

AUSTRALIAN STEEL INSTITUTE
Response to the Productivity Commission's Interim Report
Safeguard inquiry into Fabricated Structural Steel
30 September 2026

Introduction and summary of position

1. The Australian Steel Institute (**ASI**) welcomes the opportunity to comment on the Productivity Commission's (**PC**) interim report in this safeguard inquiry. ASI's members are the domestic producers of the fabricated structural steel (**FSS**) that is the subject of the inquiry. The ASI does not accept the interim findings and provides this response so that the matters identified below can be considered and assessed before the final report.
2. The ASI's position, in summary, is that the interim findings that (a) there has been no relevant increase in imports and (b) the domestic FSS industry is neither suffering serious injury nor threatened with it, are not supported by a reasoned and adequate assessment of the evidence, and rest on methodological choices that understate both import penetration and injury. As the competent authority, the PC is required to provide a reasoned and adequate explanation of how the facts support its determinations, to evaluate all relevant factors, and to assess injury by reference to the industry producing the like or directly competitive product.¹
3. This submission is directed to the three questions that determine the inquiry, and to the PC's assessment of each: first, whether imports have increased, in absolute and relative terms (Part 1); secondly, whether the domestic FSS industry is suffering serious injury, or faces a threat of serious injury (Part 2); and thirdly, whether the inquiry has been conducted in accordance with the Agreement on Safeguards and relevant WTO jurisprudence (Part 3). On each issue, the ASI submits that the interim findings cannot be sustained. Part 4 responds to the interim report's commentary on the public interest. The ASI's requested findings and recommendations for the PC's final report are set out below.

Part 1 – Whether imports have increased, in absolute and relative terms (the “surge”)

Increased-imports finding and the period of investigation

4. On the PC's own figures, absolute imports of in-scope FSS increased by 27.9 percent over the investigation period, from 446,600 tonnes in 2020–21 to 571,200 tonnes in 2024–25.² The interim finding that this does not amount to a relevant increase in imports does not follow from those figures; it depends on how the increase is characterised, and the characterisation adopted is not sustainable.
5. The PC's finding rests on the test for increased imports drawn from *Argentina – Footwear*.³ As the PC states in its overview, that test requires an increase that is 'recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury', with the significance of short-term trends, as the PC also notes, citing *US – Lamb*, assessed in the light of long-term trends.⁴ This is the single, relevant standard as to whether the increase, taken as a whole, is enough to cause or threaten serious injury.

¹ Appellate Body Report, United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia, WT/DS177/AB/R, WT/DS178/AB/R (US – Lamb); Appellate Body Report, United States – Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS248/AB/R et al. (US – Steel Safeguards).

² Productivity Commission, Safeguard inquiry into fabricated structural steel – Interim Report (2026) (**Interim Report**), p. 22 and Table 3.1.

³ Appellate Body Report, Argentina – Safeguard Measures on Imports of Footwear, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I.

⁴ Ibid, Overview (p. 4), quoting *Argentina – Footwear (EC)*, para. 131, and *US – Lamb*, para. 138.

6. That principle does not assist the PC in the present case; correctly applied, it points to a different conclusion. Assessing the recent increase given the longer-term trend confirms that the recent rise furthers a sustained, decade-long upward trajectory in the volume of imports, and is not an isolated or reversible movement. *US – Lamb* established precedent against mistaking a short-lived fluctuation for a relevant increase. However, it does not permit the opposite, of discounting a large, sustained and recent increase because an earlier period grew faster still. When the PC sets the 5-year growth rate against the faster 2016–17 to 2019–20 period of 15 percent⁵ and concludes on that basis that the recent increase is neither significant nor sudden, it does not apply the long-term-trend principle but converts it into a fixed rate benchmark, which the Agreement does not contain and the jurisprudence does not recognise. This is further developed below.
7. In applying the test, the PC has however reduced it to a mechanical checklist applied to isolated sub-periods. It has treated the increase in 2021–22 (19.2 percent) as sudden and sharp but ‘not recent’, and the remainder of the period as recent and significant but ‘neither sudden nor sharp’, so that no segment satisfies all four descriptors entirely.⁶ Respectfully, that approach is not aligned with the authority the PC relies on. It contradicts the requirement, as stated in both *Argentina-Footwear* and *US-Steel Safeguards*, to assess the trend in imports over the whole period rather than by comparing endpoints or splitting the periods for individual assessment.⁷
8. Applied correctly, the PC’s own data satisfies the test. Imports did not return to lower levels after 2021–22: the level was retained (510,600 tonnes in 2022–23, well above the 446,600-tonne starting point) then increased in each of the next two years (by 4.8 percent and 6.8 percent) to a period peak of 571,200 tonnes in the most recent year, with preliminary data for 2025–26 showing the increase continuing.
9. An increase of 27.9 percent over the period that moved upward and reached its peak in the most recent year is, viewed over the whole period, significant enough to satisfy the test. The ASI submits that the “sudden” and “sharp” qualifiers were never intended to exclude a large, sustained and recent increase only because it accrued in steps rather than in a single leap. The PC’s further contrast of the in-period growth rate (6.3 percent) with a faster earlier period (15.2 percent over 2016–17 to 2019–20)⁸ applies a comparative-acceleration requirement that the *Agreement on Safeguards* (**the Agreement**) does not contain.
10. The interim report measures import market share in value terms and records it as broadly stable (approximately 22–26 percent across the period). However, this understates import penetration. On the PC’s figures, over the past decade the volume of imports rose by around 130 percent while estimated domestic production rose by around 50 percent, and the imputed price of imported FSS remained broadly flat in nominal terms while the imputed price of domestically produced FSS rose by around 50 percent.⁹
11. Value-based market share is stable only because domestic producers held their revenue share by raising prices, and by moving to higher-value work, even as imports captured volume. However, the Agreement is concerned with the quantities in which a product is imported, and the relevant injury factor is the share of the domestic market taken by increased imports. Measured by volume, that share has risen materially, and relative imports now equal or exceed domestic production. Indeed, the ASI notes that calculating market shares based on value (where differences in prices may potentially distort the

