



EUROPEAN COMMISSION  
EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR TRADE AND ECONOMIC SECURITY  
DIRECTORATE-GENERAL FOR TRADE AND ECONOMIC SECURITY

Directorate G – Trade Defence  
Directorate G – Trade Defence  
Investigations IV. Relations with Third Countries for Trade Defence Matters  
Investigations IV. Relations with Third Countries for Trade Defence Matters

**NON-CONFIDENTIAL**

Brussels, 9 April 2026

## **SAFEGUARD INVESTIGATION ON IMPORTS OF FABRICATED STRUCTURAL STEEL**

### **Submission by the European Commission regarding the initiation of the investigation**

The European Commission ('the Commission') would like to thank the Australian authorities for the opportunity to present its comments with regard to the initiation of the safeguard investigation on imports of fabricated structural steel.

After analysis of the Notice of initiation G/SG/N/6/AUS/5 submitted to the WTO Committee on Safeguards, the Terms of reference<sup>(1)</sup> as well as the non-confidential version of the application, the Commission would like to raise the following concerns.

These comments are submitted without prejudice to any further submissions that may be made at subsequent stages of the procedure.

#### **1. PROCEDURAL DEFICIENCIES**

The investigation was initiated and referred to the Productivity Commission (PC) on 23 January 2026. On the same day, a Notice was submitted to the WTO Committee on Safeguards, stating that the investigation had been initiated pursuant to an **application lodged by the Australian Steel Institute (ASI)** on behalf of the domestic industry.

However, **the non-confidential version of the application, lodged by ASI, was only available on 1 April 2026, just before the Easter break and more than two months after the initiation of the investigation.** This constitutes a serious procedural deficiency. It is recalled, that in the absence of access to the non-confidential application, interested parties are effectively prevented from understanding the factual and legal basis of the claims made by the domestic industry.

Such lack of transparency fundamentally undermines due process and precludes the effective exercise of interested parties' rights of defence.

---

<sup>(1)</sup> [Terms of reference - Fabricated structural steel safeguards | Productivity Commission](#)

The requirements under Article 3 of the WTO's Safeguards Agreement (WTO SA) are unequivocal, both in the text of the Agreement and in established jurisprudence.

Article 3.1 of the WTO SA states that “[...] *this investigation shall include **reasonable public notice to all interested parties** and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. [...]*”.

In addition, the *Panel in Ukraine – Passenger Cars* described the **duty to give reasonable public notice** as follows: “*The Panel notes that while the parties disagree whether Ukraine gave reasonable public notice to all interested parties, neither party has been specific about what constitutes reasonable public notice within the meaning of Article 3.1. In our view, in interpreting the phrase 'reasonable public notice', it is necessary to bear in mind that interested parties play a central role in safeguard investigations and that they are a primary source of information for the competent authorities. In the light of this, we consider that the competent authorities must certainly notify interested parties of a decision or action, such as the initiation of an investigation, that impacts on whether or how interested parties can discharge their role as providers of evidence and views. As we mentioned above, the Appellate Body in US – Wheat Gluten also stated that interested parties must be notified of an investigation. Furthermore, absent further elaboration in Article 3.1, we consider that the adjective 'reasonable' when used in conjunction with 'public notice' is susceptible of being interpreted to relate to several relevant aspects, including the timing of the public notice, the manner of publication of the notice, and its content. Here as well, a determination of whether public notice is 'reasonable' in terms of its timing, manner of publication and content may, in our view, affect the ability of interested parties to perform their role in the investigative process*”(2).

Investigating authorities are under a **clear obligation** to ensure **transparency, procedural fairness, and a properly substantiated evidentiary basis** in the conduct of the investigation.

In the present case, the Notice published by the PC falls short of these obligations.

## **2. FAILURE TO DEFINE THE PERIOD OF INVESTIGATION**

The Commission reiterates that the PC failed to provide reasonable public notice to interested parties, as required under the WTO SA, because **it omits basic and essential information** necessary to understand and respond to the initiation of the safeguard investigation. Among such essential elements is the **definition of the “period concerned”**, or the **“period of investigation”** that has not been clearly defined in the application either. This is not a mere procedural irregularity; **it constitutes a fundamental deficiency. The period of investigation is the core element in safeguard investigations, as it defines the period within which import trends and injury factors are to be assessed.**

---

(2) Panel Report, Ukraine – Passenger Cars, paras. 7.409-7.410.

While it is true that the WTO SA does not prescribe a specific or fixed time period (for example, the last 3 or 5 years) that must be examined, WTO law nevertheless imposes clear **substantive obligations**, namely:

- the determination of serious injury must be based on **objective evidence** and a proper evaluation of all relevant factors, including import trends and the condition of the domestic industry; and
- the investigation must constitute a systematic examination supported by a **sufficient and coherent factual basis**.

