



Australian Government
Anti-Dumping Review Panel

Anti-Dumping Review Panel Report No. 173

Interchangeable Bolted Clipping System Brackets
exported from the People's Republic of China

March 2026

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

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Abbreviations

Term	Meaning
Abey	Abey Australia Pty Ltd
ABF	Australian Border Force
Act	<i>Customs Act 1901</i>
Anti-Dumping Agreement	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
ADN	Anti-Dumping Notice
Applicant	AC Plumbing Supplies Pty Ltd
AUD	Australian Dollar
Appellate Body	Appellate Body of the World Trade Organisation
CIO Regulation	<i>Customs (International Obligations) Regulation 2015</i>
CTMS	Cost to Make and Sell
Commission	Anti-Dumping Commission
Commissioner	Commissioner of the Anti-Dumping Commission
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
FOB	Free on board
GAAP	Generally accepted accounting principles
Goods	<p>Interchangeable bolted clipping system brackets, whether or not galvanized, whether or not including nut and bolt, including the following brackets:</p> <ul style="list-style-type: none"> • light hanging bracket with elongated slot and square hole for interlocking coach bolt and nut • stand-off bracket with elongated slot and square hole for interlocking coach bolt and nut • adjustable stand-off bracket with elongated slot for interlocking coach bolt and nut

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	<ul style="list-style-type: none"> • all-thread bracket with elongated slot and square hole for interlocking coach bolt and nut, and • welded nut bracket with elongated slot and square hole for interlocking coach bolt and nut. <p>Further information in relation to the goods: The interchangeable bolted clipping system brackets are manufactured from galvanised hot rolled coil (HRC). The grade of galvanised HRC is Z275 grade and is of varying thicknesses of 1 mm to 4 mm, dependent upon the model of steel bracket.</p>
IDD	Interim dumping duty
Injury examination period	From 1 April 2020
Manual	Dumping and Subsidy Manual 2021
Minister	Minister for Industry and Innovation; Minister for Science
NIP	Non-injurious price
RIQ	Response to Importer Questionnaire
REQ	Response to Exporter Questionnaire
REP 644	The report published by the Commission in relation to the goods and dated 12 September 2025
Review Panel	Anti-Dumping Review Panel
Review Period	1 April 2023 to 31 March 2024
Reviewable Decision	The decision of the Minister under sections 269TG(1) and 2) of the Act made on 24 September 2025 (ADN 2025/089)
SCM	Agreement on Subsidies and Countervailing Measures
SEF 644	Statement of Essential Facts
SG&A	Selling, general and administration expenses
USP	Unsuppressed selling price
WTO	World Trade Organization

Summary

1. I have conducted a review of a 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* (Cth)¹ ('the Act') in respect of interchangeable bolted clipping system brackets ('the goods') exported from China ('Reviewable Decision').
2. AC Plumbing Supplies Pty Ltd ('the Applicant') applied for this review.
3. For the reasons set out herein, I recommend that the Minister revokes the Reviewable Decision pursuant to s 269ZZM(1)(b) of the Act and substitute a new decision in its stead, namely to:
 - a) determine a different normal value for Fenghui as per Confidential Attachment 1; and
 - b) thus, vary the Dumping Duty Notice No. 2025/090, by altering the dumping margin for Fenghui from 71.2% to 63.8%.

Introduction

4. On 31 October 2025, the Applicant applied under s 269ZZC of the Act for a review of the Reviewable Decision ('the Application'). The Application attached four (4) documents, which I have reviewed and considered. The application raised three (3) grounds for the review of the Reviewable Decision. They were as follows:
 - c) Ground 1: there was an incorrect reliance on s 269TAC(6) to determine the normal value.
 - d) Ground 2: the normal values were not in the "ordinary course of trade".
 - e) Ground 3: the determination of material injury was erroneous.
5. On 13 November 2025, in my capacity as Senior Member of the Anti-Dumping Review Panel ('Review Panel'), I directed in writing that the Review Panel be constituted by me pursuant to s 269ZYA of the Act.

¹ *Customs Act 1901* (Cth).

6. The application was accepted and notice of the proposed review, as required by s 269ZZI, was published on 9 January 2026.

Background

7. 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 644'),² following an application by Abey Australia Pty Ltd ('Abey'). Abey is the sole manufacturer of the goods in Australia.
8. The Commissioner established an investigation period of 1 April 2023 to 31 March 2024 ('Investigation period'). The Commissioner examined details of the Australian market from 1 April 2020 onwards for the purposes of the analysis of injury
9. The Commissioner published a Statement of Essential Facts ('SEF 644') on 27 June 2025. I have reviewed and considered SEF 644.
10. 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.
11. On 12 September 2025, the Commissioner made a report to the Minister ('REP 644'). REP 644 recommended that the Minister publish a dumping duty notice in respect of the goods exported from China. I have reviewed and considered REP 644.
12. On 24 September 2025, the Minister accepted the Commissioner's recommendations in REP 644 and notice of the decision was published on 2 October 2025, which I have reviewed and considered.⁴

² ADN 2024/040.