⁵ Ibid, p. 4.

⁶ Ibid, Overview, p. 4, and ch. 3, p. 22.

⁷ *US-Steel Safeguards*, para. 72 (a comparison of the end-points of the period of investigation is not sufficient; the competent authority must examine recent imports, and recent data should not be considered in isolation from the data pertaining to the entire period of investigation); *Argentina-Footwear* (EC).

⁸ Interim Report, p. 22. The Agreement does not require that the increase in imports exceed the rate of some earlier period; the requirement is that the increase be recent, sudden, sharp and significant.

⁹ Ibid, p. 41.

overall analysis) rather than volume of sales is highly unorthodox and contradicts other jurisdictions' consistent practice.

12. The ASI submits that the "long-term trend" comparison the PC applies also has no footing in the jurisprudence. There is no fixed period (five years or otherwise) over which imports must be compared, and no fixed benchmark against which "recent", "sudden", "sharp" or "significant" is to be measured. Instead, the enquiry should be a concrete, case-by-case assessment of the evidence, not an abstract comparison against a historical rate.¹⁰ The PC's contrast of the in-period rate with a faster earlier period applies the very kind of fixed benchmark that the jurisprudence does not.
13. Comparable rates of increase have satisfied the test elsewhere. In *US – Steel Safeguards* an implied compound annual import growth rate of approximately 9.4 percent was treated as capable of meeting the standard, and in *US – Wheat Gluten* a rate of approximately 8.4 percent. In neither case was the pace of the increase itself an obstacle.¹¹ An increase averaging 6.3 percent a year, and measured over the whole period at 27.9 percent, is of the same order, and relevantly within the range the jurisprudence has accepted as an increase in imports, without reference to any longer-term-trend test.
14. Nor is the established presence of imports in the Australian market, by itself, a basis for declining a safeguard. A measure may be imposed notwithstanding a long-standing import presence. In *US – Photovoltaic Products*,¹² the imported product had been subject to anti-dumping and countervailing duties since 2012, yet the safeguard was upheld, with no inconsistency found in the causal-link analysis. The Appellate Body has also confirmed that, although safeguards are emergency measures to be construed with regard to their extraordinary nature, their prerequisites need not themselves be abnormal or extraordinary, so that a gradual increase against a backdrop of pre-existing imports can qualify.¹³ To the extent the interim report treats the longevity of imports as weighing against a measure, that reasoning finds no support in the jurisprudence.

Measurement of imports – reconciliation with an Anti-Dumping Commission approach

15. The PC analysed imports using the BLADE Merchandise Trade Imports module, comprising transaction-level customs data collected by the Australian Border Force (**ABF**).¹⁴ In the course of the inquiry the PC consulted the Anti-Dumping Commission (**ADC**), the ABF and the Australian Bureau of Statistics (**ABS**).¹⁵ The ASI does not dispute the source of the data. Its concern is with the methodology by which that transaction-level data was cleansed and scoped, as the reliability of the measured increase in imports (which underpins both the increased-imports finding (Part 1) and the relative-imports and market-share calculations (Parts 2 and 3)) relies on it.
16. The interim report discloses that the PC encountered material quality problems in the import data. Quantity data was missing for all transactions of HTISC 7308.10.00.01 (bridges and bridge sections) and other transactions recorded quantity and customs-value measures that were, 'unrealistically low or high, indicating a high likelihood of reported quantity errors'.¹⁶
17. To address these problems, the PC applied a bespoke methodology in removing transactions whose customs value per tonne fell more than three standard deviations from the annual mean, and imputing

¹⁰ Appellate Body Report, *Argentina – Footwear (EC)*, WT/DS121/AB/R; Panel Report, *Dominican Republic – Safeguard Measures (Polypropylene Bags and Tubular Fabric)*, WT/DS415/R; Panel Report, *Argentina – Preserved Peaches*, WT/DS238/R; Appellate Body Report, *US – Steel Safeguards*, WT/DS248/AB/R et al; Panel Report, *Ukraine – Passenger Cars*, WT/DS468/R.

¹¹ *US – Steel Safeguards*, WT/DS248/AB/R et al; Appellate Body Report, *US – Wheat Gluten*, WT/DS166/AB/R.

