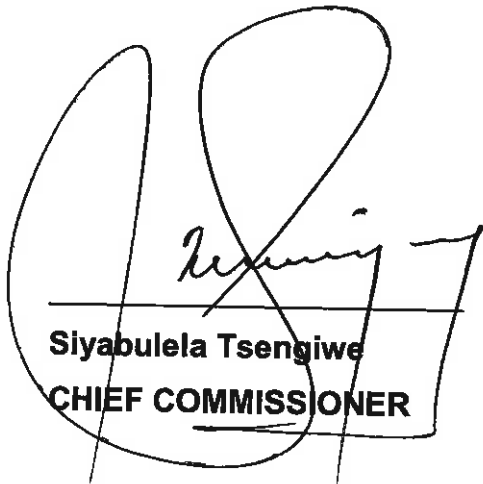


Report No. 555

**INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD
AGAINST THE INCREASED IMPORTS OF COLD-ROLLED STEEL PRODUCTS:
FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 555: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF COLD-ROLLED STEEL PRODUCTS: FINAL DETERMINATION**



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PRETORIA

31 / 08 / 2017

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD AGAINST THE INCREASED IMPORTS OF COLD-ROLLED STEEL PRODUCTS: FINAL DETERMINATION

SYNOPSIS

On 29 July 2016, the Commission initiated an investigation for remedial action in the form of a safeguard against the increased imports of cold-rolled steel products through Notice No. 469 of *Government Gazette* No. 40171 dated 29 July 2016.

The application was lodged by the South African Iron and Steel Institute (SAISI), a non-governmental representative organization serving the collective interests of the primary steel industry in South Africa (the Applicant) on behalf of ArcelorMittal South Africa (AMSA) the major producer of cold-rolled steel products (the subject product), representing the Southern African Customs Union (SACU) industry.

The investigation was initiated after the Commission considered that there was *prima facie* evidence to show that events cited by the Applicant 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 World Trade Organisation (WTO), and the countries with a significant interest in the exports of the subject product 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 by the Commission in making a preliminary determination.

The Commission made a preliminary determination that there were unforeseen developments which resulted in the increased imports. The Commission further made a preliminary determination that there was a surge in imports of the subject product, causing serious injury to the SACU industry.

The Commission however made a preliminary determination not to request the Commissioner for South African Revenue Service (SARS) to impose a provisional payment since it was considered that the initiation of the safeguard investigation may already have had an effect of deterring imports to a certain extent and that the increase in the ordinary customs duty may also have had a positive effect on the industry's situation. The Commission further took into consideration the magnitude of the duty and its ability of preventing a possible worsening of the state of the industry during the time it would take to finalise the investigation.

The Commission issued Report No. 537 containing its preliminary determination and invited interested parties to comment on its preliminary determination.

On 29 November 2016 a public hearing was held where interested parties could address the Commission on whether the imposition of a safeguard measure would be in the public interest.

Based on the details as contained in the Commission's preliminary report and the comments received, the Commission made a final determination before "essential facts" that it was considering making a final determination that there was a surge in the volume of imports of the subject product into the SACU market that was as a result of unforeseen circumstances and that the increase in imports was causing serious injury to the SACU industry. However, in calculating the possible measure to be imposed, it was determined that the Applicant was not experiencing a price disadvantage when comparing its unsuppressed selling price with the landed price of the imports.

The Commission sent out letters to all interested parties informing them of the "essential facts" which were being considered by the Commission and invited comments from interested parties on these "essential facts" being considered.

Taking all the information available to it into account, including all comments received during the investigation, the Commission made a final determination that there was a surge in the volume of imports of the subject product into the SACU market as a result of unforeseen circumstances and that the increase in imports was

causing serious injury to the SACU industry. However, in calculating the possible measure to be imposed, it was determined that the Applicant was not experiencing a price disadvantage when comparing its unsuppressed selling price with the landed price of the imports.

The Commission therefore decided to recommended to the Minister of Trade and Industry that the investigation be terminated.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was 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 lodged the application on behalf of ArcelorMittal South Africa (AMSA) the major producer of cold-rolled steel products (the subject product), representing 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 cold-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 2015.

