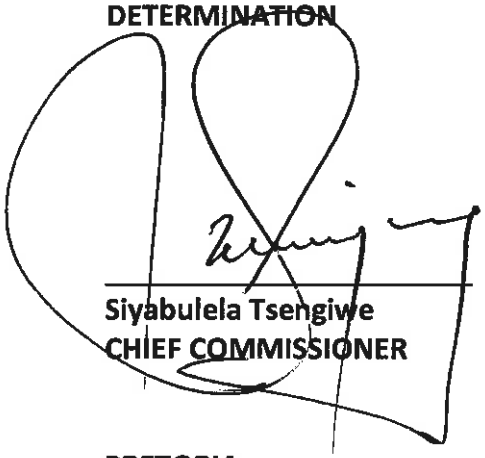
Report No. 533

INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF FLAT HOT-ROLLED STEEL PRODUCTS: PRELIMINARY DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No. 533: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF FLAT HOT-ROLLED STEEL PRODUCTS: PRELIMINARY DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA
22/07/**2016**

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF FLAT HOT-ROLLED STEEL PRODUCTS: PRELIMINARY DETERMINATION

SYNOPSIS

On 24 March 2016, the Commission initiated an investigation for remedial action in the form of a safeguard against the increased imports of flat hot-rolled steel products through Notice No. 149 of Government Gazette No. 39860 dated 24 March 2016.

The application was lodged by the South African Iron & Steel Institute (SAISI) on behalf of the SACU industry. The producers represented by SAISI constitute 100 per cent of SACU production volume.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that events cited can be regarded as unforeseen developments, which resulted in a surge in imports of the subject product, causing serious injury to the SACU industry.

On initiation of the investigation, the WTO, and the countries with a significant interest in the exports of the subject products were notified of the initiation of the investigation.

Interested parties responded by submitting comments on the initiation of the investigation, which were taken into consideration in making a preliminary determination.

The Commission made a preliminary determination that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- There was a surge in the volume of imports;
- The SACU industry is suffering serious injury; and
- There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development.

The Commission made a preliminary determination not to impose provisional payments.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the International Trade Administration Commission's Safeguard Regulations (SGR) and giving due regard to the World Trade Organisation's Agreement on Safeguards (the Safeguard Agreement).

1.2 APPLICANT

The South African Iron & Steel Institute (SAISI) an industry association representing 100% of the SACU industry by production volume of the subject product, lodged the application on behalf of the SACU industry.

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant submitted that a confluence of events (listed below) forms the basis of the unforeseen developments that support its application.

The applicant stated that during the Uruguay Round negotiations, South Africa did not foresee the following events:

- The unprecedented steep rate of increase in global steel production capacity (including the subject product) over the ensuing two decades (more than doubled since 1994) to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies;
- The significant market downturns in emerging (and other) economies and the resultant contraction in demand for steel that contribute to the imbalance between capacity and demand, that is, the global oversupply of steel (including the subject product);
- Record export volumes by countries with excess capacity, fuelled by excess steel supply;

- Given the global nature of the steel industry, excess capacity in one region can potentially displace production in other regions, thus harming producers in those markets. This has already led to several trade actions by major steel markets. Recent trade measures by those countries are a result of all the above named unforeseen developments, and the fact that their markets are now protected contracts the global demand for steel even further, exacerbating the problem of increased imports into the SACU;
- The oversupply of steel (including the subject product) has led to deterioration in the financial situation of steelmakers globally and also the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector today; and
- Despite slowing demand and the existing excess capacity, there are several new investment projects underway and planned (especially in current net-importing countries) in the steel industry that will result in global steelmaking capacity to continue to expand and causing the SACU to expect further increases of imports of the subject product.

The Applicant submitted that the above confluence of circumstances were unforeseen at the time South Africa concluded its tariff negotiations and it resulted in a global oversupply of steel (including flat hot-rolled steel products) that led to increased imports causing serious injury to the SACU industry.

1.4 INVESTIGATION PERIOD

The data evaluation for the purposes of determining increased imports and serious injury covered the period 01 January 2012 to 31 December 2014 plus an additional seven months information for 2012 to 2015 (01 January to 31 July).

1.5 INVESTIGATION PROCESS

1.5.1 The information submitted by the applicant was verified from 10 - 13 February 2016 and on 07 March 2016.

1.5.2 The application was accepted as being properly documented on 16 March 2016.

1.5.3 The investigation was initiated on 24 March 2016.

1.5.4 The SACU importers known to the applicant of the subject product are:

- Safal Steel (Pty) Ltd;
- DSP (Pty) Ltd;
- Aveng Trident Steel;
- Battership Steel Industries;
- Genesis Steels;
- Transcape Steels;
- Duferco Distribution Services;
- Allied Steel Rod;
- NJR Steel;
- Robor Group;
- Macsteel;
- EM Trade; and
- Argent Steel.

1.5.5 The following interested parties responded and provided comments on the investigation:

- Duferco Steel Processing (Pty) Ltd;
- Safal Steel (Pty) Ltd;
- Government of Japan;
- Government of Egypt;
- European Commission;
- Portland Steel International (Pty) Ltd;
- Government of Taiwan;
- Government of Turkey;
- Japanese Manufacturers - Nippon, Nisshin, Kobe & JFE;
- Steelbank Merchants (Pty) Ltd;
- Special Steels (SCS Impex Trading C.C.);
- Gerber Goldschmidt Group SA (Pty) Ltd;

- Government of Brazil;
- Robor (Pty) Ltd;
- TW Profile Services C.C;
- BSi Steel Ltd;
- W.C. Youngman S.A. (Pty) Ltd;
- POSCO;
- China Steel Corporation;
- Aveng Africa (Pty) Ltd. (Aveng Steel);
- MACSTEEL Service Centres SA (Pty) Ltd;
- Tubecon Africa (Pty) Ltd; and
- Safintra South Africa (Pty) Ltd.

1.6 COMMENTS FROM INTERESTED PARTIES

The Commission considered comments received from interested parties prior to it making its preliminary determination. All submissions made by interested parties are contained in the Commission's public file for this investigation and are available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

Comments by Interested parties

WTO notification was not done immediately.

Commission's consideration

Taking into account that there was an Easter weekend and a further weekend between the initiation and notification to the WTO, the Commission considered that the notification was made immediately. Furthermore, governments with a substantial interest were notified directly upon initiation.

1.7 PRELIMINARY DETERMINATION

The Commission made a preliminary determination at its meeting of 12 July 2016.

The Commission made a preliminary determination that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- There was surge in the volume of imports which is recent enough, sudden enough, sharp enough and significant enough;
- The SACU industry is suffering serious injury; and
- There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development.

The Commission made a preliminary determination not to impose provisional payments.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCT

2.1.1 Description

The applicant described the imported product as certain flat-rolled products of iron, non-alloy steel or other alloy steel (not including stainless steel), whether or not in coils (including products cut-to-length and 'narrow strip'), not further worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel, imported under tariff sub-headings listed on the following table 2.1.2.

