Percival Legal

Non-confidential

Date: 3 November 2026

By Email

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

Dear Sir/Madam,

RE: Dumping & Subsidy Investigation 691 – exports of aluminium windows and doors from China – Submission –Statement of Essential Facts (SEF) – Deficiencies

On behalf of my client, Fangda Australia Pty Limited, an interested party in Investigation 691, the following observations and submissions are made in relation to this dumping and subsidy investigation into exports of aluminium windows and doors from the People's Republic of China, including the recently published Statement of Essential Facts 691 (**SEF**).

Executive Summary

By way of executive summary of the contentions in this submission:

1. Aluminium windows and aluminium doors are separate 'goods', not a single 'good' (i.e., AWD).[1] A 'window' is not a 'door' and vice versa. An aluminium window does not compete with an aluminium door or vice versa on price or otherwise except in limited circumstances.
2. There is no lawful basis to so comingle two separate 'goods' 9i.e., separate articles of commerce) as a single 'good' in a dumping and subsidy investigation for the purposes of determining whether export of those two 'goods' are being dumped and, because, of that causing material injury to a domestic industry producing like goods.
3. No explanation has been provided in the SEF explaining the lawful basis for the comingling of the two 'goods' in this investigation.
4. The comingling of aluminium windows and aluminium doors into a single 'good' (i.e., AWD) affects and has affected the preliminary determination of dumping margins, material injury and causation. It means that a proper analysis of those 'goods' has not been undertaken.
5. There are other deficiencies in the analyses in the SEF especially in relation to purported price undercutting by Chinese exports and the effects flowing therefrom.

[1] Note: As noted by the applicants in their application and by the Australian Trade Remedies Commission, headings in a customs tariff typically cover a range of goods and are not determinative of the identity of any good. Goods are classified to headings in a customs tariff, not the other way around, and it is the identity of the goods as determined according to its essential physical characteristics as imported that determines its classification to a heading or sub-heading in a customs tariff.

1. Whether the goods under Investigation (GUI) are accurately described

A threshold question in this investigation is whether the goods under investigation (**GUI**) have been accurately and properly described.

In summary, Section 269TB(1) of the *Customs Act 1901* provides that a person who believes that there are, or may be, reasonable grounds for the imposition of anti-dumping measures in respect of goods that have been or may be imported into Australia may apply for the imposition of such measures.

The issue, therefore, is what is the 'good' or are the 'goods' that have been or may be imported into Australia in respect of which it is believed there may be reasonable grounds for the imposition of anti-dumping measures – that is, there are reasonable grounds that such good or goods are being exported at dumped export prices and because of that causing material injury to a domestic industry producing like goods to that good or goods.

Here the applicants have specified in their application that such goods, being goods in respect of which they formed that belief, are 'aluminium windows and doors' of the nominated dimensions exported to Australia from China. That is the 'goods' are:

> "*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*."

There are a number of issues with this description of the goods under investigation (**GUI**), some of which are set out below.

Issue One – one 'good' or two 'goods'

As is evident, 'aluminium windows and doors', abbreviated to AWD, is not 'a good'. Rather, it is at least two separate goods, namely, 'aluminium windows' and 'aluminium doors' with different 'models' of each.

A 'window' is not a 'door' and vice versa. And while each may share some common materials in their construction and some common characteristics depending upon their construction and materials used in their production and be produced in vertically integrated production facilities as well as in separate production facilities, they are not functionally equivalent, nor readily substitutable, nor generally do they compete with one another on price or otherwise. They are separate and distinct from one another.

Further, they may each incorporate different materials in their construction while remaining, respectively, 'aluminium windows' and 'aluminium doors'. For example, an 'aluminium

door' may have a frame made from aluminium extrusions but with 'doors' made of glass, wood, steel, iron, aluminium mesh, particle board or any number of combinations of the foregoing in a variety of configurations.

Similarly, the frames of aluminium windows may be aluminium extrusions but the panes in the windows may be of materials other than glass such as polycarbonate, fiberglass and, in the case of louvres, wood or particle board.

See, for example, the different models of windows and different models of doors on the Ventora Group Pty Ltd (**Ventora**) under the various different brand names: VENTORA.