1.5 INVESTIGATION PROCESS

1.5.1 The information submitted by the Applicant was verified on 28 April 2016.

1.5.2 The application was accepted as being properly documented on 28 July 2016.

1.5.3 The investigation was initiated on 29 July 2016.

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

- MACSTEEL Service Centres SA (Pty) Ltd; and
- Steelbank Merchants (Pty) Ltd

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

- The European Commission;
- China Chamber of International Commerce (CCOIC);
- China Iron and Steel Association (CISA);
- Steelbank Merchants (Pty) Ltd;
- Bureau of foreign trade (Taiwan);
- The Embassy of the People's Republic of China in South Africa;
- The Ministry of International Trade and Industry (MITI), Malaysia;
- Brazilian Embassy in South Africa;
- Economic Division Taipei Liaison Office in South Africa; and
- Japanese Manufacturers (Nippon Steel & Sumitomo Metal Corporation, Nisshin Steel Co., Ltd, Kobe Steel Ltd and JFE Steel Corporation)

1.6 COMMENTS FROM INTERESTED PARTIES

The Commission considered comments received from interested parties prior to 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.

1.7 PRELIMINARY DETERMINATION

The Commission made a preliminary determination that there were unforeseen developments that led to the increased volume of imports. The Commission further made a preliminary determination that the surge in the volume of imports is recent enough, sudden enough, sharp enough and significant enough; and that the SACU industry is experiencing serious injury.

The Commission also made a preliminary determination that although there are factors other than the imports that contributed to the injury, such as the increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance; these factors did not sufficiently detract from the causal link between the serious injury experienced by the Applicant and the surge in volumes of imports resulting from the unforeseen developments.

The Commission however made a preliminary determination not to request the Commissioner for South African Revenue Service (SARS) to impose a provisional payment since it was considered that the initiation of the safeguard investigation may already have had an effect of deterring imports to a certain extent and that the increase in the ordinary customs duty may also have had a positive effect on the industry's situation. The Commission also took into consideration the magnitude of the duty and its ability of preventing a possible worsening of the state of the industry during the time it would take to finalise the investigation.

1.8 A public interest hearing was held on 29 November 2016, where interested parties raised public interest issues that the Commission considered prior to making a final determination. The following interested parties made submissions:

- SAISI;
- AMSA;
- The Taipei Liaison Office in South Africa;
- Steelbank Merchants (Pty) Ltd;
- China Iron and Steel Association (CISA);
- Japanese Manufacturers (Nippon Steel & Sumitomo Metal Corporation, Nisshin Steel Co., Ltd, Kobe Steel Ltd and JFE Steel Corporation); and
- The Brazilian Embassy in South Africa;

1.9 On 29 March 2017 essential facts letters were sent to all interested parties informing them of the "essential facts" which were being considered by the

Commission and inviting comments from interested parties on these “essential facts” being considered.

1.10 Comments were received from the following interested parties by 11 April 2017:

- The Taipei Liaison Office in South Africa;
- Steelbank Merchants (Pty) Ltd;
- China Iron and Steel Association (CISA);
- SS Profiling (Pty) Ltd;
- Chinese National Federation of Industries;
- Japanese Manufacturers (Nippon Steel & Sumitomo Metal Corporation, Nisshin Steel Co., Ltd, Kobe Steel Ltd and JFE Steel Corporation).

1.11 On 12 April 2017, the Applicant commented on the Commission’s essential facts letter. The Applicant was informed that it did not meet the 14 days timeframe and as such the Commission may not take the Applicant’s comments into account when making its final determination.

The Applicant insisted that it had complied with the requirements of the essential facts letter as it has calculated the 14 days from 30 March 2017. The Applicant stated that computation of any period of time provided for in these regulations commences with the first day following the act or event initiating such period of time. The last day of the period of time is included in the computation unless such day is a Saturday, Sunday or public holiday, or such other day when the Commission is closed for business, in which case the deadline is the next business day.

The Applicant was referred to the part in the essential facts letter that specifically states: *“Any comments on the above “essential facts” should be submitted within 14 days from the date of this letter to the Senior Manager: Trade Remedies I, in order for the Commission to be in a position to take such comments into consideration before making its final determination and recommendation to the Minister of Trade and Industry.”*

The Commission decided to take the Applicant's comments into account when making its final determination since they were only submitted one day late and therefore did not delay the investigation.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

Flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) hereinafter referred to as "cold-rolled steel products".

2.1.2 Tariff classification

The subject product is imported under the following tariff headings:

| | | | Rate of Duty | | | |
|-------------------|---|------|--------------|------|------|------|
| Tariff Subheading | Article Description | Unit | General | EU | EFTA | SADC |
| 7209.15 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness of 3 mm or more | kg | 10% | Free | Free | Free |
| 7209.16 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness exceeding 1mm but less than 3mm | kg | 10% | Free | Free | Free |

| | | | | | | |
|---------|---|----|-----|------|------|------|
| 7209.17 | <p>FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED</p> <p>In coils , not further worked than cold-rolled (cold reduced)</p> <p>Of a thickness of 0,5 mm or more but not exceeding 1 mm</p> | kg | 10% | Free | Free | Free |
| 7209.18 | <p>FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED</p> <p>In coils , not further worked than cold-rolled (cold reduced)</p> <p>Of a thickness of less than 0,5 mm</p> | kg | 10% | Free | Free | Free |