¹² Panel Report, *United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products*, WT/DS562/R, circulated 2 September 2021 (unadopted).

¹³ Panel Report, *US – Safeguard Measure on Photovoltaic Products*, WT/DS562/R (safeguard upheld notwithstanding anti-dumping and countervailing measures in force since 2012); *US – Steel Safeguards*, WT/DS248/AB/R et al (safeguards are emergency actions, but their prerequisites need not be abnormal or extraordinary).

¹⁴ Interim Report, app. B (beginning p. 65).

¹⁵ Interim Report, appendix A, Table A.2.

¹⁶ Interim Report, appendix B, p. 66.

the missing and outlier quantities (including the entire quantity series for HTISC 7308.10.00.01) from customs-value ratios. An approach that has serious potential for errors given that differences in prices may be due to a variety of other factors. These are methodological choices by the PC, and the measured volume of imports is therefore sensitive to them.

18. The ASI understands that these types of problems are addressed by the ADC as a matter of course in cleansing and analysing ABF transaction-level data for trade-remedy matters, and in applying an established and transparent methodology. Having consulted the ADC, the PC neither adopted that methodology, reconciled its own series against it, or explained its departure from it.
19. The object of a safeguard inquiry, in determining whether a border measure is warranted to address serious injury caused by imports, is materially the same as that of the anti-dumping and countervailing regimes, which address material injury. The two should measure import volumes on a consistent and reconcilable basis. The relevance is heightened by the proposed transfer of safeguard functions to the ADC (proposed to be renamed the Australian Trade Remedies Commission), which will conduct future safeguard assessments on its own methodology. A determination that is premised on bespoke import-data adjustments, unreconciled with the methodology of the agency that was consulted and to which the function is being transferred, is not supported by the reasoned and adequate explanation the Agreement requires.¹⁷
20. The ASI requests, for the final report, that the PC reconcile its import series against an assessment of the same ABF data conducted on the ADC's methodology, and compared to the ASI's own series. Any difference in the measured increase that is attributable to methodological choice rather than to the underlying data can then be identified and resolved.
21. The PC has stated, both in the interim report and in its post-publication briefing, that in light of the data environment it will undertake further data analysis and independent peer review of its analysis before the final report.¹⁸ The ASI supports peer review, and submits that it should be undertaken by the ADC.
22. The ADC is the standing Commonwealth agency whose core function is the analysis of import data and the assessment of injury from imports for trade-remedy purposes. The ADC applies an established and transparent methodology to the task at issue here and was consulted during this inquiry. It is the agency to which the safeguard function is to be transferred.
23. Peer review by the ADC would test the analysis against the methodology adopted by the PC and would resolve the discrepancy identified above. Peer review by any other agency would not serve that purpose, as the value of the review depends on the reviewer's expertise of the specific trade-remedies task. The ASI submits that the ADC, and not another government agency, is the appropriate reviewer.

Part 2 – Whether there is serious injury or a threat of serious injury

Serious injury: whole-of-firm administrative data cannot measure injury to the FSS industry

24. The PC's finding of no serious injury rests on firm-level administrative (BLADE) data, being business income tax, activity statement and PAYG records, aggregated across the identified fabricators. These are whole-of-firm financials, and the PC accepts they cannot be confined to the FSS activity that is the subject of the inquiry.
25. The PC records this limitation specifically. It states that the administrative data 'does not identify the share of businesses' income unrelated to the production of FSS (for example, income earned through engineering services, design or installation)', that "some of the activity captured ... may reflect

¹⁷ US – Steel Safeguards; Agreement on Safeguards, Article 3.1 (the competent authority must provide a reasoned and adequate explanation of how the facts support its determination).

¹⁸ Interim Report, p. 46.

diversification into other activities rather than domestic fabrication', and that across the 14 submissions providing quantitative evidence, the median share of revenue exposed to direct import competition was 80 percent.¹⁹ On this assessment then, a material and variable share of the revenue, profit and related indicators the PC relies on is not FSS activity at all.

26. The PC seeks to overcome this limitation with the following:²⁰

... there is no requirement under the Agreement on Safeguards that the firms making up the domestic industry produce only goods that are like or directly competitive with the in-scope imports. Income earned from the sale of other goods and services may mitigate against injury caused by increased imports of in-scope products.

27. The ASI does not dispute that firms in the domestic industry need be single-product producers; multi-product producers are properly included in the domestic industry. However, this only addresses the question of who is in the industry. It does not permit injury to be measured by those producers' total revenue and profit, including from products that are not like or directly competitive with the in-scope imports. The two issues are separate, and the PC has combined them.

28. The domestic industry, and the injury inquiry, are confined to producers of the like or directly competitive product. In *US – Lamb* the Appellate Body held that the definition of a domestic industry:²¹

...focuses exclusively on the producers of a very specific group of products...

and that:

Producers of products that are not "like or directly competitive products" do not, according to the text of the treaty, form part of the domestic industry.

