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The Director – Investigations 1
Australian Trade Remedies Commission
GPO Box 2013
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Investigation No. 691 - Aluminium windows and doors exported from the People's Republic of China. Submission in response to the Statement of Essential Facts

Dear Director,

This submission is made on behalf of Logikal Facade Solutions Pty Ltd (Logikal), an Australian importer and supplier of aluminium windows and doors (the goods). It responds to Statement of Essential Facts No. 691 (SEF 691) and asks that the Commissioner have regard to the points raised in making his recommendations and preparing the final report to the Minister.

Logikal confirms that its current provisional securities and future interim dumping duty liabilities stem from sourcing the goods from the residual exporter **[Principal Supplier - Confidential]**. Logikal's position is a simple one. Since 2022, Logikal has had one main customer. It supplies window and door systems to **[Principal Client - Confidential]**. Logikal successfully achieved a preferred supplier position through **[Principal Client - Confidential]** pre-approval and pre-qualification process, prior to the injury analysis period. Every system it supplies is engineered for a particular Class 2 and above project. Its imports did not, do not, and have not taken sales from the Australian industry during the injury and investigation period the SEF examines, and they could not have done so through price.

That position bears directly on the finding the SEF proposes. The SEF treats the Australian market as one in which imports won business by undercutting local prices. Logikal's supply to **[Principal Client - Confidential]** shows how a large part of the Class 2 and above market actually works, with suppliers being chosen by the developer after an assessment of their manufacturing plant, quality and capacity, and they hold that position across many projects and many years. Supply won in that way is not supply won by dumping.

The rest of this submission deals with the foundations of the preliminary findings. It begins with the conditions of competition in the Australian market, which the SEF does not adequately examine. It then addresses the amount for profit in the normal values used for

the residual rate that applies to Logikal's supplier, the tender evidence on which the measure of injury rests, the SEF's treatment of the market segments, and the factors other than dumping that the SEF identifies and then sets aside.

Behind the individual errors sits a broader concern. The system as it operates weighs the injury claimed by the applicant industry and gives no structured weight to the cost of measures to importers, builders and the people who buy what they build. As there is no public interest test in the Act, we urge the use of the Minister's discretion under s 269TL in weighing a full assessment of the downstream effects of the proposed measures.

We include in this submission, **Confidential Attachment A** which sets out the facts on the current high-rise residential projects on which Logikal's goods are now subject to securities, including their engineering requirements, the dates of the purchase orders, the wider facade package Logikal supplies, and the effect that duty would have on each project. It is provided so that the Commissioner and the Minister have those facts before them in deciding whether to make a declaration under s.269TG(1), whether to apply a lesser duty, and whether to exempt goods for Class 2 and above buildings under s.8(7)(a).

Logikal's supply to [Principal Client - Confidential]

One customer, chosen through pre-qualification

Logikal imports and supplies aluminium window and door systems for Class 2 and above buildings. All of its work is for multi-storey residential projects, which for the last five years, has seen Logikal's sales made to one main customer, **[Principal Client - Confidential]**.

[Principal Client - Confidential] [redacted]. Its projects are high-rise apartment buildings that fall within the Class 2 building structures.

Logikal did not become **[Principal Client - Confidential]** supplier by quoting the lowest price on a tender. It became **[Principal Client - Confidential]** preferred supplier of aluminium windows and doors after a thorough pre-approval and pre-qualification process. That process involved the following.

- inspection of the manufacturing plants that make the systems Logikal supplies.
- assessment of the quality of the product and of the manufacturing systems behind it.
- assessment of manufacturing capacity, so that the volumes each project needs can be delivered on programme.
- assessment of Logikal's ability to service **[Principal Client - Confidential]** needs across its projects, in design, engineering, delivery and after-sales support.

Each system is engineered for its project

[Principal Client - Confidential] needs are not met by a catalogue product. Each project requires window and door systems tailored to the building and its location. The design must take account of the wind loads that apply at that site and at each height of the building, the thermal performance the project must achieve, and the acoustic performance needed for the noise environment around the building. Those requirements change from project to project and, within one building, from one elevation or level to the next.

