**PUBLIC VERSION**

20 October 2026

The Director - Investigations 1
Australian Trade Remedies Commission
GPO Box 2013
Canberra ACT 2600

**Response to the Statement of Essential Facts**

Dear Commissioner,

This submission is made on behalf of [redacted], an Australian importer of steel mesh sheets. It responds to the statement of essential facts (SEF) report no. 692.

[redacted] is not using this submission to contest the dumping margins or to re-argue every preliminary finding. Its purpose is simply to explain, from an importer's perspective, why the outcome proposed in the SEF sits uncomfortably with the balanced system successive governments have said they want.

The concern is that the system has drifted away from that balance. In this investigation the outcome proposed is duty at the full dumping margin, with the lesser duty rule set aside, in a form of duty that the Commission's own guidelines recognise can become punitive. The consequences fall on importers, on the construction distribution businesses they supply and, through them, on the wider economy.

These concerns are not new. The Productivity Commission's 2009 inquiry, the Government's 2011 reform statement[1] and the 2016 evaluation[2] of those reforms all recognised that anti-dumping measures fall on importers and the businesses they supply. Each identified steps to keep that burden in proportion. They remain a useful guide to what the system is meant to take into account.

The Productivity Commission (PC) inquiry had a long lead-in. A review of the anti-dumping arrangements had already been scheduled under National Competition Policy[3]. In 2005 the PC itself flagged the need for one. In January 2006 the Taskforce on Reducing the Regulatory Burden on Business[4] recommended a review. Later that year the Australian Customs Service and the then Department of Industry, Tourism and Resources completed a joint study[5] of how the system was being administered. In July 2008 the Council of Australian Governments[6] listed anti-dumping as a priority area for further competition reform.

When the inquiry was finally commissioned in 2009, the terms of reference[7] were deliberately broad. The PC was asked to examine the effectiveness and impact of the anti-dumping system, in both its policy and its administration, and to weigh its costs and benefits across the whole economy, including the costs of administration and compliance. The inquiry was to consider the effect of the system on

[1] Australian Government, Streamlining Australia's anti-dumping system: An effective anti-dumping and countervailing system for Australia, June 2011.
[2] Department of Industry, Innovation and Science, Evaluation Unit, Evaluation of streamlining Australia's anti-dumping system: June 2011 reforms, December 2016.
[3] Productivity Commission, Australia's Anti-dumping and Countervailing System, Inquiry Report No. 48.
[4] Regulation Taskforce, Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, January 2006.
[5] Australian Customs Service and Department of Industry, Tourism and Resources, Joint Study of the Administration of Australia's Anti-Dumping System, report to the Minister for Justice and Customs and the Minister for Industry, Tourism and Resources, August 2006.
[6] Council of Australian Governments, Communiqué, Sydney, 3 July 2008, page 4, as cited in Productivity Commission, Australia's Anti-dumping and Countervailing System, Inquiry Report No. 48.
[7] Terms of reference, Productivity Commission inquiry into Australia's anti-dumping and countervailing system, issued by Chris Bowen, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs.

economic growth, investment and competitiveness, on importers and firms at every stage of the supply chain as well as on domestic industry, and on consumers and regional communities.

The PC found that the benefits the system delivers to applicant industries can come at a significant cost to downstream industries and other users. Users face higher prices, and importers lose business as demand falls. Whilst the PC expected the net cost to the economy to be very small because the system touched only a narrow range of activity, that assumption does not hold for steel mesh. As noted in the SEF, mesh is used in slab-on-ground construction for houses, townhouses and apartments, in commercial building and in infrastructure. Residential and commercial construction drive most of the demand. A duty on an input of this kind is carried into the cost of building well beyond any narrow range of activity.

The lesser duty rule was one of the main tools for keeping the system in balance. When the Productivity Commission reported, the rule had been applied to nearly half the measures then in force. In its 2011 response, Streamlining Australia's anti-dumping system, the Government said that routinely applying the rule on a properly determined non-injurious price keeps the remedy effective while limiting the impact on the wider economy. It described that approach as "economically responsible".

The Government also committed to telling the Minister about the wider effects of measures, including impacts on downstream industries. The 2016 evaluation noted that this policy gave greater weight in advice to the Minister to the effect of price changes on other Australian businesses and consumers.

The Government declined to adopt the Productivity Commission's proposed public interest test on the ground that the Minister's existing discretion not to impose measures already allowed the public interest to be considered when the circumstances called for it. A discretion of that kind can only be exercised on the basis of information. The final report should give the Minister that information, including the effect of duties at the full dumping margin on importers, users and the broader economy. The Minister's current Statement of Expectations is consistent with this history, and expects the Commission's advice and recommendations to be sound and evidence-based, and to give certainty to all users of the system, including importers and the businesses they supply.

The Commissioner has accepted that regulators must manage risk while supporting efficiency, growth and dynamism, consistently with the Government's commitment to national productivity, and has committed the Commission to engaging with downstream industry sectors. Those commitments describe the balance this submission asks the Commission to apply.

## The lesser duty rule

The SEF recommends that the Minister not apply a lesser amount of duty, because normal value was not ascertained under section 269TAC(1) of the Customs Act 1901. That circumstance removes the Minister's obligation to consider a lesser duty. As the Commission's own Manual confirms, it does not remove the power to impose one.

The exception for particular market situation cases was introduced after the 2011 reforms. It removed the obligation to consider a lesser duty in those cases. It did not change what a lesser duty is for, which is to remove the injury caused by dumping without imposing a greater cost on the wider economy than that requires.

In this investigation, the particular market situation finding draws on the Commission's findings in earlier investigations of steel products from China. As findings of that kind carry from one case to the next, the exception becomes available as a matter of course. A rule that once applied to nearly half of all measures now falls away for a large class of goods, without any decision on whether a lesser duty would be enough to remove the injury.

