RESPONSE TO STATEMENT OF ESSENTIAL FACTS NO. 691

Aluminium Windows and Doors Exported from the People's Republic of China

SUBMISSION BY AWARD WINDOW SYSTEMS PTY LTD (ABN 86 692 171 083)

Australian importer, manufacturer and installer of aluminium windows and doors

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1. Executive Summary

Award Window Systems Pty Ltd, (Award), an Australian importer, manufacturer and installer of aluminium windows and doors (AWD), provides this response to Statement of Essential Facts No. 691 (SEF). Award recognises the Commission's preliminary findings and does not contend that premium positioning, technical sophistication or architectural application, necessarily removes a product from the scope of, or the potential effects of, dumping in the Australian market.

Award's submission is narrower. **The SEF places significant emphasis on shared physical characteristics of AWD.** This then captures all AWD products regardless of material differences, with no regard to their whole-window performance or any mandatory project requirements there may have been in the tender or other process. This leads to an assumption that all AWD are commercially substitutable, comparably priced, but most importantly **are operating in the same competitive field**.

The consequence of this is that the published SEF is treating the AWD market as more homogeneous than particular project and actual performance conditions support. Products may share aluminium framing, glazing and hardware; while materially differing in technical suitability and practical substitutability for a given project.

Award therefore proposes two confined, objective and administrable criteria be assessed:

1. **for those AWD that are independently rated with a whole-window performance Uw 2.9 W/m²·K or lower. As these are used primarily to meet the broader energy star rating standards in the Australian Market;**

2. **for project-specific systems subject to a mandatory and independently documented consultant or architectural integration requirements.**

The purpose of the proposed criteria is not to dilute the Commission's broader findings. It is to identify circumstances in which the evidence supporting those findings should be tested at a more specific level before the same conclusions are applied to materially differentiated products and markets.

> **Without that distinction in the final report, measures directed to demonstrated injurious dumping may also capture higher-performance or specialist project products without the Commission identifying that there is any verifiable evidence that those products materially contributed to the injury identified.**

This will have unintentional, but significant public policy consequences, including increasing the cost of new energy efficient housing projects, increasing the energy usage of large Australian buildings and limiting competition, innovation and change in the Australian AWD Market. None of which is particularly consistent with broader policy or community expectations.

2. Timing and Purpose of This Response

Award did not make a submission in Investigation 691. After the investigation period, Award negotiated specialist import arrangements with Chinese suppliers for particular specific AWD products. This submission therefore places additional performance, specification and project evidence before the Commission for consideration before its Final Report.

3. Introduction

The current goods description encompasses a broad range of AWD. Award does not dispute that specialist products may fall within that description. The issue is whether inclusion in the same goods description is sufficient to establish equivalent commercial substitutability, comparable pricing and the same contribution to injury across materially different performance and project circumstances.

> The goods description covers ***"aluminium windows and doors, whether fully or partially assembled, including frames, panels and sashes, with or without glass, whether or not thermally broken and whether or not including hardware, subject to stated dimensional limits. Curtain wall products are excluded."***

The central issue is therefore not whether specific specialist products share the basic physical characteristics of an aluminium window or door. It is whether those common characteristics are sufficient in all cases to support the Commission making the same conclusions about competition, substitution, price effects and displacement across materially different products and projects.

> **Award submits that this common goods description should not, without further analysis, determine whether all products compete for the same projects, satisfy the same mandatory requirements, have meaningfully comparable prices or exert the same competitive pressure on Australian industry.**

The goods description itself applies objective dimensional parameters to define the products under consideration. Award does not suggest that those existing limits were adopted for the same purpose as what we are proposing. Rather, they demonstrate that the scope of a broadly described product category can be redefined to better administer the Commissions findings by reference to clear and measurable product characteristics.

4. The Purpose of a Confined Exclusion

Award acknowledges that technological innovation is not, by itself, a reason for an exemption from the anti-dumping framework. In this context, its relevance is narrower: We submit that a broad definition of AWD may not only affect products shown to compete directly with Australian goods, but also specialist, technically specific or emerging products whose competitive relationship with those

goods in the investigation may not have been or cannot be separately demonstrated in the investigation evidence.

> **Innovation and specialist performance can emerge first in relatively small niche product segments before becoming more widely available.**

That consideration does not displace the need for effective anti-dumping measures. It does, however, support testing whether objectively differentiated products participated in the same competitive circumstances as the goods shown to have caused injury.

Without this additional assessment, the broad treatment of AWD in the final recommendation to the Minister may otherwise restrict access to advances in thermal performance, durability, glazing, coatings, engineering and architectural integration where those advances are not represented by otherwise substitutable Australian offerings, or if they are, the evidence of anti-competitive influence on the market has not been significantly demonstrated.

