CGT LAW
CUSTOMS AND GLOBAL TRADE

4 November 2026

The Director
Investigations 1
Australian Trade Remedies Commission
GPO Box 2013
Canberra Act 2601

By email: investigations1@atrc.gov.au

Dear Director

Investigation No. 691 – Aluminium windows and doors exported from the People's Republic of China

We act for multiple unrelated companies[1] that import and supply facade system, windows and doors to Australia's commercial construction market. This submission is in response to the Statement of Essential Facts (**SEF**) published in respect of Investigation No. 691 – Aluminium windows and doors exported from the People's Republic of China (**Investigation**).

In this submission we set out our client's views on:

a) The scope of the goods under consideration so far as it relates to windows (section 2.2)
b) The scope of the goods under consideration so far as it relates to doors (section 2.3)
c) That the normal value has been incorrect determined (section 3)
d) The claims that the Australian industry manufacturing like goods has suffered material injury (section 4).

In addition to the points set out in this submission, our client maintains the views set out in our submission dated 28 December 2026. Any failure to repeat an argument put in our previous submission should not be taken as an indication that our client's no longer hold that position or that the Commission should not consider that previous submission when making its final recommendation.

1. Fundamental point - There is no price discrimination

Dumping and countervailing duties represent an exception to the general position that Australia must not impose customs duties on Chinese exports at rates that are higher than Australia's most favoured nation rate. Dumping duties are permitted to address unfair price discrimination that causes material injury to an Australian industry.

Regardless of the legislative path the Commission elects to take, its final recommendations suffer from the fundamental flaw that:

- It has identified that Chinese exporters are achieving greater profits on exports to Australian than on domestic sales; and
- Chinses exporters are exporting goods to Australia at a higher price than the comparable Chinese domestic sale price of those goods.

[1] [redacted] **[Name of façade importers]**

The Commission has found an absence of price discrimination. It is not the intention of the *Customs Act 1901* (**Act**) that dumping duties be imposed in these circumstances.

2. Incorrect interpretation of the goods under consideration

It is submitted that the scope of the goods under consideration (**GUC**) has been incorrectly interpreted and applied by the Commission. This has impacted all aspects of the Investigation. In particular, an incorrect interpretation of the GUC has impacted:

a) The identification of the Australian industry and whether the applicant had legislative standing to bring the application;
b) Identification of the extent to which there is an Australian industry producing like goods;
c) The identification of exports from China that are like goods to the GUC;
d) The identification of any dumping margin on the export of those like goods.

These issues were raised in our earlier submission and other parties shortly after the initiation of the Investigation. The Commission elected to neither issue an Issues Paper on the scope of the GUC or adopt model control codes (**MCC**) that would have enabled the Commission to adjust the findings of its Investigation to reflect an altered interpretation of the GUC.

The consequences of the incorrect interpretation of the GUC cannot now be cured and the investigation should be terminated.

2.1. Goods under consideration

The applicant's wording of the GUC is:

"*Aluminium windows and doors, whether fully or partially assembled, including their frames, panels, and sashes, with or without glass, whether or not thermally broken, whether or not including hardware, up to the following dimensions:*

- for window assemblies or partial assemblies (including window frames, panels and sashes), up to and including 3.0 metres high and up to and including 4.0 metres wide; and

- for door assemblies or partial assemblies (including door frames, panels and sashes), up to and including 3.0 metres high and up to and including 7.0 metres wide.

"Fully assembled" refers to a complete window or door unit in which all frames and the applicable panels and/or sash are joined together to form a complete and functional window or door assembly, whether or not glazed, whether or not thermally broken, whether or not including hardware.

"Partially assembled" refers to a fabricated aluminium frame, panel, or sash assembly that is supplied individually or connected to other frame, panel, or sash assemblies, where the combination does not yet form a complete window or door unit, whether or not glazed, whether or not thermally broken, whether or not including hardware.

Excluded are curtain wall products"

The Commission sets out its finding as to the goods and like goods at section 3 of the SEF.

The wording selected by the Applicant to define the GUC is particularly imprecise. In the circumstances it is crucial that the Commission set out its understanding of what it understands is meant by the various terms used in the GUC wording.

The first four key words are “aluminium windows and doors”. Before consideration of any other aspect of the GUC wording, a product must first be identified as either “aluminium window” or “aluminium door”.

Given the importance of the words “aluminium window and doors” it is extraordinary that the Commission has not set out a view as to the meaning of these words. The Commission seems to have proceeded on the assumption that the words “aluminium window” and “aluminium door” mean goods produced by Ventora. If this is the case, the Commission’s approach involves a significant error of law.

The only substantive finding made by the Commission regarding the scope or meaning of the GUC is that window wall fits within the definition of an aluminium window. However, even this finding did not involve the Commission setting out a view as to what products were included within the scope of the wording “aluminium windows”. Issues regarding the interpretation of the GUC are set out below.

2.2. Aluminium windows – Approach to interpretation

It is submitted that by including window wall within the Investigation, the Commission has incorrectly interpreted the GUC. This error results from the fundamental flaw of the Commission in not defining what is in fact is an “aluminium window”.

The Commission cannot sensibly carry out an investigation into aluminium windows without providing a definition of what is an aluminium window. Section 2.3 of the SEF summarises the terms used throughout the SEF. Remarkably, the Commission has included neither the term “aluminium window” or “aluminium door” in this definition. It is unclear how the Commission distinguished between goods that were, and were not, included in the Investigation without defining these terms.

A definition of “window assemblies” is provided in the SEF. It is:

“*A complete assembled window unit comprising all components necessary for installation and operation as a window.”*

This definition still requires the Commission to identify what is a window. The importance of a definition is made clear at section 4.6.1 of the SEF where the Commission states:

“The commission considers the relevant questions to be whether window wall satisfied the goods description established at initiation, including whether it falls within the express exclusion for curtain wall”.

While it is agreed that this is the correct test, how did the Commission answer the question without the Commission identifying what is in fact the meaning of the term “window”.

<u>Ordinary meaning</u>

The most appropriate starting point is the normal understanding of the word “window”.

The Macquarie Dictionary defines window as:

“*1. An opening in the wall or roof of a building, the cabin of a boat, etc., for the admission of air or light or both, commonly fitted with a frame in which are set moveable sashes containing pains of glass.”*

Similarly, the online Cambridge Dictionary definition of a window is “*A space usually filled with glass in the wall of a building or in a vehicle, to allow light and air in and to allow people inside the building to see out”*

The online Collins Dictionary defines window as “*A window is a space in the wall of a building or in the side of a vehicle, which has glass in it so that light can come in and you can see out.*”

This is a common understanding of the term "window" and reflects the goods manufactured by the applicant. This description is also consistent with the MCCs adopted by the Commission in the Investigation.

