference to the test

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"(3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:

(a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or

(b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or

(c) using any other reasonable method and having regard to all relevant information."

[30] See Attachment 2 to application for review, 6th to 7th pages (unpaginated).

[31] Reference was made to Page 35 of REP 645.

[32] See Attachment 2 to application for review, 7th page (unpaginated).

set out in s 269TAAD(1).[33] ACP submitted that this focussed 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.[34] ACP submitted further that as the goods are not sold for home consumption in the country of export, there is no data that fits this description, so the requirement of reg 45(2) cannot be met.[35] ACP submitted further that in these circumstances, the regulation directs the Minister to reg 45(3), which sets out three different methodologies for determining the profit, with no hierarchy to these methodologies.[36] ACP submitted that it is open to the Minister to elect which one to use depending on the available information.[37]

39. ACP submitted that REP 645 indicated that reg 45(3)(a) can be applied and REP 645 found that Fenghui sells the same general category of goods in China, and an amount of profit on those sales had been identified.[38] ACP stated that it was cognisant of the strict reading that the Federal Court of Australia has applied to this regulation,[39] in particular to the term "actual amounts realised" and noted that this had not specifically been addressed in REP 645. ACP submitted that if an alternative methodology is needed, it noted that "any other reasonable method having regard to all relevant information" is available under reg 45(3)(c), which is subject to the operation of reg 45(4) which requires that, if,

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[33] ACP stated that this understanding aligned with the ADC's policy, as set out in the Manual, page 38.

[34] Reference was made to s 269TAAD(1)(i) and (ii) of the Act.

[35] ACP noted that the Verification Report states that "...Qinyan did not produce or sell like goods for home consumption in China", at page 6.

[36] The three different methodologies for determining the profit set out in reg 45(3) are as follows:

> (3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:
>
> (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
>
> (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
>
> (c) using any other reasonable method and having regard to all relevant information.

[37] See Attachment 2 to application for review, 7th page (unpaginated).

[38] Reference was made to Page 38 of REP 645.

[39] *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..."

……..

(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.

40. ACP stated that it understood that the ADC traditionally treats this as something of an impasse to the application of reg 45(3)(c) in circumstances where there is only one exporter. ACP submitted that based on the language adopted in the regulation, it is unclear why this would be the case under Australian law.[40] ACP stated that consideration could be put aside for now, and what was important for current purposes is that the determination of the cap has some inbuilt flexibility, and could be adopted to many different scenarios.[41]

41. ACP submitted that the term "same general category of goods" is not used in the Act and is not defined in the regulations, and that it was, in ACP's view, a concept with some inherent flexibility. ACP stated that a particular class of like goods could fall within several different and overlapping "general categories of goods" of varying degrees of specificity, with this flexibility being reflected in REP 645, where the same "general category" of goods as the like goods has been identified as "clip heads" and "plumbing products" and "products used in plumbing applications".[42] ACP stated that it was also worth noting that these categories reflected "all domestic sales" by Fenghui.[43]

42. ACP further submitted that reg 45(4) requires that the cap be based on amounts "realised by other exporters and producers on goods of the same general category

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

[41] See Attachment 2 to application for review, 7th – 8th pages (unpaginated).

[42] Reference was made to REP 645 at, respectively, pages 35 and 39.

[43] See Attachment 2 to application for review, 8th page (unpaginated) where reference was made to REP 645 at page 39.

of goods". ACP submitted that 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. ACP stated that the ADC 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.[44] ACP submitted that the ADC 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. Further, ACP submitted that REP 645 notes that regard had been had to "the commission's previous findings with respect to the steel industry and markets in China".[45] ACP contended that there was ample institutional knowledge within the ADC to determine a view regarding the appropriate cap under reg 45(3)(c).[46]

43. ACP submitted that if it was 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. It submitted that 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, ACP contended that 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 goods is "zero". ACP submitted that zero is an amount and 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.[47]

44. In response to Question 11 of the application form, requesting how the grounds raised in Question 9 support the making of the proposed correct or preferable decision, ACP submitted that while the ADC's approach under s 269TAC(6) may appear to be a reasonable approach to assessing the normal value, and that one may expect that the exporter would sell the goods profitably in China, it is not what the legislation calls for. It submitted that *prima facie*, under s 269TAC(1), the normal value is the price derived from sales of like goods in arm's length transactions in the

[44] Reference was made to REP 645, pages 20 and 21.
[45] Reference was made to REP 645, page 12.
[46] Reference was made to REP 645 at, respectively, pages 35 and 39.
[47] See Attachment 2 to application for review, 8th - 9th page (unpaginated).

ordinary course of trade in the domestic market of the country of export. ACP submitted that every method prescribed after this in s 269TAC is designed to arrive at proxy for that same value.[48]

45. ACP further submitted that the concept of "ordinary course of trade" is informative as to what is an acceptable price in the country of export. It submitted that per s 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. ACP submitted that the cost of such goods is defined to be:

    - the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

    - the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.[49]

46. ACP submitted that the determination of those amounts was in accordance with the regulations, being the same regulations that are relevant to the determination of the normal value under s 269TAC(2)(c). ACP stated that as noted, while s 269TAC(1) focusses on the "exporter" as the primary actor in the determination of the normal value, reg 43 allowed for the cost of production from records of the producer. ACP stated that, as the Review Panel 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…*[50]

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

[48] See Attachment 2 to application for review, 9th page (unpaginated).
[49] See Attachment 2 to application for review, 9th page (unpaginated).
[50] See Attachment 2 to application for review, 9th page (unpaginated) where reference was made to Review Panel Report No 130 - Steel reinforcing bar exported from the Republic of Korea, Singapore, Spain (except Nervacero S.A.) and Taiwan (except Power Steel Co., Ltd) at paragraph 85.

the Act. ACP submitted that Qinyan's cost of production information had been verified with their accounting system and source documents. Through the process verification, the ADC concluded those records were "accurate", "complete" and "relevant".[51] ACP submitted further that nowhere has there been a finding that it is "unreliable" so as to justify it being disregarded under s 269TAC(7). ACP submitted that accordingly, to the extent that the goods had been purchased by Fenghui from Qinyan, there was a basis to determine a cost or production under s 269TAC(2)(c)(i) and the legislative disciplines that flow on from that needed to be adhered to, which had not occurred.[52]

48. ACP submitted that this investigation deals with a circumstance in which like goods are not sold in any transaction for home consumption in the country of export, and as had been 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. ACP submitted that 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. ACP submitted that the guiding question was 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*.[53]

49. In response to Question 12 requesting reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision, and after describing the ADC's determination of normal value under s 269TAC(6) in REP 645, ACP submitted that it was not the logic of the Act that was being applied. ACP submitted that when the normal value is determined under s 269TAC(1), it is done so on the basis of sales that are in the "ordinary course of trade" and "arms length". ACP submitted that for sales to be in the ordinary course of trade they need only be not "less than the cost of such goods" or "put another way, break-even sales would be in the ordinary course of trade".[54]

50. ACP referred to the alternative methodologies used to determine a proxy of the s 269TAC(1) amount, where there are no sales in the domestic market and

[51] Reference was made to Qinyan's Verification Report, page 8.
[52] See Attachment 2 to application for review, 10th page (unpaginated).
[53] See Attachment 2 to application for review, 10th page (unpaginated).
[54] See Attachment 2 to application for review, 10th page (unpaginated) where reference was made to s 269TAAD(1)(a) of the Act.

submitted that this required the use of 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. ACP referred to the normal value determination in both SEF 645 and REP 645 and stated that although using different methodologies for normal value, both methodologies effectively had two levels of SG&A and two levels of profit, which ACP contended was not what the legislation called for, and which had the effect of inflating the normal value and was likely the result of the significant dumping margins observed in the reviewable decision. ACP contended that this outcome has arisen because the normal value has been determined apart from the disciplines imposed by the Act and the CIO Regulation.[55]

51. ACP further submitted that the position adopted in REP 645 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. ACP contended that the Act and the CIO Regulation do not allow for such an assumption and that they provide disciplines through which a profit can be determined, with none of those involving the use of the profit from two different entities. ACP submitted that in terms of impact, a normal value constructed under s 269TAC(2)(c) would result in a lower, or even no-dumping, margin, which would be a materially different outcome.[56]

ADC Position for Ground 1

52. In its s 269ZZJ submission, the ADC referred to ACP's claim that there was sufficient information to determine Fenghui's normal value under s 269TAC(2)(c) in respect of the goods produced by Qinyan and that the absence of cost of production information for Zhenli did not prevent the use of s 269TAC(2)(c) in relation to the goods Fenghui purchased from Qinyan. The ADC stated that it understood ACP's submission to be that:

[55] See Attachment 2 to application for review, 10th – 11th pages (unpaginated) for details of ACP's argument in this regard.
[56] See Attachment 2 to application for review, 10th – 11th pages (unpaginated) for details of ACP's argument in this regard.

- it accepted that since the ADC did not have the production costs of Zhenli, that when calculating the normal value for like goods supplied by Zhenli there was not sufficient information available and so the use of s 269TAC(6) was open to the ADC when determining the normal value for goods supplied by Zhenli; and

- in effect, normal value should be supplier specific rather than exporter focused.[57]

Factual circumstances relevant to the commission's consideration of normal value

53. The ADC, in its s 269ZZJ submission, set out the factual context that informed its approach to determining normal value, for the purpose of assessing the claims made by ACP, confirming that, as set out in REP 645:

    i. Fenghui was the exporter of the goods,

    ii. The manufacturing of the exported goods was fully outsourced to Qinyan and Zhenli, and

    iii. Fenghui warehoused and shipped the goods to ACP, a related party to Fenghui.

54. The ADC submitted that in cases where the exporter is not the manufacturer, as in this case, the ADC approached its task of determining normal value having regard to the range of information made available from all entities that could provide information on the cost of production, SG&A expenses and profit. The ADC submitted that it is the costs incurred by Qinyan and Zhenli that were a critical element of determining normal value.[58]

ADC's consideration of s 269TAC(2)(c) and normal value relating to goods exported by the exporter

55. The ADC submitted that its assessment of normal value followed the steps required under the Act and given that there was an absence of sales of like

[57] See paragraphs [10]–[11] of the ADC's s 269ZZJ submission, page 3.
[58] See paragraph 12 of the ADC's s 269ZZJ submission, pages 3 – 4, with reference made to pages 31 – 33 of REP 645.

goods in China, it assessed whether s 269TAC(2)(c) applied. The ADC further submitted that as only one of the manufacturers supplying Fenghui had provided information and as Zhenli, the other manufacturer, had not provided cost of production information, the ADC concluded there was not sufficient information to proceed under s 269TAC(2)(c).

56. The ADC stated that its approach was to determine normal value for the goods exported by the exporter, Fenghui, not the normal value as it applied to each separate supplier. In this respect, having regard to the factual circumstances and the available evidence in this case, the ADC submitted that the determination of the normal value for the goods exported by Fenghui was appropriately determined using the one methodology, under s 269TAC(6). The ADC further submitted that in determining normal value under s 269TAC(6), the ADC was determining the normal value of the goods exported to Australia by Fenghui, and that the ADC considered that this approach aligned to how the export price was determined.[59]

Determination of normal value took into account that there was more than one party that produced the goods exported to Australia by Fenghui.

57. The ADC stated in its s 269ZZJ submission that in this case, the exporter sourced goods from two producers and no cost of production information was available for one of them, Zhenli, and relevant to the ADC's consideration was that Zhenli supplied a significant proportion of the goods purchased by Fenghui, being approximately [redacted]%. The ADC submitted that it assessed that the use of only Qinyan's cost of production information would not appropriately represent a reliable cost of production for the entire goods exported by Fenghui.[60]

58. The ADC submitted further that in the absence of information provided by Zhenli, it was unable to reliably determine if Zhenli's costs to produce were higher or lower than Qinyan's and considered that it was not reasonable to assume that the cost of production of the exported goods sourced from both Zhenli and Qinyan are the same. The ADC further submitted that, relevantly, it

[59] See Paragraphs 13 – 15 of the ADC's s 269ZZJ submission, pages 3 – 4, with reference made to pages 34 – 35 of REP 645.
[60] See Paragraph 16 of the ADC's s 269ZZJ submission and the ADC's response to Further Information Request No.1 in Paragraph 1 of the Third Conference Summary..

would not in any case have been possible to establish different normal values for each producer that could then be matched to an export price based on the manufacturing source because Fenghui warehouses the goods from both suppliers together and does not track which sales originate from a particular manufacturer. The ADC stated that it was therefore not able to identify the manufacturer (Qinyan or Zhenli) of the goods in each export sale for models manufactured by both companies.[61]

59. The Review Panel recognised that the ADC was unable to identify the manufacturer of the goods in each export sale for models manufactured by both companies. During the Third Conference the Review Panel requested further clarification as to why the ADC could not make separate calculations, using different methodologies, for the goods produced by Qinyan (actual COP plus actual SG&A and profits for sales to Fenghui) and Zhenli (purchase price to Fenghui), respectively, up to the point where the products were sold to Fenghui. The Review Panel pointed out that this would be before consolidating into a weighted average selling price to Fenghui, per quarter, and then adding the SG&A and profits for Fenghui sales in the domestic market and finally arriving at a weighted average normal value of the combined sales for each quarter, for comparison with the export price.

60. In response, the ADC stated that this was “more or less” the methodology adopted in SEF 645, since while using Qinyan’s cost of production for both producers, they adjusted for differences in purchase price paid by Fenghui between Qinyan and Zhenli.[62] The ADC stated that in SEF 645 it was under s 269TAC(6) and not under s 269TAC(2)(c), but the approach was to try and use cost of production information as far as possible. The ADC pointed out that the adopted approach in REP 645 was driven by Fenghui and Qinyan’s

[61] See paragraphs [16]–[19] of the ADC’s s 269ZZJ submission, pages 4 - 5, with reference made to Document #20 of EPR 645.

[62] The ADC provide more explanation of its SEF methodology in its s 269ZZJ submission, noting that in SEF 645 it had calculated the normal value of the goods exported by Fenghui by having regard to Qinyan’s cost of production, SG&A expenses and profit on its sales of the goods to Fenghui, and also had regard to Fenghui’s profit on its domestic sales in China, plus its SG&A expenses. It was further submitted that while not explicitly stated in SEF 645, it had regard to the difference in the price of the goods purchased by Fenghui from Zhenli and Qinyan when determining the normal value in SEF 645. See paragraph 20 of the ADC’s s 269ZZJ submission, page 5.

response to SEF 645 requesting the ADC to use the purchase price of the products to Fenghui, rather than Qinyan's COP, which resulted in a lower normal value and dumping margin in REP 645. The ADC stated that as it also had information relating to Fenghui's purchases from Zhenli, it determined it would be more appropriate to change the methodology and determine a normal value having regard to the purchase prices rather than some construct of those prices, to reflect the actual purchase price of goods Fenghui sourced from Qinyan and Zhenli.[63]

61. In its s 269ZZJ submission, the ADC stated that it had altered its approach in REP 645 following a submission from Qinyan and Fenghui, but still maintained an approach focused on the exporter by having regard to the cost of purchase of goods sourced from both Qinyan and Zhenli. The ADC stated that both approaches that were used in the SEF and in REP 645 took into account the fact that there was more than one party involved in manufacturing the goods exported to Australia by Fenghui. The ADC further stated that in both SEF and REP 645 it used the best information available to it at the time that enabled it to determine normal value for the exporter, Fenghui.[64]

[63] See the Further Clarification Request by the Review Panel and the ADC's response thereto in respect of Further Information Request No.2 in Paragraph 2 of the Third Conference Summary, pages 4 to 5 as well as the ADC's response to Further Information Request No. 4 in Paragraph 4 of the Third Conference Summary, page 6. In response to the Reviewing Member's further request for additional clarification relating to Further Information Request No. 2, as to why the methodology in SEF 645 resulted in a higher dumping margin, the ADC stated that it related to the calculation of Qinyan's profit, since using the constructed normal value took into consideration a weighted average profit on Qinyan's sales of the goods to Fenghui over the whole investigation period, while using the purchase price method took into consideration the profit on the models actually exported during the investigation period (i.e. the price between Qinyan and Fenghui already subsumes the actual profit achieved on the sale). The ADC also stated, in response to an additional clarification request, that if Qinyan had been the only producer supplying Fenghui the normal value would have been calculated under s 269TAC(2)(c) using Qinyan's COP, SG&A and profit. The ADC also stated that had Zhenli provided all its COP information, it would also have calculated normal value under s 269TAC(2)(c), consolidating the two producers' weighted average COP, SG&A and profits, to obtain a normal value. See the ADC's response to the Further Clarification Request relating to Request No.2 in Paragraph 2 of the Third Conference Summary, page 5.

[64] See paragraph 20 of the ADC's s 269ZZJ submission, page 5, with reference made to Document #28 of EPR 645.