In practice, these requirements necessarily imply that the investigating authority must identify and rely upon a **defined period of investigation** that is **recent, representative, and sufficiently long** to permit a meaningful analysis of trends and developments of imports and economic situation of the domestic industry throughout the period concerned.

With regard to the **application filed in November 2025**, it remains **unclear what period of investigation has been chosen**. The application asserts that imports increased over the period CY2022 to CY2024, in both absolute and relative terms, while alleging serious injury over a different period, namely CY2022 to CY2025 or alternatively from 2022/23 to 2024/25. This inconsistency gives rise to **fundamental legal deficiencies** under the WTO SA.

**First**, under WTO law, the period of investigation must be **recent** and representative, that is, it must reflect market conditions **at or very close to the time the investigation is initiated**. However, the applicants provide import data only up to December 2024, despite the investigation being submitted in November 2025 and initiated in January 2026. This results in a gap of **more than one year between the end of the data period and the initiation of the investigation**. Such data cannot be considered sufficiently recent to reflect current market realities. At a minimum, import data should extend to at least Q3 2025 to ensure that the analysis captures the most up-to-date trends in imports and industry conditions.

**Second**, the application claims serious injury in CY2025 but fails to provide any import data for that year. It is well established that a determination of **serious injury** must be assessed **in parallel with import trends over the same period**. The use of different time periods for imports and injury data precludes any proper assessment of correlation and causation. In the absence of import data for CY2025, it is impossible to determine whether imports increased, stabilised, or declined during the period in which serious injury is alleged. This gap breaks the causal link required under WTO law. Moreover, any attempt to attribute the domestic industry's situation in CY2025 to imports would be inherently speculative and unsupported by positive evidence.

Substantively, the failure to identify the relevant period concerned **undermines the integrity of the investigation itself**. Without a clearly defined period of investigation, it is impossible to ensure that the analysis is based on properly contextualised data. This deficiency leads to **distorted and misleading claims**, and consequently to a failure to properly establish causation in accordance with WTO requirements.

In these circumstances, it is particularly concerning that the PC did not request the applicant to submit updated and recent data but instead proceeded to initiate a safeguard investigation on the basis of manifestly **incomplete and outdated information**.

### 3. FAILURE TO DEMONSTRATE INCREASED IMPORTS IN THE MEANING OF ARTICLES 2.1, (3.2), AND 4.2(A) OF THE WTO SA

Under Article 2.1 of the WTO SA, a Member may only apply a safeguard measure if it has determined "*that such product is being imported into its territory in such increased quantities, absolutely or relative to domestic production, and under such conditions that it is causing or threatening to cause serious injury to the domestic industry producing like or directly competitive products.*"

Similarly, Article 4.2(a) WTO SA clarifies that all relevant factors must be evaluated, "[...] *in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports [...]*"

The PC's Notice asserts that imports of the FSS products increased by 38.7%, rising from 389,169 tonnes in 2020 to 539,649 tonnes in 2024. However, such a statement, based solely on a comparison of end points, is **insufficient to meet the legal standard** required under the WTO SA. This deficiency is further compounded by the fact that an investigation initiated in 2026 relies on data ending in 2024, thereby failing to reflect the most recent import developments.

As clarified by the *Appellate Body Report Argentina –Footwear*<sup>(3)</sup>, Articles 2.1 and 4.2(a) of the WTO SA require not merely evidence of any increase in imports, but a **demonstration that imports have increased “in such increased quantities ... and under such conditions as to cause or threaten to cause serious injury.”** Crucially, Article 4.2(a) further mandates an **evaluation of both “the rate and amount of the increase in imports ... in absolute and relative terms.”** The Appellate Body confirmed that this obligation entails an **assessment of trends over the entire period of investigation**, rather than a simple comparison of initial and final data points.

In the present case, the PC appears to rely on a simple end-point comparison without adequately analysing intervening trends.

Similarly, the application fails to provide any meaningful analysis of import developments. In fact, it does not include any data on import volumes and, as such, does not comply with the requirements set out in Article 3.2 of the WTO SA.

These deficiencies are manifest and material. **Essential information, most notably import volumes**, is entirely absent; instead, the application relies on graphical representations (e.g., Figures 3 and 5) that omit any indication of scale or magnitude. Such omissions are unjustified. Even where confidentiality concerns arise, the obligation remains to provide meaningful summaries, including through indexed figures or ranges. The complete absence of any quantification of import volumes is therefore inexplicable and inconsistent with established WTO requirements.

Moreover, the limited information that is available indicates that, notwithstanding any alleged increase in imports between 2022 and 2024, the domestic industry appears to have retained a majority share of the market in 2024 (as suggested by Figure 7). This further underscores the

---

<sup>(3)</sup> Appellate Body Report Argentina –Footwear (EC), para.129

need for a comprehensive, and up-to-date analysis of import trends, an analysis that is currently lacking.