The key elements of the commonly accepted definition of "window" are:

- An opening in the wall of a building
- For the admission of air or light
- Containing pains of glass

By contrast, the Macquarie Dictionary defines wall as:

"1. an upright work or structure of stone, brick, or similar material, serving for enclosure, division, support, protection etc., as one of the upright enclosing sides of a building or a room, or a solid fence of masonry."

Fundamentally, a window is an opening in a wall. An object that is itself the wall, is not correctly identified as a window. The wall may be made of glass and may admit light. However, that object performs the function of constituting a glass façade/wall. It is enclosing a side of the building.

The Commission's fundamental flaw is that rather than define the term "window", it proceeds on the basis that if window wall is made of aluminium framing and glass, then it is a window. By that logic, a shower screen is a window. A window is not defined by the materials from which it is produced. It is defined by its function.

The Commission states at page 90 of the SEF that "…*the commission considers that incorporating an aluminium-framed window into a broader façade system does not, of itself, alter whether the product meets the goods description*…" However, the Commission sets out no reason for this view. It does not address the questions of, what is an aluminium window, and in what circumstances is a wall correctly identified as a window. Given the impact of this decision, the Commission should set out its view as to what is a window and why it considers that a façade system fits into this definition.

It is submitted that the wording of the GUC demonstrates that the presence of aluminium and glass is not the complete test of whether an item is identified as a window. We say this for the following reasons:

- The goods description distinguishes between aluminium windows and aluminium doors. If all that was necessary to meet the definition of being an aluminium window is glass famed by aluminium, there would be no need to separately refer to "aluminium glass doors". By the Commission's logic, these doors are in fact windows. By the wording of the GUC, it is recognised that glass famed by aluminium is identified not by its physical features, but whether it functions as a window or functions as a door. Similarly, glass framed by aluminium that functions as a wall or façade, is identified as a wall.
- The goods description does not require that the goods include glass. The goods must however, be identified as an aluminium window or door. The wording only has sensible operation if there are features of an unglazed frame that identify that frame as a part of the window. It is submitted that the key feature is the intended installation in an opening of a wall for the purpose of admitting light or air. Window wall does not have this characteristic. It will never be installed in a wall, it is the wall.

Contextual approach

If a dumping notice is made, that notice is a form of delegated secondary legislation. The usual principles of statutory interpretation apply to the terms of the notice, including the scope of the GUC.[2] It is well established that the modern starting point of statutory interpretation is the wording of the text considered in its context. In *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, Kiefel CJ, Nettle and Gordon JJ of the High Court said (at [368]):

> *The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.* (Footnotes omitted)

The context to the wording of the GUC is the application by Ventora in which it is contained. There are a number of important contextual points:

- Ventora is not a manufacturer of facades and almost exclusively supplies AWDs for housing;
- Ventora elected to expressly exclude curtain wall, indicating that the investigation was not intended to cover facades;
- Ventora nominated MCCs that only specified window types for housing and did not nominate window wall;
- Ventora stated at question A-6.7 that "…*AWDs are sold under a quotation basis based on specific housing lot requirements.*"
- Ventora nominated that AS 2047 applied to the GUCs. This is relevant in that AS 2047 expressly distinguishes between windows and window wall (section 1.1 of AS 2047). Further, Ventora did not nominate AS 4284 which is the primary standard applying to window wall.

A fair reading of the Ventora application is consistent with a local manufacture of housing AWDs seeking protection from the importation of housing AWDs.

The scope of the GUC should be interpreted in this context.

Below we address specific particular arguments adopted by the Commission.

a) Difference in functions

The Commission states that at page 91 of the SEF that:

"*the commission considers that the differences described by interested parties concerning product specification, engineering, installation and end use application do not establish that window wall has a sufficiently different physical or functional characteristics such that it falls outside the goods description.*"

Given that the Commission did not define the scope of "window" within the GUC, it is hard to understand on what basis it reached the above conclusion. Had the Commission correctly identified that a window is

[2] *Solar Juice Pty Ltd and Comptroller-General of Customs* [2022] AATA 550 at 56.

an opening in a wall of a building, it would have identified that the function of window wall is significantly different to that of a window.

Window wall forms the façade of a building. It is a wall. This is a completely different function than a window, which is an opening in the façade.

These differences are highlighted by the different purposes that units in a window wall system can serve. Even where the façade is entirely glass, not all sections of the glass façade are designed to admit light or air. The great majority of window wall systems do not contain sections that can be opened to admit air.

There are also a portion of façade panels that while glass, do not admit light. Glass used on the façade of spandrels may itself not be transparent. The back may be painted with ceramic paint. More often, such spandrels contain a back panel. In addition, there may be insulation of other material between the glass façade and the back panel. Internally, the end user of the room may see only a plaster wall. The key point is, even though the external façade is glass, that panel is not performing the function of admitting air or light. The glass is only present to form part of the façade. If the façade was a different material, such as cladding, the unit would not contain glass.

The use of glass spandrels in buildings demonstrates that the presence of glass alone does not defines a component as being window. Rather, it is the function of the component. Is the component an opening in a wall for the admission of light or air, or is the component the wall itself. Unlike window wall, a good commonly thought of as a window would never be designed or used in a way where it admitted no light.

b) Application of AS 4284

On page 92 of the SEF the Commission states:

"*The commission considers that this information establishes that a window wall possesses the characteristics of an AWD while also forming part of a façade system and as such is subject to facade performance requirements*."

It is important to note that window wall should not be identified as "part of a façade system". Rather, the window wall is the façade system. By contrast, a window or door may be part of a façade system in that it is placed within the wall that is itself the façade system.

The Commission's language on page 92 indicates a misunderstanding – it views window wall and windows as equal components of a façade system, rather than recognising that window wall is a complete wall and is the façade. Window wall's characterisation as a façade is what prevents its identification as a mere window.

The Applicants are correct that AS 4284 applies to broader facades system than simply window wall. However, it is the identification of window wall as a façade system, and not a mere window, that results in the application of AS 4284. A window that is an opening in a wall will not be assessed under AS 4284 as a single window. Rather, the window will only be assessed as a component of a wider façade system (being the wall into which it is inserted).

AS 4284 applies to window wall as it is a façade and not a mere window. AS 4284 only applies to windows if they are a component of a façade. Window wall is not outside the scope of the GUC merely because of the application of AS 4284. However, AS 4284 only applies because window wall is a façade and it is this characteristic that takes window wall outside of the scope of the GUC.

c) Failure to separately identify window wall via a model control code

It is clear that the Applicant did not intend window wall to be covered by the GUC. A fair reading of the application is consistent with this view. The strongest point is that the Applicant did not include window wall as a specific type of window or door in item 3 of the proposed MCCs.