Sufficient information

62. The ADC submitted that it considered that it did not have sufficient information regarding the cost of production for producer Zhenli (to determine the cost of production for the exported goods) and so did not consider it appropriate to use s 269TAC(2)(c) due to the information that was lacking and moved to applying s 269TAC(6). The ADC submitted that ACP misconceived the statutory test of "sufficient information" with sufficiency being a qualitative and contextual assessment, requiring information that is complete, reliable and representative of the cost of the production of goods under consideration.[65]

63. The ADC submitted further that the Act does not oblige the ADC to extrapolate unknown costs from partial data, nor to accept information that would result in an unrepresentative normal value.[66] The ADC further submitted that given the information available to the ADC this case, it was open to the Commissioner to conclude that the normal value of the goods exported to Australia by Fenghui could not be determined under s 269TAC(2)(c) and to instead apply the methodology in s 269TAC(6), which is available when "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...". The ADC submitted that in such instances, the normal value is such amount as is determined by the Minister having regard to all relevant information.[67]

Qinyan's information

64. The ADC stated that it considered ACP's claim – that Qinyan's records meet the requirements of reg 43 of the CIO Regulations – to be misdirected. The ADC stated that after determining that there was an absence of sales in China, it was next required to assess whether it was able to proceed under s 269TAC(2)(c) and subsequently determined that it could not. The ADC submitted that for the purpose

[65] See paragraphs 21 - 22 of the ADC's s 269ZZJ submission, page 5.
[66] Reference was made to *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 where the ADC noted the "the no evidence ground" was touched on in this case. The ADC stated that it was also discussed in the original case (*Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2016] FCA 1309).
[67] See paragraphs 23 - 24 of the ADC's s 269ZZJ submission, page 5.

of applying reg 43(2), as required under s 269TAC(2)(c), it did not have the information available to it that would have enabled it to apply that regulation. The ADC stated that it agreed with ACP that the records of producers can be used but considers that this is not the central point at issue given the facts of this case. The ADC stated that it was not possible to apply reg 43(2) in circumstances where information from Zhenli was not provided and the goods that Zhenli produced made up a significant portion of the goods exported by Fenghui. The ADC stated that while it made findings in its Verification Report on the adequacy of the information provided by Qinyan, it did not proceed to apply reg 43(2) to Qinyan's information as it was not appropriate to do so in light of the fact that the records of the cost of production did not cover all goods the subject of the investigation, being those supplied to Fenghui by both Qinyan and Zhenli. The ADC submitted that it was unnecessary to consider whether Qinyan's records complied with reg 43.[68]

65. The ADC submitted that in light of the absence of information provided by Zhenli, it appropriately had recourse to s 269TAC(6) and that this approach provided for a proper comparison with the export price (being the purchase price from Fenghui, as exporter and not the purchase price from the producers (Qinyan or Zhenli)). The ADC further submitted that there needed to be congruence between the method of calculating the normal value and the export price to ensure that like was compared to like.[69] The ADC submitted that ultimately, the objective of the various methodologies was to arrive at variable factors applicable to the exporter.[70]

Profit

66. The ADC referred to ACP's claim that profit should be determined under s 269TAC(2)(c)(ii) which would require consideration of the CIO Regulation, specifically reg 45. The ADC submitted that for the reasons discussed above, the ADC was correct in determining normal value under s 269TAC(6) and therefore, there was no obligation for the ADC to consider reg 45, specifically reg 45(4). The ADC stated that it had nonetheless addressed certain claims made by ACP relating

[68] See paragraphs 25 - 26 of the ADC's s 269ZZJ submission, page 6, where reference was made to Document #19 of EPR 645.
[69] Reference was made to *Powerlift (Nissan) Pty Ltd v Minister of State for Small Business, Construction and Customs* [1993] FCA 38, 40 (Hill J).
[70] See paragraphs 27 of the ADC's s 269ZZJ submission, page 6.

to profit.[71] During the Third Conference and in response to a further clarification request relating to the ADC's response to Further Information Request No. 6, the ADC stated that while it considered that it was not required to follow the CIO Regulation under s 269TAC(6), Fenghui's profit was 'in effect' determined in accordance with reg 45(3)(a) of the CIO Regulation.[72]

67. The ADC referred to ACP's claim that a view could easily be formed that profit normally realised by other producers is zero, and submitted that would not be a "reasonable" method (noting reg 45(3)(c) of the CIO Regulation), particularly when, on the available evidence before the ADC, it established that Fenghui's own sales of general plumbing products on the domestic market were profitable. In this regard, the ADC noted that, in any case, it did not accept that regard must be had to reg 45(3)(c), given that s 269TAC(6) was the correct provision under which to determine normal value.[73]

68. The ADC noted that for completeness, it undertook a comprehensive analysis of Fenghui's domestic sales/selling prices to address Fenghui's profit claims made in the course of the investigation as to different levels of trade and concluded that Fenghui's claims could not be substantiated. The ADC submitted that it fully evaluated Fenghui's proposal to use CITIC Metal Co., Ltd's ('CITIC') profit margin but did not consider that CITIC's profit margin was a reasonable or relevant profit amount to use in determining the normal value. The ADC stated that it reached this position given: CITIC's products were not in the same category as the goods sold by Fenghui; CITIC was a subsidiary of a large conglomerate in China that was ultimately state-owned; and the ADC did not have details of CITIC's sales transactions to enable assessment of the specific terms and conditions, including whether sales were arm's length. The ADC stated that it reasoned that it was not clear how, or why, this profit margin would make the transaction conditions more comparable to the exported goods. The ADC submitted that the same or similar issues arose with respect to other

[71] See paragraphs 28 - 29 of the ADC's s 269ZZJ submission, page 6.
[72] See the ADC response to a further clarification request by the Review Panel relating to the ADC Response to Further Information Request No. 6, in Paragraph 6 of the Third Conference Summary, page 7.
[73] See paragraph 30 and Footnote 13 of the ADC's s 269ZZJ submission, page 6.

alternative profits margins put forward by Fenghui, with respect to other companies.[74]

69. The ADC submitted that, for the reasons outlined above, it considered it correct and preferable to use Fenghui's own profit margin, for the same general category of goods, as explained in REP 645, to determine the profit margin and submitted further that for the above reasons the profit used by the ADC was the correct and preferrable profit margin to use, in determining the normal value for like goods.[75]

SG&A Costs

70. The ADC referred to ACP's claim that SG&A should be determined under s 269TAC(2)(c)(ii) and in accordance with the CIO Regulation, being Fenghui's SG&A costs on sales of the same general category of goods (plumbing products) in China because Fenghui's records meet generally accepted accounting principles (GAAP) requirements and Fenghui had been identified as the exporter (as per reg 44(3)(a)), alternatively, ACP's claim that reg 44(3)(c) could be used. The ADC submitted that for the reasons set out above, the ADC was correct in determining normal value under s 269TAC(6) and therefore, there was no obligation for the ADC to consider reg 44(3). The ADC stated that it had regard to Fenghui's SG&A expenses, which appears to be what ACP claims is appropriate, albeit under s 269TAC(6).[76]

71. During the Third Conference and in response to a further clarification request relating to the ADC's response to Further Information Request No. 5, the ADC stated that while it considered that it was not required to follow the CIO Regulation under s 269TAC(6), Fenghui's SG&A was 'in effect' determined in accordance with reg 44(3)(a) of the CIO Regulation.[77]

[74] See paragraphs 31 of the ADC's s 269ZZJ submission, page 7, where reference was made to REP 645, pages 37 – 40.
[75] See paragraphs 32 – 33 of the ADC's s 269ZZJ submission, page 7.
[76] See paragraphs 34 – 35 of the ADC's s 269ZZJ submission, page 7.
[77] See the ADC response to a further clarification request by the Review Panel relating to the ADC Response to Further Information Request No. 5, in Paragraph 5 of the Third Conference Summary, page 7.

Qinyan's SG&A and profit

72. The ADC referred to what it stated appeared to be ACP's primary claim in relation to SG&A and profit, that the normal value ascertained by the ADC on the basis of s 269TAC(6) "effectively has two levels of SG&A and two levels of profit". The ADC referred to its statement in REP 645 that:

> *…because there is more than one party involved in the exportation of the goods, the price of the goods exported to Australia by Fenghui essentially reflects the price of the goods as purchased by Fenghui from the manufacturers, plus Fenghui's respective margin and SGA&A expenses.*[78]

The ADC also referred to Footnote 60 of REP 645 that it stated made clear that '[t]he price paid by Fenghui for these goods is essentially the cost of the goods as incurred by Fenghui", stating that the conclusion was based on factual evidence of the sales price paid by Fenghui to both producers, Qinyan and Zhenli.[79]

73. The ADC submitted that it considered that Qinyan's SG&A costs and profit were integral elements that were being factored in when the objective is to arrive at "the normal value" being "the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter". The ADC submitted that in REP 645, in using the actual sales price paid by Fenghui to Qinyan, it included the SG&A and profit of Qinyan because goods sold in the OCOT for home consumption will necessarily include those costs and profit and there was no evidence before the ADC to indicate otherwise.

74. The ADC further submitted that it did not consider it unreasonable to assume a profit in the ordinary course of trade, consistent with s 269TAAD, absent any information to the contrary and using information provided by Qinyan that disclosed a profit.[80]

[78] Reference was made to REP 645, page 35 (passage quoted).
[79] See paragraphs 36 - 37 of the ADC's s 269ZZJ submission, page 7.
[80] See paragraph 38 of the ADC's s 269ZZJ submission, page 8.

75. During the Third Conference, the Review Panel requested the ADC to comment on the claim by ACP, relating to the calculation of the normal value in REP 645, that the normal value "effectively has two levels of SG&A and two levels of profit, which is not what the legislation calls for" and that this "has the effect of inflating the normal value and is likely the result of the significant dumping margins observed in the reviewable decision."[81] The ADC responded as follows:

    - The normal value would not have 2 levels of SG&A or profit, with Qinyan and Fenghui performing 2 different functions: Qinyan manufactures the goods (for Fenghui), while Fenghui warehouses and sells them.

    - Section 269TAC(2)(c)(ii) requires the Minister to determine amounts for SG&A and profit that would be the SG&A and profit 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.

    - If Fenghui had sold the goods on the domestic market in China, the SG&A expenses incurred in relation to the goods would be those incurred by Qinyan in relation to the manufacture of the goods, and those incurred by Fenghui in relation to the warehousing and selling of the goods.

    - Similarly, if Fenghui had sold the goods on the domestic market in China, the profit on that sale would have been the profit earned by Fenghui and the profit earned by Qinyan as the return for its effort and resources expended in manufacturing the goods.[82]

76. The ADC stated that it considered ACP's reading of reg 43 of the CIO Regulation in support of its contentions, to be misplaced. It submitted that the choice of exporters or producers records to use does not alter the objective of achieving a normal value that can be compared to the export price. It submitted

[81] See Attachment 2 to the application for review, 11th page (unpaginated).
[82] See the ADC Response to Further Information Request No. 8, in Paragraph 8 of the Third Conference Summary, page 8.

further that reg 43 mandates the use of records in certain circumstances and that it is not a substitute for the requirements of s 269TAC.[83]

Commission's view of correct or preferrable decision

77. In conclusion, the ADC submitted that the approach for determining normal value undertaken in the inquiry under s 269TAC(6), set out in REP 645 was sound and that it properly supported its finding with respect to the normal value.[84]

Submissions from Abey for Ground 1

78. In its s 269ZZJ submission, Abey did not comment on any claims or arguments of ACP in respect of Ground 1, but expressed full support for the Minister's Reviewable Decision, and submitted that it was both correct and preferable.

Analysis of Ground 1

79. The basis of Ground 1 is ACP's claim of the incorrect reliance on s 269TAC(6) to determine normal value in respect of the goods Fenghui purchased **from Qinyan,** and that the absence of cost of production and other information for Zhenli did not prevent the use of s 269TAC(2)(c) to determine normal value in relation to the goods produced by Qinyan. ACP claimed that with respect to the goods produced by Qinyan, the statutory preconditions necessary to access the discretions available under s 269TAC(6) had not been met and that 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) for the goods produced by Qinyan.

80. It appears to be common cause that Fenghui, the exporter, did not have any sales of like goods in China and that there was no indication that there were other sellers of like goods in China, and that therefore s 269TAC(1)[85] of the Act was unavailable

[83] See paragraph 39 of the ADC's s 269ZZJ submission, page 8.
[84] See paragraph 40 of the ADC's s 269ZZJ submission, page 8.
[85] Section 269TAC(1) provides:

> Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for

to determine normal value. ACP submitted that in such a circumstance, s 269TAC(2)(b) directs that the normal value be determined under s 269TAC(2)(c) which provides that the normal value of the goods 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.

Cost of Production

81. ACP stated that its focus in Ground 1 was on s 269TAC(2)(c)(i), relating to cost of production, noting that s 269TAC(2)(c)(ii) would be addressed in Ground 2 below. ACP contended that in this regard s 269TAC(2)(c)(i) and the relevant CIO Regulation (being reg 43) should have been applied to the goods produced by Qinyan, as guided by s 269TAC(5A)(a), and that there was sufficient relevant information available to the ADC for such application. ACP emphasised that reg 43 provides that the costs need not be derived from the exporter's records but instead may be derived from a producer's records, which is the focus of Ground 1 for ACP. The ADC on the other hand refers to the producer's costs of production as being a 'critical element' of determining normal value for the exporter.

82. It also appears to be undisputed that one of the two producers of the goods, Zhenli, did not provide its cost of production information to the ADC and that therefore there was not sufficient information available for the purpose of determining normal value under s 269TAC(2)(c), in respect of that producer. It also appears to be undisputed that the use of s 269TAC(6)[86] was open to the ADC when determining the normal value for goods supplied by Zhenli to the exporter. ACP, however, disputed the

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home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

[86] Section 269TAC(6) provides:

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 ……., the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information."

application of s 269TAC(6) to the goods purchased from both Zhenli and Qinyan whereby a normal value was determined, 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 was properly comparable to the export price.

ACP contended that the normal value for the goods purchased from Qinyan should be determined under s 269TAC(2)(c).

83. The ADC made it clear that its approach was to determine normal value for the goods exported by the exporter, Fenghui, not the normal value as it applied to each separate supplier and contended that the determination of the normal value for the goods exported by Fenghui was appropriately determined using the one methodology, under s 269TAC(6).

84. The first issue to be considered is whether the statutory preconditions for the application of s 269TAC(6) were met for all transactions, where sufficient information was unavailable for only that portion of goods (approximately [redacted]%), specifically, goods purchased by Fenghui from producer Zhenli, while sufficient verified information existed for the rest of the goods (approximately [redacted]%) purchased from producer Qinyan. In other words, the issue for consideration is whether the ADC should have applied s 269TAC(2)(c) to determine normal value in respect of the goods Fenghui purchased from Qinyan, for which the ADC had access to the relevant cost of production and other information, while invoking s 269TAC(6) to determine normal value in respect of the goods Fenghui purchased from Zhenli, in respect of which the ADC did not have access to the relevant cost of production and other information.

85. If the insufficiency of information relating to the goods produced by Zhenli triggers the application of the s 269TAC(6) normal value methodology for all the goods exported by Fenghui (whether produced by Qinyan or Zhenli), a further issue arises. The further question to be asked is whether, in furtherance of the statutory intent,

the ADC should nonetheless be required to apply a 's 269TAC(2)(c) – like' methodology in respect of the goods produced by Qinyan and for which sufficient cost of production and other relevant information is available.

86. Consideration of this issue requires a closer look at the history, intent and application by the Courts of s 269TAC(6). The concept of this relevant normal value provision (now s 269TAC(6)) was first introduced by the *Customs Tariff (Anti-Dumping) Act 1975* (Act No. 76 of 1975), with the provision formally incorporated into the Act by the *Customs Legislation (Anti-Dumping) Act 1989* (Act No. 174 of 1989), which inserted the anti-dumping provisions into Part XVB of the Act, including s 269TAC and specifically s 269TAC(6). The Explanatory Memorandum ('EM') to the 1975 Bill states that the relevant clause was included "for cases where information is withheld or otherwise unavailable".[87]

87. The Courts have emphasised that s 269TAC(6) is a last-resort or "fallback" provision, requiring satisfaction that prescribed prior (and preferred) methods cannot be applied after reasonable inquiry.[88] It is noted that the Court in these cases considered that s 269TAC(6) applies only where the decision-maker is satisfied that sufficient information is unavailable for the prescribed methods. However, the cases do not expressly address 'mixed-methodology' scenarios where a significant portion of data is in fact available. It should also be noted that s 269TAC(6) does not prescribe a method of calculation, rather, it simply mandates 'regard to all relevant information'.

88. *Powerlift (Nissan) Pty Ltd v Minister for Small Business, Construction and Customs (1993)* 113 ALR 339 ('*Powerlift* case') addresses the operation of the very similarly worded provision of s 269TAB(3) of the Act,[89] relating to export price. Like s 269TAC(6), which relates to the determination of normal value, s 269TAB(3)

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[87] See Customs Tariff (Anti-Dumping) Bill 1975 – Explanatory Memorandum, Clause 5.

[88] See *Vredelco Food Industries v Anti-Dumping Authority* (1994) FCA 883, pages 23-25; *Steelforce Trading Pty Ltd v Parliamentary Secretary for Industry, Innovation and Science* [2018] FCAFC 20, paragraph [97]; *Pilkington (Australia) Ltd v Comptroller-General of Customs and the Minister of State for Science and Small Business* (1994), page 3.

[89] Section 269TAB(3) provides

> Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

applies where sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under preceding subsections. Like s 269TAC(6), s 269TAB(3) is also a last-resort or "fallback" provision, requiring satisfaction that prescribed prior (and preferred) methods cannot be applied after reasonable inquiry. Since it is apparent that the two provisions are closely analogous in structure and purpose, I consider that judicial interpretation of s 269TAB(3) is relevant, by analogy, to the interpretation of s 269TAC(6). I therefore consider that the *Powerlift* case*,* although opining on s 269TAB(3), provides useful guidance on the operation of s 269TAC(6).