29. The Appellate Body added that the legal basis for a safeguard measure 'exists only when imports of a specific product have prejudicial effects on domestic producers of products that are "like or directly competitive" with that imported product'.²² That isolation to the like or directly competitive product was applied again in *US – Steel Safeguards*.²³

30. The ASI submits that the injury factors must be evaluated on data specific to the like product. This is what the Panel in *US – Safeguard Measure on Washers (Washers)* found:²⁴

It follows that, in undertaking that analysis, investigating authorities are required to evaluate the injury factors having a bearing on the domestic industry by reviewing data relating specifically to those "like or directly competitive products" that comprise the domestic industry.

31. In *Washers*, the exporting party (Korea) argued that the authority should have looked beyond the like product to the profitability of the broader "laundry segment" (including dryers), so as to defeat the injury finding. The Panel rejected that argument and held that the other-product performance of the same producers was irrelevant:²⁵

¹⁹ Ibid, p. 31.

²⁰ Ibid.

²¹ *US – Lamb*, para. 84.

²² Ibid.

²³ *US – Steel Safeguards*, paras. 276 and 299.

²⁴ Panel Report, United States – Safeguard Measure on Imports of Large Residential Washers, WT/DS546/R (*US – Washers*), para. 7.114.

²⁵ Ibid, para. 7.115.

That the producers forming part of the domestic industry also produced other products that were profitable is irrelevant to the situation of the domestic industry.

32. The Panel confirmed the authority's refusal to rely on whole-of-segment financial results specifically because the like product was only a minority of the revenue captured. The authority 'found Whirlpool's financial results for North America uninformative, given that [the like product] only accounted for 13.1 percent to 13.5 percent of the North America segment's total revenue'.²⁶ The PC has undertaken the opposite of the Washers precedent. It has relied on whole-of-firm financials that it accepts cannot isolate the like product, and has treated non-FSS income as capable of mitigating FSS injury. This was the same approach that the exporter advanced, but that the Panel rejected, in Washers.
33. The PC's "other income may mitigate injury" reasoning also inverts the analysis on the facts of the FSS inquiry. The report's narrative records that fabricators have preserved revenue by moving out of import-exposed FSS supply and into engineering, design-and-construction, turnkey and bespoke work where imports cannot compete (i.e. they have been displaced from the like-product market).²⁷ That displacement is the mechanism of injury, not a factor against it. On the PC's rationale, the more successfully imports displace domestic FSS production and force firms to substitute other activities, the healthier the industry is. That is nonsensical in the context of a trade remedy assessment of "serious injury".
34. Furthermore, there is no basis in the Agreement for the injury "set-off" the PC proposes. The only netting principle in the injury provisions is the requirement that injury caused by factors other than increased imports not be attributed to imports. There is no corresponding principle allowing unrelated income to be netted against import-caused injury. If that were otherwise the case, no sufficiently diversified industry could ever establish serious injury, however severely like-product operations were harmed.
35. Two features of the identified industry population compound the problem:
 - as a matter of product scope, the whole-of-firm data captures fabricators' activity in products outside the inquiry (for example stainless and non-ferrous fabrication, plate work and equipment fabrication) none of which is like or directly competitive with the in-scope imports; and
 - more critically, the population includes firms that themselves import FSS, ranging from fabricators who import to supplement their own production through to businesses with only a nominal local presence that supply wholly or largely from imports. The revenue those firms earn from importing is therefore recorded as domestic-industry activity. This hides serious injury and, because domestic production is estimated from the same population, inflates the denominator against which relative imports and import market share are measured.
36. The result is that the injury finding is built on data that cannot measure the condition of the FSS industry. The ASI submits that the injury analysis should be re-performed on FSS-specific data, using the exposure and segment evidence already on the record (including the 80 percent median-exposure figure and the segment-level testimony) to isolate the like-product activity, and give proper weight to the consistent direct evidence of the FSS industry itself.
37. The reliability of the BLADE data can also be tested directly, and the ASI submits that it should have been before any confidence was placed in it. Thirty-four domestic FSS producers made submissions to the inquiry and are identified at page 31 of the interim report; those firms, and their Australian Business Numbers, are known, as is the financial performance they reported. A basic first-level test of the

²⁶ US – Washers, paras. 7.117–7.118.

²⁷ Interim Report, p. 31 and p. 47.

BLADE dataset is whether the metrics it produces for those 34 known firms correspond to the results those firms in fact reported. If they do not, the PC ought to have low confidence in the dataset; and if the correlation is poor for the very firms whose results are known, there is no utility in expanding the BLADE selection to the more than 300 Australian Business Numbers of purported FSS producers whose results cannot be checked at all.