It is not reasonable to believe that the Applicants intended window wall to be included in the GUC, yet would not nominate window wall as a specific type of window in item 3 of the MCCs. The Applicants were very specific in nominating types of windows, included sliding windows, fixed windows, awning windows and louve windows in the model control codes.

The failure to include window wall in the MCCs was not a mere oversight. It is consistent with an accurate interpretation of the GUC, a fair reading of the application and the actual business of Ventora.

The approach of the Commission to include window wall in the GUC, but not include a MCC for window wall, impacts the ability of the Commission to now either:

- Remove the impact of it incorrectly including window wall within the GUC; or
- If window wall is properly included, determine the extent to which any dumping of window wall has impacted the Australian market. The Commission's injury assessment has focused on Ventora. However, there can be no credibility to a claim that any dumping of window wall has caused injury to Ventora. By not being able to isolate importations of window wall via the model control codes, the Commission cannot not properly assess the extent to which any dumping of the GUC has caused injury to Ventora.

The Commission should either:

a) Adjust its Investigation, and the results of the Investigation, to only cover windows included in the GUC, which should not include window wall;
b) Expressly exclude window wall from the any recommended dumping notice; or
c) If it can do neither of the above, terminate the investigation as the Investigation has included goods not included in the GUC.

Our clients otherwise repeat their previous submissions regarding the incorrect inclusion of window wall within the GUC.

2.2. Aluminium Doors

So far as it applies to doors, the description in the GUC is:

Aluminium doors, whether fully or partially assembled, including their frames, panels, and sashes, with or without glass, whether or not thermally broken, whether or not including hardware, up to the following dimensions: … for door assemblies or partial assemblies (including door frames, panels and sashes), up to and including 3.0 metres high and up to and including 7.0 metres wide.

The requirement from this description is that:

- The door be identified as aluminium
- The door need not be assembled
- The door need not contain glass
- The door need not be thermally broken
- The door need not include hardware
- The door must be less than 3.01 metre wide
- The door must be less than 7.01 metres high

Although an extremely wide definition of the GUC was provided, the Commission has elected to only investigate a sub-set of the doors described in the application. That subset is doors with an aluminium frame that either contain glazing or are designed to contain glazing.

This is despite the terms of GUC including no requirement that the aluminium door contain glass and rather states that aluminium doors are covered whether or not the aluminium door contains glass.

The Commission has elected to conduct the Investigation in respect of a narrow sub-set of aluminium doors. It does not appear that the investigation included any of the following doors with aluminium frames:

- Aluminium doors that do not contain glazing. As example is an aluminium screen door.
- An aluminium framed or semi-framed shower door.
- Garage doors with solid infill panels.
- Cabinet or wardrobe doors.
- Pool fence doors.
- Security doors.

In addition, the goods description only requires that the door be identified as “aluminium”. There is no requirement that it is the frame that is aluminium. Light duty roller doors for garages, sheds and shopfronts will often be made from aluminium.

The Commission has no power to narrow the scope of the GUC once an application is accepted. It was required to carry out the Investigation to the alleged dumping of the goods described in the GUC.

It is accepted that a review of the application for the Investigation contains statements that are consistent with the reference to aluminium doors in the GUC being aluminium glass doors. If the Commission wishes to rely on wording from other sections of the application to inform the definition of the “aluminium doors”, a similar approach must also be taken in respect of the definition of “aluminium windows”. This is relevant to whether the definition of “aluminium windows” includes window wall.

Put differently, the Commission cannot cure the drafting of the wording of the GUC in respect of “aluminium doors” by adopting a contextual approach, but then not adopt that same contextual approach to the interpretation of “aluminium windows”.

(a) What is the Commission’s definition of the doors under consideration

The Commission must set out what it defines as an aluminium door. It has conducted the Investigation as limited to aluminium doors containing, or intended to contain, glazing. That is, aluminium framed glass doors. What is the basis for the Commission narrowing the scope of the GUC submitted by the Applicant to only aluminium framed glass doors? There is no requirement in the GUC that either:

- the frames of doors be the aluminium component of the door; or
- that the doors contain glass.

The Commission should set out how it interprets the wording of the GUC so far as it applies to doors. This will enable the Minister, the Anti-Dumping Review Panel or a Court reviewing the final report to determined whether:

- the Commission has carried out an investigation into the GUC or only a subset of those goods; and
- whether the Commission has exceeded its legislative power by purporting to limit the scope of the GUC after acceptance of the application.

(b) Implications of the Commission incorrectly narrowing the scope of the GUC

In respect of aluminium doors, the Commission has elected to only investigate aluminium framed glass doors. It has elected not to investigate aluminium doors generally. This has the following implications:

- The Australian industry has not been properly identified.
  - This creates the fundamental flaw that there was not a correct assessment of the standing of the applicants to commence the proceeding.
  - The assessment of whether the Australian industry has suffered injury is incomplete.
  - The assessment of whether any dumping has caused injury to the Australian industry is incomplete.
- The assessment of whether exports of the GUC have been dumped is incomplete. Only a subsection of the relevant Chinese industry has been assessed.
- The assessment of the Chinese domestic market is incomplete. This impacts issues such as profits made on domestic supplies and how the alleged particular market situation (**PMS**) impacted the Chinese market compared to the Australian market.

These are significant issues that cannot now be cured.

The Commission should terminate the investigation for the following reasons:

a) It has not carried out an investigation into the GUC, but rather a narrow subset of those goods;
b) It has no evidence that Australian producers of aluminium doors, as that term is correctly understood, supported the application;
c) It has no evidence that there was dumping of aluminium doors, as that term is correctly understood;
d) It has no evidence that there has been material injury suffered by the Australian industry producing aluminium doors, as that term is correctly understood.

3. Calculation of the dumping margin

It is submitted that the Commission has, in the circumstances of this Investigation, incorrectly calculated the normal value, and as a result, the dumping margin.

As a starting point, it is important to appreciate that any claim as to the existence of dumping is technical and lacks substance given that the Commission has expressly found that AWDs are being exported to Australia with higher profit margins than are found on the same goods sold into the Chinese domestic market.

While the information is confidential, if the inputs and costs of production for Chinese and domestic goods are the same, higher profits on exported goods must be reflective of higher export pricing. The finding of dumping is not based on price discrimination, but approaches adopted by the Commission which most often results in the finding of dumping regardless of the price at which goods are sold to the Australian market.