89. Relevantly, Hill, J stated In the *Powerlift* case*:*

> *Once the applicants' material was able to be disregarded, then Mr Beaman was authorised to proceed to make a calculation under s 269TAB(3). The decision made under s 269TAB(3) was accordingly not unreasonable.*
>
> *An alternative but related submission was that the scheme of the legislation required that, even if applying s 269TAB(3), s 269TAB(l) could only be departed from to the extent required to compensate for the insufficient material. So, it was said, to consider a transaction level not contemplated by s 269TAB(l) involved an error of law.*
>
> *The initial premise upon which the submission is based is, in my view, flawed.* ***There is nothing in s 269TAB(l), or any other section of the Customs Act, which requires that s 269TAB(l) is predominant. Section 269TAB(3) is not a power dependent upon or ancillary to s 269TAB(l). Indeed, as was submitted by the respondent, the existence of s 269TAB(3) is justified in terms where the export price can not be ascertained under s 269TAB(l)(a) or (b). All that need here be said is that the calculation under s 269TAB(3) would need to be a calculation consistent with the scheme of the legislation.*** *There was no error committed by Mr Beaman in proceeding as he did under s 269TAB(3)*.[90]
> [Emphasis added]

[90] See *Powerlift case*, ALR 364

90. The guidance on the 'fallback' provisions, being s 269TAB(3) and s 269TAC(6), than can be gleaned from the *Powerlift* case and the other case law referred to in Paragraph 87 above,[91] is as follows:

    - The fallback provisions are autonomous and not subordinate to the standard methods in s 269TAC(1) – (5) or s 269TAB(1). Once the Minister is satisfied that "sufficient information" is not available to apply the standard methods, the fallback provisions are properly engaged.[92]

    - The threshold for invoking the fallback is a factual satisfaction by the Minister (or delegate) that reliable data is unavailable. The Court will not interfere with this judgment unless it is unreasonable.[93]

    - Once engaged, the Minister has broad discretion to determine the normal value or export price "having regard to all relevant information." There is no requirement to replicate the standard formulas or deduction structures, but the fallback determination must still align with the broader legislative scheme.[94]

    - The Court emphasised that it could be assumed that the legislature would endeavour to have a congruence between the method of calculating "normal value", and that used in calculating the "export price", so as to ensure that like is compared to like.[95]

91. ACP's approach to determining normal value focusses on the goods produced by each producer separately, as discussed above, involving a 'mixed-methodology' approach, while the ADC's articulated approach to determining normal value focusses on the goods exported by the exporter, Fenghui. The following would appear to detract from ACP's approach:

[91] Also see Footnote 88 above.
[92] See *Powerlift case,* pages 362 – 364 (ALR 362 – 364).
[93] See *Powerlift* case*,* pages 362 – 364.
[94] See *Powerlift* case*,* pages 362 and 364.
[95] See *Powerlift* case*,* pages 354, 357-358.

- The dumping margin is calculated, and any duty is imposed with respect to **the exporter**, Fenghui, as clearly indicated in the Dumping Duty Notice. [96]

- ADC's statement that it would not have been possible to establish different normal values for each producer to be matched to an export price because Fenghui warehouses the goods from both suppliers together and does not track which sales originate from a particular manufacturer.

- The guidance from the case law, particularly the *Powerlift* case*,* relating to the interpretation of the so-called 'fallback' provisions, does not appear to provide a basis for a 'mixed-methodology' approach. Once the Minister is satisfied that "sufficient information" is not available to fully apply the preferable methodology, the fallback provision, in this instance s 269TAC(6), then becomes are "properly engaged".[97]

92. For the reasons discussed above, I disagree with ACP's claim that the absence of cost of production information for Zhenli did not prevent the use by the ADC of s 269TAC(2)(c) to determine normal value in relation to the goods produced by Qinyan. I consider the correct approach is for the ADC to determine normal value for the goods exported by the exporter, Fenghui, as a whole, and not the normal value as it applies to each separate supplier. In my view, as soon as the ADC was satisfied that "sufficient information" was not available to determine normal value for all the goods exported by Fenghui, under s 269TAC(2)(c) (in the absence of Zhenli's cost of production and other information), the fallback provision of s 269TAC(6) became engaged. It should be recalled from the *Powerlift case* that the threshold for invoking the fallback provision is a factual satisfaction that reliable data is unavailable (in this instance, being Zhenli's cost of production and other information) and that the Court will not interfere with this judgment unless it is "unreasonable".[98] As mentioned above, it is not disputed than Zhenli's cost of production and other information was unavailable, which would be required to determine the normal value for all the goods exported by Fenghui under s 269TAC(2)(c). In addition, the ADC provided comprehensive reasons, as discussed above, for invoking the 'fallback' provision of s 269TAC(6) in respect of

[96] See ADN 2025/090.
[97] See *Powerlift* case*,* pages 362 – 364.
[98] See *Powerlift* case*,* pages 362 – 364.

the goods produced by **both** Qinyan and Zhenli, and for the methodology it adopted under s 269TAC(6).

93. Once s 269TAC(6) is enlivened, with the mandate that the ADC must have 'regard to all relevant information', the further issue arising is whether it would be reasonable and in accordance with the intent of the statute for the ADC to follow the type of methodology set out in s 269TAC(2)(c), including the relevant regulations, for the goods produced by Qinyan, and in respect of which the relevant cost of production and other information was available.

94. Notwithstanding a valid invocation of s 269TAC(6) by the ADC and that s 269TAC(6) does not prescribe a particular method of calculation (but rather, it simply mandates 'regard to all relevant information'), it would in my view be incumbent upon the ADC to ensure that the fallback determination under s 269TAC(6) must still align with the broader legislative scheme or as stated in the Powerlift case, it would need to be "a calculation consistent with the scheme of the legislation". [99]This requirement to align with the broader legislative scheme, does not in my view necessitate meticulously replicating the methodology of s 269TAC(2)(c) but rather could entail the application of a 's 269TAC(2)(c) – like' methodology in its determination of normal value in respect of the goods purchased from Qinyan, since Qinyan's cost of production information was available and it is a requirement of s 269TAC(6) to have 'regard to all relevant information'. However, in my view, it would be important that such a methodology not detract from "congruence" between the method of calculating normal value, and that used in calculating the export price, so as to ensure that "like is compared to like", as referred to in the *Powerlift case*.[100]

95. I noted that the ADC had used Qinyan's cost of production information to determine normal value in SEF 645 and on a limited basis in REP 645 (in instances where there were no purchases by Fenghui of particular models or types of brackets exported in a particular quarter or the previous quarter). I also recognised the ADC's position that it could not identify the manufacturer of the goods in each export sale for models manufactured by both companies and therefore could not have separate normal values for goods produced by Qinyan and Zhenli, respectively. Therefore,

[99] See *Powerlift* case, p364 (ALR 364).
[100] See *Powerlift* case, p354 (ALR 354)

during the Third Conference and in accordance with the above-mentioned requirement of s 269TAC(6) to have regard to all relevant information and align the methodology used with the broader legislative scheme, I requested clarification as to whether the ADC could make separate calculations, using different methodologies, for the goods produced by Qinyan (using actual cost of production plus actual SG&A and profits for sales to Fenghui) and Zhenli (using purchase price to Fenghui) respectively, up to the point where the products were sold to Fenghui.[101] This would avoid the problem articulated by the ADC in its s 269ZZJ submission about establishing different normal values for each producer while using Qinyan's cost of production information to the extent possible, that is, the application of a 's 269TAC(2)(c) – like' methodology, thereby aligning with the broader legislative scheme.

96. The ADC confirmed in the Third Conference that it was able to calculate normal value using this methodology and stated that this was "more or less" the methodology adopted in SEF 645 (under s 269TAC(6) using cost of production information as far as possible), but in SEF 645 it had used Qinyan's cost of production for both producers and adjusted for differences in purchase price paid by Fenghui between Qinyan and Zhenli. The ADC explained that the changed approach in REP 645 (using the respective purchase prices of goods to Fenghui) was driven by the Fenghui and Qinyan's response to SEF 645 requesting the ADC to use the purchase price of the products to Fenghui, rather than Qinyan's cost of production information, and which resulted in a lower normal value and dumping margin in REP 645. The ADC stated that it determined it would be more appropriate to change the methodology in REP 645 and determine a normal value having regard to the purchase prices rather than a construct of those prices, to reflect the actual purchase price of goods that Fenghui sourced from Qinyan and Zhenli. The ADC stated that the methodology used in REP 645 still maintained an approach focused on the exporter and stated that both approaches that were used in the SEF 645 and in REP 645 took into account the fact that there was more than one party involved in manufacturing the goods exported to Australia by Fenghui.[102]

[101] See paragraph 2 of the Third Conference Summary, pages 4 to 5.
[102] See paragraphs 2 and 4 of the Third Conference Summary, pages 4 - 6, as well as Paragraph 20 of the ADC's s 269ZZJ submission, page 5, with reference made to Document #28 of EPR 645.

97. In response to a clarification request, the ADC explained why the methodology in SEF 645 resulted in a higher dumping margin than REP 645, stating that it related to the calculation of Qinyan's profit, since using the constructed normal value (a 's 269TAC(2)(c) – like' methodology) took into consideration a weighted average profit on Qinyan's sales of the goods to Fenghui over the whole investigation period, while using the purchase price method took into consideration the profit on the models actually exported during the investigation period (that is, the price between Qinyan and Fenghui already subsumes the actual profit achieved on the sale).[103]

98. During the Third Conference, I requested the ADC to provided updated normal value and dumping margin calculations using the methodologies referred to above for the goods produced by Qinyan and Zhenli respectively. This further information was subsequently provided, with supporting documents, indicating a revised dumping margin of 25.3%, which differed from the dumping margin determined in REP 645 of 22.2%.[104] Since the revised calculation was also based on a constructed normal value (this is, a 's 269TAC(2)(c) – like' methodology) for the goods produced by Qinyan, as in SEF 645, I considered the issue of the application of profits (referred to above with regard to the SEF 645 methodology) was also the likely reason for the higher dumping margin of 25.3%. I also considered the ADC's reasons for its changed approach from SEF 645 to REP 645, referred to in Paragraph 97 above, which would be relevant here as well. It seems clear to me that using different methodologies to calculate normal value for the goods produced by Qinyan and Zhenli, respectively, results in different values for level of profits applied to the goods from two producers, impacting the final normal value for the exporter and the dumping margin. This would appear to detract from a "congruence" in method of calculating normal value and that used in calculating the export price", so as to ensure that "like is compared to like", as referred to in the *Powerlift case*.[105]

99. I consider that the ADC was therefore correct in determining that it was more appropriate to change the methodology from SEF 645 (which used a 's 269TAC(2)(c) – like' methodology to the methodology in REP 645 (based on purchase price to the exporter). For the same reasons, I consider that it is more

[103] See paragraph 2 of the Third Conference Summary, page 5.
[104] See paragraph 9 of the Third Conference Summary, page 9.
[105] See *Powerlift* case, p354 (ALR 354).

appropriate and reasonable for the ADC to use the normal value methodology based on the purchase price to Fenghui of both the goods produced by Qinyan and Zhenli, respectively, under s 269TAC(6), as it did in REP 645, rather than using a 's 269TAC(2)(c) – like' methodology for the goods produced by Qinyan. I agree with the ADC that this approach takes into account the fact that there was more than one party involved in manufacturing the goods exported to Australia by Fenghui, and maintains focus on determining a normal value for the exporter, having regard to the cost of purchase of goods sourced from both Qinyan and Zhenli. In my view, this methodology does not detract from a "congruence" in method of calculating normal value and export price, so as to ensure that "like is compared to like", and still aligns with the broader legislative scheme.

100. Therefore, for the reasons discussed above, I consider that the ADC's reliance on s 269TAC(6) to determine normal value in respect of the goods that Fenghui purchased from Qinyan, based on the purchase prices to Fenghui, was appropriate and the correct or preferable decision. In addition, and for the reasons discussed above, I consider that once s 269TAC(6) was appropriately invoked and became enlivened, the ADC was not required to follow the methodology set out in s 269TAC(2)(c) (or a 's 269TAC(2)(c) – type methodology'), for the goods produced by Qinyan, and in respect of which the relevant cost of production and other information was available.

101. ACP's claim in Ground 1 that the ADC should have applied a normal value methodology under s 269TAC(2)(c) (read with the relevant CIO Regulation) in relation to the goods produced by Qinyan, is rejected. Therefore, it is unnecessary to address ACP's arguments in its application for review relating to the detailed application of s 269TAC(2)(c)(i) and reg 43 of the CIO Regulation and the sufficiency of Qinyan's cost of production information for this purpose. I will, however, address certain of ACP's claims in Ground 1 relating to SG&A expenses and profit.

SG&A Expenses

102. ACP also claimed in Ground 1 that SG&A costs should be determined under s 269TAC(2)(c)(ii) and reg 44 of the CIO Regulation. ACP's claim in this regard is that Fenghui's selling cost records should be the basis for the determination of

SG&A expenses, because Fenghui has been identified as the "exporter", and the relevant entity for which the normal value is to be determined. ACP claimed that since "like goods" are not sold for home consumption in China and reg 44(2)(b)(ii) of the CIO Regulation could not be satisfied, the alternate methodologies for determining SG&A costs in reg 44(3)(a) or (c), should be applied. The ADC stated that it was correct in determining normal value under s 269TAC(6) and therefore, there was no obligation for the ADC to consider reg 44(3) but that it had in any event had regard to Fenghui's SG&A expenses, although under s 269TAC(6), and not under reg 44(2)(b)(ii) of the CIO Regulation.

103. The ADC's analysis is correct in that the CIO Regulation is not applicable when s 269TAC(6) is invoked, since in accordance with s 269TAC(5A)(b), the CIO Regulation is only applicable to determinations made under s 269TAC(2)(c)(ii) or (4)(e)(ii). During the Third Conference, the ADC confirmed that it had in any event had regard to the SG&A expenses recorded in Fenghui's own records in determining an amount for SG&A incurred on goods in the same general category of goods in the domestic market. While confirming that the ADC was not required to, and did not apply the CIO Regulation, when determining an amount for Fenghui's SG&A in REP 645, the ADC also confirmed that Fenghui's SG&A costs were 'in effect' determined in accordance with reg 44(3)(a) of the CIO Regulation.[106] I therefore consider that the ADC's methodology under s 269TAC(6) relating to SG&A is reasonable, using a 's 269TAC(2)(c) – like' methodology and aligning with the broader legislative scheme, while taking into consideration Fenghui's actual information. ACP's claims relating to SG&A and the application of s 269TAC(2)(c) under Ground 1 are therefore rejected.

Profits

104. ACP also claimed in Ground 1 that profit should be determined under s 269TAC(2)(c)(ii) and reg 45(3) of the CIO Regulation, which sets out three different methodologies for determining the profit, with no hierarchy to these methodologies, and further, that it was open to the Minister to elect which one to use depending on the available information. Details of ACP's arguments in relation to the methodologies in reg 45(3)(a) and (c) of the CIO Regulation are set out in the

[106] See paragraph 5 of the Third Conference Summary, page 7.

application for review.[107] ACP made some detailed claims relating to the application of the methodology for determining profit referred to in reg 45(3)(c) of the CIO Regulation, that is, "using any other reasonable method and having regard to all relevant information" and in particular to the cap of the profit amount referred to in reg 45(4) of the CIO Regulation. The ADC stated in its s 269ZZJ submission that it was correct in determining normal value under s 269TAC(6) and therefore, there was no obligation for the ADC to consider reg 45(3) and (4). The ADC stated that it had nonetheless addressed certain of ACP's claims relating to profit in REP 645 but that the determination relating to profit was under s 269TAC(6), and not under s 269TAC(2)(c)(ii) and reg 45(3) of the CIO Regulation.

105. I consider that the ADC's analysis is correct in that the CIO Regulation is not applicable when s 269TAC(6) is invoked, since in accordance with s 269TAC(5A)(b), the CIO Regulation is only applicable to determinations made under s 269TAC(2)(c)(ii) or (4)(e)(ii). The ADC stated that it had in any event had regard to Fenghui's actual profits realised from the sale of the same general category of goods in the domestic market. During the Third Conference, the ADC confirmed that there were no sales of like goods by Fenghui, so it determined the actual profit realised on Fenghui's domestic sales of plumbing products (either self-produced or purchased), being in the same general category of the goods, having regard to Fenghui's own records on its costs and sales. While the ADC confirmed that the normal value was determined under s 269TAC(6), and that the ADC was not required to, and did not, apply the CIO Regulation when determining an amount for profit for Fenghui's in REP 645,[108] the ADC also confirmed that Fenghui's profits were 'in effect' determined in accordance with reg 45(3)(a) of the CIO Regulation. The ADC's methodology under s 269TAC(6) relating to profits was open to it, and it appropriately adopted the principles reflected in reg 45(3) of the CIO Regulation, aligning with the broader legislative scheme, while taking into consideration Fenghui's actual information.[109] I therefore consider it to be the correct or preferable methodology.

[107] See Attachment 2 to the application for review, 7th – 8th pages (unpaginated).
[108] See paragraph 6 of the Third Conference Summary, page 7.
[109] I note that the ADC in its s 269ZZJ submission, "for completeness" undertook a comprehensive analysis of Fenghui's domestic sales/selling prices to address Fenghui's profit claims made in the course of the investigation and concluded that Fenghui's claims could not be substantiated. The ADC also submitted that it fully evaluated Fenghui's proposal to use CITIC's profit margin as well as other

106. At this point, I take the opportunity to address ACP's alternate claim that zero is an amount and that 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.[110] The ADC in its s 269ZZJ submission rejected this claim and submitted that it would not be considered to be a "reasonable" method of determining profit (noting reg 45(3)(c) of the CIO Regulation), particularly when, on the available evidence before the ADC, it had established that Fenghui's own sales of general plumbing products on the domestic market were profitable. In this regard, the ADC noted that, in any case, it did not accept that regard must be had to reg 45(3)(c), given that s 269TAC(6) was the correct provision under which to determine normal value. I agree with the ADC regarding ACP's alternate claim that a zero amount for profit would be appropriate and the claim is rejected. For the reasons discussed above, I consider that the ADC's methodology under s 269TAC(6) relating to profits is reasonable, in that it uses a 's 269TAC(2)(c) – like' methodology, that is, actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market, and it aligns with the broader legislative scheme, while taking into consideration Fenghui's actual information.

