SUBMISSION IN RESPONSE TO THE INTERIM REPORT

Safeguards Inquiry into the Import of Fabricated Structural Steel

Steel Builder Australia

30 September 2026

EXECUTIVE SUMMARY

SBA's position is unchanged. Safeguard measures, whether tariffs, quotas or tariff-rate quotas, are not warranted for fabricated structural steel. SBA accepts each of the Commission's interim findings and submits that the analysis supporting them should be maintained in the final report.

This submission makes two arguments that do not depend on one another. The first supports the Commission's safeguards analysis. The second concerns a question the Commission itself identified at page 54 of the interim report: whether the conformity of imported fabricated structural steel with Australian standards should be verified at the time of import. SBA's case on that second question does not depend on any finding that imports have increased or that the domestic industry has been injured. Rather, if the Commission's analysis changes and the public interest test is enlivened, the effect of ensuring that imports conform with Australian standards must be a central consideration.

The Commission observed at page 54 that a safeguard measure would raise the price of compliant and non-compliant imports alike and would not test product quality, verify conformity or strengthen enforcement, and that enforcing objective standards, conformity assessment, procurement requirements, and monitoring and enforcement would address the problem more directly. That observation goes to the heart of any public interest assessment. Enforcement of standards at the border should be considered as an economically efficient option that does not carry the concerns the Commission has identified with indiscriminate safeguard measures.

This submission is directed at four matters.

- **The interim findings should be maintained.** Part A records SBA's agreement with each finding and with four elements of the Commission's methodology on which they rest, and adds supporting evidence (sections 2 and 3).
- **Conformity is a question the Commission has already identified.** Section 5 draws on the Commission's observation at page 54, preserves the qualifications the Commission attached to it, and explains why conformity is directly relevant to any public interest assessment.
- **Border verification of conformity is the alternative a public interest assessment would need to weigh.** Section 6 sets out why builders, asset owners, compliant suppliers wherever located, and the wider economy have an interest in steel meeting applicable requirements and in being able to rely on the evidence that it does, and how border verification compares with a safeguard measure.
- **A workable framework exists, and the final report can recognise the issue within the Commission's remit.** Section 7 outlines the framework SBA proposes. Section 8 sets out the wording SBA asks the final report to consider.

References in this submission to sections are to this submission. References to pages, figures, tables, chapters and findings are to the Commission's interim report of 3 September 2026 unless otherwise stated.

PART A – THE INTERIM FINDINGS

1. SBA'S INTEREST AND THE STRUCTURE OF THIS SUBMISSION

Steel Builder Australia (SBA) welcomes the opportunity to respond to the Commission's interim report. SBA participated in this inquiry through its principal submission (sub. 42), the public hearings held from 13 to 15 May 2026 and a post-hearing submission. Its proposal is cited in the report's discussion of alternatives to a safeguard at page 54, note 36.

1.1 Interest

SBA is an Australian-owned construction and engineering group. It fabricates through an Australian-controlled facility in Vietnam, Hightech Steel Builder JSC (HTSB), accredited to AS/NZS 5131 Construction Category 3 (CC3), and imports that product into Australia. SBA has submitted that the issues reported by the Australian industry could be most effectively addressed by Australian enforcement of compliance with AS/NZS 5131. Both of the instruments discussed in the interim report (safeguard measures and a conformity requirement) would apply to SBA on the same terms as to any other importer: a safeguard measure by reference to the quantity imported, and a conformity requirement of the kind described at page 54 by reference to the accreditation of the producing facility.

1.2 Structure of this submission

SBA has structured this submission so that its two arguments do not depend on one another. Part A is confined to the initial questions the terms of reference require the Commission to answer, and SBA's answer to each is that the Commission's interim view is correct. Part B addresses conformity as a public interest consideration, and Part C outlines the framework SBA proposes and what it asks of the final report. Nothing in Parts B or C is advanced as evidence of increased imports, injury or causation, and SBA asks that they not be read as such.

1.3 SBA's earlier data

SBA's earlier submissions drew on the best data then available to it, principally a customised ABS International Merchandise Trade extract. The Commission has since published its own analysis of the import data, drawing on transaction-level access not available to participants. Some of SBA's earlier figures may be revised in light of that data. The matters SBA raises in this submission do not depend on them. SBA would be pleased to provide updated figures if that would assist the Commission.