2.1.2 Tariff classification

The following table is the ordinary customs duty table for the subject product:

Table 2.1.2: Applicable duties and rebates

Tariff sub-heading	Description	Statistical Unit	Rate of Duty			
			General	EU	EFTA	SADC
72.08	**Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:**					
7208.10	-In coils, not further worked than hot-rolled, with patterns in relief	kg	10%	Free	Free	Free
7208.2	**- Other, in coils, not further worked than hot-rolled, pickled:**					
7208.25	- - Of a thickness of 4.75 mm or more	Kg	10%	Free	Free	Free
7208.26	- - Of a thickness of 3 mm or more but less than 4.75 mm	Kg	10%	Free	Free	Free
7208.27	- - Of a thickness of less than 3 mm	kg	10%	Free	Free	Free
7208.3	**- Other, in coils, not further worked than hot-rolled:**					
7208.36	- - Of a thickness exceeding 10 mm	kg	10%	Free	Free	Free
7208.37	- - Of a thickness of 4,75 mm or more but not exceeding 10 mm	kg	10%	Free	Free	Free

7208.38	- - Of a thickness of 3 mm or more but less than 4,75 mm	kg	10%	Free	Free	Free
7208.39	- - Of a thickness of less than 3 mm	kg	10%	Free	Free	Free
7208.40	-Not in coils, not further worked than hot-rolled, with patterns in relief	Kg	10%	Free	Free	Free
7208.5	**- Other, not in coils, not further worked than hot-rolled:**					
7208.51	- - Of a thickness exceeding 10 mm	kg	10%	Free	Free	Free
7208.52	- - Of a thickness of 4.75 mm or more but not exceeding 10 mm	kg	10%	Free	Free	Free
7208.53	- - Of a thickness of 3 mm or more but less than 4,75 mm	kg	10%	Free	Free	Free
7208.54	- - Of a thickness of less than 3 mm	kg	10%	Free	Free	Free
7208.90	- Other	kg	10%	Free	Free	Free
7211.1	**- Not further worked than hot-rolled:**					
7211.14	- - Other, of a thickness of 4,75 mm or more	kg	10%	Free	Free	Free
7211.19	- - Other	Kg	10%	Free	Free	Free
7225.1	**- Of silicon-electrical steel:**					
7225.30	- Other, not further worked than hot-rolled, in coils	Kg	10%	Free	Free	Free
7225.40	- Other, not further worked than hot-rolled, not in coils	Kg	10%	Free	Free	Free
7225.9	**- Other:**					
7225.99	- - Other	Kg	10%	Free	Free	Free
7226.9	**- Other:**					
7226.91	- - Not further worked than hot-rolled	Kg	10%	Free	Free	Free
7226.99	- - Other	Kg	10%	Free	Free	Free

Source: SARS

2.1.3 Production process

The production process is as follows;

- In the iron making complex, Iron ore, dolomite, silica and coal are blended and then fed into coal-fired pre-reduction kilns in order to pre-heat the mix and allow metallisation to take place. This mix is then transferred to either a submerged electric arc or open slag bath electric arc furnace for smelting into vanadium bearing iron and titaniferous slag.
- The vanadium bearing liquid iron is then transferred to the steel plant where further additions of anthracite and scrap are made to the liquid iron. It is then soft-blown with oxygen to remove the vanadium and leave behind a sponge iron product. The iron is then converted into liquid steel through the traditional BOF steelmaking route, adding fluxes and oxygen and refining it to steel to the required grade and specification. The steel is then cast into slabs in the continuous casting plant.
- It can thereafter either continue by:

  (a) Hot-rolling the input material (slab) into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling.

  (b) Chequered plate (Hot rolled material with a pattern on the surface) is the same as normal hot rolled, the only difference is the workrolls in the last stand of the hot rolled process are replaced by workrolls with a pattern to ensure the imprint on the coil surface in the hot condition. Chequered plate is patterned to render a non-slip surface. The geometry of the layout facilitates cleaning and draining of the working surfaces while retaining the required non-slip characteristics.

  (c) Pickled and oiled: The manufacturing process for hot rolled pickled and oiled material consists of several stages:

  - Melting and refining to set the steel's chemical and metallurgical properties;
  - Casting the steel into a semi-finished shape (slab);
  - Hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling;
  - Pickling and oiling in a continuous mill after removing the scale in a pickling plant.

- It can also continue by transferring the cast slabs to the flat products rolling complex where they are re-heated to the required temperature for rolling. Rolling takes place through a roughing mill and then rolled down to the required thickness and length. The steel is either air or liquid cooled according to the desired mechanical properties required. Once rolled the product is trimmed to the correct length and allowed to slow-cool before final quality inspection and despatch to customers.

In summary the production phases are as follows:

(1) Melting and refining to set the steel's chemical and metallurgical properties;

(2) Casting the steel into a semi-finished shape (slab); and

(3) Hot rolling the input material into a hot rolled plate on a single-stand rolling mill and cooled on a cooling bed prior to cutting and/or further processing.

According to ArcelorMittal South Africa Limited ("AMSA"), the equipment used to manufacture flat rolled steel products is much the same throughout the world and without significant differences in production technology.

2.2 SACU PRODUCT

2.2.1 Description

The applicant described the subject product as certain flat-rolled products of iron, non-alloy steel or other alloy steel (not including stainless steel), whether or not in coils (including products cut-to-length and 'narrow strip'), not further worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel.

2.2.2 Production process

The production process is as follows;

- In the iron making complex, Iron ore, dolomite, silica and coal are blended and then fed into coal-fired pre-reduction kilns in order to pre-heat the mix and allow metallisation to take place. This mix is then transferred to either a submerged electric arc or open slag bath electric arc furnace for smelting into vanadium bearing iron and titaniferous slag.

- The vanadium bearing liquid iron is then transferred to the steel plant where further additions of anthracite and scrap are made to the liquid iron. It is then soft blown with oxygen to remove the vanadium and leave behind a sponge iron product. The iron is then converted into liquid steel through the traditional BOF steelmaking route, adding fluxes and oxygen and refining it to steel to the required grade and specification. The steel is then cast into slabs in the continuous casting plant.
- It can thereafter either continue by:
  (a) Hot-rolling the input material (slab) into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling.
  (b) Chequered plate (Hot rolled material with a pattern on the surface) is the same as normal hot rolled, the only difference is the workrolls in the last stand of the hot rolled process are replaced by workrolls with a pattern to ensure the imprint on the coil surface in the hot condition. Chequered plate is patterned to render a non-slip surface. The geometry of the layout facilitates cleaning and draining of the working surfaces while retaining the required non-slip characteristics.
  (c) Pickled and oiled: The manufacturing process for hot rolled pickled and oiled material consists of several stages:
    - Melting and refining to set the steel's chemical and metallurgical properties;
    - Casting the steel into a semi-finished shape (slab);
    - Hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling;
    - Pickling and oiling in a continuous mill after removing the scale in a pickling plant.

- It can also continue by transferring the cast slabs to the flat products rolling complex where they are re-heated to the required temperature for rolling. Rolling takes place through a roughing mill and then rolled down to the required thickness and length. The steel is either air or liquid cooled according to the desired mechanical properties required. Once rolled, the product is trimmed to the correct length and allowed to slow-cool before final quality inspection and despatch to customers.

In summary the production phases are as follows:

(1) Melting and refining to set the steel's chemical and metallurgical properties;

(2) Casting the steel into a semi-finished shape (slab); and

(3) Hot rolling the input material into a hot rolled plate on a single-stand rolling mill and cooled on a cooling bed prior to cutting and or further processing.