107. I would also like to address what the ADC referred to as ACP's primary claim in relation to Qinyan's SG&A and profit, that is, that the normal value ascertained by the ADC on the basis of s 269TAC(6), "effectively has two levels of SG&A and two levels of profit". ACP contended that this was not what the legislation called for, and that it had the effect of inflating the normal value. ACP further submitted that the position adopted in REP 645 is based on 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. ACP contended that the Act and the CIO Regulation do not allow for such an assumption and that they provide disciplines through which a profit can be determined, with none of those involving the use of the profit from two different

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alternative profits margins put forward by Fenghui, with respect to other companies. See paragraph 31 of the ADC's s 269ZZJ submission, page 7. In light of the above finding that the ADC's determination for profits under s 269TAC(6) using a 's 269TAC(2)(c) – type' methodology relating to profits is the correct or preferable decision, I do not consider it necessary to further address these issues.

[110] See Attachment 2 to application for review, 9th page (unpaginated).

entities. ACP submitted that it considered that a normal value constructed under s 269TAC(2)(c) would result in a lower, or even no-dumping, margin, which would be a materially different outcome.[111]

108. During the Third Conference and in its s 269ZZJ submission, the ADC disputed ACP's claim that there would be two levels of SG&A or profit, stating that Qinyan and Fenghui performed two different functions: Qinyan manufacturers the goods (for Fenghui), while Fenghui warehouses and sells them. The ADC pointed out that if Fenghui had sold the goods on the domestic market, the SG&A costs and profit relation to the goods would be both those incurred by Qinyan in relation to the manufacture of the goods, **and** those incurred by Fenghui in relation to the warehousing and selling of the goods.[112]

109. I agree with the ADC's analysis. Section 269TAC(2)(c)(ii) requires the Minister to determine amounts for SG&A and profit, on the assumption that the goods, instead of being exported by Fenghui, had been sold for home consumption in the ordinary course of trade in China. This would include the SG&A and profit, both in respect of the sales from Qinyan to Fenghui and in respect of Fenghui's sales on the domestic market. Therefore, contrary to ACP's claim that a normal value constructed under s 269TAC(2)(c) would result in a lower, or even no dumping margin, such a constructed normal value where the exporter is not the manufacturer, as in the case of Fenghui, would clearly include SG&A and profits of in respect of both the sale of goods to exporter from the producer **and** in respect of the sale of goods from the exporter to its customers on the domestic market. In any event, and for the reasons discussed above, I consider that the ADC's methodology for determining normal value in REP 645 under s 269TAC(6), including the methodology for determining SG&A and profits, is the correct or preferable methodology and that the ADC was not required to apply s 269TAC(2)(c)(ii) or the relevant CIO Regulation relating the SG&A expenses and profit. ACP's claim in this regard is therefore rejected.

[111] See Attachment 2 to application for review, 10th – 11th pages (unpaginated) for details of ACP's detailed argument in this regard.
[112] See paragraph 8 of the Third Conference Summary, page 8.

Error in Calculations

110. Prior to the Third Conference, the ADC advised the Secretariat that in its preparations for the Third Conference, in reviewing the normal value calculations relating to Ground 1, it identified an error that would result in a change to the dumping margin if corrected.

111. The Review Panel requested and was provided with further information relating to error, during the Third Conference, including a description of the error, an explanation of how it arose and relevant revised documents and spreadsheets. During the Third Conference, the ADC advised that correcting the error would result in a lower ascertained normal value, resulting in a change to the dumping margin from 22.2% in REP 645 to 21.9 %.[113]

112. I find that I was permitted to have regard to this information in accordance with s 269ZZHA(2). I further find that while calculation error was not the subject of an express complaint in the reviewable grounds for the purposes of s 269ZZG(5)(c), I consider that it nonetheless falls within my review jurisdiction to address for the following reasons:

    - During my initial consideration of Ground 1, I was exploring the merits of ACP's claim that the statutory preconditions necessary to access the discretions available under s 269TAC(6) had not been met with respect to the goods produced by one of the producers, Qinyan, and that normal value should have been determined under s 269TAC(2)(c) for Qinyan, since it had provided all its cost of production and other relevant information to the ADC.

    - I was considering whether it would be permitted (or required) to have a mixed-methodology approach to determining normal value, if cost of production information was unavailable for only a portion of the sales, and if so, what sort of percentage of the sales would trigger (or permit) such a mixed-methodology approach.

[113] For a description of the error and an explanation of how it arose, including relevant documents, see the ADC's response to Supplementary Further Information Request No.1 in Paragraph 10 of the Third Conference Summary, page 10.

- In furtherance of the consideration of this issue, I requested the ADC to provide further information relating to the percentage of the goods purchased by Fenghui (the exporter) from Qinyan and from Zhenli, respectively, during the investigation period. In preparing its response to the further information request for the Third Conference, the ADC identified the error and advised the Secretariat of the details, prior to the conference.

- During the Third Conference, I noted a discrepancy between my calculations from Confidential Attachment 3 to REP 645 and the ADC's response to Further Information Request No.1, in relation to Fenghui's purchases from Zhenli and I requested clarification during the conference. The reason for the discrepancy related to the error.[114]

- During the Third Conference I also requested further information relating to a description of the error including the supporting documents and revised spreadsheets relating to the error. I also requested the ADC to advise if the rectification of the error, on its own, and the resulting reduced dumping margin, would have any effect on the ADC's consideration of the finding of material injury and causation, given that the size of the dumping margin was a relevant factor that was taken into account in the ADC's finding that dumped goods caused material injury.[115]

- Ground 1 is described in the Initiation Notice and the application for review as "Incorrect reliance on s 269TAC(6) to determine the normal value". While the description does not, on its face, encompass consideration of the ADC's calculation error, it is clear from the above discussion, that the calculation error is raised within Reviewable Ground 1 and that there is jurisdiction to address and correct the error in the report and recommendation to the Minister.

- In addition, since one of the components of Reviewable Ground 3, which challenges the determination of material injury, is based on the size of the

[114] See the ADC's Response to Further Clarification Request in respect of Further Information Request No. 1 in Paragraph 2 of the Third Conference Summary.
[115] See Supplementary Further Information Request No.1 and ADC's Response in Paragraph 10 of the Conference Summary.

dumping margin, so that an error in calculation affecting the dumping margin could impact the consideration of Reviewable Ground 3. This is an additional reason for jurisdiction to address and correct the error.

Ground 1 Conclusion

113. For the reasons discussed above, Ground 1 is rejected. I consider that the ADC's determination of normal value in respect of the goods Fenghui purchased from Qinyan, using the methodology under s 269TAC(6) of the Act to be the correct or preferable decision.

114. During the course of the consideration of Ground 1 an error in the calculation of normal value was identified by, which if corrected, results in a reduction to the dumping margin from 22.2% in REP 645 to 21.9 %, subject to the outcome of Ground 2 and 3, discussed below.[116]

Ground 2: Normal values not in ordinary course of trade

ACP's Claims and Supporting Arguments for Ground 2

115. At the outset, ACP stated that Ground 1 relates to the determination of the normal value for goods purchased from Qinyan, while Ground 2 relates to all normal values determined under s 269TAC(6). ACP noted that the Review Panel's consideration of Ground 1 will dictate whether that is all goods, or merely those purchased by Fenghui from Zhenli. ACP submitted that a key determinant in assessing a normal value under s 269TAC(1) is whether the price was in the "ordinary course of trade" and that the normal value, as assessed in REP 645, is not correct or preferable,

[116] During the Third Conference, further information was requested as to whether the rectification of the error, on its own, and the resulting lower dumping margin, had any effect on the ADC's consideration of the finding of material injury and causation, given that the size of the dumping margin was a relevant factor that was taken into account in the ADC's finding that dumped goods caused material injury. The ADC advised that the change (0.3%) in the dumping margin was not significant and did not lead to a change in the findings relating to material injury caused by dumping. See ADC response to Supplementary Further Information Request No.1, in paragraph 10 of the Third Conference Summary, page 10.

because it was not determined with a view to achieving a value akin to a price achievable in the ordinary course of trade.[117]

116. ACP submitted that s 269TAC(1) sets out what is understood to be the "normal value" and one of the fundamental principles in determining a normal value under that section is whether the sales were in the ordinary course of trade. ACP submitted that similarly, where an alternative method is required for determining a normal value under s 269TAC(2)(c), (d) or s 269TAC(4), the "ordinary course of trade" is explicitly a relevant consideration. ACP submitted further that from this context where "normal value" is determined under s 269TAC(6), the Minister must be attuned to achieving the same outcome, that is, a value representative of an arm's length, ordinary course of trade price. ACP submitted that when assessing which of the relevant information should inform the Minister's determination, arriving at an ordinary course of trade price is a relevant consideration. ACP submitted that it was not apparent that regard was had to that consideration in determining the normal value and that there is nothing in REP 645 that suggests this goal was in mind when the normal value was determined.[118]

117. ACP submitted that this was evident when regard was had to the profit applied to represent a domestic market profit, 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. ACP submitted that this ignores an important piece of relevant information, being that the goods do not appear to have been sold in China for home consumption and questioned why it would 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. ACP submitted that if there is no demand for a product in a market, which appeared to be the case, then a seller has very little leverage to seek a profit on its sales. ACP described how Fenghui characterised its domestic sales of other products: being mostly retail sales to end users which produce container houses destined for Australia; at very high prices because the purchase volume and each sale is very small and the products are low-value parts in the finished decorated container house; with high costs to import similar products (including the import tariff, transportation cost and time). The conclusion was that it

[117] See Attachment 2 to application for review, 11th page (unpaginated).
[118] See Attachment 2 to application for review, 11th - 12th pages (unpaginated).

was 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 were not comparable to the export products.[119]

118. ACP submitted that two things were observable from Fenghui's characterisation of its domestic sales of other products:

    1. Fenghui's domestic sales are made in highly specific circumstances, which apparently do not apply to the goods subject to this investigation; and
    2. As a consequence of these specific circumstances, the profit it achieves on the domestic market is significant, "sometimes even 10 times the purchase cost".[120]

119. ACP submitted that as noted above, for a price to be in the ordinary course of trade it need only not be "less than the cost of such goods"[121] and that a price that breaks even is an ordinary course of trade price. ACP submitted that by adopting what appears to be a significant profit under s 269TAC(6), REP 645 is requiring significantly more than that to reflect hypothetical domestic ordinary course of trade sales of the goods. ACP contended that the dumping margin is driven by this choice of profit and it is wholly responsible for the conclusion that dumping has occurred. ACP submitted that by failing to take into consideration the broader statutory context, the ADC 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.[122]

120. In response to Question 10 of the application form to 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, ACP submitted that:

    - The purpose of s 269TAC(6) is to allow the Minister a method to determine a normal value that is representative of the arm's length ordinary course of

[119] For more details on this argument and how Fenghui characterised its domestic sales of other products, see Attachment 2 to application for review, 12th page (unpaginated) with reference made to Document #22 of EPR 645.
[120] See Attachment 2 to application for review, 12th page (unpaginated).
[121] Reference was made to s 269TAAD(1)(a) of the Act.
[122] See Attachment 2 to application for review, 12th - 13th pages (unpaginated).

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.
- REP 645 has been adopted by the Minister and represents his statement of facts for his decision to impose anti-dumping measures.
- There was 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.
- It appeared to ACP that the failure 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, which in practice can be achieved by:
    - ❖ Assessing whether any profit needs to be included in the normal value in circumstances where the like goods are not sold in the domestic market in China; and
    - ❖ If the answer to the second question is affirmative, at least accepting that a profit based on very specific circumstances where the profit margin is "very high" and "sometimes even 10 times than its purchase cost" is not a reasonable exercise of the discretion under s 269TAC(6).[123]

121. In response to Question 12 of the application form requesting reasons why the proposed decision provided in response to question 10 is materially different from the reviewable decision, ACP submitted that:
    - The reviewable decision proceeds on an erroneous understanding of the Minister's power under s 269TAC(6),

[123] See Attachment 2 to application for review, 13th page (unpaginated).

- 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.[124]

ADC's Position on Ground 2

122. In REP 645, the ADC found that since Fenghui did not sell like goods in the domestic market in China, it had regard to Fenghui's actual profit realised on products that are not like goods sold in the Chinese domestic market in the investigation period. The ADC stated that the products sold by Fenghui on the domestic market were used in various plumbing applications and therefore were in the same general category as the goods (clip heads) exported to Australia. The ADC considered that had Fenghui sold clip heads in China, then the profit achieved on those clip heads would have reflected the profit achieved on products in the same general category as the clip heads exported to Australia. In REP 645, the ADC further found that the total volume of these products sold on the domestic market was not insignificant when compared to the volume of the goods (clip heads) exported to Australia, and Fenghui's sales of these products "were mostly profitable".[125] Based on this, the ADC stated that it disagreed with the assertion that these sales were not made in the ordinary course of trade.[126]

123. In its s 269ZZJ submission, the ADC referred to ACP's claim that the normal value as assessed in REP 645 is not correct or preferrable because it was not determined with a view to achieving a value akin to a price achievable in the ordinary course of trade. The ADC stated that ACP claimed that it was not apparent that regard was

[124] See Attachment 2 to application for review, 13th - 14th pages (unpaginated).
[125] During the Third Conference, the Review Panel requested further information as to what the ADC meant by "mostly" profitable, and what percentage of the products sold were not profitable. The ADC stated that Fenghui had provided a list of its domestic sales on a line-by-line basis and that the ADC had regard to this information in determining an amount of profit achieved by Fenghui on its domestic sales of goods in the same general category as the exported goods. The ADC stated that some of Fenghui's sales included in the calculation of profit were not profitable (i.e. the price was lower than the cost) but as the percentage of unprofitable sales was less than 20% and therefore unprofitable sales were not in substantial quantities, the ADC included all sales (whether profitable or not) in the calculation of the profit margin for Fenghui. See paragraph 11 of the Third Conference Summary, pages 10 – 11.
[126] See REP 645, pages 37 - 40.

had to that consideration and that the lack of consideration of this point was evidenced by the significant profit that was applied to represent a domestic market profit. In response to these claims, the ADC stated that it carefully considered the most reasonable, reliable and appropriate profit margin to use based on the facts and circumstances of this case. In this regard, the ADC referred to its response in its s 269ZZJ submission to Ground 1 in respect of 'Profit" in which it outlined its consideration of profit as follows:

- The ADC was correct in determining normal value under s 269TAC(6), not under s 269TAC(2)(c)(ii) and therefore, there was no obligation for the ADC to consider s 45 of the CIO Regulation in its determination of profit. The ADC stated that nonetheless, it addressed certain claims made by ACP relating to profit.

- With respect to ACP's claim that it was appropriate that the profit normally realised by other producers is zero, the ADC submitted that would not be a "reasonable" method (noting regulation 45(3)(c)),[127] particularly when on the available evidence before the ADC, it was established that Fenghui's own sales of general plumbing products on the domestic market were profitable.

- The ADC fully evaluated Fenghui's proposal to use CITIC Metal Co., Ltd.'s ('CITIC') profit margin but did not consider that CITIC's profit margin was a reasonable or relevant profit amount to use in determining the normal value. The ADC also evaluated other alternative profits margins put forward by Fenghui with respect to other companies.[128]

The ADC also submitted that ACP had not outlined a reasonable argument as to why any other profit margin was correct and/or preferrable. [129]

124. The ADC submitted that while it may be that a price in the ordinary course of trade that "breaks even" can be in the ordinary course of trade, ACP gave no reason as to why a "zero amount of profit" or a break-even profit should be used. The ADC

[127] The ADC noted that it did not accept that regard must be had to Regulation 45(3)(c) in any case, given the ADC's finding that s 269TAC(6) was the correct provision under which to determine normal value.
[128] Reference was made to REP 645, pages 37 – 40.
[129] See paragraphs 41 – 42 of the ADC's s 269ZZJ submission, page 8, which also referred to paragraphs 28 – 33 of the ADC's s 269ZZJ submission.

stated that this was especially in circumstances where the ADC submitted that the most reasonable and relevant profit margin to use would be Fenghui's own profit relating to its domestic sales of the same general category of goods (products used in plumbing applications).[130]

125. The ADC further submitted that ACP cannot claim a profit is not in the ordinary course of trade simply because it is not a "zero" or "break even" profit, or on the basis that they consider the profit to be "inflated". The ADC submitted that the concept of "ordinary course of trade" under section 269TAAD in fact contemplates that a lower price, in particular where it is below the cost of such goods, is indicative of a transaction that is not in the ordinary course of trade.[131]

126. The ADC stated that the profit margin used, as outlined in REP 645, came from actual domestic sales that it carefully considered and was of the view were commercially normal and representative (and not based on whether they were "high" or "low").[132] The ADC submitted that the profit margin used was correct and preferable and that the reasoning for why it considered the profit reasonable and representative is set out in REP 645, based on the information the ADC had available to it.[133]

Submissions from Abey on Ground 2

127. In its s 269ZZJ submission, Abey did not comment on any claim or arguments of ACP in respect of Ground 2, but expressed full support for the Minister's Reviewable Decision, and submitted that it was both correct and preferable.