38. The interim report discloses no such assessment. That omission is critical, because the BLADE data departed materially from the two independent sources against which it could have been checked: the financial evidence supplied by the cooperating industry members, and the galvanising-sector data addressed in Part 3. Faced with those differences, the PC did not seek to understand them, rather it disregarded the industry-supplied data and relied on the administrative outputs.
39. The ASI puts this as a threshold test rather than a complete answer. Even if the BLADE results for the 34 known firms were found to correlate closely with their actual performance, it would not follow that the dataset is reliable across an expanded population of more than 300 entities, for the reasons given below — accuracy across a small, known set does not establish accuracy across a larger, unverified one. But validation against the known firms is the basic threshold that should be met before the BLADE methodology is ruled in or out, and its absence, in the face of the divergences described above, points towards unreliability in the PC's chosen source rather than reliability.
40. A further difficulty in the PC's treatment of the industry's response to import competition is that the interim report characterises the industry's forced shift out of import-exposed FSS supply as adjustment rather than serious injury. That characterisation is wrong in law. A forced retreat from a market segment, or an involuntary change in product mix, is not a separate "other" factor to be carved out of the injury analysis; it is part of the serious injury caused by imports.
41. In *US – Photovoltaic Products* the Panel recorded the authority's findings that one producer was forced out of the utility segment by 'the unrelenting pressure of low-priced imports', and that another's loss of "bankability" was itself a result of the serious injury caused by imports. These circumstances were a product of import-caused injury.²⁸
42. In any event, "adjustment" is a remedy-design concept, not an element of the injury test. Article 5.1 of the Agreement provides that a safeguard measure is to be applied only 'to the extent necessary to prevent or remedy serious injury and to facilitate adjustment'. Adjustment is therefore what the measure is to facilitate once injury has been found, and not part of what constitutes injury in the first place. The Appellate Body in *US – Line Pipe* treated the existence of injury as a question distinct from what the remedy can achieve. In *US – Lamb*, the measure was described as one to 'facilitate positive adjustment to competition from imports'.²⁹ The PC's use of adjustment to negate injury reverses that concept – a forced business-model change driven by low-priced imports is evidence of injury, not a reason to disregard it.

Current evidence and the threat of serious injury

43. The interim report separately finds no threat of serious injury. The ASI submits that this finding does not withstand the most recent evidence, including that of the PC's.
44. First, the final year of the investigation period (FY2024–25) is largely modelled rather than observed. Business income tax data was available only to 2023–24. Sales, profit, EBITDA, production and market share for 2024–25 have therefore been imputed from turnover and employment data, and the PC provides no estimate at all for productivity or capacity utilisation for that year, citing a high degree of uncertainty.³⁰ A threat assessment that must be 'based on facts and not merely on allegation,

²⁸ Panel Report, *US – Safeguard Measure on Photovoltaic Products*, WT/DS562/R.

²⁹ Agreement on Safeguards, Article 5.1; Appellate Body Report, *US – Line Pipe*, WT/DS202/AB/R; Panel Report, *US – Lamb*, WT/DS177/R.

³⁰ Interim Report, ch. 4 (p. 38) and appendix B.

conjecture or remote possibility' according to the Agreement cannot rest on imputed values for the year in issue while two of the mandatory injury factors are left unquantified.

45. Secondly, where the PC did impute 2024–25 values, the results are difficult to reconcile with the direct evidence. The PC's methodology has industry profit rising a further 1.8 percent in 2024–25, whereas the ASI's survey of fabricators records production, sales and capacity utilisation falling to around half their 2021–22 levels, and profit to around a third, by 2024–25.³¹ The interim report does not reconcile that difference, which falls in the year in which the threat assessment is required.
46. Thirdly, the PC's directly-observed 2024–25 data moves downward, highlighting what the ASI believe to be the experience of serious injury. FTE employment fell 5.1 percent and headcount 5.7 percent. Investment recorded in the administrative data fell 6.3 percent after averaging around 5.8 percent annual growth over the preceding four years.³² Against a demand outlook the PC accepts will remain strong, an industry whose employment and investment turn down while imports continue rising to a period peak is not one from which the threat of serious injury can be excluded on the evidence.
47. Finally, because the industry is project-based, current financial results reflect work won in earlier periods. The PC records evidence of project margins being 'materially eroded', of contracts accepted at low or negative margins to retain staff and throughput, and of investment being deferred.³³ This pressure that will present itself in financial data in later periods.
48. These issues relate directly as to whether serious injury is "clearly imminent" (as required by the Agreement), which the interim report does not address. The ASI requests that the no-threat finding be reconsidered on the most recent evidence, including the shift in the directly-observed data and the forward-looking evidence of eroded margins and deferred investment.
49. It should also be highlighted that serious injury does not require a severe deterioration across every injury factor in the most recent data. A single indicator can establish injury, and the sharp fall in the industry's net profit recorded in the interim report is itself strong evidence of serious injury, whatever the trend in earlier years.³⁴ The Agreement requires the evaluation of all relevant factors; it does not require that every factor deteriorate, and less so that all deteriorate severely, before injury can be found.

Part 3 – Whether the inquiry has been conducted in accordance with the Agreement on Safeguards and the jurisprudence

Safeguards are not an extraordinary or exceptional measure

50. The interim report frames safeguards as an 'extraordinary measure' reserved for extraordinary circumstances, and uses that framing to set a sceptical tone for the assessment as a whole.³⁵ The ASI does not suggest that the threshold for serious injury is a low one, however the premise that a safeguard is a rare exception is not borne out by WTO practice.
51. Safeguard investigations are common and, of late, increasing. By mid-2026 WTO Members had already initiated 21 investigations for the year, following a rise from 4 initiations in 2022 to 12 in 2023, 16 in 2024 and 14 in 2025; and 168 investigations were initiated and 89 measures imposed between 1995 and 2008.³⁶ Steel is, moreover, among the sectors most frequently subject to safeguards: base metals account for roughly a quarter of all safeguard measures imposed since 1995 (the largest single

³¹ ASI 2026, p. 37 and 39 (survey of fabricators); cited in the Interim Report at p. 33.

