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A-TECH/AKJ SUBMISSION NO. 8

IDENTIFICATION OF THE AUSTRALIAN INDUSTRY, INDUSTRY REPRESENTATION AND INTEGRITY OF THE EVIDENTIARY RECORD

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 statutory Australian industry must be identified correctly

Who actually constitutes the Australian industry allegedly suffering material injury?

Section 269T provides that where persons produce like goods in Australia, there is an Australian industry in respect of those goods and, subject to the statutory exceptions, that industry consists of those persons. The Act also requires at least one substantial manufacturing process in Australia before goods are treated as partly manufactured in Australia.

This means the Commission must distinguish carefully between an Australian producer of the like goods and an entity that is commercially connected with the market but does not itself produce those goods.

2. Commercial interest does not automatically establish membership of the relevant Australian industry

Investigation 691 involves completed window manufacturers, façade manufacturers, bespoke façade/window manufacturers, system owners, extrusion suppliers, component suppliers, importers, contractors and an industry association. Those functions are not legally or economically interchangeable.

An industry association does not become a manufacturer because it represents manufacturers.

A system owner does not automatically become the manufacturer of completed goods fabricated using its system.

An extrusion supplier does not automatically become the manufacturer of the completed window or façade package.

Commercial interest in an industry is not the same as constituting the Australian industry producing the like goods.

3. AGWA

AGWA is an industry association. Its views may provide information to the Commission, but its advocacy must be distinguished from evidence of material injury suffered by an actual Australian producer.

The Commission should identify which Australian producers supplied AGWA's evidence; which members determined AGWA's position; the extent to which Ventora supplied or influenced that information; whether members with materially different commercial models participated; whether importing members or businesses involved with Chinese manufacturing were represented; and whether AGWA evidence relied upon by the Commission is independently sourced.

The Commission should not treat AGWA position = position of every Australian producer without establishing that proposition.

4. Capral and Alspec

The same legal distinction applies to Capral and Alspec. Their commercial significance within the Australian aluminium industry does not itself determine whether they are producers of the completed like goods relevant to a particular injury finding.

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The Commission should identify precisely what relevant like goods each produces, what substantial manufacturing process each undertakes in Australia, and what injury to that production is being relied upon.

Where their proprietary systems are manufactured in China and generate Australian royalty, licence or related revenue, that commercial participation should also be identified.

5. Ventora and the source of industry evidence

Ventora is commercially interested in the outcome of Investigation 691. That does not invalidate its evidence. It does mean that the source of apparently corroborating evidence matters.

VENTORA → AGWA → COMMISSION

VENTORA → COMMISSION

Where substantially the same proposition travels through both routes, the Commission should not treat them as two genuinely independent sources without examining their common origin.

WHO CREATED THE INFORMATION → WHO SUPPLIED IT → WHO REVIEWED IT → WHO ADOPTED IT → WHO PRESENTED IT → WHO INDEPENDENTLY VERIFIED IT

6. Public technical representations

The public laboratory-test example addressed in Submission No. 4 reinforces why this distinction matters. Public advocacy concerning Chinese product quality should not substitute for verified technical evidence.

The Commission's determination must be based on the actual test requirements, actual test result, actual system and actual manufacturer. One specimen cannot establish the technical performance of all Chinese manufacturers.

7. Support for an application is different from proof of injury

The Customs Act separately addresses support for an anti-dumping application by reference to the Australian industry producing or manufacturing like goods. That reinforces the importance of identifying the actual producers.

An association, supplier or system owner may have views concerning the investigation. But the statutory injury case ultimately concerns the Australian industry producing the like goods.

8. The Commission should identify the protected industry expressly

1. every entity treated as an Australian producer of the relevant like goods;
2. the relevant like goods each produces;
3. the substantial manufacturing process undertaken in Australia;
4. its production attributable to those goods;
5. its actual market segment;
6. the injury attributed to it;
7. whether any production has been counted through more than one participant in the supply chain;
8. whether entities providing supporting evidence are producers, suppliers, system owners, associations or other interested parties; and
9. how that distinction affected the evidentiary weight given to their submissions.

9. Injury and causation remain the ultimate statutory questions

Section 269TAE requires a determination based upon facts and requires injury caused by other factors not to be attributed to the relevant exports.

> **The final question is not: How many organisations support measures against Chinese imports?**
>
> **The relevant questions are: Which Australian producers manufacture the like goods? What material injury did those producers actually suffer? Which imports caused that injury? What actual competition occurred? What other factors caused or contributed to the alleged injury?**

10. Required correction

> **A-Tech/AKJ requires the final determination to distinguish clearly between Australian producer and industry association; manufacturer and system owner; completed-goods production and component supply; commercial interest and material injury; advocacy and evidence; repeated evidence and independent corroboration; and alleged injury and injury actually caused by dumped or subsidised imports.**
>
> **The final findings must be based upon the actual producers, actual production, actual competition, actual injury and actual causation.**

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