2.2.3 Application or end use

- The applicant stated that the imported hot rolled and hot rolled pickled and oiled material are used for manufacturing of general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small- and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, and racking & shelving.
- Plate material is delivered according to mechanical properties for the following grades/categories: Commercial grades, Pressure vessel grades, Ship Hull grades, Flanges, Hard wearing grades and Structural grades. Plate material is used in the manufacture of heavy engineering products such as pressure vessels, overhead cranes, dump trucks, storage tanks and wind towers etc. Plate is an intermediary product utilised in the construction, mining, power, renewable energy, transport, and infrastructure sectors.

2.2.4 Technical characteristics

The products when in coils are hot rolled dry, chequered plate ("Vastrap"), hot rolled pickled and oiled, and when not in coils, it is supplied in the trimmed or untrimmed condition and can be supplied as-rolled or normalised.

Comments by interested parties

(i) Interested parties alleged that ArcelorMittal South Africa Limited (AMSA) cannot make certain product types, certain dimensions (thickness, length and width) and grades especially certain automotive grades.

(ii) Interested parties want to make a comparison between the imports and locally produced products as per tariff sub-heading.

Applicant's response

(i) AMSA indicated that it does not make all products required by the SACU industry due to process or technical limitations and also due to commercial reasons. However, it states that the products not made by the industry are minimal, and should the need arise, AMSA is willing to consider producing such products. AMSA also stated that some of the products it does not make are substitutable with other products it makes and that they compete directly in the same market.

Commission's consideration

(i) AMSA does not have to manufacture all the sub-products for determining the subject product or directly competitive products. The Commission further considered that there are other mechanisms to deal with sub-products not manufactured by AMSA.

(ii) The product under investigation is certain flat-rolled products of iron, non-alloy steel or other alloy steel (not including stainless steel), whether or not in coils (including products cut-to-length and 'narrow strip'), not further worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel, imported under tariff sub-headings listed on table 2.1.2. Therefore the Commission considered that the applicant's products are like or directly competitive products with those imported under the tariff sub-headings contained in table 2.1.2.

After considering all the above, the Commission made a preliminary determination that the SACU product and the imported products are "like products" or directly competitive products, for purposes of comparison, in terms definition of "like product" in terms of the Amended Safeguard Regulations.

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

The South African Iron & Steel Institute (SAISI) an industry association representing 100% of the SACU industry by production volume, lodged the application on behalf of the SACU industry. The SACU industry producing the subject products comprises ArcelorMittal South Africa Limited ("AMSA") and Evraz Highveld Steel and Vanadium (Evraz).

Considering the above, the Commission made a preliminary determination that the application can be regarded as being made "by or on behalf of the domestic industry".

4. UNFORESEEN DEVELOPMENTS

4.1 Requirements of Article XIX of GATT

Article XIX of the GATT provides that;

"If, as a result of unforeseen developments and of the effect of obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

In analysing the effects of the obligations of GATT 1994, it was considered that the South African government committed to binding the ordinary customs duty on the imported products of flat hot rolled steel at 10% *ad valorem*. The effects of these obligations were that the industry went through a restructuring that saw the state owned entity unbundled and privatised. The government also facilitated the end or review of an old pricing model to improve the competitiveness of the industry. As such various measures have been taken to encourage competitiveness and sustainability of the industry.

The Commission considered the information submitted by the applicant in relation to unforeseen developments. The Applicant submitted that a confluence of events (listed below) forms the basis of the unforeseen development that supports this application. Ultimately the considerable oversupply of steel, and specifically the subject product, in the world today is causing a surge in imports into the SACU.

The applicant stated that during the Uruguay Round negotiations, South Africa did not foresee the following events:

- The unprecedented steep rate of increase in global steel production capacity (including the subject product) over the ensuing two decades (more than doubled since 1994) to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies;

- The significant market downturns in emerging (and other) economies and the resultant contraction in demand for steel that contribute to the imbalance between capacity and demand, that is, the global oversupply of steel (including the subject product);

- Record export volumes by countries with excess capacity, fuelled by excess steel supply;

- Given the global nature of the steel industry, excess capacity in one region can potentially displace production in other regions, thus harming producers in those markets. This has already led to several trade actions by major steel markets. Recent trade measures by those countries are a result of all the above named unforeseen developments, and the fact that their markets are now protected contracts the global demand for steel even further, exacerbating the problem of increased imports into the SACU;

- The oversupply of steel (including the subject product) has led to deterioration in the financial situation of steelmakers globally and also the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector today; and

- Despite slowing demand and the existing excess capacity, there are several new investment projects underway and planned (especially in current net-importing countries) in the steel industry that will result in global steelmaking capacity to continue to expand and causing the SACU to expect further increases of imports of the subject product.

The Applicant submitted that the above confluence of circumstances were unforeseen at the time South Africa concluded its tariff negotiations and it resulted in a global oversupply of steel (including flat hot-rolled steel products) that led to increased imports causing serious injury to the SACU industry.

The Applicant thus submitted that the above confluence of circumstances leading to a considerable oversupply of steel. Crude steel cannot be used as it is and needs to be reworked. A large portion of crude steel is rolled into hot rolled products, the subject product, which is also an input for downstream steel products. These events were unforeseen at the time South Africa concluded its tariff negotiations and it resulted in such increased imports of the subject products causing serious injury to the SACU industry.

Commission's consideration

Unforeseen developments in accordance with Article XIX of GATT 1994 are the following:

The increase in the production capacity of liquid steel and the subject product at such high rate as submitted could not have been foreseen prior to 1994. This increased production therefore filtered through all steel producing markets in the world, led by the increase in production by China as both a high producer and consumer of steel including the subject product.

This increased production led to an oversupply of steel and the subject product in the global markets, and this oversupply was unforeseen. The oversupply of steel and the subject product is a world phenomenon. Consumers of the subject product reduced their consumption patterns of the subject product. However, production continued, leading to globally produced steel and the subject product filtering through all world markets as exports from producing countries, such as China increased.

This is seen by the massive exports of steel and the subject product by China, with other steel producing economies imposing and considering trade remedies measures to deal with this global increase in steel production that led to an oversupply of steel and the subject product in world markets, subsequently filtering through to all markets.

The Commission in its consideration of unforeseen developments considered that the applicant submitted information related to the subject product and other information relating to crude steel. It was considered that about 60% of crude steel is converted into flat steel products. Furthermore information was analysed in absolute terms and relative terms it concluded that production output of the subject product was significantly higher after 1994, as compared to before 1995.

Comments from Interested parties

(i) The unforeseen development of excess steel supply does not only affect domestic producers, thus these developments cited do not meet the requirements of GATT.

(ii) The analysis of the increase in global production volumes is flawed as the average increase prior to 1994 was higher than the average increase after 1994. The use of global steel production to motivate unforeseen developments is inconsistent with the WTO Agreement on Safeguards.

(iii) South Africa did not make any tariff concessions regarding the subject product.

(iv) The alleged serious injury was not the effect of obligations incurred under the WTO but because MFN duties were reduced below bound rate. For serious injury to be shown to be as a result of WTO obligations, the domestic industry must experience injury over a period of time when the applied MFN duties are at the WTO bound rate

Commission's Considerations

(i) The unforeseen development although a global phenomenon, affects every country differently, and the domestic industry has sufficiently motivated such. No reasons are provided by interested parties to substantiate claims that the cited developments do not meet the requirements of unforeseen development.

