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A-TECH/AKJ SUBMISSION NO. 1

REJECTION OF MATERIAL PRELIMINARY FINDINGS, STATUTORY CAUSATION AND RESERVATION OF RIGHTS

SUBMISSION – In response to Statement of Essential Facts No. 691

Countries Involved: Australia and China

Submitted by

A-Tech Australia Pty Ltd
Guangdong AKJ Façade and Architecture Co., Ltd

LODGEMENT DETAILS

To:
The Director – Investigations 1
Anti-Dumping Commission
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1. Purpose

A-Tech Australia Pty Ltd and Guangdong AKJ Façade and Architecture Co., Ltd (A-Tech/AKJ) reject material preliminary findings in Statement of Essential Facts No. 691 concerning market competition, technical substitutability, price effects, injury and causation.

The fundamental concern is that materially different manufacturers, systems, project markets, technical capabilities and commercial circumstances have been aggregated and conclusions have then been drawn concerning competition and injury without sufficiently establishing the transaction-level causal relationship.

> **LIKE GOODS → TECHNICAL SUBSTITUTABILITY → ACTUAL TENDER COMPETITION → CAUSATION → MATERIAL INJURY**

Each material step must be established.

> **The Commission has made the findings. It must establish the evidence supporting those findings.**

2. Statutory framework

Section 269T of the Customs Act 1901 is important to the identity of the protected Australian industry. Where persons produce like goods in Australia, the Australian industry in respect of those goods consists of those producers. The Act also requires Australian production to involve at least one substantial process of manufacture in Australia.

That distinction is important throughout these submissions. An entity may have a commercial interest in the window and façade industry without itself being a producer of the relevant like goods. An association may represent producers without itself becoming a producer. A system owner may receive revenue from systems without necessarily manufacturing the completed goods. An extrusion supplier does not automatically become the manufacturer of the completed façade or window package incorporating its extrusion.

> **The Commission must distinguish the Australian industry producing the like goods from other parties commercially associated with that industry.**

3. Causation must be established

Section 269TAE requires the injury analysis to address injury caused or threatened by factors other than the relevant exports and prevents such injury from being attributed to those exports. The statutory determination must be based on facts rather than allegation, conjecture or remote possibility.

A-Tech/AKJ's objections go directly to that statutory task. The existence of Chinese imports and adverse economic outcomes within an Australian industry does not, by itself, establish the necessary causal relationship.

Where the actual cause may instead include technical non-substitutability, different market participation, absence of an Australian tender, absence of an Australian compliant system, capacity, construction programme, engineering capability, product performance, customer requirements, Australian proprietary systems manufactured in China, competition between different Chinese manufacturers, or other commercial circumstances, the Commission must distinguish those causes from injury properly attributable to dumping or subsidisation.

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4. Matters challenged

A-Tech/AKJ addresses the preliminary findings through seven further focused submissions:

- Submission No. 2: Pre-existing fixed-price contracts and Australian contractor profitability.
- Submission No. 3: Technical substitutability, Class 2+ competition and causation.
- Submission No. 4: Ventora, actual competition with opposing bespoke Class 2+ suppliers, AGWA and independence of evidence.
- Submission No. 5: Capral and Alspec, their status in the relevant industry, Chinese manufacture of their proprietary systems and associated Australian commercial income.
- Submission No. 6: The approximately $350 million tender-loss and $72.6 million forgone-sales findings.
- Submission No. 7: AMJ's actual historical market participation and market segmentation.
- Submission No. 8: Identification of the Australian industry, industry representation and integrity of the evidentiary record.

5. The Commission should investigate the questions raised

These submissions do not ask the Commission to substitute A-Tech/AKJ's assertions for investigation. They identify material questions arising from the Commission's own preliminary findings.

Where the relevant information is held by Ventora, AGWA, Capral, Alspec, AMJ, other industry participants, purchasers, testing laboratories or within information already obtained by the Commission, the appropriate course is for the Commission to interrogate that material and determine the facts.

A-Tech/AKJ should not be required to reconstruct the Commission's evidentiary case.