Relatedly, the majority of goods exported to during the inquiry period have been found to have been dumped without any examination of the normal value or export prices applying to those goods. Residual and All Other Exporter rates cover more than half of the exported goods. The existence of dumping in respect of these goods must be speculative at best given the Australian market has been found to attract higher profit margins than the Chinese domestic market.

a. Calculation of the normal value

The Commission's recommendation that most Chinese exports be subject to dumping margins in excess of 24% is not based on a finding of price discrimination, but only the belief that a PMS exists in China that impacts the cost of aluminium and glass used in the production of Chinese AWDs.

No submission is made in respect of whether there exists a PMS in the Chinese markets for either aluminium or glass or AWDs more generally. However, it is submitted that in the factual circumstances of this inquiry, the Commission erred by finding that the existence of a PMS prevented a comparison between Chinese domestic prices and export prices. The flaw in the Commissions approach rests on the following:

1. The PMS affects the price of aluminium and glass used in the production of AWD;
2. The same inputs are used in both AWDs produced for domestic sale and AWDs produced for export sale;
3. The same glass used for production of AWD by Chinese producers is used in Australia by Australian producers of AWD;
4. The same aluminium extrusions used for production of AWD by Chinese producers is used by some Australian producers of AWD.

Not only does the low costs inputs affect Chinese production for domestic and export sales equally, those same low cost inputs are available to, and used by, Australian manufacturers of AWDs. The existence of the same low-cost inputs in both China and Australia means that the PMS does not prevent a proper comparison between Chinese domestic prices and export prices.

i. Correct approach to assessing whether a PMS does not permit a proper comparison

Article 2.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (**WTO Agreement**) provides:

"2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, ***because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison****, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits."* (emphasis added and footnotes omitted)

The WTO Agreement makes clear that a PMS only permits the Commission to disregard domestic sales where the presence of the PMS means that such domestic sales do not permit a proper comparison.

Article 2.2 of the WTO Agreement is implemented in Australia in section 269TAC of the Act. Relevantly, that section provides:

(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(1A) …

(2) Subject to this section, where the Minister:

(a) is satisfied that:

(i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

(ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1) …"

The Commission has proceeded on the basis that the Minister can invoke subsection 269TAC(2) where the PMS will not permit a proper comparison with the domestic sale of like goods.

The WTO Review Panel in Australian – Anti-Dumping Measures on A4 Copy Paper (**A4 Copy Paper**) provided guidance on the content of the "proper comparison" requirement in article 2.2 of the WTO Agreement. At paragraph 7.74 of its report the Panel outlined the meaning of "proper":

"The ordinary meaning of the term "proper" is "suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; … apt, fitting; correct, right". The term "comparison" can be understood as "the action, or an act, of comparing, or noting the similarities and differences of two or more things". The function of the "permit a proper comparison" test is to determine whether the domestic price can or cannot be used as a basis for comparison with the export price to identify the existence of dumping. It is implied here in Article 2.2 that the words "a proper comparison" refer to the comparison between the domestic price and the export price. Thus, the purpose of an investigating authority's examination under the second clause of Article 2.2 of the Anti-Dumping Agreement is to determine whether domestic sales of the like product in the ordinary course of trade do not permit a proper comparison between the export price and the domestic sales price because of the particular market situation or the low volume."

The issue is whether a domestic price remains appropriate to use as a comparison to an export price to *identify the existence of dumping*. That is, the test is whether the domestic price remain appropriate to identify price discrimination in international trade.

While it may be that the PMS does not affect domestic prices and export prices identically, the issue is whether this makes a comparison between domestic and export prices incorrect or improper for the purpose of identifying whether dumping of exported goods is occurring.

The Panel made clear at paragraph 7.75 of its report that the only focus must be on the extent to which the PMS affects the comparison. The impact of other factors on the price of domestic sales of like goods cannot be taken into account as a reason for a finding that a PMS prevents a proper comparison.

Taking the above into account, the Panel outlined the following approach at 7.80:

"*In our view, how domestic prices and export prices of an individual exporter are affected notwithstanding an equal decrease in input costs is likely to depend significantly upon a number of factors, including the prevailing conditions of competition in each market and the existing relationship between price and cost.*"

The Panel states that the suitability of the comparison is likely "*to depend significantly upon a number of factors*" and provided two examples:

- The prevailing conditions of competition in each market; and
- The existing relationship between price and cost.

In undertaking the comparison, the Commission should not limit itself to only the above two factors, noting that these were only two examples provided by the Panel. Further, the Panel at 7.74 noted that a comparison involves comparing both differences **and similarities** between two or more things.

It is submitted that the prevailing conditions of competition in each market and the relationship between price and cost in each market need not be identical to enable a proper comparison. It may be that while there are some differences, these differences are more than outweighed by the similarities. It may be that some differences mean that the circumstances are not identical, however the differences are not so significant so as to prevent a proper comparison for the purpose of identifying whether dumping exists.

In considering the level of difference that would prevent a proper comparison, it is relevant that the comparison is being undertaken in the context of the WTO Agreement. That agreement envisages that that there will be differences in economies, products, levels of trade, packaging and other factors. In drafting the WTO Agreement, WTO members nominated some differences for which due allowance will be given, and others for which no allowance is given (but a comparison is still undertaken). Similarly, by its very nature, a normal value and export value will involve a comparison of prices set for different markets. The Chinses and Australian markets will for many products have significant differences in costs of labour, import penetration, economies of scales and overhead costs. The WTO Agreement does not envisage that in the usual course such differences would prevent a proper comparison.

The WTO Agreement is built on a premise that normal value and export value does not involve a comparison between identical goods, identical circumstances of supply or identical markets. This framework must impact the level of difference that must exist before a PMS prevents a proper comparison. It is submitted that the Commission has not interpreted section 269TAC of the Act and article 2.2 of the WTO Agreement in this manner. Rather, it is treated section 269TAC of the Act and article 2.2 of the WTO Agreement as permitting the disregard of domestic sales if there is any difference between the Australian and Chinese markets for AWDs.

In addition, the Commission has limited its review to the two examples provided by the Panel in A4 Copy Paper, despite the Panel referencing the impact of "*a number of factors*".

The approach of the Commission means that article 2.2 of the WTO Agreement and the proper comparison test have no operation. There are no two identical markets and a pedantic and inflexible application of the proper comparison test will always result in the rejection of domestic sale prices as the norma Value. This is not the intention of the Act or the WTO Agreement.

ii. Comparison between the markets – Raw Materials

Leaving aside the submitted general error in the approach of the Commission, we consider that the Commission's proper comparison finding is incorrect in the particular facts of this Investigation.

The Commission found at b4.2 of the SEF that there are differences between the Australian and Chinese AWD markets in respect of the raw materials used and the prices for those materials. It was further found that the differences affect the nature of competition in each market.