³ ADN 2025/074.

⁴ ADN 2025/089.

Conduct of the Review

13. 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
14. 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.
15. In undertaking the review s 269ZZ(1) of the Act requires the Review Panel to determine a matter required to be determined by the Minister, in like manner as if it 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.
16. 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 Commission had regard or ought to have had regard when making its findings and recommendations to the Minister. I have not had regard to any information other than the information, to which I am required to have regard for the purposes of this report.
17. 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 conference was held with the Commission on 27 February 2026 for the purposes of confirming the Commission's calculation of the dumping margin. A non-confidential summary of the information obtained at the conference was made publicly available in accordance with s 269ZZX(1) of the Act. A list of the conferences held during the course of this review is appended to this report and marked "A".

⁵ Pursuant to s 269ZZK(3) of the Act.

⁶ See s 269ZZK(4).

18. In conducting this review, I have had regard to all of the following documents and materials (including both the confidential and public versions of these documents as applicable):

- a) SEF 644;
- b) REP 644;
- c) The materials before the Commissioner for the purposes of REP 644, including the various submissions the Commissioner had received, including from the Applicant;
- d) The Commissioner's Consideration Report 644;
- e) The Application and the documents it attached;
- f) The Applicant's submissions made pursuant to s 269ZZJ of the Act;
- g) The Commissioner's Submissions made pursuant to s 269ZZJ of the Act;
- h) Abey's submissions made pursuant to s 269ZZJ of the Act;
- i) A conference I held with the Commission on 27 February 2026.

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 1994⁷ ('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

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').

- b) Agreement on Subsidies and Countervailing Measures⁸ ('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 interprets and applies the legislation, as far as its language permits, in a way that 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 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". 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

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).

¹⁰ [2022] FCA 847.

¹¹ *Ibid* at [172].

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 must mean is that the nature of the review undertaken by the Review Panel is to essentially determine whether the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds. It is only to that extent, and on those terms, that the Review Panel is required to consider and determine whether the reviewable decision is the correct or preferable decision.

If, on the one hand, the Review Panel, having conducted the review, is not satisfied that the reviewable decision is not the correct or preferable decision for any of the reasons articulated in the reviewable grounds, the Review Panel would be entitled to find that the reviewable decision was the correct or preferable decision, and therefore entitled to recommend that the Minister affirm the reviewable decision. The Review Panel is not required – indeed, it is not permitted – to look beyond the reviewable grounds in order to satisfy itself that there is no other reason for finding that the Minister’s decision was not the correct or preferable decision. If, on the other hand, the Review Panel is satisfied that the reviewable decision is not the correct or preferable decision for one or more of the reasons articulated in the reviewable grounds, it would be entitled to recommend that the Minister revoke the reviewable decision and substitute a new 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 the reviewable grounds and the submissions advanced in support of those grounds...

Grounds of Review

22. I have set out the Applicant's grounds of review in paragraph 4 above. That paragraph seeks to capture the essence of the grounds of review.
23. In this section of the report, I have referred to the Applicant's and the Commissioner's contentions or submissions on the three Grounds before me. I note at the outset that I have not restated all of the contentions or submissions made by the Applicant, the

Commissioner or Abey here, although I have had regard to all of them. Throughout this report, I have referred to specific portions of the documents and materials, to which I have had regard. Those references should not be taken to mean that I have not had regard to the balance of the contents of those documents and materials. Importantly, where I have included one specific reference to a document, for example, to identify an argument made by the Applicant or a determination by the Commissioner, I have not ignored the restatement of that argument or determination elsewhere in the documents or materials. I have dealt with those contentions or submissions insofar as I have needed to do so in order to deal with the Grounds.

A short note on form

24. Before dealing with Ground 1, I wish to raise one matter of form. I note that the Applicant and the Commissioner have adopted the convention of numbering their headings in presenting their reports, application and submissions, rather than the paragraphs of their documents. It might be more helpful, in the future, for all parties to adopt paragraph numbering for each of the paragraphs of their documents. That approach would enable the Review Panel to make more precise references to the parties' documents if required. The aforementioned matters have not, of course, affected any of the views I have expressed herein in relation to the substance of the Applicant's or the Commissioner's contentions.

Consideration of Grounds

Ground 1: Incorrect reliance on s 269TAC(6) to determine normal value

25. In support of Ground 1, the Applicant contends that:
- a) the statutory precondition necessary to the exercise by the Minister of the discretion under s 269TAC(6) of the Act has not been met (section B1 of attachment 2 to the Application).
 - b) the Minister was able to determine cost of production under s 269TAC(2)(c)(i) based on the information at hand, which met the requirements of reg 43 of the

Customs (International Obligations) Regulations 2015 (Cth) (section B1(a) of attachment 2 to the Application).