The issue here is not whether two goods can be investigated in the same investigation following receipt of a valid application seeking the imposition of anti-dumping measures on the two goods. Clearly that is possible and permissible under relevant Australian anti-dumping legislation and WTO anti-dumping rules.

Rather, the issue here is whether the determination of dumping, material injury and causation can be and has been undertaken in this investigation as if 'aluminium windows and doors' (i.e., AWD) were a single 'good' and not two 'goods' with each such good having their own different variety of models.

This also is not to suggest that 'aluminium windows' do not or cannot compete with 'aluminium doors' on price as well as on other criteria. They can, but in limited circumstances, For example, folding aluminium glass doors may compete with aluminium glass windows for installation on balconies or patios. However, as noted, the extent of any such competition is limited.

It cannot be assumed in a dumping and/or subsidy investigation that a broad collection of goods is sufficiently homogeneous for every analytical purpose because the goods have been grouped under one description by an applicant in its application.

That appears to have occurred here. The analysis and preliminary findings in the SEF indicate the dumping determinations, as well as material injury and causation preliminary findings, are based on the premise that 'aluminium windows and doors' (i.e., AWDs) are a single homogeneous 'good'. There is, for example, only one dumping margin for both 'aluminium windows' and 'aluminium doors' notwithstanding that they are different 'goods'. Similarly with respect to the assessment of the Australian market and the analysis, assessment and determination of material injury and causation in the SEF.

No explanation nor detailed reasons supported by evidence are provided in the SEF as to why two separate, distinct goods have been comingled for the purposes of this investigation either in the applicants' application or in the SEF, nor why such an approach has been adopted by the Commission in respect of the GUI instead of treating them as separate distinct goods – that is as separate articles of commerce.

This is also relevant in the material injury analysis. That is, injury caused or threatened by exports of aluminium windows at dumped export prices cannot be attributed to exports of aluminium doors and vice versa. A purchaser of an aluminium window may be persuaded to

purchase one model of aluminium window over another for reasons of price, ascetics, functionality or a combination of these factors. However, that purchaser is unlikely to purchase an aluminium door instead of an aluminium window.

Moreover, domestic producers of aluminium windows only or aluminium doors only will be subject to competition from imports of, respectively, aluminium windows and aluminium doors, but not both. Further, as producers of of aluminium windows only or aluminium doors only, their cost to make and sell such products will be materially different from a vertically integrated producer of both those goods, as will their general selling and marketing expenses, prices, revenues and, ultimately, profits.

Hence the business plans of vertically integrated producers such as Ventora will be materially different from domestic producers of of aluminium windows only or aluminium doors, as will the effect of import competition on their respective businesses. This appears not to have been addressed, although relevant to the determination of material injury and causation.

That is, based on the sections in the SEF on material injury and causation, there does not appear of have been an analysis of the effects of exports of aluminium windows and aluminium doors respectively on Australian producers of, respectively, aluminium windows and aluminium doors. That analysis appears to have been undertaken on the basis that exports of aluminium windows and aluminium doors as a single comingled product and their effect on a combined Australian industry of producers of aluminium windows and aluminium doors. This regardless of any difference in effects on each o any analysis of any differences between Australian producers of aluminium windows and producers of aluminium doors. This does not appear to have been contemplated.

In particular, a domestic producer of aluminium windows is not a producer of 'like goods' to aluminium doors and vice versa. Thus, there are two domestic industries producing like goods – a domestic industry producing like goods to exports of aluminium windows and another producing like goods to aluminium doors. Vertically integrated domestic producers would be members of both industries.

This has not been the approach adopted in the investigation. No explanation or rational has been given justifying the approach taken and whether it is consistent with Australia's anti-dumping legislation and WTO anti-dumping rules, nor why the approach indcated above has not been taken. This would seem a material omission.

Further, competition from windows and doors other than aluminium windows and aluminium doors, both exports and domestic products, must be taken into account on their effect on prices and sales volumes of domestically produced aluminium windows and aluminium doors respectively. That is, windows with wood frames and/or polycarbonate or fiberglass panes, whether sourced domestically or overseas, would compete with aluminium windows, as would be the case, for example, with steel doors competing with aluminium doors.