In particular, it was held that "*The commission considers that Chinese exporters of the goods to Australia can take advantage of lower raw material costs to compete with both the Australian industry and exporters from other countries which do not benefit from the advantage of lower priced raw materials. This benefit does not extend to the domestic Chinese market, where producers benefit relatively equally from the distorted raw material prices*."

This finding is not reasonably open on the material that was before the Commission. There are two significant inputs into the manufacture of AWDs – Aluminium extrusions and glass (including float glass, laminated glass, toughened glass, coated architectural glass and insulated glass units). Each are considered below.

1. Glass

In respect of glass, the Commission found that glass represents approximately 19% of the costs to make AWDs. The Commission also found that China accounts for approximately 60% of global glass production.

The Commission will also be aware that while there are glass fabricators in Australia, there is no Australian industry producing glass. Further, at all material times, there were no dumping duties on the export of glass to Australia from China.

In the circumstances, it is submitted that both Chinese and Australian AWD manufacturers have available to them the same input into manufacturer, being Chinese glass. Rather than being a difference between the Chinese domestic and Chinese export market, this is a significant similarity.

The Commission can easily verify the extent to which Chinese sourced glass is used in the production of glass used in Australian produced AWDs. It has available to it:

a) The import data relating to glass imported into Australia. All glass used in Australian windows is imported. Reviewing the origin of imports will indicate the likely extent to which glass in Australian produced AWDs is of Chinese origin (even if further fabricated in Australia);
b) Procurement information, or at least access to procurement information, from the Australian industry which it has audited. We presume that the Commission has not made a finding regarding the source of raw materials in the Australian market without auditing this fact. Where goods are procured from Australian fabricators, it is incumbent on the Commission to make basic inquiries as to the origin of the material used by the fabricator.

The Commission also has available to it Australian Industry Member Questionnaire responses and can identify where the Australian industry has stated that it has imported materials for use in the production of AWDs.

2. Aluminium

In respect of aluminium, the Commission notes at section A9 of the SEF, that on average, aluminium accounts for 37% of the cost of make AWDs.

It is contended that during the period of investigation, Australian producers of AWDs had access to the aluminium at the same, or very similar, costs as Chinese producers of AWDs.

While it is noted that dumping duties applied to certain aluminium extrusions exported to Australia during the investigation period, these dumping duties did not apply to unglazed window and door frames and unassembled products containing aluminium extrusions, such as unassembled window and door frames.[3]

In addition, following Aluminium Extrusions Review 609, effective from 20 September 2023, the major aluminium extrusion exporters from China, together with exporters entitled to the residual exporter rate, had a fixed combined dumping and countervailing duty rate of less than 1%.[4]

[3] Dumping Commodity Register – Aluminium Extrusions
[4] Exports were also subject to a confidential floor price. The Commission is privy to this floor price and will be able to form a view of the extent to which extrusions used in the manufacture of AWDs exceeded this floor price. Given that it is a specialist product, it is expected that material used for AWD will always have exceeded the floor price.

It is contended that during the review period, while there were dumping duties applying to aluminium extrusions exported from China to Australia, the impact of these dumping duties on products used in the Australian manufacture of AWDs was minimal.

The Commission has the ability to investigate the extent to which there was a significant difference due to the PMS on the cost of aluminium extrusions (or frames made from them) in the Chinese market versus the Australian market. In particular, the Commission can review:

- ABF trade data for the import of aluminium window and door frames from China during the investigation period; and
- The procurement cost records for Australian manufacturers of AWDs that used aluminium extrusions or frames imported from China.

Australian Dumping Commission Review Report REP 657 considered aluminium extrusions exported from China to Australia and the price of aluminium extrusions exported from China to Australia. The period reviewed was 1 October 2023 to 30 September 2024. In that report, the Commission found that for 4 exporters, aluminium extrusions exported from China to Australia were more expensive than Chinese prices in the range of 13% - 23%[5]. While the Commission noted that exports from China of aluminium extrusions were more expensive than the domestic price, it did not note the extent to which the price difference was due to (1) a competitive advantage caused by a PMS or (2) market differences unrelated to the PMS, such as labour costs.

Even if the Commission is correct that the PMS relating to aluminium extrusions on its own meant that export extrusions were 18% (adopting a midpoint) higher in price than extrusions in the Chinese market, this is a nominal difference (about 6%) in the cost of raw materials for AWDs given that aluminium only accounts for 37% of the cost of AWDs.

It is submitted that rather than constitute a difference between markets, the cost of raw materials is very similar. While there may be some difference in the cost of aluminium extrusions for some Australian manufacturers, this difference is not so great as to prevent a proper comparison for the purpose of assessing whether dumping has occurred.

iii. Comparison between markets – Level of competition

It is submitted that both the Chinese domestic market and the Australian market for AWDs are characterised by intense competition. While the Commission noted that there are broad structural similarities and that goods are sold to comparable categories of customers and end users, the Commission also noted that there are differences in concentration, scale and competition.

The Commission seeks to differentiate the Chinese domestic and Australian export markets based on the level of import penetration. It is said that in Australia import penetration is high (despite only being 22%) and in China it is low. While import penetration was said to be low, the Commission has not explained how that difference impacted the ability to compare Chinese domestic and export prices due to the PMS.

The Commission found that over 1435 unique Chinese exporters exported AWDs to Australia during the relevant period. These exporters all, presumably, had access to the same low-cost inputs to production, and competed against Australian manufacturers that also had access to Chinese produced glass and aluminium.

The Commission has found that in the Australian market, price is a relevant and material factor influencing purchasing decisions (section 8.5.1 of the SEF). The Commission has also found that there

[5] Sections B5.1.1, B5.2.1, B5.3.1 and B5.4.1 of REP 657

was undercutting of Australian prices by Chinese imports in the range of 5% - 64% across a range of residential and multi and high-rise residential projects (section 9.6.1 of the SEF).

The level of alleged undercutting is more consistent with competition amongst Chinese exporters rather than competition between the Australian industry and Chinese exporters.

Given the allegations made by the Commission as to the extent to which price is a factor, the level of alleged price undercutting and that the Australian industry has suffered price suppression, it is not logical to at the same time allege that the Australian and Chinese markets are not equally competitive.

A Chinese exporter to the Australian market has to compete with over 1000 other Chinese exporters that have access to identical cost of raw materials. This is not materially different to the competitive landscape in China. The Commission has not explained why it believes that the level of competition between 1000 Chinese companies (Australian market) is materially different to the level of competition between 3000 Chinese companies (Chinese market).

To the extent that there is a difference in import penetration, and related levels of competition, it is not so significant as to prevent a comparison between Chinese domestic and export prices. It does not prevent the fundamental feature remaining that in both markets a Chinese manufacturer competes against a large number of other Chinese manufacturers with access to the same cost structure.