- c) the correct and preferable decision was to determine the normal value of the goods purchased by Ningbo Fenghui Metal Products Co Ltd ('Fenghui') from Cixi Guanhaiwei Qinyan Hardware Factory ('Qinyan') under s 269TAC(2)(c) and the normal value of the goods purchased from Zhenli under s 269TAC(6), that the administrative, general and selling costs ('SG&A') could be determined based on Fenghui's selling costs records, that there is flexibility in the rules governing the determination of "profit" and at the amount of profit might be zero and that there is no basis to assume that the exporter's hypothetical domestic market prices be profitable (section B1(a), (b) and (c) of attachment 2 to the Application).
- d) the proposed decision is materially different to the Reviewable Decision, because whereas the Reviewable Decision includes Fenghui's profit in the calculation of the cost of goods, the Applicant contends that break-even sales would be in the ordinary course of trade (section B1, sections numbered 11 and 12 of attachment 2 to the Application).

26. For the following reasons, I am not persuaded that the Applicant's contentions in support of its Ground 1 are correct.

27. Section 269TAC is situated in part XVB of the Act entitled "Special provisions relating to anti-dumping duties". Division 1 of that part is entitled "Definitions and role of Minister", but it is s 269SN, which explains that the division principally (and relevantly here) "provides the basis for determining various factors (such as normal value, export price, and non-injurious price) necessary to decide whether dumping or countervailable subsidisation has occurred" and "sets out the criteria for the use of those factors in so deciding".

28. In reaching the conclusions set out in REP 644 in relation to normal value, the Commissioner determined:

- a) normal value was to be determined in accordance with s 269TAC. Subsection 269TAC(1) provides that a normal value of any good exported to Australia is the price paid or payable for like goods sold in the ordinary course of business

for home consumption in the country of export in sales that are "arms length" by the exporter or other parties (section 5.2.2).

- b) subsection 269TAC(1) can be used to calculate the normal value if one of the circumstances in ss 269TAC(2)(a) or (b) is present. In those circumstances, the normal value was to be determined in accordance with s 269TAC(2)(c) or (d) (section 5.3.3).
- c) subsection 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1) where there is an absence, or low volume of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price. Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods that are exported to Australia by the exporter. In those circumstances, s 269TAC(2)(a)(ii) provides that sales in that market are not suitable for determining normal price under s 269TAC(1) (section 5.2.2).
- d) section 269TAC(2)(c) provides for a mechanism for constructing the normal value from the cost of production or manufacture of the goods in the country of export (section 5.2.2).
- e) section 269TAC(6) provides that where the normal value cannot be established under ss 269TAC(1), (2)(c) or (2)(d) due to sufficient information, not being furnished or available, the normal value is determined having regard to all the relevant information (section 5.2.2).
- f) Fenghui was the principal in the transaction located in the country of export, from where the goods were shipped, and therefore was the exporter of the goods the subject of REP 644 (section 5.3.2).
- g) Qinyan was a manufacturer of the goods the subject of REP 644 which commenced supplying Fenghui in March 2023 (section 5.3.2).
- h) Neither Fenghui nor Qinyan sold any like goods for home consumption in China and, therefore, the Commissioner was unable to determine normal value under s 269TAC(1) (section 5.3.2).

- i) Neither Fenghui nor Qinyan sold any like goods to countries other than Australia and, therefore, the Commissioner was unable to determine the normal value under s 269TAC(2)(d) (section 5.3.2).
 - j) It was not furnished with sufficient information to calculate the normal value of goods exported by Fenghui under s 269TAC(2)(c). That was because Guanhaiwei Zhenli Hardware Factory ('Zhenli'), the other manufacturer that provided goods to Fenghui, did not provide information with respect to its cost of producing the goods (section 5.3.3).
 - k) In those circumstances, normal value ought to be determined pursuant to s 269TAC(6) (section 5.3.3).
 - l) normal value by reference to Fenghui's purchases of the goods from Qinyan and Zhenli, Fenghui's own margin on the goods and the SG&A expenses in hand handling, selling and exporting the goods to Australia and Fenghui's actual profit realised on products that are not like goods sold in the Chinese domestic market in the investigation period (section 5.3.2).
 - m) it was preferable to have regard to the actual price of the goods sold by each manufacturer, Qinyan and Zhenli, to Fenghui rather than to construct the price between Qinyan and Fenghui (section 5.3.2).
29. Section 269TAC(6) is one of a number of cascading provisions that govern the determination of normal value by the Minister. In *Pilkington (Australia Limited) v the Comptroller-General of Customs and Minister for Science and Small Business* [1994] FCA 1330, Heery J stated that section 269TAC involves a "hierarchy" of measures of normal value (at [6], citing *Enichem Anic Srl v Anti-Dumping Authority* (1992) 39 FCR 458).
30. The hierarchy begins in subsection 269TAC(1). In this matter, subsection (1) has no application. The Applicant does not contend that it does.
31. Subsection 269TAC(2) permits the reconstruction of normal value in certain circumstances. In order to conduct such reconstruction, the Minister is required to determine, amongst other things, "such amount...to be the cost of production or manufacture of the goods in the country of export".