This does not appear to have been addressed in the SEF.

The preliminary findings and proposed recommendations in the SEF are, consequently, necessarily deficient in this regard.

Issue 2 – are the GUI confined to residential and office buildings?

The preliminary findings in the SEF appear to relate to 'aluminium windows' and 'aluminium doors' that are for use in the construction of residential houses and apartments and office buildings.

However, 'aluminium windows' and 'aluminium doors' are not confined to such end-uses.

For example, doors of a number of products are made from either stainless steel or aluminium or a combination of both such as the doors of passenger motor vehicles, doors in trains, aircraft and boats. If made from aluminium, they are 'aluminium doors'. Similarly, screen doors may be made, wholly or in part, with aluminium and would be correctly described as 'aluminium doors'. This is the case regardless of whether they include panels made from other materials such as glass, polycarbonate or fiberglass windows.

Similar to 'aluminium doors', 'aluminium windows' can have variety of end-uses. They can be found in recreational vehicles such as RVs, caravans, boats, trains and some aircraft.

While it may have been the applicants' intent to confine the GUI to 'aluminium windows' and 'aluminium doors' for use solely in the construction of residential homes and apartments and in office buildings, the point here is that the description of the GUI does not explicitly or expressly so confine the GUI. Therefore, the description of the GUI as being 'aluminium windows' and 'aluminium doors' extends beyond such goods for use in the construction of residential homes and apartments and in office buildings but for other end-uses.

This is not suggest that the investigation extends or should extend to such a wide range of aluminium windows and aluminium doors. Rather, the description of the GUI itself does not limit the range of aluminium windows and aluminium doors to a limited range of aluminium windows and aluminium doors other than by their dimensions.

This, in turn, raises the question of what 'goods' being imported into Australia did the applicants form the belief that there were reasonable grounds for the imposition of anti-dumping measures and on what basis for the purposes of Section 269TB(1) of the *Customs Act 1901*? Evidently, such goods have not been accurately and precisely described in the description of the GUI.

This would not be the first time that the goods under investigation have been erroneously described. For example, the description of the goods under investigation in Investigation 647, being an investigation into exports of clear laminate glass from China, required multiple corrections before the investigation was terminated.

This deficiency in the description of the GUI has not been addressed in the SEF or otherwise. Rather, the investigation appears to have been confined, probably inadvertently, to a narrower range of goods than that required by the description of the GUI. Hence the

preliminary findings in the SEF are deficient in this regard. This needs to be addressed and rectified.

Issue 3 – Mechanised aluminium windows and doors

Aluminium windows and aluminium doors not only can come with digital and other electronic locking devices but also electronic mechanised opening and closing systems. It is understood that aluminium windows and aluminium doors incorporating various electronic mechanical devices are exported to Australia from China.

For example, digital and other electronic locking devices enable a window or door to be locked both through an electronic digital code recorded on a touchpad on the window or door but also via an electronic devise such as a smartphone.

In addition, electronic mechanised opening and closing systems exist for doors and windows that enable a door or window to be opened or closed as required via an electronic pad installed on a wall within a room in the building or remotely via a smartphone or other electronic devise.

It is not apparent whether such aluminium windows and aluminium doors are included in the GUI as they are not expressly referred to in the description of the GUI, nor in the applicants' or the Commission's Model Control Code.

Self-evidently such aluminium windows and aluminium doors would be sold and purchased at different price points to manually operated aluminium windows and aluminium doors. Consequently, if included in the GUI they should have and would have receive their own Model Control Code and be dealt with separately from manually operated aluminium windows and aluminium doors.

However, it is not apparent that electronic mechanised aluminium windows and aluminium doors were included in the description of the GUI by the applicants in their application. Rather, the description of the GUI in the application appears to be solely and exclusively for manually operated aluminium windows and aluminium doors. There is nothing in the application to indicate otherwise.[2]

This is supported by the applicants' Model Control Code in its application, which makes no reference to mechanised aluminium windows and aluminium doors when they are discrete 'models' of aluminium windows and aluminium doors. It also is supported by the absence of evidence in the application that electronic mechanised aluminium windows and aluminium doors are in fact produced in Australia and, if so, in respect of what electronic mechanical applications and to what extent.