The proposed criteria are performance and project-based, technology-neutral, and available to any product that satisfies the stated requirements. They do not create a general exemption from the measures arising from Investigation 691. Rather, they provide a confined means of identifying products whose performance or mandatory project requirements may place them in a different competitive segment of the market.

> **This approach would preserve protection where injury has been demonstrated while allowing objectively differentiated products to be assessed against the evidence relevant to their competitive circumstances.**

Increasing the exemptions to specific and limited criteria in the broad definition of AWD would therefore preserve the effectiveness of measures against injurious mass dumping in the market, those circumstances demonstrated by Investigation 691, while allowing the Commission to test whether the same findings apply to objectively differentiated market segments with vastly different performance and project requirements to those in the general AWD market.

5. Criterion One: 2.9 Cohort Performance Segment

The SEF indicates that differences in product specification, performance requirements, engineering and end-use application may be relevant to market segmentation and the degree of competitive interaction even where those differences do not remove a product from the goods description.

Award submits that this supports a relevant distinction for the **2.9 Cohort Performance Segment (2.9 CPS)**: not that thermal performance necessarily changes the physical identity of the goods, but that an objective performance threshold may identify a cohort whose competitive interaction, pricing and displacement should be assessed separately.

5.1 Why Uw 2.9 W/m²·K is a relevant benchmark

A whole-window U-value (Uw) of **2.9 W/m²·K or lower** has been adopted in this submission as the threshold for the **"2.9 Cohort Performance Segment" (2.9 CPS)**. The threshold is not presented as a statutory or regulatory classification. It is an analytical boundary based on independently rated whole-window performance and the observed distribution of relevant products within the **WERS Framework**.

WERS is Australia's established window energy-rating scheme, administered by the Australian Glass and Window Association (AGWA). It provides independently assessed and third-party certified performance data for windows and glazed doors under Australian Fenestration Rating Council (AFRC) protocols.

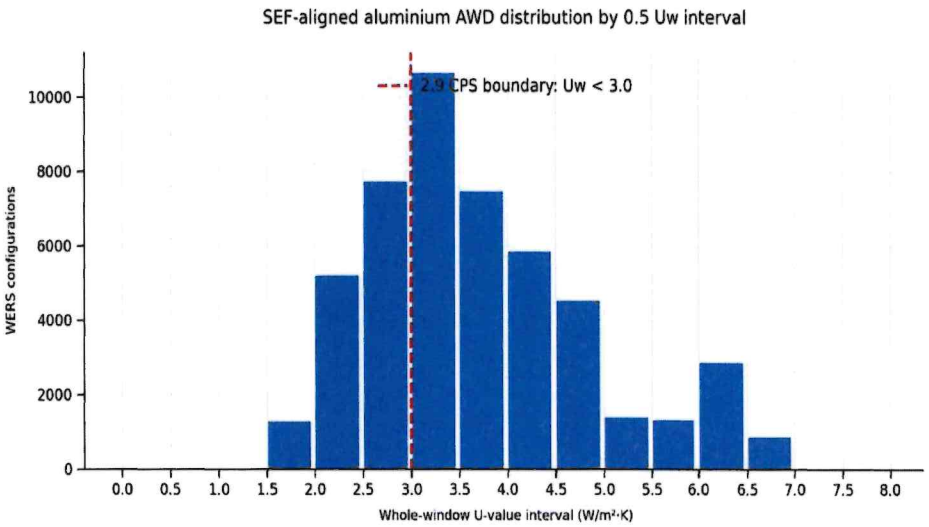
Its product data includes whole-window U-value (Uw) and SHGCw, providing an objective basis for comparing the thermal performance of window systems available in the Australian market.

It therefore provides an objective and reproducible performance measure rather than a distinction based on branding, manufacture testing or claims, country of manufacture or general aesthetic positioning.

> **Lower values represent reduced conductive heat transfer allowing them to better meet the individual States star ratings for houses and projects. It also supports Government initiatives to reduce our reliance on energy consumption in Australian households**

The statistical basis for selecting **Uw ≤2.9 W/m²·K** is set out fully in Appendix B. The analysis uses a WERS population aligned with the goods description as currently defined in the SEF: This produces **49,438 relevant WERS configurations**.

The distribution around the proposed threshold is as follows: **14,322 configurations, or 28.97% fall into the group between 0.0 and ≤2.9**. However, 12,510, or 25.3% fall into the next 0.5 rating (between 3.0 and 3.5 W/m²·K) which is the highest individual separated grouping. There are then 22,606 configurations, 45.73%, that record Uw ≥3.6 W/m²·K.