Rather than focus on a subset of competition which may be different, the more appropriate approach for the Commission is to focus on the significant similarity that both markets are characterised by intense price competition.

The finding regarding import penetration reflects an approach whereby the Commission focuses on one characteristic of difference to the exclusion of a much more significant findings of similarity.

iv. Relationship between costs and price

The Commission has found that Chinese manufacturers have been able to achieve greater profits on Australian sales compared to its domestic sales, despite limited differences in the respective cost of manufacture.

The Commission notes the additional profits on exports to Australia and concludes, without evidence, that the PMS has affected the Chinese domestic market in a manner that results in this profit differential. It is claimed that this is a consequence of the PMS equally impacting most Chinese producers.

The Commission observes that there is more variation in export pricing than there is compared with Chinese domestic pricing. Without any consideration of other contributing factors, the Commission states on page 313 of the SEF that "…*The Commissioner is satisfied that variability of pricing by Chinese manufacturers in the Australian domestic market builds a competitive advantage enjoyed by Chinese exporters due to the market situation, which allows them to engage in pricing strategies in the Australian market that allow them to…"* achieve higher margins, increased sales or both.

The Commission does not consider other factors that might permit exporters from China to Australia to achieve higher margins than domestic sales and/or increase sales. The Commission has not set out any analysis as to the extent to which differential profits/sales may be due to any of the following:

a) Economies of scale of Chinese manufacturers. This allows manufacturers to source raw materials in bulk and spread fixed costs, such as research, development, tooling over a larger number of units than the Australian market;
b) Supply chain integration within China; and
c) Lower labour costs and availability of labour in China.

The Commission has not demonstrated any consideration of the extent to which these cost factors, as opposed to the PMS, have enabled Chinese producers to achieve higher profits on goods exported to Australia. Given the existence of these structural cost differences, it is unreasonable for the Commission to attribute profit differential to raw material inputs when those same raw materials are available to Australian producer of AWDs.

v. Summary on normal value

It is submitted that the Commissions approach is non-compliant with the direction from the Panel in Australian A4 Copy Paper as:

a. The Commission disproportionately focuses on the differences between the Chinese and Australian markets without giving proper weight to the similarities between the markets;
b. The Commission either disregards, or gives no allowance to, the fact that producers in both markets have access to Chinese produced glass;
c. The Commission either disregards, or gives no allowance to, the fact that producers in both markets have access to Chinese produce aluminium extrusions;
d. The Commission identifies a positive profit differential on exports to Australia and attributes that differential to the PMS without conducting any analysis on whether other structural differences between the Chinese domestic and Australian export markets explain the difference.

In the circumstances, the Commission has not properly assessed whether the PMS prevents a proper comparison between Chinese domestic prices and export prices. To the extent that the assessment was carried out, the decision by the Commission, is not the correct decision and does not comply with the requirements of the Act or the WTO Agreement.

The Commission should have found that despite the PMS, the Chinese domestic sale prices of like goods and the price of exports to Australia were comparable for the purpose of determining whether there has been dumping of AWDs. For exporters that sold AWDs on the Chinese market, the Commission should calculate the normal value for those exporters by reference to their domestic sales.

The approach adopted by the Commission produces the unfair result that the Australian industry maintains access to low-cost Chinese inputs but imposes dumping duties on Chinese exports on the basis of the use of those same low-cost inputs. This is despite the Commission being aware that those Chinese exporters are exporting AWDs to Australia at pricing that exceeds the Chinese domestic price.

4. Material Injury

Before recommending the imposition of dumping duties, the Commission must be satisfied that any alleged dumping has caused material injury to the Australian industry producing like goods.

We are concerned that the injury analysis of the Commission has focused heavily on Ventora and to the extent that it has relied on information from other members of the Australian industry, this information has not been the subject of detailed review.

This approach is of particular concern as Ventora represents less than 25% of the Australian market and Ventora almost exclusively produces goods for residential and low-rise construction.

The approach by the Commission suffers from the flaw that while its injury analysis has materially focused on the Australian industry producing residential AWDs, its dumping analysis, pricing analysis and market share analysis makes no such distinction. In particular, the Commission's failure to include a MCC for window wall means that it has no reliable method of the determining the extent to which it is

attributing dumping of goods in the high-rise construction sector to claimed loss in the residential housing market.

In the circumstances, the approach by the Commission to injury and causation is extremely speculative.

a. Injury caused by exports by Altop

Exports by Altop have been found not to have been dumped. To the extent that the Australian industry is said to have lost market share, it needs to be determined to what extent that market share was lost to Altop. Any market share lost to Altop cannot be attributed to dumping.

Similarly, the Commission in its tender analysis needs to consider the extent to whether Altop was involved in the tender, and if it was involved, whether Altop either was the successful tenderer, or if not successful, was a lower price than the unsuccessful Australian producer. Any project where Altop submitted a price that was lower than the price of the Australian industry, cannot be seen as a project that the Australian industry lost due to alleged dumping. Rather, it is a project that either was won by Altop or would have been won by Altop in the absence of dumping by other Chinese exporters (assuming that price is the only factor).

The same approach needs to be taken to claims of price suppression and lost revenue. If Altop is a price leader, then even in the absence of dumping, it is the Altop price that reflects the price at which the Australian industry would need to supply at in order to be competitive (assuming that price is the only factor).

The Commission cannot adopt the approach of treating all dumped goods as causing injury on the basis of price if the price of dumped imports are comparable to the price of the un-dumped Altop imports.

[redacted] **[Comment on understanding of Altop pricing]** It is expected that Altop will have been one of the lowest priced suppliers in the market. The Commission will have actual data as to Altop's prices. To ensure that its injury and causation findings are accurate, the Commission must:

- Identify the Altop sale price;
- Compare the Altop price to the price of allegedly dumped goods;
- Not attribute injury to allegedly dumped goods that are priced higher than comparable Altop goods.

b. General comments on the injury analysis

i. Impact of Covid

The selection of 2021/22 year as the comparison year for injury analysis produces unreliable results. The Commission needs to examine whether 21/22 was an unusually strong year for Australian suppliers of AWDs and that a decline in the following years reflected the expected normalisation of results.

To this end, the Commission needs to examine whether results in 21/22 were influenced by disruptions to global shipping and higher containerised shipping costs making imported products less competitive. Equally, the Commission needs to consider the extent to which the normalisation of international shipping costs improved the competitiveness of imported goods and caused the claimed loss (rather than any alleged dumping).

The Commission needs to examine whether the 21/22 year was the subject of stronger than usual demand for residential construction caused by Government stimulus measures.