The systems Logikal supplies are therefore custom made. They are designed, engineered and manufactured for one project and are not sold again. Each is, in a practical sense, unique. That is the kind of product the SEF itself describes when it says that "window wall may incorporate heavier aluminium profiles, higher performance glazing and project specific structural, acoustic, thermal or weather performance requirements".

Why Logikal's imports did not cause injury

The SEF's case on causation is that Chinese imports at dumped prices took sales from the Australian industry and suppressed its prices during the injury analysis period, which runs from 1 July 2021 to 30 June 2025. Logikal's imports do not fit that account at any point.

First, Logikal's supply relationship with **[Principal Client - Confidential]** was established in 2022, and it has continued unchanged since. Logikal's imports in the investigation period supplied a customer that had chosen Logikal years earlier. They did not displace an Australian manufacturer from any sale made in the injury analysis period.

Second, **[Principal Client - Confidential]** chose Logikal through a pre-qualification process that assessed plant, quality, capacity and service. Price is weighed, if at all, only among suppliers who have passed that assessment. The SEF accepts that "compliance, delivery capability, technical suitability, supplier reliability, project capacity and previous supplier performance" are "important factors in purchaser decision making". For Logikal's customer, those factors decided who could supply at all.

Third, the SEF has not shown that any Australian manufacturer was pre-qualified by **[Principal Client - Confidential]**, or bid for the supply Logikal provides, or lost it to Logikal on price. If any project in the SEF's lost tender analysis is a **[Principal Client - Confidential]** project supplied by Logikal, it was awarded within a long-standing preferred supplier relationship. It was not lost to a dumped price on that tender.

Logikal recognises that s.269TAE requires the Commission to assess the effect of the dumped imports as a whole, and not importer by importer. Its submission does not ask the Commission to excuse one importer's goods. It puts before the Commission direct evidence of how a large part of the Class 2 and above market is supplied, from the supplier to **[Principal Client - Confidential]**. That evidence goes to three questions the SEF has not answered:

1. what drives supplier selection in that segment,
2. whether the tenders counted as lost were lost on price, and

3. whether the volume of imports into that segment is evidence of injury caused by dumping.

Section 269TAE(2A) provides that injury caused by a factor other than the exportation of the dumped goods "must not be attributed to the exportation of those goods". A long-standing supplier relationship formed through pre-qualification, before the injury analysis period, is such a factor. The volume it represents should not be counted as volume taken from the Australian industry by dumping.

Logikal's request

Logikal asks the Commission to check whether any project counted in its lost tender analysis, or in the $72.6 million of forgone sales, is a **[Principal Client - Confidential]** project supplied by Logikal, and if so, to remove it. It asks the Commission to treat supply made under pre-qualified, long-standing supplier arrangements as a factor other than dumping in the causation analysis. Logikal is willing to provide the Commission, on a confidential basis, with evidence of its pre-qualification by **[Principal Client - Confidential]** and a list of the projects it has supplied.

The Australian market and the conditions of competition

The conditions under which Logikal supplies **[Principal Client - Confidential]** are not unusual in the Class 2 and above market. Its concern is that this investigation treats two materially different parts of the construction industry as one. Conventional residential windows and the engineered systems used in apartment buildings are both made of aluminium framing and glass. That shared material does not make them commercially interchangeable. Both share basic components and materials, but their design requirements, manufacturing processes, specialist resources and delivery capabilities are materially different.

Local capacity is concentrated in Class 1 buildings

The SEF accepts that "some Australian industry members may have greater exposure to Class 1 buildings or generally the residential segment" and that "some imported AWD may be more prevalent in the Class 2 to Class 9 buildings". It nonetheless finds that "the commission does not consider that the evidence obtained during this investigation supports the broader proposition that the Australian industry is confined to, or, only meaningfully supplies Class 1 buildings".