Accordingly, **35,116 configurations, or 71.03% of the relevant WERS population, sit at Uw 3.0 W/m²·K or above**, compared with 28.97% at Uw 2.9 W/m²·K or below. We can therefore contend that almost ¾ of WERS entries do not meet this 2.9 CPS threshold.

This distribution is important to the selection of the benchmark, **Uw 2.9 W/m²·K marks the upper boundary of a discrete lower-Uw cohort before the substantially larger 71.03% of configurations occurring from Uw 3.0 upward.** The threshold therefore does not divide an otherwise uniform distribution at an arbitrary point; it identifies a measurable higher-performance cohort using a recognised whole-window performance characteristic.

> **To qualify for this proposed exemption, an AWD that meets the 2.9 CPS would only qualify if it had also passed all required independent testing to be registered by the AGWA on the WERS database.**

As a separate cross-check, Award compared the **126 exporters identified in Investigation 691** with the WERS Manufacturer field. Twelve manufacturer-level matches were identified; However, **only nine of those 126 have at least one configuration satisfying the 2.9 CPS threshold**.

In total, those matched exporters account for only **467 of the 14,322** configurations within the entire 2.9 CPS, or **3.26%.** The remaining 13,855 configurations, or 96.74%, are listed by other WERS manufacturers.

> **The 3.26% is not advanced as evidence of sales, import volumes or market share. Its relevance is narrower: the exporters presently matched from Investigation 691 have a very limited representation within the WERS-listed 2.9 CPS, or realistically in WERS generally.**

Taken together, the **WERS distribution and exporter comparison** support treating the 2.9 CPS as an identifiable performance cohort that support and meet current Government policy to reduce energy consumption and raise a focused question for the Commission to assess: whether its underlying volume, price, tender and displacement evidence demonstrates the same competitive effects within that cohort as within AWD generally.

Award therefore asks the Commission to consider the **2.9 CPS as a separate market segment for analytical purposes**, and to assess the transaction, pricing, tender and displacement evidence relevant to that segment rather than infer an outcome solely from the broader AWD findings.

The existing dimensional limits in the broad definition of AWD demonstrate that the imported goods can be defined by objective and verifiable product characteristics. The relevant point relating to the dimensional limits is that the Commission's findings need not be applied to every product sharing the general characteristics of AWD without distinction. **A measurable criterion can be used to identify materially different competitive circumstances.** Uw ≤2.9 W/m²·K (2.9 CPS) provides such a criterion and allows those circumstances to be tested against the Commission's underlying injury evidence.

For the proposed exclusion, the threshold would apply to the complete configured window or door, not a centre-of-glass value or isolated component. The imported configuration would need to correspond with the configuration listed in the WERS Certified Product Directory as a whole system with Uw ≤2.9 W/m²·K.

The Commission should also consider the proposed 2.9 CPS in the context of Australia's broader energy-efficiency objectives. NatHERS and the NCC form part of an established policy framework directed toward improved residential thermal performance, while NatHERS identifies reduced energy bills and emissions as outcomes of better-performing homes.

Award does not contend that this policy framework requires Uw ≤2.9 W/m²·K. Rather, it demonstrates that **improved whole-window thermal performance has a recognised public-policy value**.

Considering the potentially minor effects on the broader general AWD market, Award submits that the competitive and injury effects of the CPS 2.9 cohort that support these public policy outcomes, warrant specific examination before measures are applied without distinction.

6. Criterion Two: Project Specific Technical Requirements

Award acknowledges that "Architectural Specification", considered in isolation, may involve subjective judgment. The proposed exclusion therefore does not depend upon that description alone.

We submit that for an AWD to be able to claim an exemption under a **Project Specific Technical Requirement (PSTR)** the operative test would be whether the relevant window or door is subject to a mandatory, objectively defined and independently documented technical or architectural integration requirement before a tender or other selection process even began.

Award submits that the criterion should apply only where project drawings, specifications, schedules or written direction from the project manager, architect or relevant design consultant require the AWD to match or integrate with a specified architectural or façade requirement in respect of **frame construction, profile, sightline, finish, covering, cladding, geometry or another defined physical characteristic**, and compliance with that requirement is necessary for design compliance, consultant approval or acceptance under the project specifications.

A preference for a particular brand, supplier, country of manufacture or general aesthetic outcome where substitutability is demonstrated in the tender process would not be sufficient.