2. RESPONSE TO THE COMMISSION'S FINDINGS

Finding	The Commission's conclusion	SBA's response
3.1 (p. 26)	The increase in imports does not meet the standards required. Growth in imports, in absolute terms or relative to domestic production, does not meet the standard required by the WTO Agreement on Safeguards.	Accepted. SBA agrees with the Commission's reasons for the investigation period and for assessing the twelve codes as one product group, and adds evidence supporting both (sections 3.1 and 3.2).
4.1 (p. 44)	The Australian fabricated structural steel industry as a whole is not suffering serious injury and there is not a threat of serious injury.	Accepted. SBA agrees with the Commission's preference for population-wide administrative data over participant accounts, and addresses the one disclosed limitation (sections 3.3 and 3.4).

Finding	The Commission's conclusion	SBA's response
5.1 (p. 46)	The conditions for definitive safeguard measures are not met.	Accepted, and consistent with SBA's position since its principal submission. SBA notes this finding is to be revisited in the final report, and section 3 is directed to supporting it.
5.2 (p. 47)	The conditions for provisional measures are not met. The matter will not be revisited in the final report.	Accepted, and noted as final. Consistent with SBA's response to PC Question 7 (sub. 42, pp. 30–31).

SBA's response to the interim findings. Page references are to the interim report.

SBA also notes the Commission's observation at section 3.2 of the interim report that trade measures applied to steel inputs raise the costs of domestic fabricators relative to foreign fabricators, a point SBA made in its principal submission and which the Commission has recorded (sub. 42, p. 28). That mechanism operates on the competitive position of domestic fabricators independently of any increase in imports.

3. SBA'S AGREEMENT WITH THE COMMISSION'S METHODOLOGY

The Commission's methodology turned on four important elements: the investigation period, the treatment of the twelve tariff codes as a single product group, the weight given to administrative data over participant accounts, and reliance on WTO panel decisions. The Commission has given reasons on each, and explained them further at the public webinar on 10 September 2026. SBA agrees with those reasons and sets out why. SBA then addresses the one limitation in the Commission's dataset that it regards as genuine, and the treatment of data after the investigation period.

3.1 The investigation period

The Commission adopted an investigation period of financial years 2020–21 to 2024–25 and set out its reasons: the terms of reference are silent on the period; identifying the appropriate start was complicated by potential COVID-19 distortions, which a five-year window is long enough to accommodate; most participants focused on the last five years; 2024–25 is the most recent financial year for which sufficient injury data exists; the increase must be recent, so the period must capture the recent past (*Argentina – Footwear (EC)*, para. 130); and five-year periods have been used in many other safeguard investigations, including by the Commission (pp. 17–19). SBA agrees. The period is orthodox in length, ends on the most recent year for which the data will support an assessment, and extends beyond the period on which the application was framed.

The ASI had advocated a three-year period beginning with the 2022 calendar year. Its application gives no reason for selecting only three years, or for not using figures up to the end of the 2025 financial year (paragraph 65 of the ASI application). SBA submits that a five-year period is essential given the impact of COVID-19 on demand, domestic production and imports of FSS. COVID-19 operated in several ways: an initial reduction in economic activity, increased activity arising from government stimulus spending, and pronounced movements in the cost of containerised sea freight. In this context, a five-year period carries the following benefits:

- It permits a meaningful assessment of whether any increase in imports is recent, sudden, sharp and significant.
- It permits a comparison of current import levels with a broader historic baseline, which helps to distinguish between a genuine surge, a temporary fluctuation within normal trade cycles and longer-term increases that occur gradually.
- It limits the distortion that can be caused by the selection of a particular base year or end year. A three-year period affected by COVID-19 is particularly vulnerable to a strategically selected start point. As noted in *Argentina – Footwear (EC)* at [8.156] – [8.157], if moving the start or end year changes the result, that "at least raises doubts" about whether imports increased.

- It identifies increases that may be the result of COVID-19 or of the government stimulus that followed it.

The purpose of the inquiry is to identify whether there has been a change from normal market conditions. It is appropriate for the Commission to select a period sufficiently long to identify what ordinary market conditions are. While a three-year period may be appropriate in some cases, it is less likely to be so where that period was affected by COVID-19 stimulus spending. As noted in *US – Lamb* at paragraph 138, the period of review must be sufficiently long to allow appropriate conclusions to be drawn.