³² Interim Report, p. 43.

³³ Ibid, p. 43 (ASI application: project margins "materially eroded"; Australian Industry Group, sub. 32: contracts accepted at low or negative margins to retain staff; investment deferred).

³⁴ Ibid, Table 4.2.

³⁵ Interim Report, p. 10.

³⁶ S. Lester, "A Sudden Surge of Safeguard Investigations" (worldtradelaw.net, June 2026); WTO, Safeguard Initiations by Reporting Member, 1995–2025; WTO, "Statistics on Safeguard Measures" (2008).

sector) and recent WTO Committee on Safeguards reviews have repeatedly found steel and metal products to be a large share of notified actions.³⁷ Safeguards are a routine trade-remedy instrument, and the interim report's contrary characterisation is not supported by practice and prevalence.

Estimating domestic production – galvanising-sector data

52. Domestic production, as an injury factor in its own right, is also the denominator the PC uses to calculate relative imports and import market share. Its estimation is therefore critical to the two findings central to the interim report. The PC's chosen estimate is based on the steel-cost shares of four fabricators together with industry-supplied steel prices and a wastage assumption,³⁸ and was not tested against any independent measure of production.
53. That method also carries into the production estimate the flaw identified in Part 2. The method works back from the fabricators' whole-of-firm financial data (dividing revenue by an average steel-cost measure) to an implied production volume. However, because the revenue drawn on is whole-of-firm, it includes revenue from activity that is not FSS production. An overstated numerator overstates the implied output of FSS, by a widening margin where firms have diversified successfully out of FSS. This diversification is what the interim report treats as a feature of the industry. An overstated production denominator then understates relative imports and import market share, and so understates the import penetration on which the serious injury assessment hinges.
54. A further difficulty concerns the population used to estimate production. The PC presents two categories: a "conservative" population of up to 376 identified fabricators, and an "expanded" population of up to 514, the additional businesses having been identified only as purchasers of major steel inputs.
55. The PC treats the expanded population as its "best estimate" of the industry.³⁹ This has materially affected the outcome. On the expanded population, relative imports fall from 105.3 percent to 75.3 percent and estimated production rises, diluting the import penetration and injury metrics.
56. However, an input-purchase proxy does not establish that a business produces the like product. It will also capture builders, distributors and other consumers of structural steel that are not part of the domestic FSS industry. The conservative population, which the PC accepts is sufficient for the assessment and which is consistent with the ASI's evidence that its members represent about 70 percent of capacity,⁴⁰ is the appropriate basis. To the extent the expanded population is retained, the basis for treating input purchasers as FSS producers should be disclosed and tested.
57. The PC considered, but did not use, an estimate based on downstream galvanising activity. Its stated reason was confidentiality:⁴¹

The second approach could not be used because data on the tonnes galvanised was provided on a confidential basis. It would not be possible to publish estimates of domestic FSS production without also revealing the confidential data.

58. That reason is not supported by the facts on record. The *Galvanizers Association of Australia (GAA)*, which supplied the data, advises that it provided the data to the PC at the PC's request, in full and with its source detail, and that at no stage did the PC indicate that the data could not be used because it was

³⁷ Center for WTO and International Trade (VCCI), "Global trends in Safeguard investigations" (3 December 2024) (base metals about 26 percent of safeguard measures imposed since 1995); WTO Committee on Safeguards reviews, April 2026, October 2025 and April 2025.

³⁸ Ibid, p. 74.

³⁹ Ibid, p. 24.

⁴⁰ Ibid, p. 71.

⁴¹ Ibid, p. 73.

confidential.^{42 43} On the GAA's account, the data was not unusable; it was not used. Moreover, consolidated industry data covering multiple participants is not as such so sensitive that it cannot be published for antitrust reasons.