Taken together, these deficiencies **prejudice the rights of defence of interested parties**. In the absence of adequate disclosure and a reasoned, evidence-based analysis of import developments, interested parties are effectively prevented from exercising their procedural rights.

Accordingly, the investigating authority is requested to (i) **disclose complete and up-to-date data on import volumes and trends**, and (ii) **conduct and place on the public record a proper, reasoned analysis** of import developments over the entire period of investigation, in **full compliance with Articles 2.1, 3.2, and 4.2(a)** of the WTO SA and the relevant jurisprudence.

#### **4. FAILURE TO DEMONSTRATE SERIOUS INJURY WITHIN THE MEANING OF ARTICLE 4 OF THE WTO SA**

The WTO SA states in Article 4.2(a) that *"In the course of the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the provisions of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature which bear on the condition of that industry"* and mentions a series of factors which must be analysed.

**First**, the notice of initiation prepared by the PC asserts that *"import unit prices of FSS were consistently between 50% and 70% below the global average price over the period 2020–2023"*. However, **no evidence** has been provided to substantiate this claim. This is particularly problematic given that the period of investigation seems to be from 2022 to 2024. Furthermore, the application simultaneously asserts that *"imported FSS is being sold at prices 15% to 50% lower than domestic FSS."* The coexistence of these two rather different claims, without explanation, reveals a **significant discrepancy** that undermines the reliability of any price evidence.

**Second**, the applicants allege continued downward price pressure, the expansion of aggressively low-priced imports into the domestic market, and the existence of price depression and/or suppression etc. Notwithstanding these assertions, **no substantive price effects analysis has been provided**. While domestic prices appear to be reflected in Figure 10 (based on industry questionnaire data), **the period used (2022/23 to 2024/25) differs from that applied to import data or the serious injury analysis**. Crucially, **no import price data has been made available**. An assessment of price effects, such as price undercutting, depression, or suppression must be conducted on the basis of **consistent and comparable data**. The use of so many divergent periods distort the analysis and impedes an objective examination.

This deficiency is underscored by the findings of the in *Panel in Argentina – Footwear*<sup>(4)</sup>, where the Panel observed that in the absence of price comparisons between imported and domestic products, there was no factual basis for the statements that imports were cheaper than domestic products; and that there was no evidence that lower-priced imports had any injurious effects on the domestic industry. In the latter regard, the Panel stated: *"[T]he report on the*

---

<sup>(4)</sup> Panel Report, Argentina – Footwear (EC), para. 8.261.

*investigation contains no evidence to indicate that the effect of the prices of imported footwear on domestic producers' prices, production, etc., was specifically analysed, in spite of the fact that the causation finding was fundamentally based on price considerations. Rather, aggregate trends in broad statistical indicators were compared and conclusory statements made (e.g., that 'the decline in output was replaced by imports, essentially cheap imports'. This is not an analysis of the conditions of competition that is called for by Articles 2 and 4.2."*

**Third**, the data on the record does **not support a finding of serious injury** to the Australian industry, as required under Article 4.1(a) and Article 4.2(a) of the WTO SA. To the contrary, the available evidence demonstrates that the overall condition of the domestic industry remained **stable or improved during the period 2022–2024 when imports were allegedly increasing**.

In particular, key performance indicators show **no deterioration consistent with serious injury**, namely:

- **Production remained broadly stable**, declining only marginally by 1.52%.
- **Sales volume increased** by 0.7%, while sales value rose by 6.77%, indicating improved revenue performance.
- Most notably, **profits increased** by 119.07%, and **profitability (turnover) increased** by 105.18 percentage points, reflecting a substantial strengthening of financial performance.
- **Employment also increased** by 2%, further confirming the absence of adverse effects typically associated with injury.
- Although **capacity utilisation** declined by 13.74 percentage points, this isolated indicator cannot outweigh the overwhelmingly positive trends observed across the other main economic factors.

Additional analysis further undermines any claim of industry-wide injury. The data reveals a highly divided performance among Australian producers. Fabricators #1, #3, and #5 experienced significant growth, with **increases** in production and sales of up to 84% during the period of 2022-2024. These same producers also recorded substantial gains in sales value, up to 130%, and marked improvements in profitability, including increases of 260% for Fabricator #3, 166% for Fabricator #5, and 78% for Fabricator #1. Capacity utilisation for these producers likewise increased significantly, by as much as 84%.

By contrast, the remaining producers experienced declines in production, sales, and capacity utilisation of up to 62%. Such divergent trends do not evidence any injury caused by increased imports; rather, they point to **intensified competition within the domestic market** and **company-specific performance gaps**. The fact that several producers expanded output, increased sales, and significantly improved profitability during the same period (2022 to 2024) in which imports were rising is fundamentally inconsistent with a finding that imports caused serious injury to the domestic industry.