3.2 The consolidated product group

The Commission assessed the twelve 10-digit codes in the terms of reference as a single product grouping and gave three reasons: the Agreement on Safeguards does not constrain the choice of product under investigation and permits a range of products to be investigated together (*EU – Certain Steel Products (Panel)*, paras. 7.34, 7.53; *Dominican Republic – Safeguard Measures (Panel)*, para. 7.181); the products share a common functional character and are produced by an identifiable group of firms using the same facilities, inputs, labour and processes; and the residual code HS 7308900065 accounted for between 72 and 83 per cent of in-scope import volume over the investigation period, so the distribution of imports across codes reflects classification practice as much as substantive difference (pp. 14–15). SBA agrees with each of those reasons and adds the following.

- **Definition of FSS.** The ASI requested the inquiry but did not submit a clear definition of FSS. At paragraph 6 of its application it stated "*Steel fabrication is a value-adding process that transforms finished steel into specific steel products through processes such as cutting, bending, machining, welding, and/or assembling.*" The definition provides no differentiating factors that would justify viewing the imports as twelve different subsets according to tariff code. At paragraph 11 of its application, the ASI refers to the "like product" as being FSS imported under heading "7308".
- **SBA identified the same classification problem independently.** SBA's principal submission described HS 7308900065 as a residual catch-all category vulnerable to inconsistent classification (sub. 42, p. 14). The Commission has reached the same conclusion from the transaction data and from the ASI's own evidence at the hearings (p. 14). A determination applying different treatment to different codes would rest on that same classification data and would be open to circumvention by reclassification.
- **Code-level results diverge.** The Commission records that imports in half of the in-scope codes declined over the investigation period while total in-scope imports rose, and that the code most naturally capturing portal frames, the segment in which import penetration is claimed to be greatest, accounts for only around 1 per cent of in-scope volume (p. 15).

A code-level assessment would therefore produce a materially different measured outcome from the same underlying facts, which is itself a reason to prefer the grouping the Commission has adopted. SBA does not submit that the tariff-line reporting contemplated by the terms of reference is precluded, only that the classification characteristics the Commission has identified make code-level findings unreliable for assessing imports and injury.

3.3 The use of population-wide administrative data

The Commission based its assessment on administrative data for a conservative population of up to 376 businesses, comprising 336 ASI fabricator members and 40 fabricators identified during the inquiry, and tested the result against an expanded population of up to 514 (pp. 16, 24). It has explained why: administrative data gives broad coverage, uses information firms have already reported to the Australian Taxation Office, reduces reporting burden, and reduces selection bias, being less likely than a survey to over-represent firms still operating or firms experiencing particular difficulties (p. 31). SBA agrees without qualification.

SBA made a related point in its principal submission about an injury analysis resting on six fabricators from a single sub-segment (sub. 42, pp. 24–25). Thirty-four domestic fabricators made public submissions and nearly all reported growth in imports and reduced market share, but the Commission's own tabulation shows that most

injury factors were not addressed by most submitters, and that very few provided full time-series data (pp. 31–32). Firms experiencing the greatest difficulty have the strongest incentive to participate. The population-wide data answers that limitation, and the confirmation that the expanded population of over 500 businesses produces the same conclusion removes any suggestion that the result is an artefact of industry definition. SBA notes without criticism that the conservative population is built on a fabricator member list supplied by the ASI, so the population tested is the population the applicant itself identified as suffering injury (see paragraph 23 of the ASI application).

In its media release of 3 September 2026, the ASI stated that it would need to understand why the Commission's assessment of injury varied so dramatically from its own. A comparison of the injury methodology in the ASI application with the interim report makes the reasons apparent:

- At paragraph 25 of its application, the ASI states that it obtained "*a sample of seriously injured FSS producers, primarily from the portal frame sub-sector, as a statistically relevant indicator of the broader Australian FSS Industry*", and at paragraph 27 that the results from this sample "*provide a sound basis for drawing conclusions on the serious injury suffered by the entire FSS industry*".
- The interim report relies on actual reported data for the entire FSS industry. It effectively tests the ASI's claim that the results of a sample of manufacturers from the most affected sub-sector, selected because they had suffered serious injury, will be representative of the entire industry.
- An assessment based on the financial results of the most affected manufacturers in the most affected sub-sector would be expected to differ materially from an industry-wide assessment.

The difference demonstrates the importance of Australian trade policy resting on industry-wide data compiled for purposes unconnected with the injury claim, such as tax returns, and that the claim that six sampled manufacturers were representative of the entire industry (paragraph 131 of the ASI application) cannot be sustained. In *US – Lamb* the panel at [7.220] – [7.221] noted that petitioners cannot automatically be taken to represent a major proportion of the industry. The data must be representative, and a sample of the six most affected manufacturers is not.