The requirement must be **specific to the project, documented independently of the importer or supplier, objectively verifiable, and such that substitution would require a documented change to the approved design or technical requirement**. This provides a tight practical basis on which the requirement could be verified by the relevant authorities if required.

6.1 Specialist products as supporting evidence

Appendix A provides two specialist products as practical examples of the issue the PSTR criterion is intended to address. Award's evidence identifies the relevant technology, physical characteristics, architectural and technical requirements associated with those products, as well as their use within the Australian Market.

Award's Australian-market search has **not identified a previous or presently available commercially equivalent Australian-market product satisfying the same characteristics**.

> **The significance of these examples is not simply that the products are novel or technically advanced. They test whether the broad treatment of AWD captures products whose relevant technology or mandatory project requirement may not have been represented in the competitive, displacement and injury evidence underpinning the broader findings.**

Where a project mandates specialist architectural or technical characteristics and commercially equivalent Australian-market products satisfying those requirements have not been identified, Award submits that **competitive displacement should not be assumed merely because the imported product falls within the broader physical description of an AWD**. The more relevant question should be whether an Australian product could have satisfied the same mandatory project requirement and therefore genuinely competed for that work.

This applies not only for future projects but also can be mapped using our examples against those projects that were found to have caused harm to the Australian Market in investigation 691. We ask that if the evidence presented does not demonstrate the material presence of these types of products within the Australian market segment assessed, then can the broader injury finding automatically be attributed to those products merely because they fall within the same general AWD description.

If this issue is untreated, practically, the examples of the type of specialist systems demonstrated in Appendix A, would become materially more expensive in Australia than elsewhere internationally. Subjectively due to the application of that broad general AWD description.

The alternatives available to the project seeking specialised AWD may be to **retain the specified system at higher cost, seek to substitute another lesser system forcing a substantial redesign of the relevant building elements, or accept the limitation and abandon that design requirement completely**.

Award therefore submits that, if further examination of the tender data and other evidence relied upon in Investigation 691 does not identify products comparable to those described in Appendix A;

> **the Commission should not simply infer that the displacement and injury identified across the broader AWD market is equally attributable to this materially differentiated broad class of goods. In the absence of such evidence, there would be a substantive basis for considering a PSTR exemption before those broader findings are referred to the Minister.**

7. Substitutability in Different Competitive Segments

The SEF recognises that competition and substitutability may vary according to product specifications, project requirements, technical suitability and AWD type. Award submits that the two proposed criteria identify circumstances in which those differences can be measured and verified.

The 2.9 CPS identifies a whole-window performance cohort. The PSTR criterion identifies systems that cannot be substituted without departing from documented design or consultant requirements. In each case, the relevant competitive field may be significantly narrower than the broad AWD category.

> **Award does not submit that technical differentiation, certification or project specification makes dumping impossible.**

We are simply noting that the published analysis does not, on the information presently identified by Award, separately disclose tender outcomes, import volumes, prices or lost projects by whole-window Uw band, WERS status or mandatory integration requirements.

Award therefore asks the Commission to interrogate its underlying evidence: how many of the imports, tenders, undercutting observations and lost projects relied upon for the injury finding involved ≤2.9 systems or products satisfying a mandatory PSTR integration requirement?

If these two objective criteria identify cohorts in which the available evidence points to materially different competitive conditions, the Commission would be justified, or perhaps even required, to consider its final finding to the Minister in order to not unduly restrict access to products that were not shown to have caused injury.

> **The Commission should therefore determine whether the loss demonstrated in the broader market can properly be attributed to those suggested cohorts.**

8. Public Policy and Community Expectations

There are also broader consequences in applying the same treatment without distinction to these segments. In particular, doing so may:

- restrict Australian access to innovative and higher-performing window and door technologies;
- reduce the range of products available to designers, builders and developers seeking improved building-envelope performance;
- make it more difficult or costly to achieve increasingly demanding energy-efficiency outcomes supported by NatHERS, the NCC and related government policy; and
- where lower-performing alternatives are substituted, increase operational energy demand and associated recurrent energy costs over the life of the building.

These considerations are consistent with the broader direction of Australia's building-energy framework. NatHERS is used to assess residential energy performance and supports compliance

with NCC energy-efficiency requirements, while Australian Government policy seeks improved residential energy performance, including reduced household energy costs and emissions.

> **Award does not ask the Commission to presume an absence of injury. Rather, Award asks the Commission to test whether the volume, pricing, tender and displacement evidence relied upon in the SEF actually involved products technically comparable and commercially substitutable with those identified in Appendix A.**

If that evidence does not demonstrate material competition, displacement or price effects involving comparable products within these segments, Award submits that the broader injury finding should not automatically be extended to them merely because they fall within the broader description of AWD.