59. The stated reason is also inconsistent with the PC's own methodology. The administrative (BLADE) data on which the entire injury analysis rests is itself confidential and de-identified, and is reported only in aggregate form. Confidential source data yielding a publishable aggregate estimate is ordinary practice. A production estimate derived from galvanising throughput could have been reported in exactly the same way, without disclosing the underlying tonnages. To put this issue beyond doubt, attached to this submission is the galvaniser's data as NON-CONFIDENTIAL ATTACHMENT 3.
60. The galvanising data is an independent, directly-measured indicator that, on the GAA's account, points to a materially different market position from the one the PC has published. To discard such evidence on a ground contradicted by the data-provider and inconsistent with the PC's own treatment of confidential data, and to then leave the preferred estimate untested against it, is not consistent with the obligation to evaluate all relevant factors and to give reasoned and adequate reasons for the resulting determination.
61. The ASI has analysed that dataset, and it does not support the PC's conclusion. Because hot-dip galvanising covers a broader range of steel products than FSS, the ASI relies on the data series as a directly-measured indicator of the trend in domestic steel-fabrication activity, not as a measure of the level of FSS production. On that basis, the data series is highly informative: galvanising throughput rose to a peak in 2021–22 and then fell by 17.1 percent over the PC's investigation period (FY2020–21 to FY2024–25), and by 22.6 percent over the period nominated by the ASI (CY2022 to CY2024).⁴⁴
62. That trend is the opposite of the PC's own estimate. At Table B.2, the PC estimates that domestic production rises across the investigation period, by 14.3 percent on the conservative population and by 8.0 percent on the expanded population, and reaches its highest level in the most recent year, 2024–25.⁴⁵ The PC's method therefore has domestic production peaking in the year in which injury is said to have crystallised, while the independent downstream galvanising indicator, and the ASI's own estimate of fabricator output, show it falling.
63. The ASI's estimate of Australian fabricator output and the PC's expanded population sit at essentially the same level (around 660,000 to 760,000 tonnes) then diverge only in the most recent year. It is here that the PC's expanded estimate rises to its high, whereas the ASI's estimate falls 11.4 percent over CY2022 to CY2024 (744,000 to 659,000 tonnes), and the galvanising indicator falls further still.⁴⁶ Two independently-derived series thus record a decline in the domestic industry's output in the most recent period that the PC's modelled estimate does not show.
64. More fundamentally, that divergence should have caused the PC to question the accuracy and validity of the administrative-data it relied on, both its level and its trend, rather than to discard the galvanising estimate that contradicted it. The two were not unrelated data sources: they were two of the four approaches the PC itself identified for estimating domestic production.⁴⁷ When an authority's own alternative method points in the opposite direction (i.e. a volume fall where the chosen method shows a rise) that contradiction is a signal that the chosen method may be wrong.

⁴² Non-Confidential Attachment 1: Correspondence from the GAA to the ASI dated 7 September 2026.

⁴³ The communications cited by the ASI between the GAA and the PC do in no way indicate that the PC had formed the view that the data could not be utilized. Refer Non-Confidential Attachment 2.

⁴⁴ Non-Confidential Attachment 3: Galvanizers Association of Australia, hot-dip galvanising processed-tonnes dataset (quarterly, calendar-year).

⁴⁵ Interim Report, Table B.2, p. 74 (estimated domestic production of FSS: conservative population 474,000 t (2020–21) to 542,000 t (2024–25), (upward by 14.3 percent); expanded population 703,000 t to 759,000 t (upward by 8.0 percent).

⁴⁶ ASI safeguard application estimate, and Non-Confidential Attachment 3.

⁴⁷ Interim Report, p. 73.

65. The administrative-data estimate is itself heavily modelled. It relies on the steel-cost share of four fabricators and depends on an industry-supplied steel price, a 7.5 percent wastage assumption and various imputed figures.⁴⁸ Such estimates call for external validation, and the galvanising series was the external check available. The ASI submits that the PC should have, when confronted with this independent indicator that contradicted its modelled estimate, tested and sought to reconcile the two. Failing reconciliation, the PC should have treated its estimates with corresponding caution. Respectfully, the PC did neither, discarding the check and relying on the estimate.
66. The administrative (BLADE) dataset that produced the disputed production series is also the same dataset, and the same modelling, on which the PC's injury findings rest. The production figure is the one output of that dataset that could have been checked against the directly-measured galvanising external data series.
67. The contradiction is therefore a reason to doubt the reliability of the administrative-data. The data the PC set aside does not fill a gap; it points the other way, and in doing so calls into question the evidentiary foundation of the interim report. It was not evidence that could properly be discarded on the ground given. Rather, reinstated and reconciled, it materially changes the picture of domestic production on which the relative-imports and injury findings depend.
68. The ASI submits that in its final report the PC ought properly to reinstate the galvanising-based estimate as a cross-check on the trend of domestic production, and to test its preferred estimate against it. To the extent confidentiality remains a concern, ASI proposes the mechanism the PC has itself endorsed elsewhere in the interim report (i.e. reporting in aggregate or indexed form only) so that the data can inform the final report without publication of the underlying figures.⁴⁹

The standard of review, and the interim report's departures from it

69. The PC, as the competent authority, must set out findings and reasoned conclusions on all pertinent issues, evaluate all relevant factors of an objective and quantifiable nature, and provide a reasoned and adequate explanation of how the facts support its determinations.⁵⁰
70. That standard is not met where, as set out above, the analysis rests on a mechanical misapplication of the increased-imports test (Part 1); on whole-of-firm data the PC accepts cannot measure the like-product industry, coupled with a treatment of forced adjustment the jurisprudence does not permit (Part 2); and on an administrative estimate of domestic production left unreconciled with, and contradicted by, the independent evidence the PC discarded (Part 3).
71. These issues go to whether the interim report's central findings on increased imports and on serious injury rest on the reasoned and adequate assessment the Agreement requires. The ASI submits that they do not, and that the matters set out in this submission should be addressed before the PC finalises its report.