3.4 Revenue from activities outside the scope of the inquiry

One limitation in the Commission's dataset is genuine, and the Commission has disclosed it. Data drawn from business income tax returns, business activity statements and pay-as-you-go returns cannot separate fabrication income from engineering, design and installation income, so some of the activity captured may reflect diversification rather than domestic fabrication (pp. 16, 31). The Commission records that across 14 submissions providing quantitative evidence, the median share of revenue exposed to direct import competition was 80 per cent. The Commission has also stated that the Agreement on Safeguards does not require the firms making up the domestic industry to produce only like or directly competitive goods, and that income earned from other goods and services may mitigate against injury caused by increased imports (pp. 16, 31). SBA does not contest that position, and offers two observations on how much the limitation matters in practice.

- **The 80 per cent median is participant-reported rather than measured.** It derives from what 14 submitters stated about their own revenue mix. SBA does not criticise the Commission for relying on it, since no better source presently exists, but it carries the same selection characteristics as the submissions from which it is drawn.
- **On SBA's own delivery model, non-goods revenue does not move independently of fabrication revenue.** SBA's engineering, project management, logistics and installation revenue is contracted as part of an integrated supply-and-install package and follows from winning the fabrication scope. On SBA's experience, movement in non-goods revenue broadly tracks movement in goods revenue. If that pattern holds across the industry, firm-level revenue and profit measures are a reasonable proxy for the health of the fabrication

activity within those firms. SBA offers this as evidence from a single integrated operator, not as an industry-wide finding.

The relevant question is not whether the administrative data is perfect, but whether it is the best available. It captures the entire industry, is objective and auditable, was produced outside the context of the inquiry, and is not affected by the inherent flaw in relying on self-selected data provided by those requesting protection. There is no evidence that non-FSS revenue within the industry is of a material amount or has moved in a different trend to FSS revenue. By contrast, the data put forward by the ASI and other participants covers a smaller fraction of the industry, relates only to participants claiming injury, was prepared to advance the case for safeguard measures, and often consists of claims or predictions unsupported by auditable data.

3.5 Data after the investigation period

The Commission records that preliminary data for the first three quarters of 2025–26 suggests the longer-term import trend has continued beyond the investigation period, and notes that the data is preliminary and subject to revision (pp. 22–23, figure 3.2). SBA supports the interpretive principle the Commission applies throughout, that the real significance of short-term trends in the most recent data should be assessed in the light of long-term trends (*US – Lamb*, paras. 136–138, cited at pp. 4 and 7), and submits that the principle should govern the treatment of any post-period data in the final report, including in relation to the threat of serious injury.

Applied to this data, the principle supports the Commission's conclusion. The continuation of an established trend is not a surge, and the Commission has already found that the one sudden and sharp movement within the investigation period, in 2021–22, was neither recent nor significant in the context of longer-term trends because imports fell the following year (p. 22). The Commission's own summary of the final year of the investigation period, at Table 4.2, records relative imports and the import share of the domestic market both falling in 2024–25, alongside growth in domestic industry sales, turnover, profit, EBITDA and production. SBA asks that the final report continue to assess post-period data against the long-term trend rather than in isolation, and that any characterisation of it record that the data is preliminary and subject to revision.

If the Commission's view on any material issue changes after a review of more recent data, SBA requests that any changed view, and the data supporting it, be provided to industry for comment. This would ensure a procedurally fair approach and increase the robustness of the final report. SBA would need only seven days to respond.

3.6 Reliance on WTO panel decisions

The Commission has cited or followed WTO panel decisions at various points in the interim report. That reliance is appropriate for three reasons.

- Before this inquiry commenced, Australia had not enacted legislation setting out how a safeguard inquiry is to be conducted. The Commission's primary source of direction on the conduct of the inquiry, and on the findings required before safeguard measures could be imposed, is the WTO Agreement on Safeguards. That is precisely what the WTO panel decisions construe.
- There is no Australian case law or recent safeguard report providing direction to the Commission on the conduct of a safeguard inquiry.
- Australian case law has made clear that WTO panel decisions should be given substantial weight, to ensure consistency of outcomes among WTO member states and certainty for international trade (*Siam Polyethylene Co Ltd v Minister of State for Home Affairs* [2009] FCA 837 at [65]–[66]).