32. In *Pilkington*, Heery J said, “[t]he only gateway to sub-s.6 is a finding that sufficient information has not been furnished or is not available to enable the use of the preceding sub-sections, which include sub-s.(4)”. That approach is consistent with the one taken by Hill J in *Powerlift (Nissan) Pty Ltd v Minister for Small Business, Construction and Customs* (1993) 40 FCR 443 at 358 (taken in relation to another provision, section 269TAB(3) in relation to export price, which had a similar structure, machinery and language). A similar approach was taken by Neaves J in *Vredelco Food Industries Pte Limited v Anti-dumping Authority* [1994] FCA 1501 at [32] *ff*.
33. The approach taken by the authorities set out above is consistent with the language of section 269TAC(6), which provides that:
- “[w]here 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 (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information”.
34. The phrase “sufficient information” in this provision ought to be understood as information sufficient to determine normal value under the preceding paragraphs.
35. In this instance, Fenghui was the exporter. It obtained the relevant goods from two manufacturers, Qinyan and Zhenli. One provided information in relation to its cost of production. The other did not. The Applicant does not challenge the aforementioned findings. That being so, one may conclude that the absence of information from Zhenli left an important hole in the information that the Minister had received in relation to the cost of production. The Minister was not satisfied that he had sufficient information to determine normal value under the preceding paragraphs, given the absence of information from one of the two manufacturers. I am of the opinion that it was open to him, and indeed he was correct, to conclude so.
36. The Applicant expresses concerns regarding the approach taken by the Minister. The submission it makes is that REP 644 operates on an “erroneous basis”. It submits that one may infer the assessment of normal value was made under section 269TAC(6), because the cost of production “could not be determined” under section 269TAC(2)(c) as a result of the failure by Zhenli to provide information. The Applicant contends such a

rationale is mistaken and that the absence of such costs in no way prevents the “usage of s 269TAC(2)(c) in relation to the goods that Fenghui purchased from Qinyan”.

37. In my opinion, those arguments are unpersuasive. Section 269TAC(6) is not engaged where the cost of production, for example, “could not be determined” under an earlier provision of s 269TAC. The gateway is that the Minister determines that “sufficient information” had not been furnished concerning the exporter’s cost of production. In other words, the question is one of sufficiency. It may be readily accepted that the cost of production *as between Fenghui and Qinyan* was available, but the existence of that integer does not support the contention that the Minister could not have been satisfied that the information furnished was not sufficient. The reality was that the Commissioner had not been furnished with any information in relation to Zhenli’s costs. In my opinion, and given that Zhenli was one of the only two manufacturers that sold products to Fenghui, it was open to the Minister – and indeed it was correct to say – that “sufficient information” had not been furnished concerning Fenghui’s cost of production. Section 269TAC(6) is not directed to the sufficiency of information between an exporter and one of its suppliers; it is concerned with the determination of the normal value for the goods by the exporter as a whole.
38. The Applicant further contends that instead of determining normal value under s 269TAC(6) only, the Commissioner ought to have used s 269TAC(2)(c) to the calculation of the normal value of the goods supplied Qinyan and s 269TAC(6) to calculate the normal value of the goods supplied by Zhenli. The cascading structure and contents of the legislation is inconsistent with this approach. In essence, the structure of the legislation does not permit one aspect of the analysis as to normal value to be conducted pursuant to s 269TAC(2) and another aspect under s 269TAC(6), because the latter provision is engaged only after the Minister determines sufficient information has not been furnished to make a determination under s 269TAC(2) etc. Further, in my view, normal value under any of the applicable subsections of s 269TAC needs to be determined for the whole of the principal under the relevant subsection. There is no language in s 269TAC that suggests otherwise. There is no authoritative support for the position propounded by the Applicant from courts. Accordingly, even if it were necessary to do so, I do not accept this contention.
39. For those reasons, I am of the view that the invocation of section 269TAC(6) was correct and was appropriate and the correct or preferable decision. Thus, I reject Ground 1.

Ground 2: Normal Values not in the ordinary course of trade

40. In support of Ground 2, the Applicant contends that:

- a) this ground relates to all normal values determined under s 269TAC(6) (section 2, question 9 of attachment 2 to the Application).
- b) whether the sales were “in the ordinary course of trade” is fundamental in determining normal value (section 2, question 9 of attachment 2 to the Application).
- c) when determining normal value under s 269TAC(6), the Minister must be “attuned to achieving the same outcome: a value representative of an arm’s length, ordinary course of trade price” (section 2, question 9 of attachment 2 to the Application).
- d) there was nothing in REP 644 that suggested “this goal” was in mind when the normal value was determined (section 2, question 9 of attachment 2 to the Application).
- e) regard should have been had to values that were representative of the “ordinary course of trade” when determining the price of goods as between Fenghui and its suppliers, but it was not (section 2, question 9 of attachment 2 to the Application).
- f) some of the sales were identified by Fenghui as having “unusual” prices and should thus had been excluded from the determination of normal value (section 2, question 9 of attachment 2 to the Application).
- g) Fenghui’s profits ought not have been used to determine normal value, because it did not sell the products in the Chinese market and that it had little leverage to seek a profit on its sales in that market (section 2, question 9 of attachment 2 to the Application).
- h) “a price that breaks-even is an ordinary course of trade price” (section 2, question 9 of attachment 2 to the Application).