6. Administrative decision-making

The issues raised in these submissions concern the factual and legal foundation upon which the final determination will be made. A-Tech/AKJ therefore places the Commission expressly on notice of material factual, evidentiary, causation and economic matters requiring resolution before the preliminary findings are maintained in the final report.

A-Tech/AKJ reserves all rights concerning any final determination affected by material factual error, error of law, failure to consider legally relevant matters, reliance upon irrelevant considerations, procedural unfairness, absence of evidentiary foundation, jurisdictional error or other reviewable error.

7. Preliminary dumping rate, disclosure and exporter-specific methodology

A-Tech/AKJ expressly disputes any inference that the provisional dumping rate applicable to AKJ has been accepted. The present submissions primarily challenge the identification of the Australian industry, technical substitutability, injury and causation. The following additional objections concern the transparency and evidentiary basis of the exporter-specific rate. These are separate, cumulative grounds and do not diminish Submissions Nos. 2–8.

A-Tech/AKJ cannot responsibly provide an alternative numerical dumping margin without knowing the calculation methodology, the classification assigned to AKJ and the data or assumptions used to derive the applicable rate. A-Tech/AKJ therefore requests a reasoned, exporter-specific explanation and access to any calculation material that can lawfully be disclosed, with confidential third-party information appropriately protected.

The Commission is requested to identify and explain:

1. AKJ's precise exporter classification, the statutory basis for that classification, and whether the rate is individual, a cooperating-unexamined rate, a residual rate or another category.

2. The calculation pathway for the applicable rate: normal value, export price, currency conversion, weighted averages, adjustments, constructed values, facts available and any sampling or aggregation of other exporters' data.

3. The product comparison method, including product control numbers or equivalent categories, and treatment of differences in frame depth, glazing, thermal breaks, hardware, size, complexity, bespoke Class 2+ specifications and project-by-project manufacture.

4. The product-specific basis of any normal value, export price or non-injurious price calculation, including the source of the underlying data, applicable units, product coverage, comparability adjustments and treatment of materially different product configurations.

5. The lawful basis for any difference in treatment between AKJ and individually examined exporters, including Altop, Broad and Kete; the relevant selection criteria; and whether an individual determination for AKJ is available at this stage.

6. The non-confidential methodology, calculation worksheets or explanatory schedules available to AKJ, and the procedure for requesting any further exporter-specific disclosure without access to competitors' confidential business information.

7. Whether AKJ may submit actual export invoices, product-by-product quantities, factory costs, aluminium and glass inputs, labour, overheads, financial statements and other records for verification before the final determination; and any procedural restrictions or deadlines.

8. If individual assessment is unavailable during this investigation, the precise legal and procedural route, timing and evidentiary requirements for AKJ to seek a later review or individual rate.

A-Tech/AKJ requests that the Commission address these questions in its final analysis and identify any information it considers necessary from AKJ. A-Tech/AKJ seeks consistent application of the governing law, not automatic adoption of another exporter's rate. Any opportunity to provide further data is sought subject to the Commission's applicable statutory powers, procedural requirements and deadlines.

For avoidance of doubt, A-Tech/AKJ does not accept any preliminary margin, normal value, export price or methodology by silence. All available rights are reserved subject to applicable statutory requirements and time limits. This reservation does not purport to extend a deadline or replace any required application or submission.

8. Reservation of rights

A-Tech Australia Pty Ltd and Guangdong AKJ Façade and Architecture Co., Ltd expressly reserve all rights to challenge, seek review of, or make further submissions concerning any dumping margins, normal values, export prices, calculation methodologies, exporter-specific determinations and resulting measures under Investigation No. 691.

The decision not to address those matters substantively in the present submissions must not be interpreted as acceptance of or agreement with the Commissioner's preliminary findings or calculations.

A-Tech/AKJ reserves all available administrative, statutory and judicial review rights, subject to applicable requirements and time limits.

9. Required approach

A-Tech/AKJ requires the final findings to be grounded in the actual goods; the actual Australian producers; the actual manufacturers; the actual systems; the actual technical capabilities; the actual tenders; the actual reasons for project outcomes; and the actual evidence of material injury and causation.

A-TECH

Signed:

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