4. IF A MEASURE IS NONETHELESS CONTEMPLATED

SBA's position is that no measure should be introduced. If the Commission nonetheless contemplates one in the final report, SBA offers the following on design, consistent with chapter 6 of the interim report.

- **Quotas are particularly ill-suited to this product.** SBA supports the Commission's conclusion that quotas and tariff-rate quotas should not be preferred. Fabricated structural steel is ordered against project programmes with long lead times, and the date on which goods enter Australia is not reliably within the importer's control. An importer could not know at the time of order whether goods would land within or outside a quota. The rational response is to price every consignment at the out-of-quota rate, which produces more protection than the measure intends and does so unpredictably.
- **Proportionality.** The case advanced for a measure rests on an increase from a pre-existing level of imports. It follows that the pre-increase level is not said to cause serious injury. A measure applied to all imports rather than to the increment would deliver protection greater than the case advanced could justify.
- **Pre-existing commitments.** SBA supports the Commission's observation that implementation arrangements should take account of pre-existing commercial commitments, including a sufficient lag between announcement and commencement, a phase-in period, or special treatment for goods already in transit or contracted for (p. 57). A measure applied to goods already contracted falls on transactions that cannot be redirected to domestic supply, adding cost to committed projects without producing substitution.

PART B – CONFORMITY AND THE PUBLIC INTEREST

5. THE QUESTION THE COMMISSION IDENTIFIED AT PAGE 54

Having found that the conditions for a measure are not met, the Commission was not required to assess alternatives. It nonetheless observed, in its discussion of how problem identification shapes the choice of policy options:

> "The PC has not investigated these competing claims, but critical concerns about safety and consumer protection, if verified, should be addressed directly. A safeguard measure would raise the price of compliant and non-compliant imports alike. It would not test product quality, verify conformity or strengthen enforcement. Enforcing objective standards, conformity assessment, procurement requirements, and monitoring and enforcement would address the problem more directly. Some inquiry participants have suggested these sorts of measures be introduced."[1]

SBA supports this reasoning and accepts that the Commission has stated a conditional proposition rather than a conclusion. The Commission's reasoning is that where compliance concerns are verified, enforcement and conformity assessment address them more directly than a safeguard, and it has expressly declined to test whether those concerns are made out. Testing the proposition was not necessary on the Commission's interim findings. It would need to be tested fully if a public interest assessment became necessary.

SBA notes that the concerns regarding compliance are not its own alone: seven other participants are recorded at footnote 34, four others propose measures of this kind at footnote 36, and Infrastructure Australia has recorded that it is currently difficult to ascertain the compliance of imports with Australian Standards, creating significant quality risks (2025 Infrastructure Market Capacity Report, p. 39, as cited at sub. 42, n. 15).

SBA also accepts that the conformity question, as a standalone issue, sits outside what the terms of reference require the Commission to determine. The public interest limb of the terms of reference is engaged only if the conditions for a measure are met, and the Commission has recorded that, because they are not, it is not required to complete a public interest assessment and has not done so (p. 7). The Commission has nonetheless set out the considerations such an assessment would involve and said they are relevant to future decision-making. That

[1] Productivity Commission, Fabricated structural steel safeguards, interim report, September 2026, p. 54, under the heading 'Safeguards should always be compared with alternative policy options'. Footnote 34 records eight participants raising concerns about documentation, traceability or conformity, of whom SBA is one. Footnote 35 records two hearing participants indicating that overseas producers can meet Australian requirements, being CASA Engineering and Technoweld. Footnote 36 to the final sentence records five participants proposing measures of this kind: name withheld (sub. 28, p. 8), SEMMA (sub. 6, p. 5), Sencova Steel Fabrication (sub. 26, p. 5), Steel Builder Australia (sub. 42, pp. 8–9) and Weld Australia (sub. 24, p. 8).

relevance is heightened by the transfer of safeguard functions to the Anti-Dumping Commission, to be renamed the Australian Trade Remedies Commission, under the *Customs Amendment (Safeguard Inquiries) Bill 2026*, which Parliament passed on 17 September 2026. The remainder of Part B is directed to those considerations.

5.1 Capability and verification are different questions

While the number of accredited overseas facilities is low, SBA submits that this reflects choice, not the capability of overseas manufacturers to meet the standard. The Commission records at footnote 35 that two hearing participants, CASA Engineering and Technoweld, indicated overseas producers can meet Australian requirements. SBA agrees, and its own operations demonstrate the point, since HTSB holds CC3 accreditation conferred through SCA and BSI audit. Capability is not the question. The question is what incentive a producer has to become accredited when nothing at the point of entry distinguishes a producer audited against AS/NZS 5131 from one that has not been. Neither participant cited at footnote 35 contends that anything presently does.