- i) by failing to take into consideration the broader statutory context, the Commissioner and the Minister had failed to ask the correct question in determining normal value under s 269TAC(6) and, accordingly they have failed to make the correct or preferable decision in the exercise of that power (section 2, question 9 of attachment 2 to the Application).
- j) the correct or preferable decision would have been achieved by first, excluding the prices of the goods that Fenghui had described as not being in the ordinary course of business from the calculation of normal value, second, assessing whether any profit needed to be included in the calculation of normal value in circumstances whether the goods are not sold in the domestic Chinese market and, third, if the answer to the second question were in the affirmative, accepting that profit based on very specific circumstances when 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) (section 2, question 10 of attachment 2 to the Application).
- k) the Reviewable Decision is materially different from the Applicant’s preferable decision, in that in the former the normal value appears to be substantially inflated (section 2, question 12 of attachment 2 to the Application).

41. In reaching the conclusions set out in REP 644 in relation to normal value, the Commissioner determined:

- a) it had to have regard to all relative information when determining normal value in accordance with s 269TAC(6) (section 5.2.2).
- b) it should determine normal value under s 269TAC(6) rather than constructing the price between Qinyan and Fenghui (section 5.3.3).
- c) to this price should be added Fenghui’s margin on its domestic sales plus its SG&A cost to derive a normal value of the goods exported by it at a level that is comparable to the exported goods (section 5.3.3).
- d) as Fenghui did not sell like goods in the domestic market in China, the Commissioner had regard to Fenghui’s actual profit realised on products that are like goods sold in the Chinese domestic market in the investigation period. The goods selected were used in various plumbing applications and therefore

were in the same general category as the goods the subject of REP 644. It determined that had Fenghui sold brackets in China, then the profit achieved on those brackets would have reflected the profit achieved on products in the same general category as the brackets it exported to Australia (section 5.3.3).

- e) the total volume of the products sold by Fenghui was not insignificant when compared to the total volume of goods exported to Australia and such domestic sales were mostly profitable (section 5.3.3).
- f) the position put by Fenghui, namely that the difference in levels of trade between its domestic and export sales are shown to have affected price and therefore price comparability, was not accepted, because Fenghui had not identified the level of trade for each customer identified in its list of domestic sales especially in circumstances where some of those customers did not appear to be end users. Further, it had not demonstrated that the purported differences in the level of trade between its Australian customer (the Applicant) and its domestic customers affected price or its selling costs (section 5.3.3).
- g) based on an analysis of the prices for sales to Fenghui's domestic customers, there was no evidence to suggest that differences in the level of trade have in fact affected the selling prices (section 5.3.3).
- h) CITIC's profit margin was not reasonable or relevant to be used in constructing the normal value of the goods the subject of REP 644 (section 5.3.3).

42. The Commissioner submitted to the Review Panel:

- a) there was nothing to suggest that the sales by Fenghui were not at arms length (see [38] and [45] of the Commissioner's submission).
- b) Fenghui and Qinyan had submitted that the higher price for some of the goods was because the goods concerned were a new model for Qinyan to produce and that the goods were to be produced within a short timeframe, which, the Commissioner submitted, were genuine commercial reasons for increasing the price of those goods (see [45] of the Commissioner's submission).
- c) it had carefully considered the most reasonable, reliable and appropriate profit margins to use based on the facts and circumstances of this case and that the

profit margin had come from actual domestic sales that the Commissioner had carefully considered and was of the view were commercially normal and representative (see [46] of the Commissioner's submission).

43. As the Applicant has submitted, Ground 2 concerns all goods purchased by Fenghui from both Qinyan and Zhenli. At the core of its contentions is the argument that prices are to be determined by reference to “ordinary course of trade” when determining normal value under s 269TAC(6). I accept that “ordinary course of trade” is a principle that applies to the determination of normal value under s 269TAC(1). However, as the legislature has seen fit not to include a concept of “ordinary course of trade” in s 269TAC(6), I am not persuaded that it is “explicitly” (or, indeed, implicitly) a relevant consideration for the determination of normal value under that subsection.
44. In *Powerlift*, Hill J found that the determination under s 269TAB(3) had to be reasonable and consistent with the scheme of the legislation.¹² The language of the provision, furthermore, requires the Minister to take into account all relevant information in determining normal value.
45. The question for the Review Panel is, therefore, whether the approach taken by the Commissioner and the Minister in determining normal value under s 269TAC(2)(c) was a reasonable exercise of discretion. In my view, it was.
46. Given that Fenghui did not sell the relevant goods (brackets) in the domestic market in China, the Commissioner first determined that Fenghui sold products of a similar use in the domestic market. It considered Fenghui’s profit margins based on the information the Commission had been supplied and had determined those profit margins to have been commercially normal and representative. It made that determination not only based on its analysis of the figures but also based on explanations provided by Fenghui and Qinyan as to some of the commercial reasons for the setting of profit margins by Fenghui (see also the reference to “other considerations” in the Applicant's submissions). That approach appears to me consistent with the language of s 269TAC(6) and the approach suggested as correct in *Powerlift*. Although it is unnecessary to determine the issue, in my view the approach of the Commissioner did in fact expose the price at which goods were sold by Fenghui to others based on Fenghui's commercial considerations from time

¹² *Powerlift* at ALR 364.