If electronic mechanised aluminium windows and aluminium doors do fall within the GUI for some unexplained reason, then it is not apparent from the SEF whether information and

[2] Note: it is a principle in construing taxing legislation and instruments that is there is any doubt in the meaning of the words used in imposing the tax, then the taxpayer, here the importer, is be given the benefit of the doubt: refer D. Pearce, '*Statutory Interpretation in Australia*', 9th Ed, LexisNexis, Sydney, 2019, para 9.42 and cases cited therein

evidence was obtained to assess whether exports of such goods to Australia from China were being dumped and, if so, whether because of that material injury was being caused or threatened to an Australian industry producing like goods to those goods., nor does there appear to be any such assessment. Again, they are no separately identified in the Commission's Model Control Code or, apparently, otherwise in the SEF.

The absence of consideration of electronic mechanised aluminium windows and aluminium doors in the SEF is a deficiency that needs to be addressed. Again, the issue here is the uncertainty of precisely what goods comprise the GUI - precisely what goods were being imported into Australia that the applicants believed when making the application there were reasonable grounds for the imposition of anti-dumping measures on such goods and why.

2. Dumping margin determinations

Preliminary dumping margin determinations have been made and are set out in the SEF.

They consist of:

- sampled exporters: -47.4% to +51.6%
- residual exporters: +24.4%
- Uncooperative & other exporters: +70.4%

These dumping margin determinations give rise to a number of issues that are set out below.

Dumping Issue One – Single dumping margin determination

A single, presumably weighted average, dumping margin has been determined for each of the sampled exporters and for each of the other categories of exporters as if 'aluminium windows' and 'aluminium doors' were a single 'good'. That is, despite being separate goods, aluminium windows and aluminium doors have been comingled as a single 'good' (i.e., AWD) and a single dumping margin determined for that comingled 'good'.

As set out earlier above, 'aluminium windows' and 'aluminium doors' are not a single 'good' but two 'goods' with each having a variety of different models. No explanation is provided in the SEF not only as to why 'aluminium windows' and 'aluminium doors' have been comingled into a single 'good' for the purposes in this investigation. Nor on what lawful basis a single dumping margin was preliminary determined for two separate and discrete 'goods' comingled into a single 'good'.

Given that the proper determination of dumping and subsidy margins is fundamental to this investigation and such investigations in general, the comingling of two separate goods into a single good for the determination of dumping and subsidy margins requires detailed explanation, including the legal basis under Australia's anti-dumping legislation and the WTO Anti-Dumping Agreement for such comingling, as well as relevant jurisprudence. Failing such justification of the comingling of aluminium windows and aluminium doors for this purpose, this deficiency in the investigation requires rectification.

Dumping Issue Two – Range of dumping margins

The range in the preliminary determined dumping margins as set out earlier above of itself raises the question of how is such a range in margins commercially possible, particularly given the manner in which export prices and normal values were preliminary determined for the relevant exporters and their respective production and sale, both domestically and for export, of aluminium windows and aluminium doors.

The cost to make and sell (**CTMS**) aluminium windows and aluminium doors in China, whether for domestic consumption or for export, would be similar for all producers in China. There is no evidence to suggest otherwise. Hence, given that:

- constructed normal values were calculated for the exporters in question and substitute benchmark costs for the major raw materials, aluminium extrusions and glass were used in the calculations; and
- general selling and administration expenses and profit margins would seem unlikely to be significantly different as the exporters would compete domestically, as well as export markets, with one another,

it is not apparent why there is such a divergent range in dumping margins.

Also, as producers of aluminium windows and aluminium doors would compete with one another in the Chinese market, domestic selling prices for their aluminium windows and aluminium doors would also be similar. This would also apply to their export prices to Australia. Such exports would not only be competing with exports from China but also from other countries and would need to be competitively priced to, for example, Australian importers so that those importers could on-sell such exports into the Australian market at competitive prices. Hence domestic selling prices and export prices of Chinese exporters would be similar. This has been the case in other investigations.