(ii) The Commission made its own analysis and made a determination based on the increase in volumes after 1994, whereby the average increase in volumes prior to 1994 was 11 million tonnes per annum, while after 1994 the average volume increase was around 20 million tons per annum. This together with all the information submitted was considered and analysed accordingly by the Commission.

The allegation that unforeseen development is not product related is unfounded. The applicant provided world production figures for the subject product and also used an estimate on the composition of the subject product from the total global steel production. Information on the subject product could only be obtained from 1990 onwards and the applicant wanted to give a broader picture of the steel industry, while also estimating the content of the subject product from the global steel output over the years before 1990. This is therefore product related and is consistent with the WTO Agreement on Safeguards.

(iii) South Africa made concessions with regards to the subject products to bind its tariffs to 10% *ad valorem*.

(iv) Analysing South Africa's effect of obligations does not mean analysing the effect of implementation of the ordinary customs (MFN) duty at the bound rate. "The effect of the obligation" relates to South Africa having bound its tariffs at the time of the Uruguay Round negotiations, and not the effect of the tariffs being increased to 10%.

Based on the above information, the Commission made a preliminary determination that the events cited by the applicant can be regarded as unforeseen developments which led to the surge of imports of the subject product, as per the provisions of Article XIX of GATT 1994.

5. SURGE OF IMPORTS

The information considered for the increased imports covered the period 1 January 2012 to 31 December 2014 plus an additional 7 months period from 1 January 2012 to 30 July 2015.

5.1 Import volumes

The following table shows import volumes as sourced from the South African Revenues Services (SARS) for the period 2012 to 2014 (full year), and 2012 to 2015 (Jan-July).

Table 5.1 (a): Import volumes (Full year period)

	2012	2013	2014
Total imports (KG)	191 092 225	490 448 207	438 705 024

The information in the table above indicates that total imports more than doubled from 2012 to 2013, as they increased by 157%, although they slightly declined by 11% from 2013 to 2014. They maintained their surge levels when comparing the increase from 2012 to 2014 as it was an increase of 130% during the period of investigation (full year periods). Even when comparing the increase of the full year 2012 to the 2015 (Jan-July) seven months periods, this is still a significant increase of 122%.

Table 5.1 (b): Import volumes (Jan -July year period)

	2012 (Jan-July)	2013 (Jan-July)	2014 (Jan-July)	2015 (Jan-July)
Total imports (kg)	124 056 984	308 029 143	180 710 362	425 118 657

The information in the table above indicates that total imports more than doubled from 2012 to 2013, as they increased by 148%, although these imports declined by 41% from 2013 to 2014. But from 2014 to 2015, imports increased again by 135%. Over the injury period, imports increased by 243%.

Increased imports

Section 8 of the Amended Safeguard regulations points out that to examine the impact the increased imports have caused or are threatening to cause serious injury to a domestic industry, the competent authorities shall evaluate, in particular, the rate and amount of the increase in imports of the subject product in absolute and relative terms.

The following table shows the volume of imports of the subject product as sourced from the South African Revenues Services (SARS) relative to production for the period 2012 to 2015.

Full year Analysis

In the following sub-section, the impact of imports is analysed in absolute and relative to production for the full year period 2012 to 2014.

Table 5.2 (a): Increase in import volumes in absolute and relative terms (Full year period)

	2012	2013	2014
Total imports (kg)	**191 092 225**	**490 448 207**	**438 705 024**
*Applicant's production (kg)	100	90.2	96.3
*Imports as a% of the applicants total production volumes	100	284	239

*These figures were indexed due to confidentiality using the 2012 as the base year

The information in the table above indicates that in absolute terms, imports increased by 157%, and slightly declined by 11% from 2013 to 2014. Throughout the period of investigation (2012 to 2014) imports increased by 130%.

It also indicates that imports relative to production increased by 184 index points from 2012 to 2013, declined by 45 index points from 2013 to 2014, representing an overall increase on 139 index points during the period of investigation.

Seven months period (Jan – July) Analysis

The following sub-section will analyse the impact of imports, absolute and relative to production for the seven month period Jan –July 2012 to 2015.

Table 5.2 (b): Increase in import volumes in absolute and relative terms (Jan – July)

	2012 (Jan –July)	2013 (Jan –July)	2014 (Jan –July)	2015 (Jan –July)
Total imports (kg)	**124 056 984**	**308 029 143**	**180 710 362**	**425 118 657**
Applicant's production (kg)	100	85.50	88.12	85.67
Imports as a% of the applicants total production volumes	**100**	**292.06**	**166.67**	**401.59**

These figures were indexed due to confidentiality using the 2012 as the base year

The information in the able above indicates that imports in absolute terms increased by 148% between 2012 and 2013 and thereafter decreased by 41% between 2013 and 2014. From 2014 to 2015 it again increased by 135%. Over the period 2012 to 2015, there was an overall increase of 242% in imports.

It also indicates that imports relative to production increased by 192 index points from 2012 to 2013, decreased by 125 index points from 2013 to 2014, and thereafter increased by 235 index points from 2014 to 2015. The rate of increase in total imports relative to total production volumes from 2012 to 2015 was 301 index points.

The Commission made a preliminary determination that the surge occurred in 2013 (1 January 2013 to 31 December 2013 and 1 January 2013 to 31 July 2013).

In its analysis of imports, the following was also taken into account:

- The surge in absolute terms began in 2013 and it maintained its levels in the 2014 full year period. When looking at the 7 month period, there was a decline in 2014.

However, it was not lower than the period prior to the surge. The rate and amount of increase from 2012 to 2013 can be seen as sudden or abrupt, and this abrupt disturbance in the SACU market by imports was maintained throughout the period of investigation both in relative terms and absolute terms.

- The rate and amount was sustained in the full year period throughout the investigation period. When analysing the 7 months period, there was a decline in the rate and amount of imports in 2014, but this decline did not last as import volumes increased substantially in 2015.

- The amount of increase of 2013 was the highest and is significant enough when looking at both the full year and 7 month period.

- The period 2013 is recent enough to meet the conditions of the safeguard agreement. This must be considered in line with the fact that although there were slight intermittent declines, the increase has been maintained throughout the period of investigation.

Comments from interested parties

(i) There is no surge in various products or tariff subheadings, except for an increase in Chinese imports, while five tariff subheadings show no surge at all.

(ii) Some imports of tariff code 7208.90 were unusually higher due to misclassification by an importer.

(iii) The investigation period is not recent, since the investigation was initiated 8 months after the end of the investigation period.

Commission's consideration

(i) The mere fact that certain tariff sub-headings show no surge does not mean that there is no surge in imports of the product subject to this investigation. The surge is based on analysis of imports for the product under investigation, which is defined as flat hot rolled products, imported under all tariff subheadings indicated in 2.1.2 of this report.

The 21 tariff sub-headings are all part of the one product under investigation.

(ii) This allegation of misclassification is not substantiated with evidence. This should also be raised with the authorities responsible for dealing with import information.

(iii) It was considered that interested parties could be confusing recentness with the requirements of an anti-dumping investigation, which is stated in the Anti-Dumping Regulations (ADR) as information for dumping may not be older than 6 months when an investigation is initiated, which is not the case in a safeguard investigation.