[130] See paragraph 43 of the ADC's s 269ZZJ submission, page 8.
[131] See paragraph 44 of the ADC's s 269ZZJ submission, page 8.
[132] The ADC referred to SEF 645 and REP 645, where it had agreed with Fenghui's submission that in calculating the profit achieved on its domestic sales, it should exclude or disregard a sale of a particular product (confidential). The ADC considered that this product was not a finished product that was normally sold by Fenghui and was therefore not relevant to the goods (being finished or final products) under consideration. Accordingly, the ADC had excluded the sale of this product from the calculation of profit in SEF 645 and REP 645. See footnote 19 of the ADC's s 269ZZJ submission, page 9.
[133] See paragraphs 45 – 46 of the ADC's s 269ZZJ submission, page 9.

Analysis of Ground 2

128. In its application for review, Abey noted that Ground 1 related to the determination of normal value for goods purchased from Qinyan (which ACP claimed should be determined under s 269TAC(2)(c)), while Ground 2 relates to all normal values determined under s 269TAC(6). ACP noted further that the Review Panel's consideration of Ground 1 would dictate whether that was in respect of all goods, or only those goods purchased by Fenghui from Zhenli. For the reasons referred to in the Analysis Section of Ground 1 above, the Review Panel rejected ACP's claims in respect of Ground 1 and found the ADC's determination of normal value under s 269TAC(6) for goods purchased from both Qinyan and Zhenli, to be the correct or preferable decision. Therefore, the consideration of Ground 2 relates to all goods purchased by Fenghui, from both Qinyan and Zhenli.

129. ACP's main claim in respect of Ground 2 is that a key determinant in assessing a normal value under s 269TAC(1) is whether the price was in the "ordinary course of trade" and that the normal value, as assessed in REP 645 under s 269TAC(6) is not correct or preferable, because of lack of proper consideration of this issue and that the normal value was not determined with a view to achieving a value akin to a price achievable in the ordinary course of trade.

130. ACP argued that one of the fundamental principles in determining a normal value under s 269TAC(1) is whether the sales were in the "ordinary course of trade" and that where an alternative method is required for determining a normal value under s 269TAC(2)(c), (d) or s 269TAC(4), the "ordinary course of trade" is "explicitly a relevant consideration". ACP submitted that it followed that when determining a "normal value" under s 269TAC(6), the Minister must be attuned to achieving the same outcome, that is, a value representative of an arm's length, ordinary course of trade price. ACP submitted that arriving at an ordinary course of trade price is a relevant consideration, and that it was not apparent that regard was had to that consideration in determining the normal value in REP 645.

131. I do not agree with ACP's interpretation and analysis of s 269TAC regarding "ordinary course of trade". I agree that "ordinary course of trade" is a fundamental principle in, and a relevant consideration for, determining normal value **under**

s 269TAC(1) as read with reg 45(2) of the CIO Regulation.[134] I do not, however agree that the "ordinary course of trade" is "explicitly a relevant consideration" where normal value is determined under s 269TAC(2)(c), or that it is a consideration where normal value is determined under s 269TAC(6). The reasons are set out below.

132. When it is not possible to determine normal value under s 269TAC(1), for example, when there are no such domestic sales as in the present case, s 269TAC provides alternate ways of calculating the normal value, such as under s 269TAC(2)(c) which provides for the amount to be the sum of two figures: (i) the amount determined to be the cost of production or manufacture (s 269TAC(2)(c)(i), which is not relevant for the purposes of this ground of review); and (ii) an amount for SG&A expenses and for profit (s 269TAC(2)(c)(ii), which is relevant for the purposes of this ground of review, insofar as it relates to profit). In *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 ('the *Steelforce Case*'), this latter amount is described as "a hypothetical amount" in that it is an amount for the goods that "rather than being exported to Australia were instead sold for home consumption in the ordinary course of trade in the country of export", and it is specifically stated in the judgment that the "effect of these provisions is that the Minister is required to determine the hypothetical profit on a hypothetical sale."[135]

133. Regulation 43(3) of the CIO Regulation provides for three alternative methodologies (in reg 43(3)(a), (b) and (c)) for determining this "hypothetical profit" when it is not possible to calculate the amount of profit by using data relating to the production and sale of like goods in the ordinary course of trade. Both reg 43(3)(a) and (b) refer to "actual amounts realised" by exporters or producers. As stated in the *Steelforce Case*, although the inquiry called for by s 269TAC(2)(c)(ii) is hypothetical in nature, the assessment of the relevant proxy is not hypothetical:

> *Thus, while I agree with the learned primary judge that the enterprise erected by s 269TAC(2)(c)(ii) is concerned with the assessment of a*

[134] Section 269TAC(1) provides that ordinarily, the normal value of goods exported to Australia is "the price paid or payable for like goods **sold in the ordinary course of trade** for home consumption in the country of export in sales that are arms length". [Emphasis added]
[135] *Steelforce Case,* paragraph [83].

> *hypothetical amount, I do not accept that the methodologies set out in reg 45 are themselves hypothetical. To the contrary, they are real world figures which the Regulation, by selecting them as proxies for the amount in s 269TAC(2)(c)(ii), assumes can be assessed. Accordingly, I do not accept that the hypothetical nature of s 269TAC(2)(c)(ii) allows one to approach the construction of reg 45(3)(a) more liberally*.[136]

134. This compelled his Honour to the view that 'actual amounts realised' in reg 44(3)(a) requires the assessment of an **actual amount.** The emphasis on "actual amounts" in reg 43(3)(a) and (b) focusses on whether "ordinary course of trade" is a relevant consideration for the purposes of determining profit under s 269TAC(2)(c)(ii), as read with reg 43(3). While the *Steelforce Case* was not concerned with whether "ordinary course of trade" is a relevant consideration for the purposes of determining profit under reg 43(3)(a), it focussed on the interpretation of "actual amount" to determine if certain sales were properly excluded from the profit determination. Interestingly, in this regard, his Honour referred to the interpretation which had been given by the WTO Appellate Body ('AB') to the corresponding provisions of the Anti-Dumping Agreement, being Article 2.2.2[137] in relation to the term "actual amounts" and whether sales which were not in the ordinary course of trade should be excluded from the sales considered under Article 2.2.2(ii) of the Anti-Dumping Agreement (the WTO provision corresponding to reg 45(3)(b)). The

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[136] *Steelforce Case,* paragraph [96]. The methodology in reg 45(3)(a) calls for an assessment of the "actual amounts realised" by the export or producer on the sale of goods of the same general category. The methodology in reg 45(3)(b) calls for an assessment of the "actual amounts realised" by other exporters or producers on the sale of the like goods.

[137] Article 2.2.2 of the Anti-Dumping Agreement provides:

> For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:
>
> (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
>
> (ii) the weighted average of the actual amounts incurred an realised by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin.
>
> (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

AB rejected the argument in *European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India* (‘*EC - Bed Linen*’)[138]

> *Here, we note especially that Article 2.2.(ii) refers to “the weighted average of the actual amounts incurred and realized by other exporters or producers”. (emphasis added) In referring to “the actual amounts incurred and realized”, this provision does not make any exceptions or qualifications. In our view, the ordinary meaning of the phrase “actual amounts incurred and realized” includes the SG&A actually incurred, and the profits or losses actually realized by other exporters or producers in respect of production and sales of the like product in the domestic market of the country of origin. There is no basis in Article 2.2.(ii) for excluding some amounts that were actually incurred or realized from the “actual amounts incurred and realized”. It follows that, in the calculation of the “weighted average”, all of the “actual amounts incurred and realized” by other exporters or producers must be included, regardless of whether those amounts are incurred and realized on production and sales made in the ordinary course of trade or not.* ***Thus, in our view, a Member is not allowed to exclude those sales that are not made in the ordinary course of trade from the calculation of the “weighted average” under Article 2.2.2(ii)****.* [Emphasis added]

135. While *EC-Bed Linen* deals with Article 2.2.2(ii) (the provision corresponding to reg 45(3)(b) of the CIO Regulation), it applies equally to Article 2.2.2(i), which is the WTO provision corresponding to reg 45(3)(a) of the CIO Regulation, since the wording is the same in both provisions with respect to “actual” amounts. It is significant that the AB unequivocally found that “actual” amounts referred to in Article 2.2.2 (i) and (ii) of the Anti-Dumping Agreement (corresponding to the provisions in reg 45(3)(a) and (b) of the CIO Regulation) do not exclude sales which did not occur in the ordinary course of trade. This detracts from ACP’s argument that the “ordinary course of trade” is “**explicitly** a relevant consideration” [emphasis added] for determining a normal value under s 269TAC(2)(c) since it is a proxy for s 269TAC(1) which is a provision which does require consideration of whether the sales were in the ordinary course of trade. This logic fails, as made clear by the AB

[138] WT/DS141/AB/R, para. 80. This passage from *EC – Bed Linen,* was reproduces in the *Steelforce Case* at paragraph 101.

in the *EC – Bed Linen* case. There would not, in my view, be any basis to further extend this misguided logic from "this context" to a requirement that the Minister, when determining a "normal value" under s 269TAC(6) (which explicitly provides a methodology where, *inter alia*, s 269TAC(2)(c)(ii) cannot be applied), "must be attuned to achieving the same outcome: a value representative of an arm's length, ordinary course of trade price", as suggested by ACP.

136. Based on the above discussion, I do not consider that "ordinary course of trade price" is a relevant consideration in the determination of profit under s 269TAC(6). However, ACP's claim relating to ordinary course of trade appears to extend to:

    i. assessing whether any profit needed to be included in the normal value in circumstances where the like goods are not sold in the domestic market; and
    ii. an implication that by accepting a profit based on very specific circumstances (customers mostly end users producing container houses destined for export, low volume and low-value products) where the profit margin is very high, is not a reasonable exercise of the discretion under 269TAC(6).

137. It should be recalled from the consideration of Ground 1 above that notwithstanding that s 269TAC(6) does not prescribe a particular method of calculation (but rather, it simply mandates 'regard to all relevant information'), it is incumbent upon the ADC to ensure that the fallback methodology under s 269TAC(6) is **reasonable** and "consistent with the scheme of the legislation".[139] I therefore considered ACP's claim relating to profits on the basis of whether the ADC's profit determination under s 269TAC(6) is a reasonable exercise of discretion.

138. The ADC found in REP 645 that the total volume of these products sold on the domestic market was not insignificant when compared to the volume of the goods (clip heads) exported to Australia, and Fenghui's sales of these products "were mostly profitable".[140] In its s 269ZZJ submission, the ADC stated that it carefully

[139] See *Powerlift case,* p 364 (ALR 364).

[140] During the Third Conference the ADC was requested to clarify what was meant by "mostly profitable" and what percentage of the products sold were not profitable. The ADC clarified that Fenghui provided a list of its domestic sales on a line by line basis and the ADC had regard to this information in determining an amount of profit achieved by Fenghui on its domestic sales of goods in

considered the most reasonable, reliable and appropriate profit margin to use, based on the facts and circumstances of this case. The ADC stated that the profit margin used, as outlined in REP 645, came from actual domestic sales that it carefully considered and was of the view were commercially normal and representative (and not based on whether they were “high” or "low"). The ADC also stated that it fully evaluated Fenghui’s proposal to use CITIC’s profit margin as well as other alternative profit margins put forward by Fenghui. The ADC stated that it had set out in REP 645 the reasoning for why it considered the profit reasonable and representative, based on the information the ADC had available to it. With respect to ACP’s claim that a view could easily be formed that profit normally realised by other producers is zero, the ADC submitted that this would not be a “reasonable” method (noting reg 45(3)(c)), particularly when on the available evidence before the ADC, it was established that Fenghui’s own sales of general plumbing products on the domestic market were profitable. The ADC stated that it disagreed with Fenghui’s assertion that these sales were not made in the ordinary course of trade.

139. For the reasons discussed above (with particular reference to the *Steelforce Case* and AB decision in *EC – Bedlinen),* it is unnecessary to assess whether the sales were made in the ordinary course of trade, since I do not consider it to be a relevant consideration of a determination under s 269TAC(6). It is, however, necessary to assess if the ADC’s determination under s 269TAC(6) is reasonable and aligns with the broader legislative scheme. I agree with ADC’s analysis and conclusions regarding its profit determination under s 269TAC(6). I consider the analysis to be comprehensive, having considered relevant factors and having evaluated alternative proposals, with the conclusions well-considered and well-reasoned. I agree with the ADC that ACP’s claim that a zero amount for profit would be appropriate, is not a reasonable method and should be rejected, particularly when on the available evidence before the ADC, it was established that Fenghui’s own sales of general plumbing products on the domestic market were profitable.

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the same general category as the exported goods. The ADC stated that as the percentage of unprofitable sales was less than 20% and therefore unprofitable sales were not in substantial quantities, the ADC included all sales (whether profitable or not) in the calculation of the profit margin for Fenghui, See the ADC’s response to Supplementary Request No. 2 in Paragraph 10 of the Third Conference Summary.

140. It should also be recalled from the consideration of Ground 1 above that once s 269TAC(6) is invoked, there is no obligation for the ADC to follow the CIO Regulation. During the Third Conference, the ADC stated that while it considered that it was not required to follow the CIO Regulation under s 269TAC(6), profit was 'in effect' determined in accordance with reg 45(3)(a) of the CIO Regulation, in that it used Fenghui's own profit margin, for the same general category of goods, being Fenghui's domestic sales of plumbing products (either self-produced or purchased), having regard to Fenghui's own records on its costs and sales. This would undoubtedly appear to "align with the broader legislative scheme".

141. For the reasons discussed above (including in the analysis and consideration of Ground 1 as it relates to profits), I consider that the ADC's methodology under s 269TAC(6) relating to profits is reasonable, in that it uses a methodology that is similar to that the methodology set out in s 269TAC(2)(ii) as read with reg 45(3)(a) of the CIO Regulation, that is, actual amounts realised by the exporter from the sale of the same general category of goods in the domestic market. I consider that the methodology aligns with the broader legislative scheme, while taking into consideration Fenghui's actual information. I do not consider that an ordinary course of trade price is a relevant consideration in the determination of profit under s 269TAC(6).

Conclusion

142. For the reasons discussed above, Ground 2 is rejected. I consider the ADC's determination of profit using the methodology under s 269TAC(6) of the Act to be the correct or preferable decision.

Ground 3: Erroneous Determination of Material Injury

143. In its application for review, ACP submitted that 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 threatened.[141] ACP further submitted that a material injury determination is bound by the following requirements:

[141] Reference was made to s 269TG(2) of the Act.

- it must be based on facts, and not merely on allegations, conjecture or remote possibilities,
- injury that was suffered by the Australian prior to the period of investigation cannot be attributed to dumping,
- injury caused by other factors cannot be attributed to the dumped goods, and
- the injury determination must be based on positive evidence and an objective examination.[142]

144. ACP referred to REP 645 which found that Abey suffered material injury because of dumping based on the following factors: price undercutting; market size and composition; loss of sales volumes to mutual customers; profit effects; and the size of the dumping margins.[143] ACP stated that each of these considerations was marred and that with appropriate context, ACP submitted that there was no basis for concluding that Abey had suffered material injury because of any dumping.[144]

145. From the above, it can be gleaned that there are five components of this ground of review relating to the claim that there was an erroneous determination of material injury, being in respect of the following factors:

    (a) Price undercutting

    (b) Market size and composition

    (c) Loss of sales volumes to mutual customers

    (d) Profit effects

    (e) The size of the dumping margins.

[142] See Attachment 2 to application for review, 14th page (unpaginated), where reference was made to: s 269TAE(2AA) and s 269TAE(2A) of the Act; *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229 [64]; Article 3.1 of the Anti-Dumping Agreement.
[143] See Attachment 2 to application for review, 14th to 15th pages (unpaginated), where reference was made to pages 50 – 54 of REP 645.
[144] See Attachment 2 to application for review, 14th page (unpaginated).

146. The ADC submitted that the material injury determination undertaken in the investigation, set out in REP 645 and in its s 269ZZJ submission, was sound and properly supported its finding that dumped goods have caused material injury to an Australian industry under sections 269TG(1) and 269TG(2).[145]

147. Each component of Ground 3 will be discussed separately under the following sub-headings: (i) ACP's Claims and Supporting Arguments; (ii) ADC's Position; (iii) Other Submissions;[146] and (iv) Analysis. A conclusion will thereafter be made in respect of Ground 3 based on the analysis of the five separate components.

Ground 3(a) - Price Undercutting

ACP's Claims and Supporting Arguments for Ground 3(a) – Price Undercutting

148. ACP submitted in its application for review that price undercutting was given the narrative force in the injury determination, and that it was used to explain why it is reasonable to conclude that dumping[147] caused Abey to suffer injury in the form of reduced market share, the loss of sales volumes to mutual customers, and the profit effects (being prices suppression and price depression).[148]

149. ACP submitted that there was limited competitive cross-over between Abey's goods and imported goods during the investigation period, for example, REP 645 revealed that while Abey and ACP share mutual customers, Abey's sales to those customers were only a "small share" or "5%" of their overall sales of the goods and that competitive overlap with Radius Supply and Service Pty Ltd ('Radius'), another importer, was negligible. ACP argued that despite this, REP 645 attributed broader trends of price depression, price suppression and unprofitability across the injury analysis period to dumped imports.[149]

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[145] See the ADC's s 269ZZJ submission, page 9 [47].
[146] It should be noted that in its s 269ZZJ submission, Abey did not comment on any claim or arguments of ACP in respect of Ground 3, but expressed full support for the Minister's Reviewable Decision, and submitted that it was both correct and preferable.
[147] ACP noted that it did not accept that there was dumping, for the reasons discussed in Grounds 1 and 2.
[148] See Attachment 2 to application for review, 15th page (unpaginated), where reference was made to pages 56, 58 and 62 of REP 645.
[149] See Attachment 2 to application for review, 15th page (unpaginated), where reference was made to page 61 of REP 645 (passage quoted).