Several Australian fabricators serve smaller and less complex Class 2 developments well. Their capacity to supply a developer such as **[Principal Client - Confidential]**, building many high-rise apartment projects at once, with systems engineered for each one, is far more limited.

Nor is the limit only one of factory size. Delivering engineered systems to a developer of **[Principal Client - Confidential]** scale depends on the capability of the whole organisation, including its design, engineering and quality-control procedures, its engineers and project

managers, its certification and compliance systems, its financial capacity to carry the contractual risk, and its record of delivering comparable projects. Those are the matters a pre-qualification process tests, and simply adding factory capacity does not create them.

Class 2 and above products are engineered to different codes

A Class 1 window is, in most cases, a standard product selected from tested ranges. A Class 2 and above system is engineered for its project, and the design values can change with the level at which the product is installed, because wind pressure and exposure change with height. Design wind pressures for Class 2 buildings are worked out by project-specific calculation, and they vary between elevations, levels and facade zones.

Thermal and acoustic performance are treated in the same way. The thermal performance of the actual framing and glass proposed for a project feeds that project's energy-efficiency assessment, and a change in framing or glass can require it to be modelled again. Similarly with acoustic performance which depends on the noise factors around the particular site. These are the matters that **[Principal Client - Confidential]** projects require Logikal to design for, one project at a time.

Class 2 and above supply is won on qualification, programme and reliability

Class 2 and above projects are procured predominantly by tender or through panels of approved suppliers, and in most cases only after some form of pre-qualification. Logikal's own position as **[Principal Client - Confidential]** preferred supplier is an example.

The factor builders treat as most important is programming, which captures the sequence of construction stages and the need for each supply to arrive on time so that the project stays on schedule. Late delivery of windows and doors delays every trade that follows, and the whole project falls behind. For **[Principal Client - Confidential]**, the cost of that delay is far larger than any saving on the price of the windows. That is why **[Principal Client - Confidential]** assesses a supplier's capacity and reliability before any project is awarded.

Profit in the residual normal values

Logikal's supplier is a residual exporter, and its normal value was determined pursuant to s.269TACAB(2)(d) of the Act, which provides that it "must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export".

Yuanjiang is one of the selected exporters found to be dumping, at 34.8%. Its normal value is therefore one of the normal values averaged into both the residual normal value and the uncooperative normal value. Any error in Yuanjiang's normal value is carried into the 24.4% rate that applies to Logikal's suppliers.

Section 45(3)(b) contains no ordinary course of trade test

Section 45 of the Customs (International Obligations) Regulation 2015 (Cth) governs the amount for profit in a constructed normal value. Its primary rule carries an express limit. Section 45(2) provides that the Minister "must, if reasonably practicable, work out the

amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade".

Where that cannot be done, s.45(3) offers alternatives. The one used for Yuanjiang requires the amount to be worked out by "identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export".

The words "in the ordinary course of trade" appear in s.45(2). They do not appear in s.45(3)(b). The Regulation places the limit in the primary rule and leaves it out of the alternative, in the same section. What s.45(3)(b) asks for is the "actual amounts realised". A loss on a sale below cost is an amount actually realised, and it belongs in the average.

The Commission's Manual confirms the correct approach. Of the three alternatives in s.45(3), it states that "there is no requirement to test for ordinary course of trade in any of these three alternatives, nor will the Commission read any ordinary course of trade requirement into them."[1]

The point has also been decided against the Commission's present method. In 2016 the Anti-Dumping Review Panel examined a profit rate worked out under s.45(3)(b) for a Chinese exporter of steel reinforcing bar. The Panel Member reviewed the confidential calculations and "agreed with Hunan Valin that this profit rate has not been established in accordance with section 45(3)(b) of the CIO Regulation".[2] The Panel then required the Commissioner "to recalculate the profit in accordance with regulation 45(3)(b), that is, by including the actual amounts realised by other exporters, without the application of the ordinary course of trade test".[3]

The Commission did so. Its reinvestigation report records that "in recalculating an amount for profit under regulation 45(3)(b), the Commission did not filter out the non-OCOT sales of other exporters."[4]

The correction can only lower the residual rate

Removing the OCOT filter moves the profit amount in one direction only. The excluded sales are loss-making sales, and adding them back to a weighted average of profit lowers that average, or leaves it unchanged if nothing was excluded. A lower profit amount gives Yuanjiang a lower constructed normal value. Because Yuanjiang's normal value is in the residual average, the residual normal value would fall, and so would the 24.4% residual rate that applies to Logikal's suppliers.