Part 4 – Public interest

72. The PC was not required to undertake a detailed public interest assessment. Nevertheless, because the interim report includes substantive commentary on public interest considerations, the ASI considers it necessary to respond, and to highlight several significant matters that have either been overlooked or afforded insufficient weight in the PC's interim analysis.

⁴⁸ Ibid, p. 74.

⁴⁹ Ibid, p. 46 (the PC states it will draw on peer review from independent analysts cleared to examine the datasets used).

⁵⁰ Agreement on Safeguards, Articles 3.1 and 4.2(a); Appellate Body Report, US — Steel Safeguards, WT/DS248/AB/R et al. (the competent authority must provide a reasoned and adequate explanation of how the facts support its determination).

73. The ASI submits that the PC's assessment of the public interest gives insufficient weight to the strategic importance of Australia's FSS industry and the current global market conditions in which it operates. While the interim report focuses heavily on the potential short-term cost impacts of safeguard measures, it does not adequately consider the broader economic and national interest consequences of allowing further erosion of domestic fabrication capability. Consistent with the approach adopted in the *Future Made in Australia* framework, strategic industrial capability should be recognised as a relevant public interest consideration where industries contribute to sovereign capability, economic resilience, workforce development and the delivery of nationally significant infrastructure.
74. The ASI also broadly agrees with the PC's observation that trade measures may benefit some participants in the economy while imposing costs on others. However, the public interest assessment should recognise that current market conditions are not representative of a well-functioning competitive equilibrium. The PC itself acknowledges the existence of significant global steel overcapacity and the role of foreign government intervention in sustaining production beyond market demand. In these circumstances, import outcomes may reflect policy distortions rather than genuine comparative advantage. The public interest test should therefore assess not only the immediate effects of a safeguard measure, but also the consequences of allowing market distortions arising from subsidised overproduction and trade diversion to determine the future structure of Australia's domestic industry.
75. Concerns regarding market access and potential trade effects should likewise be considered in their proper context. Safeguard measures are a recognised and legitimate part of the WTO rules-based trading system and have been implemented by a large number of trading partners, including many major economies. The existence of safeguard measures across numerous jurisdictions demonstrates that governments frequently conclude that temporary intervention is warranted where domestic industries face actual or threatened serious injury and significant economic disruption from import competition. The risk of trade impacts therefore needs to be balanced against the risk of the permanent loss of domestic capability, skills, investment and supply-chain resilience if current pressures on the industry are allowed to continue unchecked.
76. The ASI acknowledges that safeguard measures are temporary instruments and are not intended to provide permanent protection from competition. However, that temporary nature is precisely what makes them appropriate in the present circumstances. The purpose of a safeguard is to provide the domestic industry with a period of stability in which to adjust to exceptional import pressures and changing market conditions. As explained in the ASI's previous submissions, domestic fabricators are experiencing increasing competitive pressure arising from import growth, margin compression and declining utilisation rates that are a consequence of global overcapacity sustained by foreign policy. Temporary relief would provide critical breathing space for businesses to invest, improve productivity, retain skilled workforces and implement the structural adjustments necessary.
77. Finally, the ASI agrees that safeguard measures should not be viewed in isolation, and supports consideration of complementary policy measures that strengthen the long-term competitiveness of the sector. The industry remains committed to continuing discussions with government regarding productivity improvements, workforce development, investment attraction, procurement settings and other adjustment initiatives. However, such measures require time to develop and implement. A temporary safeguard measure would provide the stability necessary for these longer-term reforms to take effect, and would therefore serve the broader public interest by supporting both industry adjustment and the preservation of a strategically important domestic manufacturing capability.

ASI's request of the PC

78. For the reasons above, the ASI submits that the interim findings should not be carried into the final report without the PC first:
- reconciling its measurement of imports against an assessment of the same ABF customs data conducted on the ADC's methodology, triangulated with ASI's series, so that any methodology-driven difference in the measured increase is identified and resolved;
 - re-performing the serious-injury analysis on data specific to the FSS (like or directly competitive) activity, rather than on whole-of-firm financials, and addressing the position of producers within the population that are themselves importers of FSS;
 - reconsidering the no-threat finding on the most recent evidence, including the 2024–25 downturn in the directly-observed employment and investment data, the divergence between the PC's imputed 2024–25 results and the direct survey evidence, and the forward-looking evidence of eroded margins and deferred investment in a project-based industry;
 - ensuring that the independent peer review the PC has undertaken to conduct is carried out by the ADC, rather than by any other government agency. The ADC was the Commonwealth agency with the relevant trade-remedies expertise that was consulted during this inquiry, and is the future administrator of safeguard inquiries;
 - reinstating and testing its estimate of domestic production against the independent galvanising-sector data (and any other available downstream indicators), using cleared-analyst review where confidentiality requires;
 - reconsidering the increased-imports finding in light of the whole-of-period trend in its own data, an increase that reached its peak in the most recent year; and
 - giving due weight, in any assessment of the public interest, to the strategic importance of the domestic FSS industry, the distorted global market conditions in which it operates, and the temporary, adjustment-facilitating character of a safeguard measure.
79. The ASI would welcome the opportunity to discuss this response with the PC and to provide any further evidence that would assist the Commission in finalising its report.