The Commission can remove the effects of Covid impacts on supply chains and demand caused by Covid stimulus spending by comparing results in financial years FY2023, FY2024 and FY2025 with FY2019. It is submitted that due to the impact of Covid on the price of AWD in 2021/22, a longer period needs to reviewed to identify the true trends relating to the financial performance of the Australian industry.

ii. Whether injury is material

Market Share

Before Australian can impose additional tariffs, the level of injury identified must be material. The Commission has not put forward clear evidence of material injury. We note the following:

- On page 172 of the SEF it is reported that the total volume of sales by the Australian industry has declined by only 5% over a 4-year period.
- On page 173 of the SEF it is stated that the total value of sales by the Australian industry has declined by only 4%.

A 4-5% loss of volume or value of sales over a 4-year period is not material. A 1% change per year reflects a steady level of sales and is not outside the range of financial performances expected in a particular industry. This is especially so given the unusually strong performance in the 21/22 comparison year and the sensitivity of the AWD market to changes in the level of housing construction.

Similarly, the market share position of the Australian industry does not reflect material injury. The Commission has reported only an 8% increase in market share by Chinese exporters over the injury period. In assessing the extent to which this change in market share represents injury caused by alleged dumping, the Commission should exclude loss of market share:

a) to Altop;
b) market segments in which the Australian industry has little to no involvement.

In particular, the Commission notes that "*compliance, delivery capability, technical suitability, supplier reliability, project capacity and previous supplier performance as important factors in purchaser decision making*." While the Australian industry may claim to be able to supply AWDs to all market segments, the Commission must assess those claims, and claims of lost market share, against the extent to which the above non-price factors prevent the Australian industry from supplying goods and losing market share.

We refer to submission 691 by Hickory Construction Group Pty Ltd (**Hickory Submission**). Hickory refers to six suppliers referred to in section 4.7.2 of the SEF and states that in respect of a 21 story project it could not identify a suitable Australian supplier. Reasons given include:

"…several constraints, including the scale and scope of the project, limited experience in high-rise façade works, a focus on residential housing, and geographic limitations preventing suppliers from undertaking the work in Victoria."

and

"…none identifies a completed high-rise window wall project or a capacity figure."

Ultimately, Hickory submitted that the Australian suppliers identified by the Commission do not collectively demonstrate the availability of suitable domestic alternatives capable of meeting the testing, scale and delivery requirements for their high-rise project.

In addition to Hickory, the Commission has received numerous submissions regarding the limited ability of the Australian industry to supply AWDs into the commercial construction sector. If the growth in the

AWD market has been in the commercial sector, the Chinese market share will have grown. This is not due to the alleged dumping of goods but growth in a market where the Australian industry has limited capability.

Price Suppression

In respect of price suppression and depression the Commission has only provided data regarding Ventora. This data on its own is not compelling. Figure 17 of the SEF sets out that the difference between cost to make and selling price in FY22 is almost identical to the figure of FY225.

Did the Commission investigate other members of the Australian industry? Given the Commission's responsibility is to assess injury to the aggregate Australian industry, there is no justification for limiting this assessment to Ventora only. It can be expected that the party making the claim for dumping duties will present the highest level of alleged injury. However, this does not mean that the experience of the remaining 75% of the Australian industry is irrelevant. The financial position of 75% of the industry is more relevant than the financial performance of Ventora.

Before making a finding of material injury in the form of price suppression, the Commission should have reviewed evidence from other members of the Australian industry. Without doing so, the findings of the Commission as to the "Australian industry" are speculative. The finding relies on the speculative reasoning that other members of the Australian industry have experienced the same financial outcome as Ventora.

If the Commission did review other industry members, this data should be presented. The Commission's role is to present the results of its investigation to enable the Minister to make an informed decision. This obligation includes presenting evidence that indicates improvement in the financial condition of the Australian industry.

It is unclear from the SEF whether information from other industry participants has bene subject to detailed analysis and verification by the Commission. The Commission should not accept any financial data without subjecting that data to the same level of review to which the data of Chinese exporters was subjected.

Profitability

The Commission has set out the profitability of 4 Australian industry members on page 178 of the SEF. Again, the Commission has focused only on industry members supporting the application. This approach is inconsistent with the Commission's obligation to assess the condition of the Australian industry in the aggregate. The selection of industry members should be based on volume and market share rather than their support of the application. Clearly those injured the most are likely to support an application. The approach of the Commission unfairly skews injury data towards this self-selecting group.

Even taking into account the above limitations, figure 19 of the SEF relating to profitability is remarkable in its absence of evidence of injury. The weighted average profitability has remained stable. The Commission notes that "industry member 2" improved profitability due to its success in securing large individual projects. This seems to have been offered by the Commission as a reason to discount the improved profitability of that industry member. It is unclear why the ability to secure profitable projects is not relevant or is to be discounted. The Commission should be assessing why industry member 2 was able to secure profitable projects despite the claims of Ventora. The Commission cannot seek evidence of profitability from the Australian industry and then discount the evidence which is contrary to the claims of Ventora.

The Commission claims that figure 19 supports a claim that the Australian industry in aggregate has experience injury in the form of reduced profitability. There is no justification for this position. Only 4 industry members were reviewed. There is no indication as to which industry segments these members

are from, what market share they own or what was the claimed reduction in profit. Further, the weighted average line shows almost no change.

Other factors and need for an aggregate industry approach

In respect of other economic factors, the Commission appears to have relied on a survey provided to 14 Australian industry members. The Commission admits that it did not request the same level of financial data from these 14 members as it did from Ventora. Did the Commission actually audit or verify the accuracy of any of the claims by the Australian industry that are included in table 27 of the SEF? If not, the information should be disregarded as unreliable.

Ultimately the injury analysis by the Commission indicates an approach where it reviewed the position of Ventora and made no detailed attempt to investigate the aggregate financial position of the Australian industry. There seems to have been no attempt to obtain data from members of the Australian industry that did not support the application.

We refer to the recent inquiry conducted by the Productivity Commission (**PC**) into Fabricated Structural Steel Safeguards. The PC based its injury findings on aggregated data associated with 376 businesses. Rather than source the data from a self-selecting group of businesses seeking protection, the PC independently sourced transaction-level import data, anonymised Business Income Tax returns, Business Activity Statements and Pay As You Go submissions and other relevant information. It is unclear why the Commission did not seek such industry wide robust data and instead relied on subjective reporting.

Coincidence analysis

At page 183-184 of the SEF the Commission refers to 'coincidence analysis' as the most common way to perform causation analysis. This approach is flawed in the context of this investigation. The primary reason for this is that the applicant has adopted a description of the GUC that is so wide that it includes goods in completely different industries that do not compete with each other in any way. Extreme dumping of goods in the residential windows market would have zero impact on the financial performance of the Australian industry supplying goods into the high rise commercial market.