[1] Anti-Dumping Commission, Dumping and Subsidy Manual, December 2021, s 9.3.
[2] Anti-Dumping Review Panel, ADRP Report No. 39, Steel reinforcing bar exported from the People's Republic of China, 2016, para 89.
[3] Anti-Dumping Review Panel, letter to the Anti-Dumping Commissioner dated 14 August 2016, reproduced in Anti-Dumping Commission, Reinvestigation Report No. 369, Steel reinforcing bar from China, 2016, PDF p 1.
[4] Anti-Dumping Commission, Reinvestigation Report No. 369, Steel reinforcing bar from China, 2016, s 4.2, p 8.

The national interest and the Minister's discretion

The SEF accepts that "Section 269TL recognises that the Minister may ultimately decide not to impose measures after considering the Commissioner's recommendation." Where the lesser duty rule is not mandatory, it accepts that the Minister "may still wish to exercise a discretion to do so", and that "the Minister retains the discretion to apply a lesser amount of duty".

A discretion can only be exercised on the information put before the person who holds it. The SEF states that "the broader public interest considerations have not been considered by the Commissioner in making their preliminary findings and recommendations set out in this SEF".

The SEF's only quantified answer on downstream cost is that "AWD costs account for approximately 5% to 7% of total construction costs for a typical 3 to 4 bedroom dwelling". That is a Class 1 figure. The SEF itself notes that "the proportion of AWD costs in the total construction cost varies according to building type". It contains no figure for apartment buildings. Those are the buildings **[Principal Client - Confidential]** builds and Logikal supplies, and the buildings in which window and door systems make up much more of the building envelope.

Duty on Logikal's supply will fall on the cost of new apartments. It will be paid on systems that a developer chose through pre-qualification, from a supplier it appointed years before the investigation period, and that no Australian manufacturer was supplying. It will raise the cost of housing without returning any sale to the Australian industry.

The determinations Logikal asks the Minister to make

Logikal asks that the final report recommend three determinations to the Minister, or that the Minister make these determinations following his own consideration.

1. No notice under s 269TG(1): the securities should be cancelled, not converted

Securities apply to goods “entered for home consumption on or after 15 October 2026”. A security is not a duty, and it becomes duty only if the Minister publishes a notice under s.269TG(1). That provision allows the Minister, “by public notice”, to declare that s.8 of the Dumping Duty Act applies “to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD”.

The power is a discretion. The Commission’s Manual explains what follows from its exercise, with securities “transferred to revenue as interim dumping or countervailing duty on publication of a notice under section 269TG(1) or section 269TJ(1)”. It also explains what follows if the power is not exercised where “if a notice under section 269TG(1) or section 269TJ(1) is not published, any securities taken will be cancelled.”

The prospective notice does not depend on the retrospective one. Section 269TG(2) allows the Minister to impose duty on future exports “whether or not he or she has made, or

proposes to make, a declaration under subsection (1)". The Manual says the same thing that "the Minister may publish a notice under this section independent of a notice published under section 269TG(1)."

There is good reason not to make a s.269TG(1) declaration here. For goods on which security was taken, the declaration rests on a finding that "material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken". Logikal's goods entered since 15 October 2026 were supplied to **[Principal Client - Confidential]** projects under a supply relationship that predates the injury analysis period. Without the security, no Australian manufacturer would have made those sales. Converting the security would not prevent any injury. It would only add a cost to apartments that are already contracted or under construction.