5.2 What the entry process records

> Conformity with AS/NZS 5131 applies to structural steelwork used in buildings regulated by the National Construction Code irrespective of where the steelwork was fabricated. The compliance obligation exists. What is absent is any point in the importation process at which conformity is declared or evidenced. No data field in an import declaration collects information regarding compliance with Australian standards. As a result, the obligation is enforced only downstream, at the point of use, and only if someone looks.

That is not a criticism of the Australian Border Force, which collects what the law requires it to collect. The observation is about what the law requires. Participants in this inquiry have raised concerns about the compliance of imported FSS with AS/NZS 5131, which the Commission was not in a position to test. SBA submits that the compliance of imported FSS should not be a question that only an inquiry of this kind can raise, and that even then cannot answer. It should be identified at the point of entry for every import of FSS. Without this, the enforceability of AS/NZS 5131 is significantly reduced, and domestic producers and importers risk operating, in effect, under different compliance regimes.

5.3 What the available evidence can and cannot show

Without compliance data for each import consignment, the level of non-compliant FSS entering Australia cannot be identified. Certification status, product conformity and shipment volumes answer different questions. Accreditation of a producing facility establishes that the facility has been audited against AS/NZS 5131 at a given construction category. It does not establish that any particular consignment conforms, and a list of accredited facilities does not establish how much of the import stream they supply. SBA's earlier submissions used country of origin as a proxy for accreditation status in estimating the share of imports from facilities without accreditation. SBA no longer relies on that proxy. Its continuing review of certification registers has identified a facility in China holding AS/NZS 5131 CC3 accreditation, alongside HTSB and World Steel Group in Vietnam, so an origin-based estimate cannot be treated as a measure of the accreditation status of the import stream.

SBA does not consider that this weakens the case for verification. It illustrates it. The accredited offshore population can at present be established only by searching certification registers, and its share of Australian imports cannot be established at all from the data available to participants. SBA can provide the Commission with the details of each facility it has identified as holding AS/NZS 5131 Construction Category accreditation, including certifying body, certificate number and any demonstrated Australian delivery record, and invites the Commission to test that information against Australian Border Force import declaration data, and the invitation extends to any entity claiming accreditation and Australian market participation.

6. THE PUBLIC INTEREST IN RELIABLE CONFORMITY ARRANGEMENTS

The Commission has identified, at pages 7 to 8, the considerations a public interest assessment would involve, beginning with whether a measure contributes to a sustainable and efficient industry. SBA sets out below why

reliable conformity arrangements serve interests beyond those of any individual supplier and beyond the protection of domestic fabrication. The case does not depend on establishing that imports have caused injury to domestic industry, and SBA does not advance it on that basis.

The conformity issue is directly relevant to the public interest assessment. Enforcing conformity with AS/NZS 5131 at the border is an alternative means of addressing differences in production requirements, which SBA and other participants have identified as affecting production costs and, in turn, prices. If there is an alternative to broad safeguard measures, the public interest test requires the Commission to assess its merits.

Relevant to that assessment, SBA sets out below the relative merits of enforcing compliance at the border.

6.1 Product quality and structural safety

Builders, asset owners and the broader community have an interest in structural steel meeting the requirements that apply to it, and in being able to rely on the evidence provided that it does. Fabricated structural steel is embedded in buildings and infrastructure with long service lives. Its conformity cannot readily be established by inspection once it is erected, which is why AS/NZS 5131 relies on documented procedures, qualified welders, inspection and test planning, material traceability and third-party audit at the point of fabrication.

Where non-conformity is detected late, the cost is not borne by the supplier. It is borne by the contractor that must rectify, the client that must fund the delay, and ultimately the asset owner. Where it is not detected, the cost is a risk carried by the structure for its service life (and the public that uses that structure). A framework that verifies accreditation before steelwork enters a project moves the check to the point at which it is cheapest to apply and gives purchasers greater certainty about what they are buying.

6.2 Objective standards, consistently applied

The standard already exists and already applies. What is missing is verification that treats every supplier in the same way. An objective requirement, applied at entry by reference to a published standard and an accredited audit process, replaces reliance on documentation that purchasers cannot readily test with a check that is the same for every consignment. That consistency has value to purchasers, who can specify with confidence, and to regulators, who gain a reliable record of what enters the market.