This is not suggest there are or may be mathematical errors in the calculation of the dumping margins. That would seem unlikely. However, no explanation has been provided in the SEF or elsewhere why there is such a disparate range in the dumping margins from -47.4% to +70.4% for the same goods being produced in the same country and being sold in the same domestic market and being exported to the same importing country. Such an explanation is warranted as export prices to Australia for the single, commingled 'good' would not differ by up to and over 100%. That is not commercially sensible.

This, therefore, requires explanation.

3. Material Injury

At Section 1.2.10 of the SEF, the Commission stated that it had 'identified that the Australian industry lost approximately:

- $350 million due to price undercutting by dumped and/or subsidised imports from China and
- $72.6 million in forgone sales to dumped and/or subsidised imports from China'.

The Commission also stated in that section of the SEF that the Commission:

> "*… also found that persistent price undercutting by imports from China suppressed the Australian industry's ability to recover increasing costs and achieve sustainable pricing outcomes. The loss of significant project opportunities, together with the price effects of the imports, adversely affected the Australian industry's sales volumes, market share, revenue and profitability, and the Australian industry's competitive position within the Australian market*".

These findings on material injury raise a number of issues, which are addressed below.

Problem One - Price undercutting & Dumping margin analysis

While the Commission preliminary found that price undercutting by imports from China suppressed the Australian industry's prices that purportedly led to the losses set out above, it is not apparent whether such price undercutting was attributable to dumping and, if so, to what extent and across all MCCs and, if not, why not?

As in other dumping and subsidy investigations, inquiries and reviews concerning exports from China, such as Review 609 concerning exports of aluminium extrusions from China, the Commission preliminary found that Chinese producers of aluminium windows and aluminium doors possessed a comparative competitive cost advantage in the cost to make such products when compared with their Australian counterparts. That comparative competitive cost advantage presumably also gives the Chinese producers a comparative competitive price advantage when selling their products in the Australian market over their Australian counterparts.

The question, therefore, is that if exports from China were being exported at un-dumped export prices would they still undercut the prices of the Australian industry and, if so, to what extent. This could be readily assessed by using the normal values of the residual exporters, being the most representative of exporters from China given how their dumping margins are determined. So, would exports at the normal value for residual exporters for each MCC undercut the prices of the Australian industry for the same MCCs and, if so, to what extent?

Further, given the negative dumping margin of -47.4% for one exporter who, it is understood, exports the greatest volume of aluminium windows and aluminium doors to Australia, to what extent do its exports when sold in the Australian market undercut the prices of members of the Australian industry? That is, how does the extent of price undercutting by its exports compare with that of dumped exports by other exporters?

Clearly its exports cannot be causing injury because of dumping because its exports are un-dumped. Hence the question of to what extent do its exports undercut the prices of members of the Australian industry as compared with price undercutting by dumped exports and, therefore, to what extent, if any, can injury be attributed to dumped exports?

In other words, given that:

- the dumping margin preliminary determined for the largest exporter of aluminium windows and aluminium doors by volume and value is negative 47.4%; and

- if, as appears to be the case, the prices of its exports in Australia undercut the prices of the Australian industry,

then that cannot be due to dumping, obviously. If other exporters are exporting at export prices at or around the export prices of that exporter, then to what can any injury being incurred by the Australian industry be attributable to dumed exports?

Further, if that exporter's export prices to Australia are lower than those of other Chinese exporters, , then this indicates that any price undercutting by such other Chinese exporters cannot be attributed to dumping. That is, the prices of the exports of the other exporters in the Australian market would undercut those of the Australian industry regardless of any dumping or the extent of any dumping given that they exported to Australia at export prices higher than the un-dumped exports.

It, therefore, unclear from the price undercutting analysis in the SEF as to whether and to what extent (if any) is such price undercutting is attributable to dumping and, therefore, any resultant injury is being caused by dumping. Obviously, to attribute injury to dumping it is necessary to establish, supported by evidence, not only the extent of any price undercutting that is attributable to the margin of dumping but also that the extent of the price undercutting attributable to dumping flows through to the prices at which the dumped exports are sold in the Australian market and that has price effects (i.e., price suppression and/or price depression) and/or sales volumes effects (i.e., reduced sales volumes) with consequent lower revenues and profits (i.e., the injury). Absent any one link in the causal chain, injury cannot be attributed to dumping.

