Submission in Response to the Statement of Essential Facts

Investigation 691 – Aluminium Windows and Doors from China

Submission by ABS Façade Pty Ltd

This submission is made by ABS Façade Pty Ltd ("ABS") in response to the Statement of Essential Facts – SEF 691 issued in relation to Investigation 691 – Aluminium Windows & Doors from China. ABS also refers the Commission to its earlier submission recorded as EPR 494, Importer – ABS Façade Pty Ltd – Submission in support of Broad Windows and Doors, and continues to support the positions outlined in that submission.

ABS acknowledges the important role that Australia's trade remedies framework serves in protecting domestic industry where dumping and material injury have been established. ABS does not seek to challenge that framework or the Commission's role in administering it. Rather, this submission seeks to draw attention to several practical consequences of the proposed measures that ABS believes have not been fully considered within the SEF, particularly the effect on downstream Australian businesses operating within the Class 2 and above residential construction market.

ABS is an Australian façade contractor, importer and fabricator. The company maintains approximately 30,000 square metres of fabrication and operational facilities across Australia and employs Australian personnel involved in engineering, project management, design coordination, fabrication, logistics and installation. While imported aluminium windows and doors form part of the solutions delivered by ABS, they represent only one component of a much larger Australian project delivery process.

That distinction is important because much of the debate throughout this investigation has understandably focused on the impact of imports on Australian manufacturers. However, there is another part of Australian industry that exists downstream of the importation process. Companies such as ABS employ Australian workers, support Australian subcontractors and deliver Australian construction projects. The effects of any measures imposed will not be confined to overseas exporters. They will also be experienced by Australian businesses that rely upon imported products as part of broader Australian construction activity.

The Commission has received a significant number of submissions from builders, developers, construction contractors, importers and end users. In ABS's view, this level of participation demonstrates that the issues raised by this investigation extend well beyond the interests of domestic manufacturers alone.

A matter of particular importance is the exemption sought by Broad Windows and Doors and Curtain Wall System Co., Ltd. ABS continues to support that application and urges the Commission to give careful consideration to whether the Class 2 and above residential market represents a distinct market segment from the broader residential market that underpins much of the injury analysis.

ABS's experience is that large-scale residential developments operate within a fundamentally different procurement environment to detached housing and lower-complexity residential projects. These developments typically involve bespoke façade systems, project-specific engineering, extensive compliance obligations, demanding acoustic and thermal performance requirements and highly coordinated delivery programs. The suppliers competing in this segment are not necessarily the same suppliers competing in the broader residential market. They are often required to demonstrate substantial production capacity, sophisticated engineering capability and the ability to support large-scale multi-residential developments over extended delivery periods.

For this reason, ABS respectfully submits that caution should be exercised before assuming that all aluminium windows and doors participate in a single market. The practical realities of the Class 2 and above residential sector are completely different, and ABS believes that the exemption requested by Broad should be seriously considered.

One key issue that ABS believes has not received sufficient attention throughout the investigation is the distinction between projects that have already been committed and projects that have not yet entered the market.

If measures are ultimately imposed, the industry will adapt. Future tenders can be priced differently. Procurement strategies can be revised. Contractual risk can be allocated appropriately. Builders, developers and suppliers will be able to make commercial decisions with knowledge of the applicable duties and securities.

The difficulty arises from projects that have already been tendered, negotiated, awarded and procured.

Across the Australian construction industry there are numerous residential developments that were contracted long before the publication of the Preliminary Affirmative Determination. Many have progressed through design development, supplier selection, procurement and manufacturing. In those cases, the relevant commercial decisions have already been made.

This is a particularly important point in the context of the construction industry. Procurement decisions for major apartment projects frequently occur many months or years before products are shipped. By the time goods arrive in Australia, contractors have often already completed detailed design, obtained client approvals, entered supply agreements, committed manufacturing capacity, paid deposits and incorporated those products into comprehensive project delivery programmes.

Accordingly, the date of importation is not an accurate representation of the point at which the commercial commitments were made.

Whilst market participants were aware that an investigation was underway, they could not have reasonably anticipated the outcome of that investigation or the rate of the dumping margins and securities proposed. There is an important distinction between knowing that an investigation exists and being able to accurately quantify the financial consequences that may arise from it.

For ABS, this issue is not theoretical.