To do so would risk imposing an additional Australian only market cost for the duration of the measures on a cohort of products not demonstrated by the evidence to have materially contributed to the identified injury, while potentially reducing access to specialist technologies and higher-performance products that support broader Australian building-energy objectives.

9. Conclusions

Award Submits that the Commission should consider the technological product market separately because the undifferentiated treatment of all AWD risks solving the demonstrated dumping problem by creating a broader barrier to technological development, specialist architectural solutions and product choice in Australia. We conclude as follows:

- The SEF's broad goods description of AWD and aggregate injury findings do not, without further analysis, establish identical competitive conditions across every objectively measurable performance or project-specific product cohort.
- A whole-window Uw at or below 2.9 $W/m^2 \cdot K$ provides an objective benchmark for identifying a limited higher-performance segment, especially when supported by the inclusion of independent ratings and enforced registration on the AGWA, WERS configuration database.
- The PSTR exclusion provides a means that can link the project context with a mandatory and independently documentable integration requirement to allow the supply of specific products into the market when they are needed to meet specific criteria.
- Appendix A shows the Commission two specialist products to further investigate whether the broad goods treatment captures products for which there is no identified presently available commercially equivalent Australian-market offerings.
- The two criteria 2.9 CPS and the PSTR cohorts together are technology-neutral, independently verifiable and capable of administration through the Commission and Australian Border Force in a manner comparable to objective dimensional restrictions.
- Given the broader community expectations, if the Commission does not provide the exemptions, the Final Report to the Minister should still address whether these objectively identified segments materially affected comparability, competitive overlap, price effects, injury and causation.

10. Findings Requested

Award respectfully submits that the Commission, consider the following in preparing its Final Report and recommendations to the Minister:

10.1 Uw ≤2.9 whole-window performance exclusion

Recommends an exclusion for aluminium window and door systems that:

- Are registered as a certified product in the Australian WERS Certified Product Directory, with a whole-window U-value (Uw) ≤2.9 W/m²·K where the listed product configuration corresponds directly to the goods being imported.

10.2 Project Specific Technical Requirements

Recommends a confined exclusion where an AWD forms part of, or is required to integrate with, a Project Specific Technical Requirement (PSTR) of a specific project, provided that **all** of the following requirements are satisfied:

- the relevant architectural or technical requirement was documented in the approved project drawings, specifications or tender documentation **before** selection or procurement of the imported AWD;
- the requirement identifies objectively measurable physical characteristics of the AWD, including dimensions, frame construction, profile, sightline, finish, covering, cladding, geometry or interface with adjoining building elements;
- compliance with those characteristics is mandatory for acceptance of the AWD into the project and **cannot be satisfied by substitution** without requiring a documented alteration to the approved architectural or technical design;
- the requirement is project-specific and does not specify or depend upon a particular brand, supplier or country of manufacture; and
- the importer provides the relevant project documentation and evidence demonstrating compliance with each requirement at the time the exclusion is claimed.

10.3 Alternative finding if the exclusions are not accepted

If the Commission remains satisfied that the cohorts raised in this submission do not meet a specialised market segment and should remain within the current goods description, expressly address

- whether its underlying transaction, tender and project evidence demonstrates material competitive overlap, undercutting or displacement within the ≤2.9 CPS and PTSR cohorts.

- Identify whether the injury evidence independently supports application of the broader SEF findings to those cohorts or if there is an assumption made regarding the equivalent effects from the general AWD market.

11. Final Statement

Award supports the objective of protecting Australian industry from injurious dumping and subsidisation. Award does not seek a general exemption for products described as premium, innovative, thermally broken or architecturally significant and supports the Commission in that finding.

The requested exclusions are confined by newly presented objective evidence, that we believe warrants further investigation by the Commission. If supported by findings this demonstrates that although they may share the same basic physical characteristics of AWD, they are not commercially interchangeable or part of the same general field of competition identified in the SEF through investigation 691.

Award's proposed exclusions preserve the protection intended for general Australian manufacturers while requiring a closer examination of products for which the evidence may not have established equivalent competition, displacement or injury.

> **Together, that evidence is intended to test whether the displacement and injury identified across the broader AWD market can properly be attributed to products within an objectively defined higher-performance or mandatory specialist-application cohorts. If the underlying evidence does not demonstrate material competition, displacement or price effects involving those type of products, Award submits that this would provide a substantive evidentiary basis for considering their separate treatment in the final recommendations to the Minister.**

Yours faithfully,



Chris Lyons
Director & CEO
Award Window Systems Pty Ltd