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to time, which is broadly consistent with the underlying economic concepts inherent in the phrase "in the ordinary course of trade".

47. Importantly, the Commissioner's approach appears to have taken into account the whole of the information concerning Fenghui's sales in determining normal value. In my view, that approach is consistent with the language of s 269TAC(6).
48. I am not satisfied that the use by the Minister of Fenghui's profits in the domestic market for like goods was not a reasonable exercise of discretion. I agree with the approach that the Minister / Commissioner have taken, and I consider it to be correct. For those reasons, I reject the contentions in support of Ground 2.

Ground 3: Erroneous determination of material injury

49. Ground 3 concerns the alleged erroneous determination of material injury by the Minister. In that regard, the Applicant contends:

- a) Abey increased its total sales volume during the period of investigation, also its unit price and its profit and profitability and, further, it has not suffered material injury in the form of price suppression or price depression (section 9 of attachment 2 to the Application).
- b) REP 644 has found that "injury" was the decline in Abey's market share, which was said to be material because of the profit determined to have been "forgone" as a consequence, and that neither of these decisions is "correct or preferable" (section 9 of attachment 2 to the Application).
- c) market share is but one of ten (10) "relevant economic factors" identified in s 269TAE(1) and that the Minister is not obligated to consider or have regard to the industry's market share (section 9 of attachment 2 to the Application).
- d) it has concerns about the manner in which the market had been identified, including because the underlying information was inaccurate, included some imports by Couta, included information about products which were not relevant and that, if compounded, the inaccuracies would substantially impact the approximation of the size and growth of the Australian market and of

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participants' share in that market (section 9(a) of attachment 2 to the Application).

- e) it did not appear that the information took into account Flexistrut (section 9(a) of attachment 2 to the Application).
- f) the Commissioner had assumed that Abey forewent profit because of the decline in its market share, which was material in circumstances where Abey's sales increased in the investigation period (section 9(b) of attachment 2 to the Application).
- g) the above "assumption" was arbitrary and that "[i]t is not clear why anything less than a sales volume that maintains market share is injurious" (section 9(b) of attachment 2 to the Application).
- h) the Australian industry was selling more at higher prices and achieving a greater profit during the investigation period and that premising a material injury finding on the assumption that the Australian industry should have been able to take sales from other market participants, based on what is, at best a rough approximation of the Australian market, is not the correct or preferable decision (section 9(b) of attachment 2 to the Application).
- i) the theory of injury was premised on the assumption that, had Abey not "foregone" the additional sales necessary to maintain its pre-investigation market share, it would have, could have and should have done so at the same prices and profit levels as those actually achieved during the period of investigation (section 9(b) of attachment 2 to the Application).
- j) as it pertained to price undercutting, there had been no finding that Abey suffered price depression or price suppression during the investigation period, Abey's sales to mutual customers represented 1% of their overall sales in the period of investigation and that there was limited crossover between Abey and these mutual customers (section 9(c) of attachment 2 to the Application).
- k) the Commissioner fell into error to the extent that the failure of Abey to reclaim market share was a motivating factor in the finding that Abey had suffered material injury or had informed the estimation of such injury (section 9(c) of attachment 2 to the Application).

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- l) the correct or preferable decision was that there was no material injury, including because the finding concerning “market share” was built upon estimation and conjecture (section 10 of attachment 2 to the Application).

50. REP 644 addressed the question of material injury thus:

- a) it determined the Australian industry’s share of the market for brackets based on Abey’s sales data, sales data provided by ACP and Radius (section 7.4.2).
- b) it noted that the Australian industry’s market share was at its lowest in the investigation period (section 6.4.1).
- c) it determined that the Australian industry had not experienced material injury in the form of price depression or price suppression (section 6.5).
- d) it found that the Australian industry had experienced injury over the injury period examined in the form of reduced value of assets, reduced capital investment, reduced capacity utilisation, increased inventory and reduced production (section 6.7).
- e) it found that Australian industry’s prices had been significantly undercut by dumped exports from China (section 7.4).
- f) it found that given that there was little product differentiation and the fact that Chinese products could substitute Australian products easily, customers considered pricing and that pricing could not be discounted as a factor informing customers’ purchasing decisions (section 7.4.2).
- g) the prices of ACP undercut the prices of the Australian industry significantly (section 7.4.2).
- h) ACP had only been able to undercut the Australian industry’s prices by sourcing dumped goods from China (section 7.4.2).
- i) the margins of undercutting were greater in relation to common customers (section 7.4.2).
- j) ACP had built the bulk of its market share since entering in the Australian market by attracting customers that have previously sourced goods from the

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Australian industry, which had been facilitated by the significant levels of price undercutting (section 7.5.2).