ABS is currently under contract for a number of residential window and door packages across multiple large-scale projects that were tendered, awarded, contracted and procured before publication of the Preliminary Affirmative Determination.

Only a relatively small proportion of the products associated with those projects entered Australia before the interim measures took effect.

As a consequence, ABS will be exposed to a significant amount in interim securities across those projects. See Appendix A for further details.

Those costs were not capable of being incorporated into tender pricing when the projects were won, and in most cases, they are not recoverable under the relevant contractual arrangements.

The important oversight here is that the party bearing those costs is not the overseas manufacturers who form the basis of the investigation. It is an Australian façade contractor employing Australian workers and delivering Australian residential developments.

That outcome illustrates one of the most significant concerns arising from the application of the proposed measures to projects that have already progressed beyond the procurement stage. The burden is effectively transferred from the overseas supplier to an Australian business that has already entered into legally binding contractual commitments.

ABS also remains concerned about the practical implications of domestic supply capacity.

The public record demonstrates that market participants hold differing views regarding the ability of local manufacturers to service demand generated by large-scale residential developments. ABS's experience is that the Class 2 and above residential market requires suppliers capable of delivering significant volumes under demanding delivery programmes. Domestic fabrication capacity alone is often insufficient to satisfy the volume and delivery requirements of this market, forcing Australian contractors to rely on supplementary fabrication capacity from overseas suppliers.

The key question is not simply whether domestic production exists. It is whether sufficient domestic production exists to service this segment of the market without delaying construction programmes and increasing project costs.

The Australian construction industry benefits from the availability of multiple supply sources capable of servicing projects with varying technical requirements, delivery programs and budget constraints.

Whilst these issues may fall outside the specific injury analysis undertaken by the Commission, they are nevertheless practical consequences that warrant consideration when determining the appropriate scope and operation of any measures. The purpose of anti-dumping measures is to restore fair competition, not diminish competition.

ABS is similarly concerned that the effect of the proposed measures may ultimately fall disproportionately on Australian-owned small and medium-sized businesses.

The façade industry is comprised largely of specialist contractors operating under fixed-price contractual arrangements. These businesses often have limited capacity to absorb substantial and unforeseen cost increases. ABS has firsthand experience of the financial challenges created by major market disruptions. The unprecedented increases in aluminium and steel pricing throughout and following the COVID period demonstrated how quickly project viability can be eroded when costs move unexpectedly after contracts have been executed.

Many businesses within the construction industry continue to carry the financial consequences of those disruptions.

The proposed measures have the potential to create a further layer of unforeseen cost exposure for projects that were contracted under materially different assumptions.

ABS believes the Commission should carefully consider whether the financial burden of the proposed measures will ultimately be borne by Australian contractors rather than the overseas exporters that are the subject of the investigation.

ABS also wishes to raise concerns regarding the operation of interim securities.

At present there remains considerable uncertainty throughout the industry regarding calculation methodologies, reconciliation processes, refund arrangements and the treatment of projects that were committed before publication of the Preliminary Affirmative Determination.

For many businesses, the immediate financial impact of the securities regime may be more significant than the final duty itself.

The temporary withholding of substantial sums has direct consequences for working capital, project financing and day-to-day business operations. Further guidance is required regarding the calculation, administration and reconciliation of interim securities in order to assist affected parties in understanding and managing their obligations.

Finally, ABS urges the commission to consider transitional arrangements if measures are ultimately recommended. Projects already tendered, contracted, procured and committed prior to the Preliminary Affirmative Determination warrant separate consideration because the relevant commercial decisions have already been made.

Without some form of transitional treatment, the practical effect of the measures is to impose substantial costs on Australian businesses that have acted in good faith and that had no meaningful opportunity to account for those costs when the relevant contracts were entered into.

For all of these reasons, ABS requests that the Commission give further consideration to the exemption sought by Broad Windows and Doors and Curtain Wall System Co., Ltd, recognise the distinct characteristics of the Class 2 and above residential market, carefully consider the practical realities of project procurement and domestic capacity, provide greater guidance regarding interim securities and consider whether transitional arrangements are necessary to avoid disproportionate consequences for projects that were committed prior to the Preliminary Affirmative Determination.

ABS appreciates the opportunity to make this submission and would welcome the opportunity to provide any further information that may assist the Commission.