Based on the above, the Commission made a preliminary determination that there was a surge in the volume of imports of the subject product that is recent enough, sharp enough, sudden enough and significant enough.

6. SERIOUS INJURY

4.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The injury analysis relates to information submitted by ArcelorMittal South Africa Limited (AMSA), representing approximately 70 percent of the domestic industry by production volume.

The Commission made a preliminary determination that this constitutes "a major proportion" of the total domestic production, in accordance with the Amended Safeguard Regulations.

6.2 CONSEQUENT IMPACT OF THE INCREASED IMPORTS ON THE INDUSTRY

Section 8.1 of Amended Safeguard Regulations state that serious injury shall be understood to mean "significant overall impairment" in the position of the domestic industry.

6.2.1 Actual and potential decline in sales

The following tables show the applicant's SACU sales volumes of the subject product for the period of investigation:

Table 6.2.1 (a): Sales volumes (January – December)

	2012	2013	2014
Total sales volumes (metric tons)	100	92	87

These figures were indexed due to confidentiality using 2012 as the base year

Sales volume decreased by 8 index points from 2012 to 2013, and decreased by 5 index points from 2013 to 2014. The table above from 2012 to 2014 also indicates that the applicants' sales volume decreased by 13 index points during the period of investigation. The Commission considered this decline in sales volumes, especially considering that it coincided with the period of the surge.

Table 6.2.1(b): Sales volumes (January - July)

	Jan to July 2012	Jan - July 2013	Jan - July 2014	Jan - July 2015
Total sales volumes (metric tons)	100	99	74	79

These figures were indexed due to confidentiality using 2012 as the base year

Sales volume decreased by 1 index point from 2012 to 2013, decreased by 25 index points from 2013 to 2014, and increased by 5 index points from 2014 to 2015. The table above also indicates that the applicants' sales volume decreased by 21 index points during the period of investigation. The Commission considered this decline in sales volumes although not coinciding with the peak in imports in 2013, a significant decline in sales volumes was experienced in 2014, which could be a reflection of the lag between increased imports, with the reaction of the market not necessarily being immediate.

6.2.2 Profit

The following table shows the applicant's profit situation:

Table 6.2.2(a): Profits (January – December)

	2012	2013	2014
Total gross profits (R)	Negative	Negative	Positive
***AMSA total net profits (R)**	Negative	Negative	Negative

These figures were indexed due to confidentiality using the year ending 2012 as the base year

Net profits show a loss situation although the losses are declining. The applicant has not made any profits during the injury period. While there is a slight improvement, in the loss situation, this is indicative of the delicate state the industry is in.

The applicant is also making losses when it comes to gross profits, especially the period 2012 and 2013, while in 2014 the applicant's gross profit turned positive, thus making a gross profit for the first time in the injury period. The positive gross profits realised in 2014 were not sustained as shown in the table below for the overall 7 month period.

Table 6.2.2(b): Profits (January - July)

	Jan - July 2012	Jan - July 2013	Jan - July 2014	Jan - July 2015
Total gross profits (R)	Negative	Positive	Positive	Negative
Total net profits (R)	Negative	Negative	Negative	Negative

These figures were indexed due to confidentiality using the year ending 2012 as the base year

The applicant is in a loss situation for all periods, although the losses are declining. The net losses increased during the surge period of 2013.

The applicant realised a gross loss in 2012, in 2013 and 2014 the applicant made gross profits and thereafter in 2015 made a gross loss again. Even in periods were the applicant was realising profits, these were not at levels realised before, or levels that would sustain the industry.

6.2.3 Output

The following table outlines the applicant's domestic production volume of the subject product during the period of investigation:

Table 6.2.3(a): Output January - December

metric tons	2012	2013	2014
Total Production	100	90	96

These figures were indexed due to confidentiality using 2012 as the base year

The output decreased by 10 index points from 2012 to 2013, increased by 6 index points from 2013 to 2014, and during the POI 2012 to 2014, it decreased by 4 index points. The decline in output took place in the period of the surge. Although 2014 saw a slight improvement, output levels are still lower than 2012.

Table 6.2.3 (b): Output (Jan – July)

metric tons	Jan - Jul 2012	Jan - Jul 2013	Jan - Jul 2014	Jan - Jul 2015
Total Production	100	86	88	86

These figures were indexed due to confidentiality using 2012 as the base year

The output decreased by 14 index points from 2012 to 2013, increased by 2 index points from 2013 to 2014, and decreased by 2 index points from 2014 to 2015.

During the 7 month period, output decreased by 14 index points. The decline in output in 2013 continued, albeit a slight improvement in 2014 that could not be sustained, and at lower levels than before the surge.

6.2.4 Market share

The following table shows the market share for the subject product based on sales volumes:

Table 6.2.4 (a): Market share January to December

Metric Ton	2012	2013	2014
Total SACU market	**100**	**114**	**106**
Applicant's Sales	100	92	87
Other SACU producers	100	129	121
Total imports	191 092	490 448	425 119
Applicant's share as % of total market	100	81	83
Other SACU producers' share as a % of total market	100	113	115
Total imports as % of total market	100	224	209

*These figures were indexed due to confidentiality using 2012 as the base year

The SACU market increased by 14 index points from 2012 to 2013, and declined by 8 index points from 2013 to 2014, reflecting an overall 6 index points increase. The applicant's share of the market declined by 19 index points from 2012 to 2013 and slightly increased by 2 index points from 2013 to 2014, reflecting an overall decline of 17 index points. The applicant lost a significant share of the market in 2013, and while it gained 2 index points of market share in 2014, in the 2012 -2014 period there was an overall decline in its market share.

Table 6.2.4(b): Market share January to July

Metric Ton	2012	2013	2014	2015
***Total SACU market**	**100**	**121**	**87**	**108**
*Applicant's Sales volumes	100	99	74	79
*Other SACU producers	100	139	111	73
Total net imports	124 057	308 029	180 710	425 119
*Applicant's share as % of total market	100	82	86	73
*Other SACU producers' share as a % of total market	100	116	129	67
*Total imports as % of total market	100	205	168	316

*These figures were indexed due to confidentiality using 2012 as the base year

The SACU market increased by 21 index points from 2012 to 2013, declined by 34 index points from 2013 to 2014, and recovering by 21 index points from 2014 to 2015, reflecting an overall 8 index points increase. The applicant's share of the market declined by 18 index points from 2012 to 2013 and slightly increased by 4 index points from 2013 to 2014. It declined further by 13 index points from 2014 to 2015, reflecting an overall decline of 27 index points.

6.2.5 Productivity

Using the applicant's production and employment figures, its productivity in respect of the subject product is as follows:

Table 6.2.5 (a): January – December Productivity

	2012	2013	2014
*Applicant's Production (Metric tons)	100	90	96
*No. of employees(production):	100	90	95
***Productivity:**	**100**	**100**	**102**

*These figures were indexed due to confidentiality using 2012 as the base year

Productivity remained constant from 2012 to 2013. From 2013 to 2014, it increased by 2 index points, resulting in a 2 index points increase over the period 2012 to 2014. Productivity remained constant and slightly increased as a result of a loss in employment.