6.3 Fair competition, irrespective of origin

Suppliers that invest in conformity have an interest in competing against others subject to the same expectations. That interest is shared by compliant offshore suppliers and domestic fabricators alike. A fabricator that has invested in welding procedure qualification, testing regimes and third-party surveillance, wherever it is located, competes in the Australian market against product for which that investment has not been verified. Verification restores the value of that investment without favouring any origin.

The effect of the two instruments discussed in the interim report (safeguard measures and enforced compliance) differs accordingly. A safeguard raises the price of compliant and non-compliant imports alike, which is the Commission's own observation at page 54, and leaves their relative position unchanged. It gives a supplier no reason to invest in conformity, since conformity does not relieve the measure or require its international competitors to meet the standard. A conformity requirement gives that incentive directly, because accreditation secures market access. One changes how much is supplied. The other changes the terms on which supply competes.

6.4 Efficient allocation of resources and adjustment

A safeguard measure directs resources toward activity that is not competitive without it and holds them there for the life of the measure. A conformity requirement does not: it changes the terms on which supply competes and leaves the allocation of resources to the market. The Commission has recorded that Australian fabricators are already adapting their business models. A measure that arrested that adjustment would leave the industry less able to respond to the next change in its market. A measure that shifts the composition of supply toward

compliant product achieves something durable, which is the adjustment objective the Commission identifies as the first consideration in any public interest assessment (p. 8).

In this context, there will always be a need for imported FSS. Safeguard measures merely raise its price, and leave non-compliant goods as the cheapest source of imported FSS. Enforcement of compliance with Australian standards requires overseas suppliers to invest in certification, and so encourages a shift in resources from the production of non-certified goods to compliant goods.

6.5 Proportionality and cost

- **Proportionality.** A conformity requirement attaches to the absence of verified conformity and to nothing else. It does not restrict quantity, does not discriminate by origin, and imposes no obligation on supply that already complies. Safeguard measures, by contrast, apply to all imports regardless of origin, compliance or the ability of the Australian industry to supply.
- **Character of the cost increase.** Where costs increase, it is in order to acquire a legally compliant product. Where the end user pays more, it is for a different product. It is not a cost increase imposed as a form of protection. A safeguard measure increases costs solely to provide protection to domestic producers.
- **Regulatory cost.** The mechanism uses existing border infrastructure and requires no new agency and no physical testing at entry. A compliant importer declares information already in its possession. Section 7 develops this.

PART C – THE PROPOSED FRAMEWORK AND WHAT SBA ASKS

7. OUTLINE OF THE PROPOSED COMPLIANCE FRAMEWORK

SBA sets out below the elements of the framework it proposes, in enough detail for the Commission to understand what is being advocated. The ease of implementing a border compliance framework is a relevant consideration when assessing border compliance as an alternative to safeguard measures.

The architecture is simple: the regulator owns the standard and the register of accredited facilities, the importer is obliged to declare the accreditation of the producing facility, and the border authority verifies the declaration. The detailed mechanism remains subject to further technical and legal work, including with peak industry bodies and the Australian Border Force, and SBA does not ask the Commission to settle it.

7.1 Certification

The requirement would attach to the producing facility: accreditation to AS/NZS 5131 (or an international equivalent) at the construction category relevant to the work, conferred by a certification body operating under recognised accreditation. This is the established means of demonstrating conformity at Construction Category 3 and is available to any fabricator prepared to meet it. A supplier certified under a comparable overseas scheme should not be required to duplicate audit, and the framework should provide for the assessment of equivalence between AS/NZS 5131 and comparable schemes.

7.2 Traceability

The declaration would link each consignment to an identified producing facility and a current certificate. AS/NZS 5131 already requires material traceability and documentation at the point of fabrication. The framework would carry the facility identity and certificate reference through to entry, so that the documentation the standard requires can be connected to the goods it describes.

7.3 Verification at entry

SBA proposes that the declaration be made through a Community Protection Question in the Integrated Cargo System, which is existing infrastructure presently used for analogous purposes across other regulated goods.

- **No new agency is required.** The Australian Border Force administers the declaration through a system it already operates.
- **No physical inspection or testing at the border is required.** The mechanism verifies that the producing facility has been audited by an accredited certification body. It does not test the goods.
- **No new substantive obligation is created for compliant supply.** A producer already operating to the standard holds the documentation and would declare information already in its possession.
- **The cost falls on the party best placed to bear it.** An importer that cannot produce a certificate is an importer supplying product that does not meet a standard Australian law already requires.