The SEF says only that a lesser duty is not desirable, and gives no reason beyond the existence of the exception. The exception explains why the Minister need not consider a lesser duty. It does not explain why a lesser duty would be undesirable where it would be enough to remove the injury caused by dumping.

The SEF has calculated a non-injurious price (NIP), but it does not say whether the NIP is below normal value, or whether a duty based on it would be lower than the dumping margins. The SEF's own price analysis suggests that it may well be. The Commission found that, without dumping, the Australian industry could have raised its prices by up to 3.5%. That figure also includes whatever premium local supply commands, which the SEF accepts exists but has not estimated.

**Global oversupply is not relevant to the steel mesh market**

The Minister's Statement of Expectations describes the risk that overcapacity abroad, together with other countries' quotas and tariffs, may redirect trade and creating a risk that dumped goods will be diverted to Australia and undermine Australian industries that would otherwise be competitive. The concern is with overcapacity "in key sectors", and the Minister asks to be kept informed of global trade issues affecting particular industry sectors. The Commissioner has undertaken to report on developments sector by sector.

The SEF does not meet the Minister’s expectations. Its analysis of oversupply is about steel in general. It finds that global oversupply has suppressed billet prices and affected steel markets around the world, and its finding of a particular market situation is framed around overcapacity and oversupply in the Chinese steel industry as a whole, with a reference to the domestic market for plate steel. It does not examine global trade in steel mesh sheets, whether Chinese mesh has been diverted to Australia from markets now closed to it, or the balance of supply and demand for mesh in Australia.

The evidence on the record about the Australian mesh market shows the opposite to be true, with the market in short supply. The Australian Steel Association told the Commission that purchasers were reporting higher prices and unreliable supply of Australian-made mesh. The SEF records the shutdown of the Whyalla blast furnace in April 2026, and InfraBuild's own account of a disruption to its supply that lasted about two and a half months, to 21 July 2026, which it met in part by sourcing additional input steel. An Australian producer brought mesh into Western Australia from South Africa, and the market itself reached its largest size of the injury analysis period during the investigation period.

The SEF finds that the supply disruption came after the investigation period and was temporary. Measures are imposed for five years, and they will operate in the market as it is now. Whether duty at the full dumping margin, in a form that rises as prices fall, suits a market whose recent difficulty has been a shortage of local supply is a question the SEF does not ask. Answering it requires the product-specific, evidence-based analysis that both statements describe, and not a general finding that the world has too much steel.

**Impact of measures on importers, downstream industry and the economy**

Securities have been taken on imports from China since 8 August 2026. The SEF proposes interim dumping duty at effective rates between 28.5% and 45.4%. For an importer, duty at that level is not a margin to be absorbed. It changes whether the goods can be imported at all.

Those costs do not stop with importers, and the form of duty proposed will add to them. The SEF recommends the combination method, under which the effective rate of duty rises as export prices fall. The Commission's guidelines, which the SEF sets out, warn that in a declining market this can make the duty punitive and harm downstream industries. The SEF also finds that export prices from all sources were falling across the injury analysis period. Yet it does not consider the effect of the

proposed duties on the prices paid by distributors and by the residential, commercial and civil construction businesses that use the goods, although the Government committed that the Minister would be told about impacts on downstream industries.

Some of those users are themselves Australian manufacturers, such as the makers of precast concrete panels, pits and pipes. The Minister's statement refers to Australian manufacturers across the supply chain, including value-added fabrication industries. Downstream manufacturers are part of that supply chain, and the final report should take their interests into account.

The effects are not spread evenly. The terms of reference for the 2009 inquiry asked for regional impacts to be considered. The SEF finds that demand in New South Wales and Victoria, the two largest markets, fell across the injury analysis period, including in the investigation period. On its index, both stood at about 93 in the investigation period against 100 in 2022, while Western Australia reached nearly 160 and Queensland overtook New South Wales as the second-largest market.

Most of the industry's sales are made in Queensland, New South Wales and Victoria, and the reach of the smaller producers depends on where their operations are located. When the Commission looked for imports by industry members, most of what it found was mesh from South Africa delivered to Western Australia. An Australian producer bringing mesh into the fastest-growing state market from a third country is evidence that local supply in that market was not meeting demand.

In markets where local supply is limited, imports carry more of the load, and duties at the full margin fall hardest on the builders who rely on them. The SEF does not examine where the measures will adversely impact those regional markets.

A duty carried into every slab poured for housing, commercial building and infrastructure raises the cost of the same unit of construction. To the extent that the duty exceeds what is needed to remove the injury caused by dumping, that cost is a loss to the economy, borne by builders and by the people who buy what they build. Managing that trade-off is what the lesser duty rule and the Minister's discretion are for, and the SEF does not engage with it.

The Commissioner has said that a well-functioning anti-dumping system can deliver significant productivity gains by keeping the playing field level. The reverse is also true, with a remedy set above what is needed to remove injury, costs productivity downstream.

**Conclusion**

[redacted] asks that the final report restore the balance the system was designed to achieve. The SEF proposes duty at the full dumping margin, in a form that rises as prices fall, and sets the lesser duty rule aside without considering whether a lower duty would remove the injury. It treats a general oversupply of steel as relevant to a market that has recently been short of local supply, and it does not consider the cost of the measures to importers, to the builders and manufacturers who use the goods, or to the regions where local supply is thinnest.
[redacted] therefore asks that the final report give the Minister that information, assess whether a duty based on the non-injurious price would be enough to remove the injury caused by dumping, and recommend that the Minister exercise the discretion to apply a lesser duty, in a form of duty suited to a falling market.

Yours sincerely

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