Table 6.2.5(b): Jan – Jul Productivity

	Jan to July 2012	Jan to July 2013	Jan to July 2014	Jan to July 2015
*Applicant's Production (Metric tons)	100	86	88	86
*No. of employees(production):	100	90	95	101
***Productivity:**	**100**	**95**	**93**	**85**

*These figures were indexed due to confidentiality using 2012 as the base year

Productivity decreased by 5 index points from 2012 to 2013, and further decreased by 2 index points from 2013 to 2014.

From 2014 to 2015 it again decreased by 8 points, resulting in an overall decline of 15 index points during the period of investigation. Productivity in 2013 declined in line with output and employment, and it never recovered since.

6.2.6 Utilisation of production capacity

The following table provides the applicant's capacity utilisation, using plant capacity and output for the subject product:

Table 6.2.6 (a): January – December Utilisation of production capacity

Ton	2012	2013	2014
*Applicant capacity:	100	100	100
*Applicant's total production volumes:	100	90	96
***Applicant capacity utilisation%:**	**100**	**90**	**96**

These figures were indexed due to confidentiality using 2012 as the base year

Capacity utilisation decreased by 10 percentage points from 2012 to 2013, and increased by 6 percentage points from 2013 to 2014, resulting in a 4 percentage points decline from 2012 to 2014. Capacity utilisation declined in line with a declining output during 2013, although there was a slight improvement in 2014, it did not reach levels seen prior to the period of surge.

Table 6.2.6 (b): January – July Utilisation of production capacity

Ton	Jan - Jul 2012	Jan - Jul 2013	Jan - Jul 2014	Jan - Jul 2015
*Applicant capacity:	100	100	100	100
*Applicant's total production volumes:	100	86	88	86
***Applicant capacity utilisation%:**	**100**	**86**	**89**	**86**

These figures were indexed due to confidentiality using 2012 as the base year

Capacity utilisation decreased by 14 index points from 2012 to 2013, and increased by 3 index points from 2013 to 2014. From 2014 to 2015, it decreased by 3 percentage points, resulting an overall decline of 14 index percentage points during the POI. Capacity utilisation declined in line with a declining output during 2013. Although there was a slight improvement in 2014, it fell back to 2013 levels in 2015.

6.2.7 Employment

The following table provides the applicant's total employment figures:

Table 6.2.7(a): January to December Employment

	2012	2013	2014
*Applicants labour units per Ton (production):	100	90	96

These figures were indexed due to confidentiality using 2012 as the base year

Employment related to production of the subject product decreased by 10 index points from 2012 to 2013. From 2013 to 2014, it increased by 6 index points, resulting in an overall decrease of 4 index points over the period 2012 to 2014. The biggest drop in employment levels was in 2013.

Table 6.2.7(b): January to July Employment

	Jan to July 2012	Jan to July 2013	Jan to July 2014	Jan to July 2015
*Applicants labour units per Ton (production):	100	86	88	86

These figures were indexed due to confidentiality using the year ending 2012 as the base year

Employment related to production of the subject product decreased by 14 index points from 2012 to 2013, and increased by 2 index points from 2013 to 2014. From 2014 to 2015, it again declined by 2 points, resulting in an overall decline of 14 index points during the POI.

ADDITIONAL INJURY FACTORS CONSIDERED

AMSA already released data on the Securities Exchange News Services (SENS) that the loss per share for the half year ended 30 June 2015 is expected to be higher compared to the half year ended 30 June 2014. It has also announced its consideration on whether to mothball, close and/or place some of its plants, under care and maintenance.

On 12 February 2016 Highveld Steel announced in a section 189 notice that it had to close its doors definitively, affecting thousands of the company's employees in the process.

Comments from Interested parties

(i) The increase in the volumes of imports is as a result of AMSA's capacity shortages such as those caused by a fire at its Vanderbijlpark steel plant.

(ii) The applicant is using a wrong instrument to tackle its injury, since most of the imports are from China, and therefore should use any remedy to target China.

(iii) AMSA provided various products which have various uses, but did not analyse each product to determine injury. It merely consolidated the data, thus not making a like for like product analysis, or directly competitive analysis. Some products imported are not like or directly competitive products to those manufactured by the SACU industry.

(iv) The main reason for the serious injury suffered by the applicant is not imports, but the rise in electricity prices.

(v) The injury information is not indexed.

(vi) Assessing injury without the knowledge of the impact of the 10% ordinary customs duty will result in ITAC not having a clear picture of the impact of injury.

Applicant's response

(i) AMSA indicated that capacity constraints in the past have been caused by issues such as accidents, like the fire in its Vanderbijlpark plant. To cope with demand and minimise the impact of such, AMSA took a variety of actions such as:

- Ensuring that it increases production in its Saldanha plant to deal with demand;
- Fast tracking the repairs on the plant;
- Diverted some products destined for its export market to local customers; and
- Imported steel slabs from its sister companies.

(ii) AMSA indicated that it had embarked on various cost saving measures to mitigate the increase in electricity prices, including considering investing in a gas to energy program.

Commission's consideration

(i) The fire affected an estimated 361 000 tons of liquid steel production, not the subject product, although this had an effect on the subject product, and it noted the measures that AMSA took to mitigate the impact of the accident.

(ii) All the requirements of a safeguard have been met.

(iii) The products considered were like products, and within the products, there are various models or categories which are classified under various tariff codes. There is therefore no need for the applicant to make an analysis on a model by model or category by category basis. There is no provision in the Safeguard Agreement that stipulates how the definition or scope of the product under investigation must be defined and interested parties also do not identify such.

(iv) Electricity prices are in line with the prices from other developed and developing nations, and in some instances lower than those.

(v) The injury information is indexed, and the information sent to interested parties was similar to that in the application, and therefore it is not clear where this allegation emanates from.

(vi) Injury information is assessed based on information that relates to the period of investigation. There is no obligation on the Commission to assess the impact of the 10% duty.

6.3 Summary - serious injury

Based on the above information, the evaluation of the injury information of the applicant for the period 2012 to 2014 (full year) and 2012 to 2015 (7 months) is shown in table 6.3.1 and 6.3.2:

Table 6.3.1: Serious Injury Indicators (2012 -2014)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Increase
Utilisation of capacity	Decrease
Employment (production - number of employees)	Decrease

Table 6.3.2: Serious Injury Indicators (Jan-July)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Decrease
Utilisation of capacity	Decrease
Employment (production - number of employees)	Decrease

Having assessed each injury factor and noting that there is a decline in the industry's performance as listed above, the Commission concluded that the domestic industry is suffering serious injury.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

In considering whether there is a causal link between the imports of the subject product concerned and the serious injury, the Commission considered all relevant factors including factors other than imports of the subject product that may have contributed to the SACU industry's injury.

The following table shows that during the full year period (2012 -2014), there was an overall increase in imports, especially during the period of the surge.

Table 7.1 (a): Import volumes (Full year period)

	2012	2013	2014
Total imports (Kg)	191 092 225	490 448 207	438 705 024

The following table compares the market share of the SACU industry with that of imports for the full year period (2012 – 2014):

Table 7.1 (b): Market share January to December

Ton	2012	2013	2014
***Total SACU market**	**100**	**114**	**106**
*Applicant's Sales	100	91	87
*Other SACU producers	100	129	121
Total net imports	191 092 225	490 448 207	438 705 024
*Applicant's share as % of total market	100	81	83
*Other SACU producers' share as a % of total market	100	113	115
*Total imports as % of total market	100	224	209

*These figures were indexed due to confidentiality using 2012 as the base year

The SACU market increased from 2012 to 2013 by 14 index points, while the applicant's share of the market declined by 19 index points, and the market share of imports increased by 13 index points.