7.4 Enforcement

Verification at entry supplements, rather than replaces, enforcement by building regulators at the point of use. A declaration checked against a register of current certificates gives regulators a basis for follow-up where a declaration is false or a certificate has lapsed, and gives purchasers and certifiers a record they can rely on. Over two to three reporting years it would also produce data on the accreditation profile of the import stream of the kind whose absence this inquiry has had to work around, allowing any future trade or standards question in this market to be answered from data rather than inference.

7.5 Attainability and phasing

SBA anticipates the objection that a conformity requirement could operate as a disguised barrier favouring an already-accredited importer. SBA takes the objection seriously and submits that it is answerable, but only on evidence. The distinction between an enforced conformity requirement and a protectionist barrier is whether the requirement is attainable. A requirement that a substantial number of suppliers hold, or can obtain within a reasonable period, is a WTO compliant standard. A requirement that suppliers cannot realistically obtain would be difficult to reconcile with Article 2.2 of the TBT Agreement. SBA asks that the proposal be tested against four things.

- **How readily accreditation can be obtained.** The relevant measure is not how many offshore facilities hold accreditation today, in a market that has never required it to be demonstrated at entry, but whether a fabricator willing to meet the standard can obtain it within a reasonable period. Where accreditation is expected, it is held: it is increasingly specified on Australian projects and is held by a range of Australian fabricators. The small offshore population identified at section 5.3 reflects the absence of any requirement, not the difficulty of meeting one.
- **What accreditation requires.** Accreditation is a documented audit process operated by accredited certification bodies against a published standard. It is available to any fabricator prepared to meet it, and SBA's own facility obtained it as a foreign-owned entrant.
- **Equivalence,** so that suppliers certified under comparable schemes are not required to duplicate audit.
- **Phasing.** The obligation to comply with AS/NZS 5131 is not new and requires no transition. It applies now, and enforcement by domestic regulators, including in relation to imported product, continues regardless. What would require a defined lead time is the border verification mechanism itself: the declaration process, its administration, and the capacity of certification bodies to respond. The length of that period is a matter for government, and the agencies that would administer it, and SBA does not propose one.

A measure meeting these conditions is origin-neutral in operation as well as in form, applying to every producing facility on identical terms. SBA does not suggest the cost is zero: certification body capacity would need to expand and an equivalence mechanism would be required. SBA submits that the marginal regulatory cost is nonetheless of a different order from that of a safeguard measure applied to volume and is a cost inherent in prescribing a construction standard that applies to all structural steel, whether domestically produced or imported.

7.6 Enforcement of an existing standard is a different kind of intervention

A safeguard measure applied to volume requires the conditions in the Agreement on Safeguards to be met and, if they are, an assessment that the measure is in the public interest. On the interim findings those conditions are not met. Verifying at the border a requirement that already applies to steelwork used in buildings regulated by the National Construction Code is not a measure of that kind. It imposes no new substantive obligation, and any increase in the landed cost of non-accredited product is the cost of complying with a requirement Australian law already sets rather than the cost of protection. That distinction is the Commission's own at page 54, and SBA does no more than adopt it.

8. WHAT SBA ASKS OF THE FINAL REPORT

SBA does not ask the Commission to depart from its interim findings, or to determine the underlying conformity question. SBA asks that the final report do the following, each of which SBA submits is within the Commission's remit.

- **Maintain Findings 3.1, 4.1 and 5.1** and the analysis supporting them.
- **Retain the observation at page 54,** with its qualifications, that where concerns relate to conformity with a mandatory standard, enforcement of that standard and conformity assessment address the problem more directly than increased duty or quotas applied to volume.
- **Record that participants raised concerns about the verification of conformity of imported fabricated structural steel,** that the Commission did not need to test those concerns on its interim findings, and that they warrant consideration by government through the appropriate standards, building and border agencies.
- **Identify the information that would allow the question to be resolved,** including facility-level accreditation data and Australian Border Force import declaration data, whether or not it can be obtained before the final report.
- **Consider border verification of conformity in any public interest assessment.** A public interest assessment is not required on the interim findings. If that position changes, border verification of conformity is an important alternative to safeguard measures and should be assessed as such.

SBA would welcome the opportunity to meet the Commission to discuss this submission, and notes the Commission's indication that it will hold further discussions with participants after submissions close.