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A-TECH/AKJ SUBMISSION NO. 2

PRE-EXISTING FIXED-PRICE CONTRACTS, EXISTING PROJECT COMMITMENTS AND AUSTRALIAN CONTRACTOR PROFITABILITY

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

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1. The central issue

Provisional measures commenced on 15 October 2026. A fundamental distinction exists between future projects tendered after the measures and projects tendered, awarded and contractually committed before the measures.

A future tender can incorporate the new cost environment. A pre-existing fixed-price contract cannot simply be repriced.

2. The import-entry date is not the competitive decision date

Major façade contracts progress through multiple commercial and technical stages:

> **Tender → negotiation → award → contract → system approval → engineering → procurement → manufacture → progressive release → shipment → import entry → installation.**

Those events can be separated by many months.

> **Tender date ≠ contract date ≠ engineering date ≠ manufacturing date ≠ shipment date ≠ import-entry date.**
>
> **The import-entry date is not the competitive decision date.**

Goods entering Australia after 15 October 2026 can arise from a tender and contractual commitment made long before provisional measures commenced.

3. Historical tenders cannot simultaneously be treated as current competitive opportunities

The Commission has relied upon historical tender activity when assessing injury. Those historical tenders produced contractual commitments.

Where the tender was completed and the contract awarded before 15 October 2026, the competitive process has ended, the contractor has been selected, the contract price has been fixed and there is no new tender for an Australian manufacturer to win.

Imposing an additional import cost upon later shipments under that existing contract does not recreate the historical competitive opportunity. It imposes a new cost upon an existing Australian contractual obligation.

4. Fixed-price construction contracts

The Commission should not assume that an Australian façade contractor can simply pass the additional cost to the builder. Where no contractual entitlement exists to recover the cost, it is borne by the Australian contractor.

> **Contract value is not profit. Imported material value is not profit. Revenue is not available margin.**
>
> **What evidence establishes that an Australian façade contractor operating under a fixed-price contract has sufficient margin to absorb a substantial additional import cost imposed after the contract was signed?**

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5. Foreseeable economic consequences

The Commission and ultimately the Minister are now expressly on notice that imposing substantial additional import costs upon pre-existing fixed-price Australian construction contracts can produce consequences materially different from measures affecting future tenders.

- substantial erosion of contracted project margins;
- elimination of project profit;
- conversion of profitable contracts into loss-making contracts;
- serious cash-flow pressure;
- impairment of the contractor's ability to satisfy existing obligations;
- financial distress; and
- in sufficiently serious circumstances, insolvency.

These consequences arise after the competitive decision has already occurred.

6. Australian economic consequences require consideration

Section 269TAE requires the injury analysis to distinguish injury attributable to the relevant exports from injury caused by other factors and requires the determination to be fact-based.

Where measures themselves impose a new cost upon Australian companies already contractually committed to projects, the Commission should identify that consequence separately and address it expressly.

> **Having now been expressly notified of these consequences, the Commission should identify in its final report how the foreseeable financial impact upon Australian contractors performing pre-existing fixed-price contracts has been considered.**

7. Progressive manufacture does not create a new tender

Major projects can require manufacturing and deliveries over extended periods. A production release occurring after 15 October does not mean the project was awarded after 15 October. A shipment leaving China after 15 October does not mean the project was tendered after 15 October. A customs entry occurring after 15 October does not mean the competitive decision occurred after 15 October.

> **The Commission should distinguish new post-measure business from performance of pre-measure contractual commitments.**

8. Required determination

The Commissioner should identify and consider whatever lawful transitional, exemption, grandfathering or other treatment is available for genuine pre-existing contractual commitments.

1. contracts executed before 15 October 2026;
2. tenders accepted before that date;
3. projects formally awarded before that date;
4. purchase commitments made before that date;
5. goods already in production;
6. progressive manufacturing under pre-existing contracts;
7. later shipments arising from those contracts;
8. the ability of Australian contractors to recover the additional cost; and
9. the consequences where recovery is contractually unavailable.

If no lawful mechanism exists, the final report should state that conclusion and identify its legal basis.

The issue cannot simply be left unanswered.

Signed:

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