The SEF currently does not contain such an analysis, and, because of that, it is deficient in its analysis on price undercutting and attribution of injury to dumping. This requires rectification.

In addition, the contention in the SEF that there has been persistent price undercutting by Chinese exports in the Australian AWDs market gives rise to a further question. That questions is that, if there has been persistent substantial and significant price undercutting by Chinese exports, why has the Australian industry maintained its sales volumes and market share to the extent that it has? Why isn't the volume and market share of Chinese exports in the Australian AWDs market greater than it is? In other words, why hasn't the market penetration of exports from China been similar, for example, to the market penetration in Australia of passenger motor vehicles from China which involves, as has been extensively publicised, significant price undercutting of competitors?

It is not unreasonable to expect that exports of aluminium windows and aluminium doors from China would have greater market penetration than they have due to the persistent price undercutting. Why has this not occurred? This also is not addressed as a counterfactual in the SEF.

Problem Two – Price suppression

As noted above, price undercutting by imports of aluminium windows and aluminium doors is contended in the SEF to have caused the Australian industry to incur price suppression.

Specifically, it has prevented the Australian industry from recovering '*increasing costs and achieve sustainable pricing outcomes*'.

However, it is not apparent and there is no analysis supported by evidence that, for example, the Australian construction industry, investors in residential and commercial buildings and Australian businesses and consumers could afford all or part of price increases by the Australian industry. In other words, there is no economic analysis of the residential and commercial building construction market in Australia to assess whether any such price increases would be sustainable in those markets and, if sustainable, to what extent.

Someone, obviously, has to pay for any such price increases. In the construction of residential homes, apartment complexes and office buildings, it developers, builders and investors, at least initially, and Australian businesses and individuals ultimately who will be required to pay for any such price increases. The issue is whether they have the capacity and willingness to do so or, in economic terms, the likelihood of the market bearing such prices and, if so, to what extent.

The capacity of the market to bear such price increases has not been analysed, at least that appears to be the case from the SEF. Further, such an analysis presumably would require an expert duly qualified and experienced to undertake such an analysis. There is no evidence that such an expert was engaged to undertake such an analysis.

Without such expert analysis it is not known and cannot be known whether any price increases to recover costs by the Australian industry would be sustainable and, if they were, to what extent. Hence the losses set out earlier above that the Australian industry purportedly has lost is speculative at best.

For example, it is well known that Australian businesses have been under and continue to be under increasing costs in construction, including construction material costs. This has led to a record number of construction companies and business entering into administration due to insolvency, including the recent and very public insolvency of the Bathla Group, which entered into voluntary administration. In addition, it also is well known that the Federal Government has not only itself invested the residential market by providing financial assistance to first home buyers but also committed at least $100 million in investing in the construction of residential housing. State and Territory Governments also are investing in the construction of residential housing in partnership with the Federal Government.

Such investment by governments is not the hallmark of an industry that can sustain further unchecked cost increases in construction materials. Hence the need for expert analysis and advice on this issue – that is, the capacity of the aluminium windows and aluminium doors markets to bear price increases.

Query also whether government intervention in Australian residential construction and purchasing of residential accommodation has created a 'particular market situation' for the Australian aluminium windows and aluminium doors markets due to its effect on prices in those markets. This also requires expert analysis.

The absence of the required economic analysis by a qualified and experienced expert of the Australian markets for aluminium windows and aluminium doors as to whether price increases by the Australian industry were sustainable and, if so, to what extent is a deficiency with the analysis on this issue in the SEF requiring rectification.

Problem Three – Government intervention in the Australian market

The Australian market for aluminium windows and aluminium doors is not free from government influence. As noted earlier above, through government legislation and administrative practices and policies, governments in Australia and, in particular, the Federal Government, have intervened in the Australian market for aluminium windows and aluminium doors, both directly and indirectly.

The question, therefore, is whether, through such intervention, has government in Australia artificially raised the prices of aluminium windows and aluminium doors to an extent the Australian industry is not only at a comparative competitive price disadvantage internationally but also domestically.