The findings on which the securities rest are also contested on substantial grounds, including the profit in the residual normal value, the lost tender figure and the treatment of other causes. Logikal asks that the final report recommend that the Minister not make a declaration under s.269TG(1), so that the securities taken are cancelled.

2. A lesser duty is desirable

Section 8(5B) of the Dumping Duty Act provides that, where the non-injurious price is less than the normal value, "the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price". Section 8(5BAA) provides that subsection (5B) "does not require the Minister to have regard to the matter in that subsection" where the normal value "was not ascertained under subsection 269TAC(1) of that Act because of the operation of subparagraph 269TAC(2)(a)(ii) of that Act".

The exception removes an obligation, it does not remove the power. The SEF finds that the exception applies, and that "it is not desirable for the Minister to specify a method of calculating ICD and IDD such that the sum of the ascertained export price, the ICD and the IDD payable does not exceed the NIP". In the same passage it accepts that "the Minister retains the discretion to apply a lesser amount of duty". The Manual makes the same point about the parallel provision for undertakings, where the finding of these circumstances "does not prevent the Minister from considering and applying the lesser duty rule where the Minister considers it would be appropriate to do so".

The SEF gives no reason why a lesser duty is "not desirable". The non-injurious price is the price at which the injury the SEF finds would be removed. Any duty above it does nothing for the Australian industry. It is a cost carried by importers, builders and the buyers of new homes. For goods supplied to Class 2 and above projects, where the SEF has not shown that local supply is available at the scale required, that cost buys no remedy.

Logikal asks that the final report recommend, and that the Minister determine, that it is desirable to specify a method of calculating interim dumping duty so that the export price plus the duty does not exceed the non-injurious price. That non-injurious price should be corrected in the ways set out earlier in this submission.

3. Exemption of goods for Class 2 and above buildings under s.8(7)(a)

Section 8(7) of the Dumping Duty Act provides that "the Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he or she is satisfied: (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade".

The Manual confirms that the power is broad, and that it can be used at the end of an investigation. It states that "the exemption power could be exercised when the Minister makes a decision to impose a duty following an investigation." It also states that "the provision imparts quite broad discretions to the Minister."

The question under s.8(7)(a) is not whether some Australian fabricator has made a window for a Class 2 building. It is whether like or directly competitive goods are offered "to all purchasers on equal terms under like conditions having regard to the custom and usage of trade". In the Class 2 and above segment, the custom and usage of trade is project-specific engineering, pre-qualification of suppliers, and supply on the programme of a multi-storey project. Logikal submits that, for much of that segment, the Australian industry does not offer engineered systems on those terms, at the scale required, to all purchasers. Where an importer can show this for the goods it imports, the condition in s.8(7)(a) is met.

The Commission already has applications on this question. The SEF records requests covering "All AWD supplied to Class 2 buildings and construction" and AWD "specifically designed, engineered and supplied for installation in buildings classified as Class 2 or above". It states that the Commissioner "has not considered the exemption applications" and will consider them "in its preparation of the final report". It adds that where a review within the investigation is not possible "and a separate exemption inquiry is warranted, the commission will conduct that exemption inquiry following the conclusion of this investigation".

The Manual describes how such an inquiry tests the first ground. The Commission "will send out a questionnaire to the Australian industry asking whether, in their opinion, like or directly competitive goods are offered or available for sale", and "may also examine whether the terms and conditions attached to any offer to supply are in keeping with its normal business practices". Done one product or one project at a time, that process would leave the same question about the same segment to be answered again and again.

Instead, Logikal asks that the final report recommend that the Minister:

- exempt from interim dumping duty, under s.8(7)(a), goods for Class 2 and above buildings where the importer shows that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions; and
- ask the Commission to conduct a broad exemption inquiry into aluminium windows and doors for Class 2 and above buildings, to establish whether the conditions of

s.8(7)(a) are met for that segment, and to recommend the exemption of interim dumping duty on those goods.

Yours faithfully,

Yan Xie

Director

Logikal Façade Solutions Pty Ltd