Similarly, the actions of a Chinese supplier of window wall (which should be excluded) could not have meaningfully impacted the financial performance of Ventora.

The Commission did not adopt MCCs that permitted segregation of exports by industry. A consequence is that it cannot now rely on 'coincidence analysis.' To the extent that it has done so, its findings are unreliable.

Tender Analysis

The Commission sets out at section 9.6.1 of the SEF its tender analysis. The Commission has relied on 5 evidenced tenders from Ventora. It states that it received approximately 3,350 tender details from industry members. Were any of these tenders evidenced in any way or verified in any way by the Commission? By their very nature, tenders are secretive processes and the Australian industry member that lost a tender is unlikely to have received reliable information as to the reason why.

The Commission could easily have approached Australian construction companies to determine the reason it awarded tenders to specific AWD suppliers. This could have produced results based on fact from the actual decision maker.

Ultimately, the presented outcome of the Commission's tender analysis provides strong evidence that the Commission's findings are fundamentally flawed. At page 203 of the SEF the Commission claims that tenders lost by the Australian industry to dumped imports equated to a value loss of $422 million. The

Commission values the Australian AWD market at approximately $2.8 billion in FY25 (page 104). According to both of these findings by the Commission, the Australian industry claimed to have lost 15% of its market share to undercutting in tenders. Of course, the charge in market share over the 4 year review period has only been approximately 8%.

The total Chinese market share is only approximately 18%. It is expected that the majority of that market share was not the subject of competitive tender and cannot form part of the tender analysis. The Commission figures regarding lost tender value do not stand up to basic scrutiny. The figures represent the risk of relying on unverified conjecture by a party that has lost a tender.

The results also demonstrate an exaggeration of injury claims by the Australian industry and is reason to reject unaudited or unverified injury claims.

iii. Causation – Window Wall

Australian Capability

The legislative task of the Commission is to assess whether goods have been exported to Australia at dumped prices and because of that, material injury has been caused to an Australian industry producing like goods. The goods being assessed are the GUC. The Commission has assessed the GUC as including window wall.

If the Commission maintains this view, the Commission must assess the extent to which importations of window wall are causing loss to the Australian industry. The Commission has claimed at section 4.7.3 of the SEF that it has evidence that the Australian industry meaningfully participates across Class 2 to Class 9 buildings. This finding is not the same as a finding that the Australian industry is meaningfully involved in commercial projects of any substance or that it is suffering injury due to the price of imported window wall. We again note the submission of Hickory and encourage the Commission to seek evidence from the Australian construction industry as to the capability of Australian AWDs manufacturers in the medium to high-rise commercial construction market.

It is submitted that the Commission in performing its causation analysis must not attribute any loss suffered by the Australian industry to the importation of window wall. There is no creditable basis for doing so. The very companies it names as being able to supply the market have been demonstrated by Hickory to lack this capacity.

One market fallacy

The Commission has seemingly sought to advance that the pricing of window wall affects the Australian industry by a finding at section 5.7.3 of the SEF that each segment of the Australian AWD market is not a separate and independent market and that there is competitive interaction between AWD supplied into different building types of end use applications and market segmentation.

Seemingly, the Commission's argument is that façade systems for commercial towers on the one hand, and AWDs for residential housing on the other, are not supplied into wholly separate markets. With respect, such a finding is so unreasonable as to constitute an error of law. There is zero competition between AWDs supplied for residential housing and facades supplied for high rise construction projects. Façade systems and household AWDs are not at all interchangeable and serve fundamentally different technical and commercial purposes.

For the Commission to make a finding that AWDs for high rise towers and AWDs for houses represents the one market, it needs clear evidence that facades and household AWDs:

- Are commercially interchangeable;
- Are functionally equivalent;

- Are supplied by the same Chinese and Australian manufacturers;
- Experience a correlation in the movement of their levels of demand or pricing.

Can the Commission point to a single Australian producer of AWDs for the household market that has credible evidence that it is impacted by the importation of façade systems? Did a single supplier of façade systems provide evidence that the façade market is affected in any way by the price of household AWDs or the level of demand for household AWDs? If the Commission holds such evidence, it should present it. Such direct evidence is required to address the apparent unreasonableness of the finding set out in section 5.7.3 of the SEF.

The reality is that façade systems and household AWDs are different products, serving different markets with different suppliers/manufacturers. This is made clear by the express exclusion of curtain wall from the GUC.

The Commission cannot overcome the lack of causative relationship between the importation of window wall and injury to the Australian AWD industry by artificially treading window wall and household AWDs as being part of the one market. An attempt to do so constitutes an error of law.

It is acknowledged that the Commission has found that the importation of a subset of the GUC (household AWDs) has caused material injury to the Australian industry producing household AWDs. However, this is insufficient for a finding that dumping duties should be imposed on all imports of the GUC.

The Applicant put forward a wide definition of the GUC and then advocated for an even wider interpretation of that wording. The risk it took was that the investigation would be widened to include both household AWDs and the importation of goods that are not causing injury to the Australian industry. That risk has materialised. The consequence is that there are such high levels of non-injurious imports of the GUC included in the Investigation so as to justify the termination of the Investigation.

The Commission should not now attempt to remedy the outcome of the Applicant's overreach by artificially defining a single market for AWDs that includes both facades for towers and household AWDs.

5. Recommendations requested in the final report

For the reasons set out above, we submit that the final report should contain a recommendation to the Minister that the Investigation be terminated as:

a) the Commission has investigation window wall which is not properly the subject of the Investigation;
b) the Commission has failed to investigate the Australian market, and Chinese exports of, aluminium doors properly covered by the Investigation;
c) there is no reliable evidence that the Australian industry at an aggregate level has suffered material injury;
d) there is no reliable evidence that any injury suffered by the Australian industry was caused by the export of dumped goods from China.

If the Investigation is not terminated:

a) the Commission should in its final report expressly state that window wall is not included within the GUC as it is not a window;
b) the Commission should recalculate dumping margins for Chinese exporters using their domestic sale price of like goods as the normal value;
c) the Commission should reassess whether any dumping has caused material injury to the Australian industry after the exclusion of window wall and the correct calculation of the dumping margin.

If the Investigation is not terminated and the Commission maintains that window wall falls within the GUC, the Commission should recommend in its final report that the Minister grant an exemption to window wall facades and/or goods produced to AS 4284 for the reasons set out in our submission dated 28 December 2026.

We are happy to meet with the Commission to discuss any of the issues raised in this submission.

Yours faithfully
CGT Law



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