Employment trends reinforce this conclusion, as they remained stable or increased modestly by up to 6% across producers, showing no evidence of contraction in the workforce.

In light of the above, the applicants' assertion that a surge in imports since CY2022 has caused serious injury is **not substantiated by evidence**. The overall performance of the domestic industry, particularly the substantial increases in profit and profitability, plainly contradicts any

claim of significant overall impairment. Accordingly, the evidentiary threshold for establishing serious injury under the WTO SA has not been met.

Under Article 4 of the WTO SA, the investigating authority must establish **significant overall impairment of the domestic industry**. The presence of strongly performing indicators precludes any such finding. At most, the data reflects a redistribution of market performance among Australian producers, not injury attributable to imports.

#### **5. FAILURE TO DEMONSTRATE A CAUSAL LINK WITHIN THE MEANING OF ARTICLE 4.(B) OF THE WTO SA**

In this context it is recalled that according to Article 4.2(b) an investigation has to demonstrate [...] *“the existence of a **causal link between increased imports of the product concerned and serious injury or threat thereof**. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports”*.

The applicants submit that a causal link exists between the increase in imports of FSS and the actual and threatened serious injury allegedly suffered by the domestic industry. They further insist that neither the WTO SA nor the relevant jurisprudence establishes a specific or prescribed methodology for assessing causation.

This statement is not supported by the applicable legal framework. While it is correct that the WTO SA does not set out a rigid test, both the Agreement and established jurisprudence **clearly require a reasoned and adequate demonstration of a causal link** between increased imports and injury to the domestic industry. It is well established that **a mere assertion of causation, unsupported by substantiated evidence and analysis, does not satisfy this requirement**.

In the present case, such a demonstration is manifestly absent. Neither the application nor the PC’s notice contain a **reasoned and adequate explanation** establishing how the increase in imports of FSS has caused, or is threatening to cause, serious injury to the domestic industry. The statements rely primarily on conclusory statements rather than a structured and evidence-based analysis.

In particular, as noted above, no data has been provided concerning the evolution of import volumes, their price effects, or any causal link between such imports and the condition of the domestic industry during the period of 2022-2024. To the contrary, the available information indicates that the **domestic industry is performing strongly**, which further undermines any claim of causal link between the alleged serious injury and imports.

Furthermore, the application itself lists several **other factors** that could potentially contribute to injury, including domestic demand, raw material costs, regulatory developments, and technological changes. While the applicants assert that these factors did not cause serious injury, this assertion is **not supported by any evidence or analysis**. There is no attempt to assess the impact of these factors, nor to distinguish and separate their effects from those of the allegedly increased imports, as required under WTO law.

Accordingly, the application **fails to meet the established legal standard**. In the absence of a reasoned and adequate explanation demonstrating (i) the existence of a causal link between

increased imports and serious injury, and (ii) the proper non-attribution of injury caused by other factors, the applicants' claims remain unsubstantiated.

## 6. CONCLUSION

The Commission trusts that the investigating authority will thoroughly examine the points raised above and terminate the investigation, given that the analysis demonstrates that the initiation and conduct of the safeguard investigation are affected by multiple and fundamental legal and procedural deficiencies under the WTO, namely:

- the investigation is marked by **serious procedural shortcomings**; the lack of transparency undermines due process, violates the requirement of reasonable public notice and impairs the effective exercise of defence rights;
- the **failure to clearly define a consistent and recent period of investigation** constitutes a critical flaw. The use of inconsistent timeframes for imports and injury analysis, combined with outdated and incomplete data, prevents any meaningful assessment of market developments;
- the investigation **fails to demonstrate increased imports within the meaning of** Articles 2.1, and 4.2(a). The lack of actual import data and reliance on a simple end-point comparison, without a proper evaluation of trends over the period of investigation, does not meet the applicable legal standard; the absence of this essential data further undermines transparency and prevents interested parties from assessing the validity of the claims;
- the evidence on record does **not support a finding of serious injury**; key economic indicators, including profitability, sales, and employment, show stability or improvement in the domestic industry. The presence of divergent performance among Australian producers suggests internal competition rather than injury caused by imports; the threshold of “**significant overall impairment**” required under Article 4 has not been met;
- the investigation **fails to establish a causal link** between increased imports and the alleged injury, as required under Article 4.2(b). The application contains no reasoned and substantiated analysis demonstrating causation, nor does it adequately examine the effects of other relevant factors.

In light of these cumulative deficiencies, the safeguard application lacks a sufficient legal and evidentiary basis under WTO law. Accordingly, the investigation, as currently constituted, **does not comply** with the substantive and procedural requirements of the WTO Agreement on Safeguards and should be terminated. Any alternative course of action would be inconsistent with the applicable WTO rules and obligations.