From 2013 to 2014, the SACU market declined by 8 index points, while the applicant's share of the market slightly increased 2 index points while the share held by imports also increased by 2 index points.

Over the period, the SACU market grew by 6 index points, the applicant's share of the market declined by 13 index points, while the market share of imports increased by 9 index points.

The SACU market was at its highest point in 2013, but the applicant lost 9 percentage points, with imports gaining 124 percentage points. The applicant never recovered thereafter, while imports maintained their share of the SACU market, with an intervening decline. The significant decline in market share coincides with the surge of imports recorded in 2013.

The following table shows that during the 7 months period (2012 – 2015), there was an overall increase in imports, especially during the period of the surge.

Table 7.1 (c): Import volumes (Jan -July year period)

	2012 (Jan-July)	2013 (Jan-July)	2014 (Jan-July)	2015 (Jan-July)
Total imports (Kg)	124 056 984	308 029 143	180 710 362	425 118 657

The following table compares the market share of the SACU industry with that of the increased imports for the 7 months period (2012 – 2015):

Table 7.1 (d): Market share January to July

Ton	2012	2013	2014	2015
***Total SACU market**	**100**	**121**	**87**	**108**
*Applicant's Sales volumes	100	99	74	79
*Other SACU producers	100	139	111	73
Total net imports	124 056 984	308 029 143	180 710 362	425 118 657
*Applicant's share as % of total market	100	82	86	73
*Other SACU producers' share as a % of total market	100	116	129	67
*Total net imports as % of total market	100	205	168	316

*These figures were indexed due to confidentiality using 2012 as the base year

The SACU market increased from 2012 to 2013 by 21 index points, the applicant's share of the market declined by 18 index points, while the market share of imports sharply increased by 105 index points. From 2013 to 2014 the SACU market declined by 34 index points, the applicant's share of the market slightly increased by 4 index points, and the imports' share of the market declined by 37 index points. From 2014 to 2015 the SACU market share picked up again by 21 index points, the applicant's market share declined by 13 index points and that of imports significantly increased by 148 index points.

Over the period the SACU market grew by 8 index points, the applicant's share of the market significantly declined by 27 index points. However, the share of the market held by imports drastically increased by 216 index points.

The SACU market was at its highest point in 2013, but the applicant's market share was low, with imports gaining 105 index points, clearly reflecting the serious injury suffered by the applicant as a result of the surge. The significant decline in market share coincides with the surge in imports recorded in 2013.The applicant never recovered since, while imports maintained their share of the SACU market, with an intervening decline in 2014 followed by significant increase in 2015.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators (2012 -2014 full year)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Increase
Utilisation of capacity	Decrease
Employment (number of employees)	Decrease

Table 6.2.2: Serious Injury Indicators (2012 – 2015 Jan-July)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Decrease
Utilisation of capacity	Decrease
Employment (number of employees)	Decrease

6.3 VIEW OF THE APPLICANT'S CLIENTS REGARDING QUALITY, DELIVERY TIMES, SERVICE AND AFTER SALES SERVICE

- **Quality**

  The applicant stated that its quality of flat hot rolled products is generally regarded as good, even for demanding applications. Flat hot rolled products are tested and delivered to international specifications on material properties and tolerances. Several quality checks are systematically performed to minimize defective material. AMSA maintains an ISO9001 accredited quality management system. This is further augmented by the control of radioactivity, conflict minerals and environmental impact (ISO 14001).

Comments from interested parties

(i) One interested party indicated that the applicant does not conduct ultra-sonic testing for certain product dimensions.

(ii) Other interested parties indicated that the applicant's products are of a poor quality.

Commission's consideration

(i) The applicant indicated that ultra-sonic testing is performed on certain product dimensions. Other quality tests are however conducted on all their products. There is no requirement that all quality standards have to be satisfied in order for a product to be considered of good quality.

(ii) AMSA stated that they have received complaints on the quality of their products from a few of its customers, these were resolved speedily, and these complaints were minimal in revenue terms, as they were less than 0.7% of its total revenue.

- **Delivery times**

  The applicant stated that the normal lead time from order placement to delivery is six weeks for flat hot rolled products. Selections of products are produced in advance affording a shorter lead time. However, some products require more processing necessitating longer lead times.

  Comments from interested parties

  (i) The injury is not caused by imports, but AMSA cannot meet demand, and also have placed the local market on allocation, which forces them to import.

  (ii) It was also submitted that during the football world cup a lot of products ended up having to be imported because the domestic industry could not supply the required quantities.

  Applicant's response

  (i) Applicant stated that all requirements of the re-rollers can be met. It refutes the argument that they are forced to import because of AMSA's inability to meet demand. AMSA indicated that the reason re-rollers import is that they are in strategic agreements with their foreign related steel producers with which they have agreements to import from at favourable inter-company prices.

AMSA indicated that it meets demand, except for two events, when there was a fire in its Vanderbijlpark plant and when Evraz closed down. In the case of the fire, AMSA responded efficiently to restore operations and used alternative measures to supply the domestic industry. When Evraz closed down, AMSA had to accommodate some of its customers, resulting in many more orders than usual. AMSA is upgrading its plant to deal with the demand. The two events or issues do not mean AMSA is causing its own injury, AMSA notes that all steel manufacturers around the world do encounter problems from time to time, and it therefore does not mean they are inefficient.

AMSA indicated that Duferco sourced all its requirements from AMSA for ten years implying that prices and the service from AMSA were globally competitive. According to AMSA Duferco admits that it was due to China's increase in steel capacity that their situation changed.

It is submitted that Duferco failed to mention that 2013 was an important year for Duferco as Hebei Iron and Steel Group bought a stake in Duferco International Trading SA. From thereon, Duferco's global sourcing strategy changed. It was due to this strategic partnership with Hebei and their role in exporting and distributing excess steel from China that changed their sourcing strategy.

(ii) The reference to inability to meet demand during world cup preparations refers to a time outside the period of investigation.

Commission's Consideration

(i) The two unusual instances when the applicant could not meet demand on their own are not sufficient to conclude that the domestic industry cannot meet demand.

Some interested parties are sourcing from their foreign related companies and this has to be considered. AMSA has the productive capacity to meet the requirements of the SACU market.

(ii) The world cup incident is outside the investigation period and it was a unique situation.

- **Service and after sales**

  The applicant stated that a dedicated team accepts and processes customers' orders in automated planning systems, provide real time feedback to customers on production progress on any order and, interactively with customers plan delivery times and quantities.

- **After sales service, including guarantees and warrantees and technical training to customers**

  The applicant stated that a small but experienced team of engineers provide technical support to customers with material selection, material properties and processing parameters like welding and drawing and forming. This team also scans the market for new opportunities and drive new product development and innovative solutions to challenges customers may encounter.

- **Flat hot-rolled products are fully guaranteed to the applicable international specification ordered.**

  The applicant stated that prompt resolution of quality claims is ensured by personal attention from a dedicated team. Should any defective material have been delivered, the issue is resolved by full refund of money paid, replacement of material or other arrangement acceptable to customers.