150. ACP contended that the extent of price undercutting appeared to be open to interpretation. It noted that the three largest product codes by volume, representing 55% of all sales by the Australian industry and ACP, were found to be comparably priced, with these models within a 4% price band, which ACP stated suggested in some instances ACP's prices might even be greater than Abey's. ACP noted that while it sold 36 different MCCs during the investigation period, only 31 were mutually sold by ACP and Abey and only 21 of those were found to be undercut.[150]

151. ACP submitted that it had not been afforded the benefit of knowing what models had been found to undercut Abey's models but stated that it could make some estimations to model what those factors look like. Making certain assumptions from information provided in REP 645, ACP concluded that only [redacted]% of ACP's sales might relate to goods with prices that undercut Abey's prices. ACP also made some calculations relating to mutually sold MCC's, resulting in an outcome, "as an estimate", that suggested that only a minority of the goods (approximately [redacted]% of overall sales) were sold at prices that undercut Abey's prices.[151]

152. ACP stated that it did not appear that a similar exercise had been undertaken for Radius, and that it was clear to ACP that no such exercise could be undertaken for other market participants. ACP further stated that despite this, price undercutting was blamed for the reduced market share, the loss of sales volumes to mutual customers, and the profit effects (being prices suppression and price depression), all of which were observable across the injury analysis period and were features of Abey's performance even before they claim they were injured by dumping in 2022.[152]

153. ACP stated that it noted that REP 645 continued its analysis by focussing on smaller and smaller segments of ACP's sales, to the point where it found undercutting in relation to customers that only represent a "small share" of Abey's overall sales. ACP submitted that it was concerned this degree of narrow focus

[150] See Attachment 2 to application for review, 15th – 16th pages (unpaginated), where reference was made to page 52 of REP 645.
[151] For more details relating to ACP's calculations, see Attachment 2 to the application for review, 16th page (unpaginated) read with paragraph [5] of the First Conference Summary and paragraphs [1]-[2] of the Second Conference Summary.
[152] See Attachment 2 to application for review, 16th page (unpaginated), with reference to pages 56, 58 and 62 of REP 645.

obscured the larger picture, which is that the vast majority of Abey's sales have not been undercut. ACP further submitted that REP 645 failed to grapple with the simple fact that the price of the goods is not determinative of a customer's choice of supplier. ACP stated that according to REP 645, Abey's sales to customers of ACP represented only a small share of Abey's overall sales of the goods, which meant that the majority of Abey's customers had elected not to purchase from ACP. ACP submitted that this meant that a generic potential customer, when faced with a sourcing decision in the investigation period was more likely to pick Abey's goods over ACP's despite what is portrayed as decisive differences in pricing. According to ACP this suggested, as ACP had advocated throughout the investigation, that price is not a key determinant in a customer's sourcing decisions. ACP submitted that Abey, ACP and other market participants are not solely sellers of clip-heads, but that they supply the plumbing industry generally. ACP submitted that it had reinforced this point across submissions during the investigation,[153] but that nothing was done with this. According to ACP there was clear evidence that customers choose a supplier who can address their many needs, which on that evidence, eclipsed the need for the goods. ACP questioned how, then, it could be positively proved that the small degree of price undercutting had caused material injury.[154]

ADC's Position for Ground 3(a): Price Undercutting

Competitive cross-over between Abey and ACP imported goods

154. In its s 269ZZJ submission, the ADC referred to ACP's claims that for the ADC's price under-cutting analysis, there was limited competitive cross-over between Abey's goods and imported goods, citing that Abey's sales to mutual customers represented only a small share of its overall sales and that the cross-over with Radius was negligible. The ADC also referred to ACP's further contention that REP 645 improperly attributed unprofitability, price depression, and price suppression across the injury analysis period to dumped imports.

155. The ADC referred to its explanation in REP 645 that the ADC's price-undercutting analysis did not rely solely on the volume of mutual customer sales, but rather the

[153] See further details of how ACP reinforced this point in Attachment 2 to application for review, 17th page (unpaginated), with reference made to Documents #21 and #29 of EPR 645.
[154] See Attachment 2 to application for review, 17th page (unpaginated), with reference made to Documents #21 and #29 of EPR 645.

ADC examined pricing dynamics and market behaviour during the investigation period, including evidence that ACP and Radius significantly undercut Abey's prices on almost all sales to mutual customers and that ACP and Radius (via its customer) supplied a greater volume of goods to these customers than Abey. The ADC stated that it found that the volume of dumped goods imported from China and sold to mutual customers was equivalent to a quarter of the total volume of like goods sold by the Australian industry in the investigation period. The ADC further stated that it found that price undercutting was significant and widespread, particularly in relation to common customers and that the analysis supported the conclusion that dumped imports exerted downward pressure on prices, resulting in price depression and suppression during the investigation period.[155]

156. The ADC submitted further that it considered that the pricing behaviour observed in these transactions was indicative of broader market dynamics, noting that the injury determination was based on multiple factors, including reduced profitability, price effects, and loss of market share, all of which coincided with increased volumes of dumped imports from China. The ADC submitted that these findings support the conclusion that dumped imports materially contributed to the injury suffered by the Australian industry.[156]

Amount of ACP's goods that price undercut Abey's goods

157. The ADC referred to ACP's claim regarding the estimated proportion of goods that undercut Abey's prices and referred to its explanation in REP 645[157] that the ADC's analysis of price undercutting levels showed that for most products (identified by product code) sold by both ACP and Abey, ACP undercut Abey's prices. In terms of the three largest products by volume, prices were largely consistent across the products with prices within a 4% price band. The ADC emphasised that in REP 645 it found that Abey had reduced prices in order to compete with ACP's dumped goods and ACP could only maintain comparable pricing for these high-volume codes by sourcing dumped goods. The ADC submitted that had ACP purchased imported goods at undumped prices, its prices would have been between 13% and

[155] See paragraphs [49]-[50] of the ADC's s 269ZZJ submission which referred to pages 61 – 62 and pages 53, 58-59 of REP 645.
[156] See paragraph [51] of the ADC's s 269ZZJ submission, where reference was made to pages 44 – 45 of REP 645.
[157] Reference was made to pages 52 – 53 of REP 645.

49% higher than Abey's. The ADC submitted that this supported the finding that dumping materially contributed to price depression and suppression during the investigation period. The ADC stated that it considered that this analysis was more relevant to the injury determination than the proportion of ACP's goods that undercut Abey's prices.[158]

Price undercutting is a key determinant causing material injury

158. In its s 269ZZJ submission, the ADC noted that REP 645 expressly considered ACP's submissions on non-price factors, including claims that customers are highly influenced by product availability, range, and that suppliers offering a broader range of products are more likely to secure sales. The ADC stated that these submissions were addressed in detail in REP 645 and for these reasons the ADC did not accept ACP's claims that REP 645 failed to address its argument that non-pricing factors, such as product range and supplier capability, influence customer purchasing decisions and therefore undermines the conclusion that price undercutting caused material injury.[159]

159. The ADC stated that its findings in REP 645, based on all available information, show that there was no evidence to suggest that these 'other factors' were decisive or that they negate the impact of price undercutting. The ADC submitted that it undertook steps to verify ACP's claims, including sending questionnaires to customers identified in ACP's submissions and approaching a major retailer to obtain information on procurement arrangements. The ADC stated that none of the customers responded, and the retailer did not provide any information, and in the absence of such evidence, it had to rely on all other available information.[160]

160. The ADC submitted that its analysis indicated that retailers typically source goods from multiple suppliers and that purchasing decisions are not exclusively driven by product range. The ADC further submitted that evidence shows that some of Abey's customers purchased clip heads from both Abey and ACP during the investigation

[158] See paragraphs [52]–[53] of the ADC's s 269ZZJ submission, where reference was made to pages 52 – 53, pages 59 – 60 and pages 61 – 63 of REP 645.
[159] See paragraph [54] of the ADC's s 269ZZJ submission, where reference was made to pages 66 – 72 of REP 645.
[160] See paragraph [55] of the ADC's s 269ZZJ submission, where reference was made to pages 66 – 72 of REP 645.

period, and that clip heads represent a not insignificant proportion of the total value of some orders. Further, evidence provided by ACP and Abey shows that customers do (and are encouraged to) compare prices of products within the same product category which captures the goods the subject of the investigation. The ADC submitted that there is also evidence to suggest that customers also provide 'feedback' to suppliers on pricing of goods within the same category by providing information on the variance in prices offered by their current supplier and the competing supplier, presumably with the aim of leveraging a better price.[161] The ADC submitted that this, combined with the ADC's price undercutting analysis on pages 51 to 54 of REP 645, demonstrated that price cannot be discounted as a factor influencing customer decisions.[162]

Analysis for Ground 3(a): Price Undercutting

161. One of the main bases of ACP's challenge of the ADC's price undercutting analysis as one of the injury considerations, is the limited competitive cross-over between Abey's goods and imported goods during the investigation. In this regard, ACP focussed on the revelation in REP 645 that Abey's sales to mutual customers were only a "small share" of their overall sales of the goods and that competitive overlap with Radius was negligible. ACP also argued that the undercutting was overstated, and used the information in REP 645 to conclude that only a minority of the goods were sold at prices that undercut Abey's prices. ACP also argued that price was not a key determinant of customer purchasing decisions, with clip heads constituting only a small proportion of invoice values and that non-price factors such as range, supply capability and customer relationships were not properly weighed in the injury analysis.

162. I consider that the ADC comprehensively addressed these criticisms relating to the price-undercutting analysis. The ADC explained that it did not rely solely on the volume of mutual customer sales, but rather examined pricing dynamics and market behaviour during the investigation period, including evidence that ACP and Radius significantly undercut Abey's prices on almost all sales to mutual customers. The ADC noted that ACP and Radius (via its customer) supplied a greater volume of

[161] See paragraph [56] of the ADC's s 269ZZJ submission, where reference was made to pages 66 – 72 of REP 645.
[162] See paragraph [57] of the ADC's s 269ZZJ submission.

goods to these customers than Abey, finding that the volume of dumped goods sold to mutual customers was equivalent to a quarter of the total volume of like goods sold by the Australian industry in the investigation period. While acknowledging that some high-volume products were competitively priced within a narrow band, the ADC submitted that Abey reduced its prices to compete and ACP could only maintain comparable pricing for those products by sourcing dumped goods. The ADC further submitted that, absent dumping, ACP's prices would have been between 13% and 49 % higher than Abey's, which supported the finding that dumping materially contributed to price depression and suppression during the investigation period. The ADC considered that this analysis was more relevant to the injury determination than the proportion of ACP's goods that undercut Abey's prices. The ADC's analysis found that price undercutting was significant and widespread, particularly in relation to common customers and that the analysis supported the conclusion that dumped imports exerted downward pressure on prices, resulting in price depression and suppression during the investigation period.

163. The ADC rejected ACP's claims that REP 645 failed to address its argument that non-pricing factors, making reference to REP 645 where it expressly considered submissions regarding product range, availability and supplier capability and found that no evidence demonstrated these factors were decisive or negated the impact of price undercutting. The ADC also notes that customer questionnaires and retailer enquiries produced no contrary evidence, and that other evidence showed customers compared prices within the same product category.

164. I reviewed REP 645 and relevant documents (including Confidential Attachment 6), the application for review and the ADC's s 269ZZJ submission related to the ADC's price undercutting analysis and ACP's claims relating thereto. I consider the ADC's price undercutting analysis to be comprehensive and sound. The ADC addressed all the issues arising and provided detailed explanations of its analysis, describing the methodology, data and evidence on which its findings were based. The ADC addressed the various concerns of ACP with countering arguments and well-reasoned explanations, demonstrating how the price undercutting analysis supported the Australian industry's assertion that its prices had been significantly undercut by dumped goods. In my view, the ADC's analysis is comprehensive and objective, based on positive facts and evidence. I consider the ADC's undercutting analysis to be a valid component and supportive of the ADC's finding that material

injury was caused to the Australian injury by the dumped goods. ACP has not demonstrated that the price undercutting analysis in any way detracts from the finding that Abey suffered material injury caused by the dumping.

Ground 3(b) - Market size and Composition

ACP's Claims and Supporting Arguments for Ground 3(b)

165. In its application for review, ACP submitted that during the period of investigation, Abey increased its total sales volume in comparison to the previous 12 months but that because REP 645 found that the Australian market grew 11%, and that Abey only captured 30% of that growth, Abey suffered a loss of market share. According to ACP, the fault for this was again placed on price undercutting.[163]

166. ACP stated that it was concerned that the estimate of the market was incorrect, pointing out that as it did not include data of one participant, Couta Group Pty Ltd ('Couta'), it was not a full representation of the market. ACP stated that it seemed as though, instead, the market size had been based on sales data from three market participants: Abey, ACP and Radius. ACP submitted that given Abey's share of the growth of the market was roughly a third of the growth from that sample, it was not certain what the supposed injury was.[164]

167. ACP submitted that, as it had noted, when appropriate context was considered, it was apparent that price undercutting was not rampant in the market, and in any respect, as reflected in REP 645, prices of the goods were not the only determinant a customer had regard to in selecting who to purchase from. ACP submitted that accordingly, it did not believe that it can simply be assumed that (a) Abey should have been entitled to greater growth in sales during the investigation period; and (b) the failure to achieve that was because of price undercutting.[165]

168. ACP submitted further that it did not consider that REP 645 established that Abey lost market share in any injurious manner, pointing out that it sold a higher volume

[163] See Attachment 2 to application for review, 17th – 18th pages (unpaginated), with reference made to page 56 of REP 645 and Documents #21 and #29 of EPR 645.
[164] See Attachment 2 to application for review, 18th page (unpaginated), with reference made to pages 24 – 25 of REP 645.
[165] See Attachment 2 to application for review, 18th page (unpaginated).

in the period when dumping has been determined to have occurred. ACP submitted that moreover, on a measure of three market participants, Abey achieved approximately a third of the market growth. ACP submitted that it did not consider this evidenced material injury.[166]

ADC's Position for Ground 3(b): Market Size and composition

Abey has lost market share in an injurious manner

169. In its s 269ZZJ submission, the ADC referred to ACP's claims relating to market share. The ADC acknowledged that Abey captured some growth during the investigation period but reiterated that despite overall market expansion for the goods, Abey's relative position with Chinese imported goods deteriorated. The ADC submitted that imports from China captured a much greater share (approximately 70%) of the market growth, while Abey captured only around 30%, resulting in a further reduction in Abey's market share in the investigation period, coinciding with a significant increase in dumped imports that undercut Abey's prices. The ADC submitted that it considered this trend to be indicative of material injury caused by dumping.[167]

170. Regarding ACP's claim that the market share analysis was incomplete, the ADC noted that the analysis was based on the best available information, including data obtained from Abey, ACP, and Radius being the key parties identified during the investigation. The ADC submitted that while ACP suggests that other suppliers may exist, ACP did not provide evidence of additional suppliers beyond those already considered. The ADC further submitted that, as discussed in REP 645, the ADC had also relied on ABF import data and conducted relative value comparisons of Couta's goods. The ADC submitted that based on this information, it was satisfied that the volume of Couta's goods was significantly lower than goods imported by ACP and Radius and was satisfied that Couta's imports trended similarly to the overall market and increased significantly in the investigation period.[168]

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[166] See Attachment 2 to application for review, 18th page (unpaginated).
[167] See paragraph [59] of the ADC's s 269ZZJ submission, page 11, with reference to page 56 of REP 645.
[168] See paragraph [60] of the ADC's s 269ZZJ submission, page 11, with reference to pages 26 - 27 and page 56 of REP 645.

171. The ADC maintained that its market share analysis was reasonable and consistent with the statutory framework. It submitted that while Abey captured some growth, the ADC considered that the loss of market share relative to the growth captured by dumped imports, combined with evidence of price undercutting, established that the dumped goods caused material injury to the Australian industry.[169]

Analysis for Ground 3(b): Market Size and Composition

172. I considered ACP's claims in regard to the component of the ADC's injury analysis relating to loss of market share, and the ADC's countering submissions. Market share is clearly a factor to be considered in determining whether material injury has been caused to an Australian industry, as set out in s 269TAE(1)(g) of the Act, read with s 269TAE(3)(j), being one of the "relevant economic factors" in relation to an Australian industry, that the Minister may have regard to.