Such government intervention includes:

- government mandated transition to renewable energy withthe resulting increase in energy costs for industry and government subsidisation of energy costs; and
- reforms to industrial relations legislation leading to higher industrial relations management costs and wages; and
- imposition of anti-dumping measures on exports of aluminium extrusions to Australia leading to higher prices for aluminium extrusions in the Australian market and hence higher manufacturing costs for the Australian AWDs industry;
- government guarantees for first home buyers; and
- investment in residential construction and changes in planning controls for residential construction leading to increasing construction costs for developers and builders.

While the Chinese Government's intervention in the Chinese market has been assessed, no similar assessment has been made of Australian governments intervention in Australian markets and their effect on the comparative competitive costs and prices of the Australian markets such as, for example, the Australian aluminium extrusion market or the aluminium windows and aluminium doors markets or downstream markets such as the residential construction market and residential housing market. The issue is whether such government intervention has materially affected prices in those markets and, in particular, artificially inflated prices of construction materials for residential and other construction in Australia, as has been well-publicised, and done so to unsustainable levels given the number of building company insolvencies, also well-publicised?

No explanation is provided in the SEF for such an assessment not being undertaken. This would seem relevant in assessing whether injury being incurred by the Australian industry is being caused, contributed or exacerbated by government intervention in Australian markets

and the resultant comparative competitive cost disadvantage of the Australian industry, both internationally and domestically.

The absence of such an assessment is a deficiency in the SEF that requires rectification.

Problem Four – Particular market situation

The Commission has preliminary found that preliminary market situation exists in China in relation to the domestic aluminium windows and aluminium doors market in China due to government intervention in the production and supply of the two principal inputs to manufacture of such goods, aluminium extrusions and glass.

Specifically, the Commission has found that that particular market situation precludes a proper comparison between domestic selling prices for aluminium windows and aluminium doors in China and export prices of exports to Australia due to differences in the domestic Chinese and Australian AWDs markets that affect prices in such markets differently.

With respect, that is not the correct market comparison. Exports from China to Australia at their respective export prices do not compete in or sell their products in the domestic Australian AWDs market at those export prices. Export prices are the prices at which exporters export **to** an importing country, not the price at which they compete **in** the importing country. That latter price would include not only the export price but also all costs and expenses such as overseas freight and insurance to export the exports to the importing country plus the importer's costs and expense in clearing the exports through costs and its general selling and administrative expenses in on selling them into the Australian market, plus an amount for profit. It is this price at which exports compete in the domestic market of the importing market, not export prices.

Exporters, on the other hand, compete in export markets. The compete not only with exporters from the same exporting country but with exporters from other countries. They compete with one another on the prices that they can obtain in exporting their exports **to** an importing country. Hence the relevance of tariff and other trade barriers and the trade diversionary effects that such barriers to trade may have. This is the market, the export market, that requires analysis and assessment in determining whether a proper comparison can be made between export prices and domestic selling prices in the country of export, not the domestic market in the importing country.

Obviously, that analysis and assessment has not been undertaken in this investigation. This deficiency needs to be remedied so as to ascertain whether a proper comparison can be made between export prices and domestic selling prices in the country of export

Problem Five – Export sales

The applicants in their application contended that exports of aluminium windows and aluminium doors from China were being dumped, that is, they were being sold for export to Australia at export prices that were less than the prices being obtained in sales of like goods in the domestic market in China. The Commission preliminary found, as set out in the SEF, that this contention of the applicants was correct.

If, then, prices for aluminium windows and aluminium doors are higher than the export prices of such products being exported to Australia and those exports are undercutting the prices of the Australian industry, why then isn't the Australian industry exporting to China and obtaining the higher prices available in that country?

There would seem to be no impediment to their doing so given the guaranteed absence of trade and other barries to members of the Australian AWDs industry in exporting to China by the *China-Australia Free Trade Agreement*. That is the purpose of preferential (free) trade agreements.