South Africa incurred the following obligations with regard to the subject product under the GATT 1994:

| Tariff Subheading | Article Description | Unit | Bound rate |
|--------------------------|--|-------------|-------------------|
| 7209.15 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness of 3 mm or more | kg | 10% |
| 7209.16 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness exceeding 1mm but less than 3mm | kg | 10% |
| 7209.17 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness of 0,5 mm or more but not exceeding 1 mm | kg | 10% |
| 7209.18 | FLAT ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600MM OR MORE, COLD-ROLLED (COLD REDUCED), NOT CLAD, PLATED OR COATED In coils , not further worked than cold-rolled (cold reduced) Of a thickness of less than 0,5 mm | kg | 10% |

2.1.3 Possible tariff loopholes

The Applicant indicated that an analysis of the import statistics and the tariff sub-headings used to import the subject product indicates that importers are also using other tariff subheadings as a loophole to import cold-rolled steel products into the SACU. The tariff subheadings are as follows:

| Tariff heading | Tariff subheading | Description | Statistical unit | Rate of duty | | | |
|----------------|-------------------|---|------------------|--------------|------|------|------|
| | | | | General | EU | EFTA | SADC |
| 7225 | 7225.50.00 | FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF 600MM OR MORE Other, not further worked than cold-rolled (cold-reduced) | KG | 10% | free | free | free |
| 7226 | 7226.92.00 | FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF LESS THAN 600MM Other, not further worked than cold-rolled (cold-reduced) | KG | 10% | free | free | free |

2.1.4 Production process

The manufacturing process for cold-rolled products 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;
- Continuous pickling and oiling process;
- Stand Tandem cold rolling: During this process the hot rolled pickled and oiled coil is reduced from about 2.5 – 3.5 mm to thickness ranging from 0.4 to 1.6 mm. This is a cold-rolled process which is done in a 5-stand rolling mill operation where the incoming thickness is reduced at each stand of the mill. Strict thickness control is required to ensure the material specification is achieved. Some plants also use a single stand reversing tandem mill where hot rolled material is reduced to the final cold-rolled thickness using multiple passes;

- Annealing: this stage is dependent on the mechanical properties required, therefore annealing can be done by either Continuous annealing or Batch annealing. The input material will have different chemical composition and hot rolling temperatures in order to achieve the end-use specification. In batch annealing, 3 to 4 coils are loaded in a batch and then annealed together. In a continuous annealed process each coil is annealed individually but it is a continuous process where coils are welded together (Coils are split at the weld after annealing at the exit of the line). Annealing temperatures are critical to achieve the desired mechanical properties. The lead time for batch annealed products is more than that of Continuous annealed products; and
- Temper rolling. Temper rolling is a process needed to ensure the correct surface finish of the material and to ensure that the yield point elongation is removed to ensure effective material application properties. During temper rolling the material is normally elongated in the range of 0.5 to 1% depending on the properties needed.

According to AMSA, the equipment used to manufacture cold-rolled material is much the same throughout the world and without significant differences in production technology.

2.2 SACU PRODUCT

2.2.1 Description

Flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) hereinafter referred to as “cold-rolled steel products”.

2.2.2 Production process

The production process is the same as the imported product.

2.2.3 Application or end use

Cold-rolled material is used for electrical appliances, domestic appliances like stoves, fridges, drums, tubing and geysers. It can also be used for office equipment, containers and components in vehicle manufacturing.

The trend today is towards greater diversity of products to meet more sophisticated needs and to realise increased efficiency in manufacturing the final product. Greater demands for performance and quality are thus being made on cold-rolled steel sheet. The cold-rolled steel sheet range includes steel with excellent press formability as well as more general purpose steel conforming to Euronorm, ASTM and JIS specifications

2.2.4 Categories of users

- Drum manufacturers
- Tube manufacturers
- Fabricators
- Automotive component manufacturers, etc.

2.3 LIKE OR DIRECTLY COMPETITIVE PRODUCTS ANALYSIS

In terms of SR 2, a like product is "a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration", while a directly competitive product is a product, other than a like product, that competes directly with the product under investigation.