Commission's consideration

Comments from interested parties and the applicant's information with regards to quality, delivery time, after sales services, warranties and technical specifications of the customers was considered, and found that although there were challenges, the applicant provided reasonable responses to deal with such challenges, and also undertook corrective measures where required.

7.4 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY

The applicant stated that it should be noted that AMSA is currently working hand in hand with the trade unions in an attempt to prevent future job losses and retrenchments of their work force.

In this regard, AMSA and the trade unions have collectively approached the government to request its assistance, which is essential in order to prevent significant job losses within the steel industry. This therefore demonstrates the supportive relationship between AMSA and the trade unions.

Therefore, despite the continued economic slump in the steel industry, in general, AMSA is in a very favourable position with regard to the relations that they share with organised labour. During the last three years, each year AMSA has managed to sign a wage agreement with organised labour without having labour unrest or strikes. This should be appreciated against the backdrop of industrial action in the steel industry and other related industries during the same period. In 2015 AMSA has managed to sign a 2 year agreement with NUMSA and a 3 year agreement with Solidarity. This was achieved at a settlement lower than the industry average.

Organised labour is mandated by their members, AMSA's employees, to accept or reject any wage offer and changes to conditions of service and based on the wage negotiations history of the past three years as indicated above it is safe to assume that the workforce in general shares a positive attitude to AMSA as an employer.

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

The following information was considered by the Commission to indicate that no other factors other than increased imports are causing the SACU industry serious injury:

- There were no strikes during the last three years, each year AMSA has managed to sign a wage agreement with organised labour unions without labour unrest or strikes.

- Regarding the changes in patterns of consumption, or contraction in demand, the market share analysis indicates that the SACU market increased over the period of investigation.
- Productivity is on par with that of other global steel producers.

7.6 OTHER INFORMATION ON CAUSALITY

The Commission noted the closure of Evraz Highveld, the second largest steel plant in the SACU has resulted in the loss of thousands of jobs and the impact of the surge in imports is considered to be a factor.

Comments from interested parties

(i) AMSA will be the sole provider of the subject product should the duties be imposed, thus leading to monopolistic tendencies, considering the fact that it has been previously found guilty by the Competition Commission & Tribunal of anti-competitive behavior.

(ii) The safeguard duty will hurt steel fabricators, as end users will opt for importing final products.

(iii) Injury is caused by supply constraints as a result of maintenance issues, and low productivity because plants are old.

Applicant's response

(i) AMSA indicated that it meets demand, except for two circumstances, when there was a fire in its Vanderbijlpark plant and when Evraz closed down.

In the case of the fire AMSA responded efficiently to restore operations and used alternative measures to supply the domestic industry. When Evraz closed down, AMSA had to accommodate some of its customers, resulting in many more orders than usual. AMSA therefore is upgrading its plant to deal with the demand.

(ii) AMSA indicates that the investigations by the Competition Commission have been settled, and any other outstanding issues are still being discussed with the Competition Commission. AMSA indicates that for a steel company to be competitive and efficient, it has to operate at a capacity of at least 90%. The current situation is not viable.

(iii) AMSA stated that there have been continuous capital expenditures and investments made to maintain and upgrade technology to internationally benchmarked standards as reflected in its financial statements.

The two circumstances or issues have not resulted in AMSA causing its own injury. AMSA states that all steel manufacturers around the world do encounter problems from time to time, and it therefore does not mean that they are inefficient.

Commission's consideration

(i) Although AMSA has been found guilty of anti-competitive behavior before, it does not mean it should be disqualified from applying for a safeguard measure. There is also no evidence to substantiate that this anti-competitive behavior will resume if measures are imposed, and should it resume, the Competition Commission would be the correct authorities to deal with such.

(ii) No determination has been made of implementing a duty and reasons for such are contained in this report. However, the Commission will consider all aspects of the industry when making its final determination, including public interest issues.

(iii) No evidence was found to substantiate the claim of maintenance issues and low productivity resulting from old plants. AMSA submitted that it is continuously upgrading its plant. Information on the size of the SACU market was analysed and revealed that AMSA has the production capacity to meet the requirements of the SACU market.

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a preliminary determination that the information provided indicates that there is a causal link between the recent, sudden, sharp and significant surge in imports of the subject product and the serious injury suffered by the SACU industry.

8. PROVISIONAL MEASURES

In terms of the SGR 17.1, "The Commission may request the Commissioner for South African Revenue Service, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose provisional payment as soon as the Commission has made a preliminary determination that;

(a) There are critical circumstances where a delay would cause damage that it would be difficult to repair ; and

(b) There is clear evidence that increased imports have caused or are threatening serious injury."

8.1 Information on critical circumstances

- **The volume of imports**

Full year period 2012 to 2014: Total imports more than doubled from 2012 to 2013, as they increased by 157%. Although they slightly declined by 11% from 2013 to 2014, they maintained their surge levels when comparing the increase from 2012 to 2014 as it was an increase of 130% over the period (full year periods). Even when comparing the increase of the full year 2012 to the 2015 (Jan-July) 7 months periods, this is still a significant increase of 122 percent.

7 month period 2012 to 2014 (Jan – July): Total imports more than doubled from 2012 to 2013, as they increased by 148%. Although these imports declined by 41% from 2013 to 2014, from 2014 to 2015 imports increased again by 135%. For the period of investigation they increased by 243 percent.

8.2 The Commission considered SGR 17.1 and made a preliminary determination that there are critical circumstances and evidence of increased imports that have caused serious injury. The Commission further considered that the initiation of a safeguard investigation may already have had an effect of deterring imports to a certain extent.

As a result, it is expected that the serious injury suffered by the applicant will not worsen even if provisional payments are not imposed.

Further, interested parties made submissions regarding the performance of the applicant and the Commission want further interrogation of this matter in the lead-up to the final determination. The Commission aims to make a final determination in 3 months.

On this basis, the Commission made a preliminary determination not to impose provisional payments.

9. FINDINGS

9.1 Unforeseen Developments

The Commission made a preliminary determination that the events cited by the applicant can be regarded as unforeseen developments which led to the surge in imports of the subject product, as per the provisions of Article XIX of GATT 1994.

9.2 Serious injury

The conclusion on injury indicators is as follows:

Table 9.2.1: Serious injury (Full year)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Increase
Utilisation of capacity	Decrease
Employment (number of employees)	Decrease

Table 6.2.2: Serious Injury Indicators (Jan-July)

Imports in absolute terms	Increase
Imports in relative terms	Increase
Sales volumes (kg's)	Decline
Net profit (R)	Negative
Output (kg's)	Decrease
Market share (applicant)	Decrease
Productivity (kg's)	Decrease
Utilisation of capacity	Decrease
Employment (number of employees)	Decrease

The Commission made a preliminary determination that the information analysed indicates that the applicant is suffering serious injury.

9.3 Surge of Imports

The Commission made a preliminary determination that there is a surge in the volume of imports of the subject product.

9.4 Causal link

The Commission made a preliminary determination that the information provided indicates that there is a causal link between the recent, sudden, sharp and significant surge in imports of the subject product and the serious injury suffered by the SACU industry.

9.5 Provisional Measures

The Commission decided not to impose provisional measures.

10. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- There was a surge in the volume of imports which is recent enough, sudden enough, sharp enough and significant enough;
- The SACU industry is suffering serious injury; and
- There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development.

The Commission made a preliminary determination not to impose provisional payments.