This does not seem to have been addressed in the SEF – that is, the failure of the Australian industry to undertake such export opportunities as a cause of its injury. Research papers by the Chief Economist in the Department of Industry and Science have found businesses with an export orientation as well as a domestic focus end to be more competitive globally and perform better economically. Hence the absence of an export focus is a cause of the Australian industry's injury as precluding or impeding its ability to compete both domestically and internationally.

This is a deficiency in the SEF requiring rectification.

Problem Six –Raw material sources

It is noted in the SEF that the major raw material costs in the production of aluminium windows and aluminium doors in Australia are those for aluminium extrusions and glass infill.

Given that domestic production of glass has ceased in Australia, then the Australian AWDs industry must be importing its glass requirements from countries in the region including from China. However, in the SEF the Commission preliminary determined that a particular market situation exists in relation to the Chinese AWDs market because, in part, of intervention by the Chinese Government in the Chinese glass industry:

> "*The commission further considers that aluminium extrusions and glass are significant inputs in the production of AWD and that distortions affecting these upstream industries have influenced the costs and prices of AWD sold in the Chinese domestic market. Accordingly, the Commissioner preliminarily considers that domestic AWD prices in China would be substantially different in the absence of these distortions and the influence of the GOC*." (Section 6.4.2 of the SEF, p.134)

Query then that if the Australian industry is importing glass from China for use in the production of aluminium windows and aluminium doors, whether this has created a particular market situation in Australia for the same reason that it has in China? This does not seem to have been addressed in the SEF. This is a deficiency in the SEF that needs to be addressed.

Further, given the apparently higher cost of domestically produced aluminium billet in Australia used in the production of aluminium extrusions as compared with that in China, this being a reason for the imposition of anti-dumping measures on exports of aluminium

extrusions from China, would it not be commercially and financially prudent for the Australian AWDs industry to purchase Chinese aluminium billet and have it toll-processed in Australia into the aluminium extrusions required for the production of their products?

Would this not reduce their costs, improve the price competitiveness and ultimately lead to increased sales revenues and profits?

4. Public interest

A number of interested parties have raised in their submissions 'public interest' considerations. In response, the Commission has stated in the SEF that:

> "*Having regard to the above, the commission has considered the matters raised by interested parties to the extent relevant to the investigation. However, the broader public interest considerations have not been considered by the Commissioner in making their preliminary findings and recommendations set out in this SEF*." (Section 2.4.12 of the SEF, p.60)

The Commission's reasons for this approach are set out in that section of the SEF.

However, it is noted that in the Government's '*Streamlining Australia's anti-dumping system, An effective anti-dumping and countervailing system for Australia*' (Australian Customs and Border Protection Service, Canberra, June 2011) (copy **attached**), it was stated that:

> "*The Minister currently has an unfettered discretion not to impose measures. The Government believes this is adequate for the Minister to take account of the public interest when circumstances warrant broader matters be considered, subject to the changes outlined in 6.2."*

In Section 6.2 of that report, the Government stated that:

> "*As indicated in 6.1, the Minister has an unfettered discretion not to impose measures. In reporting its findings to the Minister, the Branch will now include an assessment of the expected effect that any measures might have on the Australian market for the goods subject to those measures, and like goods manufactured in Australia, and in particular any potential for significant impacts on this market.*
>
> *Potential market impacts and relevant factors are likely to differ in each case. However, the additional assessment that Customs and Border Protection will provide the Minister may include matters such as an assessment of the expected effect of any measures on market concentration and domestic prices. Customs and Border Protection will also report on any claims regarding impacts on downstream industries*."

It would seem that the likely effect of the proposed anti-dumping measures on exports of aluminium windows and aluminium doors exported to Australia from China on domestic prices and on market concentration, as well as claims regarding impacts on downstream

industries is a relevant consideration. To the that this has not been addressed in the SEF is a deficiency requiring rectification.

5. Conclusion

In light of the foregoing, it is submitted that the comingling of aluminium windows and aluminium doors as a single good instead of two separate, distinct goods for the purposes of this investigation is erroneous under Australian anti-dumping legislation and WTO rules and this has led to deficiencies in analysis and resulting preliminary findings as set out in this submission. These deficiencies require rectification.

If there are any questions, please let me know.

Yours faithfully,



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