173. The Ministerial Direction on Material Injury 2012 ("Injury Direction")[170] particularly refers to the situation where an industry suffers a loss of market share in a growing market:

> *I note that anti-dumping or countervailing action is possible in cases where an industry has been expanding its market rapidly, and dumping or subsidisation has merely slowed the rate of the industry's growth, without causing it to contract. In cases where it is asserted that an Australian industry would have been more prosperous if not for the presence of dumped or subsidised imports, I direct that you be mindful that a decline in an industry's rate of growth may be just as relevant as the movement of an industry from growth to decline.* ***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 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.*[171] [Emphasis added]

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[169] See paragraph [61] of the ADC's s 269ZZJ submission, page 11.
[170] See Australian Customs Dumping Notice No. 2012/24.
[171] See Injury Direction, page 3 – 4. The Injury Direction went on to say that, as in all cases, a loss of market share cannot alone be decisive and the Minister directed that "a loss of market share should

174. It is clear from the emphasised portion of the Injury Direction that it is possible and permissible to find material injury when there is loss of market share to the imports, in a growing market, as was the case with Abey. The Injury Direction goes on to say that loss of market share alone cannot be decisive and should be considered with a range of relevant injury indicators before material injury may be established. It should be noted in this regard, as is reflected in the ADC's injury analysis in REP 645, that there were several other injury indicators that were also considered in the ADC's injury analysis in conjunction with loss of market share. Therefore, the requirement in the Injury Direction that a "loss of market share should be considered with a range of relevant injury indicators before material injury may be established", is satisfied.

175. In light of the above discussion and having reviewed relevant sections of REP 645 and related relevant documents (including Confidential Attachment 1 to REP 645), the application for review and the ADC's s 269ZZJ submission, I consider that the ADC's market share analysis was reasonable and consistent with the statutory framework. I do not consider that ACP's claim that Abey did not lose market share "in an injurious manner" has validity. Noting the ADC's submission was based on best available information from key parties, supplemented by ABF import data and relative value comparisons for Couta, I do not consider that ACP's claim that the market share analysis was incomplete detracts from the ADC's findings, which is based on positive facts and evidence.

176. I consider the ADC's market share analysis to be comprehensive and its conclusions well-reasoned. I consider the ADC's market share analysis to be a valid component and supportive of the ADC's overall finding that material injury was caused to the Australian industry by the dumped goods. ACP has not demonstrated that the market share analysis in any way detracts from the finding that Abey suffered material injury caused by the dumping.

be considered with a range of relevant injury indicators before material injury may be established." It should be noted, as is reflected in Ground 3, that there were a number of other injury indicators that were also considered in the ADC's injury analysis.

Ground 3(c) - Loss of Sales Volumes to Mutual Customers

ACP's Claims and Supporting Arguments for Ground 3(c): Loss of Sales Volumes to Mutual Customers

177. In its application for review, ACP expressed concern regarding the use of the analysis of a "loss of sales to mutual customers" to support the injury determination. ACP stated that it appeared to relate to a loss of sales prior to the investigation period and as far back as FY2018. ACP submitted that any loss of sales to these customers in the investigation period appeared to be limited in nature and did not reverse the trend of growing sales reported by Abey in the investigation period. ACP submitted that it appeared as though the loss of sales to these customers happened before the commencement of the injury analysis period and before Abey claims to have been injured by dumping in 2022.[172]

178. ACP submitted that anti-dumping measures are required to respond to material injury caused by dumping, which is only established to occur during the period of investigation. ACP referred to the Federal Court ruling that there is no statutory basis on which injury observed during the prior period could be attributed to dumping.[173] ACP contended that the loss of sales to particular customers over the six years leading up to the investigation period and an inability to reclaim those lost sales during the investigation period, was not a permissible consideration under the disciplines required by the Act. ACP pointed out that the relevant period for establishing injury is the investigation period.[174]

179. ACP submitted that in the investigation period, Abey's sales to these customers were only a small share of their overall sales and that it had not been shown that Abey lost material volumes of sales to these customers in that period. ACP submitted further that focusing on what it considered to be a small part of the overall

[172] See Attachment 2 to the application for review, 18th page (unpaginated), where reference was made to Figure 7 of REP 645 on page 58, as well as pages 42 and 74 of REP 645.
[173] Reference was made to *Infrabuild NSW Pty Ltd v Anti-Dumping Review Panel* [2023] FCA 1229 ('*Infrabuild* case'), [64].
[174] For more details of ACP's argument see Attachment 2 to the application for review, 18th – 19th pages (unpaginated). See also Paragraph 2 of ACP's s 269ZZJ submission, page 2.

performance of the Australian industry has resulted in a skewed conclusion regarding the impact of the imports.[175]

180. In its s 269ZZJ submission ACP expressed concern about the sentiment expressed in REP 645 that ACP had an "entrenched price advantage resulting from the high levels of dumping identified serves to undermine Abey's ability to reclaim market share in relation to sales to these customers." ACP submitted that the term "entrenched" infers that "price advantage resulting from the high levels of dumping" is "firmly established and difficult or unlikely to change; ingrained." ACP submitted that the logical flow on from the available interpretations of this statement were problematic and claimed that in either case, the mutual customer analysis did not support the finding that injury had been caused by dumping in the period of investigation.[176]

181. ACP noted that it was unclear from REP 645 what information was used to establish that the historic declines in sales to select customers was a result of ACP's or Radius' sales. ADC submitted that no space was given for the potential that some other intervening factor could have arisen in the years prior, that would change the customer's need for the products. ACP submitted that there may have been any number of factors that explained this trend, which was addressed in its submission of 17 July 2025. ACP stated that the ADC responded in REP 645 that evidence had not been presented to demonstrate that Abey's sales to mutual customers were impacted by other factors, and the ADC did not find any evidence to suggest that Abey's sales volumes were impacted by other factors.[177]

182. ACP pointed out that it had not been informed as to the identities of these customers and that it was not clear on what basis ACP could make meaningful submissions about those customers choices dating back to FY2018. ACP submitted that as far back as its submission of 1 August 2024, it noted that it did not have a copy of the information used by Abey to make price undercutting allegations, nor a

[175] See Attachment 2 to the application for review, 19th page (unpaginated).
[176] For more details on ACP's argument in this regard, see Paragraph 2 of its s 269ZZJ submission, pages 2 – 3.
[177] See Attachment 2 to the application for review, 19th page (unpaginated), where reference was made Document #29 of EPR 645 and to page REP 645, page 61 (passage quoted).

meaningful summary of the same, which harmed its ability to respond to those allegations, and that position was not improved across the life of the investigation.[178]

183. ACP concluded that ultimately, during the investigation period, Abey's sales to these customers were a small portion of their overall sales, and that whatever happened historically, and for whatever reason, was not relevant to whether injury was suffered in the investigation period. ACP contended that the "mutual customers" analysis should be disregarded in assessing whether to impose measures.[179]

ADC's Position for Ground 3(c): Loss of Sales Volumes to Mutual Customers

Use of loss of sales data from prior to the investigation period was not to attribute injury prior to investigation period to dumping

184. In its s 269ZZJ submission, the ADC made it clear that it agrees with the principles articulated in the *Infrabuild case* and that, specifically, s 269T(2AD) must be read in light of the Minister's statutory task to reach a state of satisfaction, which permits examination of periods prior to the investigation period to inform that task.[180] The ADC acknowledged that the Minister cannot, however, investigate dumping margins outside the investigation period and cannot presume that goods exported before the investigation period were dumped, and further, that there is no statutory basis to attribute injury observed in a prior period to dumping.[181]

185. The ADC confirmed that consistent with the above principles, REP 645 did not attribute injury prior to the investigation period to dumping, but earlier periods were examined to assess whether material injury during the investigation period was caused by dumping, without inferring or presuming dumping occurred before the investigation period. The ADC submitted that historical data was used solely for

[178] See Attachment 2 to the application for review, 19th page (unpaginated), where reference was made to ACP's submission of 1 August 2024, page 5 (Document #5 of EPR 645).
[179] See Attachment 2 to the application for review, 19th page (unpaginated).
[180] Reference was made to Paragraph 61 of the *Infrabuild* case. Section 269T(2AD) provides:
> *The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.*

[181] See paragraphs [62]–[63] of the ADC's s 269ZZJ submission, page 12, with reference to paragraph [61]-[64] of the *Infrabuild* case.

context and trend analysis, not for attributing injury outside the investigation period to dumping. The ADC submitted further that the data demonstrated that customers previously sourced significant volumes from Abey before switching to imports and showed that the decline in Abey's sales volumes coincided with ACP and Radius entering the market in 2018–2019.[182]

186. The ADC submitted that it considered that the mutual customers assessment is relevant because it shows that customers that are supplied by Abey purchased a greater volume of the goods from either ACP or Radius (via its customer, a distributor). The ADC further submitted that it also shows that because ACP and Radius' customer were now supplying these customers, Abey was supplying a much lower volume of these goods than it used to.[183]

187. The ADC submitted that it found that Abey's prices were undercut before and during the investigation period, and in the investigation period, the goods were significantly dumped and price undercutting was significant, particularly in respect of sales made to the same customers supplied by Abey and its competitors. The ADC stated that there was also evidence that ACP approached Abey's customers and encouraged them to compare ACP's prices to Abey's prices in an effort to 'win' new customers or business, including evidence of customer feedback with respect to prices. The ADC submitted that the evidence provided by ACP was consistent with evidence provided by Abey that customer's compare prices across suppliers, which indicated that prices were considered by customers and underlined the importance of price in that consideration.[184]

188. The ADC submitted that it considered that while Abey's sales volumes to common or mutual customers were in decline prior to the investigation period, the significant undercutting evident in the investigation period further eroded Abey's sales volumes to these customers which are supplied by imported goods. The ADC further submitted that, in addition, the price advantage resulting from the high levels of

[182] See paragraph [64] of the ADC's s 269ZZJ submission, page 12, with reference to pages 58 and 60 of REP 645.
[183] See paragraph [65] of the ADC's s 269ZZJ submission, page 12.
[184] See paragraph [66] of the ADC's s 269ZZJ submission, page 12, with reference to REP 645, page 60 and Footnote 91.

dumping identified undermined Abey's ability to reclaim or at least maintain market share in relation to sales to these customers.[185]

189. The ADC submitted that in the context that ACP encouraged customers to compare prices, it considered that if the goods were not dumped, the price advantage afforded to importers of the goods from China would have been eliminated, and in respect of the highest volume product codes sold in the Australian market, the imported goods would likely have been uncompetitive relative to Abey's prices.[186]

190. The ADC submitted that, based on the above, it considered that the level of dumping identified in the investigation period, which was reflected in the levels of undercutting observed, has entrenched the price advantage importers enjoy relative to Abey in respect of those common or mutual customers that have shifted sourcing away from Abey in favour of imported goods. The ADC further submitted that the entrenched price advantage resulting from the high levels of dumping identified undermined Abey's ability to reclaim some of the sales volumes to these customers and therefore led to a further reduction in Abey's market share in the investigation period.[187]

The ADC considered 'other factors that could have caused injury' under section 269TAE(2A)

191. In its s 269ZZJ submission, the ADC noted that the Minister's responsibility under s 269TAE(1) is to reach a state of satisfaction that the exportation of dumped goods is causing material injury to the Australian industry, and in doing so, s 269TAE(2A) requires the Minister to consider whether any other factors (aside from the exportation of the dumped or subsidised goods) are causing injury and, if so, ensure that such injury is not attributed to dumping. The ADC submitted that under s 269TAE(2A), the obligation was to consider other potential causes and exclude any injury caused by them from being attributed to dumping, noting, however, that other causes must be supported by evidence. The ADC submitted that as the *Infrabuild Case* emphasises, the Minister's task is a state-of-satisfaction exercise grounded in evidence, not speculation, and ACP's claim that customer needs "may have changed" was not accompanied by evidence. The ADC stated that REP 645

[185] See paragraph [67] of the ADC's s 269ZZJ submission, pages 12 – 13.
[186] See paragraph [68] of the ADC's s 269ZZJ submission, page 13.
[187] See paragraph [69] of the ADC's s 269ZZJ submission, page 13.

properly recorded that no evidence was provided, and none was found by the ADC.[188]

192. The ADC submitted that the Federal Court of Australia has consistently characterised the causation inquiry under s 269TAE of the Act as "essentially a practical exercise" that involves assessing and weighing the evidence rather than requiring mathematical precision. The ADC referred to *Yara v Minister for Industry* [2022] FCA 857 ('*Yara* case'),[189] where the Court observed that causation is a question of fact requiring the assessment and weighing of evidence, and that material injury can be identified even where precise quantification is not possible. The ADC similarly referred to *Siam Polyethylene Co Ltd v Minister of State for Home Affairs* [2009] FCA 837 ('*Siam* case')[190] where the Court stated that the decision-maker must have an objectively identified basis to conclude that dumping has caused or is causing material injury after excluding other causes in accordance with s 269TAE(2A).[191]

193. The ADC submitted that REP 645 meets this standard, referring to Section 7.8 of REP 645 where the ADC considered factors other than dumping that could have caused injury, and concluded that these other factors had not played a decisive or causative role in the injury found. The ADC submitted that in REP 645 it identified price undercutting linked to dumped imports,[192] documents customer switching among mutual customers,[193] and records the absence of any evidenced alternative cause.[194] The ADC submitted that this constituted proper application of s 269TAE(2A) and contended that, accordingly, ACP's allegation that REP 645 failed to conduct the required non-attribution exercise should be rejected. The ADC submitted that it properly turned its mind to "other factors," took steps to look for evidentiary support for any such factor (and could identify none) and accordingly found that dumped imports caused material injury during the investigation period.[195]

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[188] See paragraphs [70]-[71] of the ADC's s 269ZZJ submission, page 13, with reference to paragraphs [61]-[64] of the *Infrabuild* case and REP 645, page 61.
[189] At paragraph [88].
[190] At paragraph [107].
[191] See paragraph [72] of the ADC's s 269ZZJ submission, page 13.
[192] Reference was made to pages 60-61 of REP 645.
[193] Reference was made to pages 65-69 of REP 645.
[194] Reference was made to pages 70-72 of REP 645.
[195] See paragraph [73] of the ADC's s 269ZZJ submission, pages 13-14.

194. The ADC submitted that the Minister's overarching question under s 269TG and s 269TAE is whether the exportation of dumped goods caused material injury during the investigation period, and that REP 645 demonstrates compliance with this requirement.

Analysis for Ground 3(c): Loss of Sales Volumes to Mutual Customers

195. The first issue relating to this component of Ground 3, is the concern raised by ACP that REP 645 improperly relied on loss-of-sales data from periods well before the investigation period, including as far back as FY2018 contrary to the principle clearly articulated in the *Infrabuild* case, that there is no statutory basis on which injury observed prior to the investigation period could be attributed to dumping.

196. I noted that the ADC in its s 269ZZJ submission unequivocally agreed with the principles articulated in the *InfraBuild* case that ACP referred to – that the Minister cannot investigate dumping margins outside the investigation period and cannot presume that goods exported before the investigation period were dumped. The ADC strongly contended that REP 645 did not attribute injury suffered prior to the investigation period to dumping. It stated that earlier data was examined solely to provide context and to assess whether dumping during the investigation period caused material injury, consistent with the applicable legal principles and the *InfraBuild* case. This is consistent with s 269T(2AD) which permits examination of periods before the investigation period for the purpose of determining whether material injury has been caused to an Australian industry.

197. I reviewed the relevant Section 7.5.2 of REP 645 and confirmed that at no point in the ADC's analysis was it in any way indicated or implied that the goods exported to Australia before the investigation period were dumped. I noted that, to the contrary, the ADC emphasised in REP 645 that "there can be no presumption that the goods exported to Australia before the investigation period were dumped".[196] I do not consider that a possible interpretation of the use by the ADC of the phrase "entrenched price advantage resulting from the high levels of dumping identified" changes the clearly stated position of the ADC of non-attribution of injury suffered

[196] See REP 645, page 59.

prior to the investigation period to dumping, as suggested in ACP's s 269ZZJ submission.

198. The ADC acknowledged that Abey's sales volumes to common or mutual customers were in decline prior to the investigation period but did not link this to dumping. In its analysis in REP 645, the ADC only referred to dumped goods that were causally linked to injury, in respect of sales made in the investigation period. The basis of the ADC's analysis in REP 645 was as follows:

    - reference was made to the significant undercutting that was evident **in the investigation period**, that further eroded Abey's sales volumes to these customers.

    - reference was made to the price advantage resulting from the high levels of dumping identified **in the investigation period** that undermined Abey's ability to reclaim or at least maintain market share in relation to sales to these customers.

    - Reference was made to the fact that the Australian market grew **in the investigation period** by an estimated 11%, yet despite having excess production capacity, Abey only captured around 30% of that growth, with imports from China capturing the remaining 70%.

    - The ADC noted the levels of dumping ascertained **for the investigation period** and considered that if the goods were not dumped, the price advantage afforded to importers of the goods from China would have been eliminated, and in respect of the highest volume product codes sold in the Australian market, the imported goods would likely have been uncompetitive relative to Abey's prices.

    - Noting the growth in the size of the Australian market **during the investigation period,** the ADC considered that 'but for'[197] the presence of dumped goods that have undercut Abey's selling prices, Abey would have

[197] A 'but for' analytical method may be used to examine causation by comparing the industry to a point in time prior to the injury having commenced. See discussion in the Manual, page 99.

secured a materially greater volume of sales during the investigation period.[198]

199. I note from the above five bullet points that the analysis of this Ground 3 component is more complex than the title of "Loss of Sales Volumes to Mutual Customers" suggests. The actual 'loss of sales volumes to mutual customers in the investigation period' is a narrow concept and is depicted quantitatively in the last part of the graph in Figure 7 of REP 645,[199] showing a gradual decline in volume over the investigation period, and described qualitatively in the first bullet point, as a further erosion of Abey's sales volumes to these customers. The actual injury in respect of this narrowly described injury factor may not appear, on the face of it, to be substantial or 'material'. For example, ACP expressed concern that in the investigation period, Abey's sales to these customers were only a small share of their overall sales, contending that it had not been shown that Abey lost material volumes of sales to these customers in that period and that focusing on what is a small part of the overall performance of the Australian industry has resulted in a skewed conclusion regarding the impact of the imports. However, the ADC's overall analysis relating to this component of Ground 3 is far more complex and includes the interaction with and combination of other injury factors in the assessment, such as price undercutting, size of dumping margin, loss of market share in a growing market and the result of a 'but for' analysis. When these factors are combined and considered in the expanded analysis, it becomes clear that the conclusions relating to injury are more comprehensive and far-reaching, as reflected in the ADC's analysis. If there is any criticism to be made relating to this component of the injury analysis, it should be directed to the narrow and perhaps somewhat understated description, 'Loss of Sales Volumes to Mutual Customers' which does not do justice to describing the complex and multi-faceted analysis.