- k) Australian industry's reduced sales volumes and market share coincided with an increase in imports from China over the period examined (section 7.5.2).
- l) its estimate of the Australian market is a reasonable approximation of the market and captures the main competitors and parties that import and sell their goods the subject of the investigation (section 7.5.1).
- m) while the Commissioner did not find that the Australian industry's profit and profitability decreased in the investigation period, the Commissioner considered that the Australian industry had foregone profit because of the decrease in its market share caused by dumped goods in the investigation period (section 7.6.1).
- n) material injury is injury that is not insubstantial, immaterial or insignificant. In determining materiality, the Commissioner had regard to the changing volumes and market share of the Australian industry and dumped imports, the size of the dumping margins, the magnitude of price undercutting and the impact that the increasing imports had on the economic condition of the Australian industry (section 7.10).
- o) it found that the imports replaced the Australian industry's sales volumes and led to a material reduction in its market share causing it injury, and was satisfied that the injury was not immaterial, insubstantial or insignificant (section 7.10).

51. I have considered the claims made by the Applicant in relation to Ground 3. I do not find them persuasive for the following reasons.

52. First, the Ministerial Direction on Material Injury includes a direction to the effect that it is possible to find material injury where an industry suffers a loss of market share in a growing market without declining profits, but that it should be considered with a range of relevant injury indicators before material injury may be established and that it cannot "alone be decisive" (Injury Direction, pages 3 to 4). I find that it was permissible for the Commissioner to determine material injury based on the determinations as to the loss of

market share, especially because the Commissioner also considered other injury indicators. Relevantly, the Commissioner made the following findings, including:

- a) that the selling prices were undercut by dumped goods exported from China in the investigation period. In the same section of REP 644, the Commissioner found that whilst the Australian industry had decided not to compete on price, and therefore there was no price depression or price suppression, the undercutting had led to the Australian industry foregoing sales volumes and losing market share (section 7.1).
- b) that the magnitude of the dumping margin enabled importers and their distributors to benefit from a competitive advantage, in terms of their pricing in the Australian market (section 7.4.1).
- c) that the Applicant had built the bulk of its market share since entering into the Australian market by attracting customers that had previously sourced goods from the Australian industry, and that capture of market share had been facilitated by price undercutting (section 7.4.2).
- d) that the Australian industry's reduced sales volumes and market share coincided with an increase in exports from China over the period examined, and that the customer switched sources of supply away from the Australian industry thereby leading to the reduction of the Australian industry's market share. The reduction of the Australian industry's market share had, therefore, been caused by the price undercutting that the Commissioner had identified. The Commissioner also discussed and dealt with submissions that the Applicant had made in relation to aspects of the Commissioner's consideration of material injury (section 7.5).
- e) that there was a reduction of the Australian industry's market share, and therefore the profit that it had forgone. That analysis was based on the conclusion that the reduction in the Australian industry's market share and simultaneous increase in the share of the products from China as part of the overall market was caused by undercutting on price (section 7.6, and based on the findings in sections 7.1 to 7.5).

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- f) that the Australian industry had experienced injury in the form of reduced value of assets, reduced investment, reduced capacity, utilization, reduced production, and increased inventory. It found that it was likely to conclude from the figures demonstrating the above matters, that the Australian industry had decided not to invest in circumstances where it was continuing to lose sale volumes and market share (section 7.7).
53. Accordingly, I consider that the approach of the Commissioner was correct and that loss of market share in a growing market without declining profits was not "alone" decisive.
54. Second, I am not persuaded that the Commissioner's determination of the market was incorrect. The starting point for the Applicant (section 9(a) of attachment 2 to the Application) was to argue that the descriptions of the determination of the Australian market as an "estimate" or "available information" is "hardly a ringing endorsement as to the accuracy of the assessment of market share". It contended its "concern increases" when one considers "available information" being sales of the Applicant, Radius and Abey and ABF data concerning imports by another entity, Couta. The Applicant argued that a market necessarily connotes that the goods are sold in Australia and that it was unclear whether Couta's imports had been sold (section 9(a) of attachment 2 to the Application). Further, the Applicant raised the concern that not taking into account the behaviour of Flexistrut could affect the accuracy of the determination of the market.
55. The Commissioner's determination of the market was based on the records of the market participants, which were before the Commissioner and to which I have had regard. I am not persuaded that the determination of market share was based on conjecture rather than facts and materials as required by the legislation (*cf* section 10 of attachment 2 to the Application).
56. The Commissioner's market share analysis, to which I have referred above, appears to me to be comprehensive. Further, I consider the conclusions reached to be well reasoned and appropriate.
57. There is no reason to believe that Couta would have imported goods into Australia and not sell them; the Applicant did not provide any reason to think that was likely.
58. Further, the Commissioner was satisfied that Flexistrut did not import the goods the subject of the investigation (REP 644, page 27), in which case it was, in my view,

appropriate for its sales not to be included in the estimation of the market (see REP 644, page 26). I note that the Applicant does not contend that Flexistrut did sell the goods the subject of this investigation. Its argument is based on the fact that Abey identified Flexistrut as a competitor. That fact is not, in my view, a sufficient or appropriate basis to include Flexistrut's sales for the purposes of determining the Australian market in relation to the goods the subject of this report if there is no contention that it actually sold those goods.

