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A-TECH/AKJ SUBMISSION NO. 6

CHALLENGE TO THE APPROXIMATELY $350 MILLION TENDER-LOSS AND $72.6 MILLION FORGONE-SALES FINDINGS

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 headline figures require transaction-level reconciliation

The approximately $350 million alleged tender-loss figure and $72.6 million alleged forgone-sales figure are central findings. Together they represent more than $420 million of alleged affected business.

> **The Commission cannot rely upon a headline number without establishing the transactions that comprise it.**

2. The approximately $350 million

For each material claimed tender loss, the Commission should establish the claimant; whether the claimant produces the relevant like goods in Australia; project; building class; tender date; package value; whether the claimant actually tendered; system offered; technical compliance; tender price; successful tenderer; successful system; equivalent scope; price difference; non-price differences; reason for award; and whether an Australian proprietary system manufactured in China was involved.

Only after that analysis can a project properly be attributed to price effects from dumped imports.

3. Purchaser evidence

Where the Commission determines that price caused a tender loss, the reason for the purchaser's decision is critical. The unsuccessful tenderer's belief about why it lost does not necessarily establish why the purchaser selected another supplier.

The Commission should test material causation findings against information available from the relevant builder, developer, head contractor, purchaser or other decision-maker.

Potential reasons include price, technical compliance, engineering, product performance, programme, capacity, previous experience, risk, contractual terms and installation methodology. The cause should be established rather than assumed.

4. The $72.6 million requires a different test

A project not tendered by an Australian manufacturer is fundamentally different from a tender actually lost. Where no tender was submitted, there is no Australian tender price, no direct undercutting comparison, no head-to-head tender involving that manufacturer and no project outcome demonstrating that dumped price caused that manufacturer to lose.

> **A project that an Australian manufacturer did not tender is not a verified lost sale.**

Before such a project can be attributed to dumped imports, the Commission should establish that the manufacturer possessed a compliant system, required testing, engineering capability, manufacturing capacity, programme capability, genuine commercial ability and intention to supply the project, and a decision not to tender actually caused by dumped import pricing.

5. Australian proprietary systems manufactured in China

The $350 million figure should also be reconciled against projects won by Chinese manufacturers using Australian proprietary Capral, Alspec or other Australian systems.

> **The Commission should distinguish the fabrication opportunity allegedly lost from Australian proprietary-system income associated with the successful imported transaction.**

The entire project value should not automatically be characterised as an Australian economic loss.

6. Australian industry status

The Commission should identify whose loss is being counted. Section 269T identifies the Australian industry by reference to persons producing like goods in Australia.

The analysis should distinguish actual Australian producers of the like goods, associations, system owners, extrusion suppliers, component suppliers and other commercially interested entities.

7. Required reconciliation

- A. Verified head-to-head tender losses attributable to price.
- B. Tender losses attributable materially to non-price factors.
- C. Projects where technical substitutability was not established.
- D. Projects where the Australian manufacturer did not tender.
- E. Projects won by Chinese manufacturers using Australian proprietary systems.
- F. Projects where the reason for loss could not be verified.
- G. Transactions where the claimant was not itself an Australian producer of the relevant like goods.

Section 269TAE requires a fact-based determination and prevents injury caused by other factors from being attributed to the relevant exports. That statutory requirement demands this reconciliation.

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