200. For the reasons discussed above, I consider the ADC's analysis of this component of Ground 3 to be comprehensive and sound. The ADC provided detailed explanations of its analysis, describing the methodology, data and evidence on which its findings were based. The ADC addressed the various concerns of ACP with countering arguments and well-reasoned explanations, demonstrating how the

[198] See REP 645, page 59.
[199] See Figure 7 of REP 645, page 7: Abey's sales to select customers', page 58.

analysis supported the Australian industry's assertion that its prices had been significantly undercut by dumped goods. I consider the ADC's analysis to be a valid component and supportive of the ADC's finding that material injury was caused to the Australian industry by the dumped goods. The ADC's analysis is comprehensive and objective, based on positive facts and evidence.[200] ACP has not demonstrated that the analysis in any way detracts from the finding that Abey suffered material injury caused by the dumping.

201. I now turn my attention to ACP's concern that REP 645 failed to conduct the required non-attribution exercise. ACP submitted there may be any number of factors that explain the trend of loss of sales to mutual customers, an issue ACP had raised in its submission of 17 July 2025. ACP referred to the ADC's response in REP 645 that ACP had not presented any evidence to demonstrate that Abey's sales to mutual customers were impacted by other factors, and that the ADC did not find any evidence to suggest that Abey's sales volumes were impacted by other factors.[201]

202. The ADC comprehensively addressed this issue in its s 269ZZJ submission referring to the obligation under s 269TAE(2A), requiring consideration of whether any other factors (aside from the exportation of the dumped or subsidised goods) are causing injury and, if so, ensuring that such injury is not attributed to dumping. The ADC referenced the required standards as set out in the *InfraBuild, Yara* and *Siam* cases, referred to above.

203. The ADC referred to the claim that customer needs "may have changed", that ACP referred to, and submitted that it was not accompanied by evidence, and REP 645 properly recorded that no evidence was provided and none was found by the ADC. The ADC referred to Section 7.8 of REP 645, where the ADC considered factors other than dumping that could have caused injury, and concluded that these other

[200] ACP stated in its application that it had not been informed as to the identities of these customers and claimed that it could not make meaningful submissions on the subject. It is noted that this was not acted upon by the ADC during the course of the investigation, probably due to highly sensitive and proprietary nature of the customer and pricing information in an undercutting analysis, The ADC has specifically noted in a previous review that it does not provide parties with the undercutting analysis, or even a component of the undercutting analysis due to confidentiality. See the ADC's responses to Information Request 3(b) oof the summary of the conference held on 24 January 2025 in Review No. 174.

[201] Reference was made to Document #29 of EPR 645 and to REP 645, page 61.

factors have not played a decisive or causative role in the injury found.[202] The ADC contended that REP 645 meets the standard required by s 269TAE(2A) and submitted that this constituted a proper application of s 269TAE(2A). Accordingly, the ADC claimed that ACP's allegation that REP 645 failed to conduct the required non-attribution exercise should be rejected.

204. I reviewed the ADC's analysis in REP 645 of factors other than dumping causing injury. The ADC considered each of these factors in detail and it also considered and elaborated on the submissions from ACP, Radius and Abey, all of which it comprehensively addressed in REP 645. After consideration, the ADC concluded that the factors had not played a decisive or causative role in the injury discussed. Further, the ADC considered that while there may be non-pricing factors that influence customer purchasing decisions, there was no evidence to suggest that these factors are the sole or key factors influencing customer purchasing decisions. Based on all available information, the ADC considered that pricing is one of the key factors taken into consideration by customers and therefore influences customer purchasing decisions.[203]

205. I consider the ADC's non-attribution analysis in REP 645 to be thorough, comprehensive and sound, with detailed explanations of its analysis, describing the methodology, data and evidence, on which its findings were based. The ADC appropriately addressed the various parties' submissions with well-reasoned explanations. In my view, the ADC meets the standard required by s 269TAE(2A) and I consider that this constituted a proper application of s 269TAE(2A).

206. In conclusion, I consider the ADC's analysis relating to loss of sales volumes to mutual customers to be a valid component of its injury determination and supportive of the finding that material injury was caused to the Australian injury by the dumped goods. ACP has not demonstrated that the analysis of this component in any way detracts from the finding that Abey suffered material injury caused by the dumping.

[202] For detailed analysis, see REP 645, pages 65 – 72.
[203] See REP 645, page 72.

Ground 3(d) – Profit Effects

ACP's Claims and Supporting Arguments for Ground 3(d): Profit Effects

207. In its application for review, ACP submitted that it was notable that Abey had not sold the goods profitably during the injury analysis period[204] and referred to the following passage from REP 645:

> *While there may be other factors that may also have caused the price suppression and loss of profit over the years, increasing competition from dumped goods and the subsequent loss of market share was one of the factors that contributed to the increasing price suppression and a marked deterioration in profit and profitability observed in the investigation period…*[205]

208. ACP stated that it had addressed the market share finding above and that it sufficed to say that it was not apparent that Abey lost market share. ACP stated that it was concerned about the reference to "increasing competition from dumped goods", and that it was unclear what was meant by this. ACP submitted that, as noted above, to the degree that Abey and ACP sell to the same customers, Abey's sales to these customers are a small share of its overall sales of the goods. ACP submitted further that Abey's sales to these specific customers had apparently declined since FY2018, and if this was the field of competition, it was 'apparently starkly limited in nature', so ACP questioned where the sense that "competition" was "increasing" came from.[206]

209. ACP submitted that it again noted that the majority of ACP's sales did not undercut Abey's prices and that customers rarely, if ever, buy the goods singularly, but rather, along with many other plumbing supplies. ACP further submitted that it again noted that the majority of Abey's customers do not purchase the goods from APC or Radius. ACP questioned where this "growing competition" was, stating that it saw no evidence of it. ACP submitted that if that was the case, then the conclusion must surely be that price suppression and loss of profit is the result of "other factors", as

[204] See Attachment 2 to the application for review, 19th page (unpaginated) where reference was made to REP 645, page 48.
[205] Reference was made to REP 645, page 63 (passage quoted).
[206] See Attachment 2 to the application for review, 19th – 20th pages (unpaginated).

was acknowledged was a possibility in the above-quoted extract. ACP questioned what the other factors were and submitted that it could not say as it did not represent Abey, was not the ADC and did not have access to the same information that would allow ACP to interrogate that point. ACP noted however that the Minister was required to undertake a non-attribution exercise under s 269TAE(2A). ACP submitted further that, having accepted that other factors might be causing this injury, the Minister was obligated to ensure such injury is not attributed to the exports. ACP contended that this exercise had not occurred and, accordingly, there was no basis to consider that the "profit effects" had been shown to be because of dumping and not because of other factors.[207]

ADC's Position for Ground 3(d): Profits Effects

210. In its s 269ZZJ submission, the ADC referred to ACP's claim that REP 645 did not establish a strong argument that growing competition from dumped imports contributed to price suppression and loss of profit, citing its earlier claims that the market share finding was inconclusive and that the majority of ACP's sales did not undercut Abey's prices. The ADC noted that REP 645 outlines the basis of the ADC's finding, that while there may be other factors which could have influenced Abey's profitability over time, increasing competition from dumped goods and the associated loss of market share were the significant contributing factors to material injury during the relevant period. The ADC submitted that this conclusion was supported by evidence of price undercutting, price suppression, and price depression which coincided with the entry and expansion of dumped imports from China.[208]

211. The ADC submitted that its price undercutting analysis observed that the margins of price undercutting were greater for common customers of Abey and ACP, and that ACP supplied a significantly higher volume of goods to these customers than Abey, reinforcing the finding that price competition driven by dumped goods displaced Abey's production volumes and caused injury.[209]

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[207] See Attachment 2 to the application for review, 20th page (unpaginated).
[208] See paragraphs [75]–[76] of the ADC's s 269ZZJ submission, page 14, where reference was made to page 72 of REP 645.
[209] See paragraph [77] of the ADC's s 269ZZJ submission, page 14, where reference was made to pages 52 – 53 of REP 645.

212. The ADC considered ACP's argument that the majority of its sales did not undercut Abey's prices and noted that the finding of material injury in REP 645 focuses on whether dumped goods materially affected pricing and profitability in the market. The ADC submitted that it maintained that its findings on price suppression and loss of profit are based on a comprehensive analysis of pricing behaviour, market share trends, and the impact of dumped goods during the investigation period.[210]

Analysis for Ground 3(d): Profit Effects

213. ACP appears to question the finding in REP 645 that growing competition from dumped imports contributed to price suppression and loss of profit, repeating previous claims that the market share finding was inconclusive and that most of ACP's sales did not undercut Abey's prices. ACP also expressed concern that the non-attribution exercise was not properly undertaken.

214. The ADC referred to REP 645 which outlined the basis of the profits effects finding, acknowledging the possibility of other contributing factors but concluded, on the basis of pricing behaviour, market share trends and the expansion of dumped imports during the investigation period, that competition from dumped goods was a significant cause of price suppression and reduced profitability. The ADC maintained that the non-attribution requirements were met, as other possible causes were considered and excluded on the basis that no supporting evidence was identified.

215. I consider that the ADC's analysis relating to profits effects is a valid component of the ADC's finding that material injury was caused to the Australian injury by the dumped goods. ACP has not demonstrated that the ADC's analysis and consideration of the profits effect in any way detracts from the finding that Abey suffered material injury caused by the dumping.

Ground 3(e) – Size of Dumping Margin

ACP's Claims and Supporting Arguments for Ground 3(e): Size of Dumping Margin

216. In its application for review, ACP submitted that for the reasons discussed above with respect to Grounds 1 and 2, it did not consider that the dumping margins are

[210] See paragraph [78] of the ADC's s 269ZZJ submission, page 14.

accurate. ACP submitted that the normal values were determined outside the disciplines set out in s 269TAC of the Act and did not recreate an "ordinary course of trade" price reflective of the fact that these goods are not sold in China, and as a consequence, considered that the dumping margins were significantly inflated.[211]

217. ACP submitted further that it had significant concern regarding the narrative employed in REP 645 in this respect, for example, that REP 645 uses terminology such as "the price advantage ACP achieved sourcing dumped goods from China…", questioning what this advantage was. ACP submitted that these goods had only been found to have been dumped because of the choices made in determining a normal value, choices that appear to include a substantial degree of assumed profit. ACP stated that it had no insight into the methodologies the ADC would eventually adopt when it chose to source goods from China and submitted that the "conceit that Australian Consolidated Plumbing has obtained any pricing advantage should be disregarded".[212]

218. ACP elaborated on this concern in its s 269ZZJ submission stating that the normal values determined under s 269TAC(6) were "significantly and incorrectly" inflated, resulting in the substantial dumping margins found in REP 645. ACP submitted that 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. ACP further submitted that the "propulsive force" given to the dumping margin in the injury analysis illustrates why it is important to hew closely to this purpose in determining a normal value. It stated that 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. ACP contended that this did not occur in Report 645.[213]

ADC's Position for Ground 3(e): Size of Dumping Margin

219. In its s 269ZZJ submission, the ADC referred to ACP's claim that the dumping margins calculated in REP 645 were inaccurate and significantly inflated because the ADC did not determine normal value under s 269TAC(2)(c) but rather under s 269TAC(6). The ADC also referred to ACP's claim that REP 645 did not consider,

[211] See Attachment 2 to the application for review, 20th page (unpaginated).
[212] See Attachment 2 to the application for review, 20th page (unpaginated), where reference was made to page 52 of REP 645 (text quoted).
[213] See Paragraph 1 of ACP's s 269ZZJ submission, page 1.

when determining a normal value under s 269TAC(6) the concept of the "ordinary course of trade" as a relevant consideration when determining price/profit. The ADC disagreed with ACP's claim and referred to the reasoning outlined above for Grounds 1 and 2, and the detailed reasoning set out in REP 645.[214]

220. The ADC stated that, as detailed in REP 645 and above, the ADC considered whether normal value could be determined under s 269TAC(2)(c), and assessed that there was not sufficient information to proceed on that basis. The ADC submitted that in applying s 269TAC(6), it considered the prices paid by Fenghui to Qinyan and Zhenli, as well as Fenghui's margin and SG&A expenses, and made adjustments to ensure comparability with the export price. The ADC stated that it also considered Fenghui's actual profit on products in the same general category (plumbing) sold in China, as outlined in REP 645. The ADC submitted that it considers that its approach to calculating normal value is consistent with the statutory framework.[215]

Analysis for Ground 3(e): Size of Dumping Margin

221. Section 269TAE(1)(aa) of the Act provides that regard may be had to the size of the dumping margin in determining whether material injury to an Australian industry has been caused. In REP 645, the ADC considered 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, which in turn provided importers and their distributors a competitive advantage in terms of their pricing in the Australian market. The size of the dumping margin was therefore a factor to which the Minister had regard, in the material injury determination.

222. ACP, for the reasons set out in Grounds 1 and 2, challenged the ADC's methodology of determining normal value, and therefore challenged the accuracy of the dumping margins, as being significantly inflated. On this basis and in this component of Ground 3, ACP also challenges the ADC's finding of material injury based on the size of the dumping margin. The ADC considers its approach to calculating normal value was consistent with the statutory framework and rejects

[214] See paragraph [79] of the ADC's s 269ZZJ submission, page 14, where reference was made to pages 34 – 37 of REP 645.
[215] See paragraph [80] of the ADC's s 269ZZJ submission, page 15.

ACP's related challenge of the material injury finding, based on the size of the dumping margin.

223. For the reasons discussed in detail above, in the analysis and consideration of Grounds 1 and 2, ACP's claims relating to the methodology of normal value and its impact on the size of the dumping margin, were rejected. Therefore, there is no basis for ACP's challenge of the finding of material injury based on the size of the dumping margin. ACP's claim in this component of Ground 3 is rejected.

224. It should be noted that during the course of this review, the ADC identified an error relating to the calculation of normal value, and the resulting dumping margin calculation. The correction of the calculation error results in a reduction of the dumping margin from 22.2% to 21.9%. During the Third Conference, I requested the ADC to advise if the rectification of the error, on its own, and the resulting reduced dumping margin, would have any effect on the ADC's consideration of the finding of material injury and causation, given that the size of the dumping margin was a relevant factor that was taken into account in the ADC's finding that dumped goods caused material injury. The ADC advised that the change (0.3%) in the dumping margin is not significant and therefore does not lead to a change in the ADC's findings relating to material injury caused by dumping.[216]

225. For the reasons discussed above, I consider the ADC's analysis relating to the size of the dumping margin to be a valid component of Ground 3 and supportive of the ADC's finding that material injury was caused to the Australian injury by the dumped goods. ACP has not demonstrated that the ADC's analysis and consideration of the size of the dumping margin in any way detracts from the finding that Abey suffered material injury caused by the dumping.

Ground 3 – Conclusion

226. The five components of Ground 3 challenging the determination of material injury, have been considered above, in respect of the following factors: (a) price undercutting; (b) market size and composition; (c) loss of sales volumes to mutual customers; (d) profit effects; and (e) the size of the dumping margins.

[216] See the ADC's response to Supplementary Request No. 1 in paragraph [10] of the Third Conference Summary.

227. For the reasons discussed above, I consider the ADC's analysis relating to each of the five components of Ground 3, to be comprehensive, well reasoned and a valid component of the ADC's finding that material injury was caused to the Australian injury by the dumped goods. I do not consider that ACP has demonstrated that the ADC's analysis and consideration of each of the components of Ground 3 in any way detracts from the finding that Abey suffered material injury caused by the dumping. Ground 3 is therefore rejected.

228. I consider the decision in REP 645 that the dumped goods caused material injury to the Australian industry producing like goods, to be the correct or preferable decision.

Recommendations

229. Pursuant to s 269ZZK(1) of the Act and for the reasons set out in this report, I consider that the Reviewable Decision was not the correct or preferable decision in so far as it related to the normal values (and consequently the dumping margin) for the goods exported by Fenghui. The revised normal value has the effect of varying the dumping margin for Fenghui from 22.2% to 21.9%. The Reviewable Decision was otherwise the correct and preferable decision.

230. I therefore recommend that the Minister, pursuant to s 269ZZM(1)(b) of the Act, revoke the Reviewable Decision and substitute a new decision:

- to determine a different normal value for Fenghui as per Confidential Attachment 1; and
- taking into account this revised normal value, to vary Dumping Duty Notice No. 2025/090, by altering the dumping margin for Fenghui from 22.2% to 21.9%.

Leora Blumberg
Panel Member
Anti-Dumping Review Panel
9 February 2026

Appendix A

Conferences

Date of conference	Participants	Purpose of conference	Abbreviation
20 November 2025	Legal Representative of ACP	To obtain further information in relation to the application	First Conference
2 December 2025	Legal Representative of ACP	To obtain further information in relation to the application	Second Conference
12 January 2026	ADC	To obtain further information in relation to the review	Third Conference