59. Third, I do not accept that the determination of market share by the Commissioner was based on "arbitrary" assumptions, of which the Applicant complains (section 9(b) of attachment 2 to the Application). As I have set out above, the Commissioner found the Australian industry was a subject of price undercutting, that price undercutting was the result of dumping, the dumping margin was large, price was a factor for customers given the lack of differentiation in the products otherwise, the market share gained by the Applicant was largely based on customers who had previously obtained products from the Australian industry, and that "but for the presence of dumped goods that have undercut Abey's selling prices, Abey would have secured a materially greater volume of sales during the investigation period".
60. In my view, the chain of reasoning adopted by the Commissioner to so conclude is sound. Contrary to the contentions made by the Applicant, the conclusion is neither based on an assumption nor is its basis arbitrary. To the contrary, each step of the Commissioner's analysis is supported by the materials before the Commissioner, to which I have had regard. Those materials demonstrate that the price undercutting caused market movement in favour of the Applicant. In those circumstances, the Commissioner was correct to conclude that but for the undercutting Abey would have maintained its market share.
61. Further, I do not accept that the approach taken by the Commissioner in REP 644 "favours" the interests of the Australian industry or that it "conveniently" sidesteps the fact that imports can enter Australia without causing injury to the local industry. True it is that there may well be circumstances in which the importing of dumped goods would not lead to material injury to the Australian industry. However, the Commissioner determined that this is not such a case. Having considered the materials before the Commissioner and the parties' contentions/submissions, I agree that the Commissioner was correct to do so. That is because, in this case, there was a demonstrable causal relationship between

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the undercutting on price and reduction in Abey's market share especially in circumstances where price was the key differentiator between products.

62. The Applicant does not appear to contend that there was no price undercutting. In section 9(c) of attachment 2 to the Application, it contends that there was no price depression or price suppression, which is consistent with the Commissioner's findings. Further, it argues that the sales to mutual customers represents 1% of Abey's sales. Based on that contention, the Applicant argues that it is not clear that Abey lost material volumes of sales to these customers in the investigation period. In my view, the analysis of sales to mutual customers was relevant to the determination of the causal connection between the price cutting and the loss by Abey of market share. It showed, in my view, that customers that are supplied by Abey increased their purchases from the Applicant (or Radius). Those materials provided a sound basis, in my view, for the Commissioner's determination that the price undercutting caused an overall reduction in Abey's share of the Australian market.
63. The Applicant argued that Abey's market share had declined before the investigation period (section 9(c) of attachment 2 to the Application), which is consistent with the findings made by the Commissioner (REP 644, page 59). However, that the market share had declined before the investigation period does not derogate, in my view, from the finding that price undercutting caused further decline during the investigation, which the Applicant does not appear to challenge.
64. The Applicant contends that the price of goods is not determinative in a customer's choice of supplier (section 9(c) of attachment 2 to the Application). That may well be so in relation to certain products. However, the Applicant has not provided any sound basis other than price, upon which a customer would differentiate between Abey's products and the products that the Applicant sells. To the contrary, the Commissioner found that there was little to no differentiation between the products sold by Abey and the Applicant and that such products were readily able to be substituted (REP 644, section 7.4.2).
65. Having reviewed the materials and for the reasons set out above, I am of the view that the approach taken to determine material injury was correct and that there was material injury. Accordingly, Ground 3 fails.

Incorrect calculation of normal value

66. At the conference I held with the Commissioner, I was informed that an error had been identified in the calculation of the normal value of the goods the subject of this report. The correct normal value was lower than the initial value calculated by the Commissioner. That results in a reduction in the dumping margin. Given that position, I have made the recommendation below so as to reflect the correct calculations, because the recommendation below would result in a decision, if adopted, that would be materially different from the Reviewable Decision.

Recommendation

67. For the reasons set out above, I recommend that the Minister revokes the Reviewable Decision pursuant to s 269ZZM(1)(b) of the Act and substitute a new decision in its stead, namely to:

- a) determine a different normal value for Fenghui as per Confidential Attachment 1; and
- b) thus, to vary the Dumping Duty Notice No. 2025/089, by altering the dumping margin for Fenghui from 71.2% to 63.8%.



Pouyan Afshar
Senior Member
Anti-Dumping Review Panel
10 March 2026

Appendix A

Conference

Date of conference	Participants	Purpose of conference
27 February 2026	Commission	To enquire as to whether the calculation error identified in REP 645 was also present in the calculations in REP 644.