In determining the likeness or directly competitiveness of the product the Commission uses the following criteria:

| | Imported product | SACU product |
|------------------------|---|---|
| Tariff Headings | 7209.15, 7209.16; 7209.17, 7209.18, 7225.50, and 7226.92. | 7209.15, 7209.16; 7209.17, 7209.18, 7225.50, and 7226.92. |
| Raw materials | Cold-rolled steel is normally supplied | Cold-rolled steel is normally |

| | | |
|---------------------------|---|---|
| | <p>from a basic oxygen furnace but could also be supplied from an electric arc furnace using clean internal scrap and direct reduced iron.</p> <p>All steel is desulphurised to maintain a high degree of cleanliness. All cold-rolled steel sheet is made fully killed and fine grained from continuously cast slabs.</p> <p>Full shrouding techniques and automatic mould level control are applied to ensure superior internal and surface quality.</p> | <p>supplied from a basic oxygen furnace but could also be supplied from an electric arc furnace using clean internal scrap and direct reduced iron.</p> <p>All steel is desulphurised to maintain a high degree of cleanliness. All cold-rolled steel sheet is made fully killed and fine grained from continuously cast slabs.</p> <p>Full shrouding techniques and automatic mould level control are applied to ensure superior internal and surface quality.</p> |
| Production process | <p>The manufacturing process for cold-rolled steel coils consists of several stages:</p> <ul style="list-style-type: none"> • 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; • Continuous pickling and oiling process; • Stand Tandem cold rolling. • Annealing; and • Temper rolling. | <p>The manufacturing process for cold-rolled steel coils consists of several stages:</p> <ul style="list-style-type: none"> • 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; • Continuous pickling and oiling process; • Stand Tandem cold rolling. • Annealing; and • Temper rolling. |

| | | |
|--------------------------------------|--|---|
| <p>Application or end use</p> | <p>Cold-rolled steel products are primarily used in the fabrication, packaging, automotive and construction industries. It is used in the manufacture of products such as electric appliances, car bodies, office equipment, containers (drums), geysers, etc.</p> <p>The trend today is towards greater diversity of products to meet more sophisticated needs and to realise increased efficiency in manufacturing the final product. Greater demands for performance and quality are thus being made on cold-rolled steel sheet. The cold-rolled steel sheet range includes steels with excellent press formability as well as more general purpose steels conforming to Euronorm, ASTM and JIS specifications.</p> | <p>Cold-rolled steel products are used for electrical appliances, domestic appliances like stoves, fridges, drums, tubing and geysers. It can also be used for office equipment, containers and components in vehicle manufacturing.</p> <p>The trend today is towards greater diversity of products to meet more sophisticated needs and to realise increased efficiency in manufacturing the final product. Greater demands for performance and quality are thus being made on cold-rolled steel sheet. The cold-rolled steel sheet range includes steels with excellent press formability as well as more general purpose steels conforming to Euronorm, ASTM and JIS specifications</p> |
|--------------------------------------|--|---|

Comments by Steelbank Merchants and CISA

Steelbank Merchants and CISA indicated that the four products listed as subject to the investigation are not like products to one another.

Commission's consideration

The Commission considered that on initiation of the investigation, the publication notice clearly defined the product under investigation as "cold-rolled steel products", imported under the following tariff headings: 7209.15, 7209.16, 7209.17, 7209.18, 7225.50, and 7226.92. As a result the determination of the surge in volumes of imports was based on imports of the subject product, being cold rolled steel products, under these 6 tariff subheadings. Therefore the whole investigation is premised on the defined product scope - "cold-rolled steel products", irrespective of tariff code classification.

The Commission indicated that the analysis of like product is done by comparing the imported subject product, being “cold rolled steel products”, with the product manufactured in the SACU (also cold rolled steel products) and not by comparing each of the types of product imported with each other.

After considering all the above, the Commission made a final determination that the SACU product and the imported products are “like products” or directly competitive products, for purposes of comparison, 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 major producers 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 Duferco Steel processing (DSP). DSP indicated neither support for nor opposition to the application.

Comments by Steelbank Merchants and CISA

Steelbank Merchants and CISA stated that the Applicant claims that Duferco Steel Processing (“DSP”) is “Neutral”. No substantiation was supplied of this. Steelbank Merchants and CISA therefore requested that the Commission obtains proof that DSP is neutral.

Comments by Japanese exporters

Japanese exporters stated that one of the SACU producers of the subject product is not participating in the investigation. They stated that this is significant because if the Applicant's claim that imports are causing serious injury to the SACU industry was correct, DSP would have supported the Application. In the circumstances, the Japanese exporters submit that the decision by DSP not to support the Application demonstrates that imports are not causing serious injury to the SACU industry.

Applicant's response

The Applicant responded by indicating that it believes the reason for DSP's lack of support could be the conflict of interest. The Applicant stated that DSP's holding company, Hebei Metals and Mineral Corp., is a Chinese Mill that would clearly be adversely affected by the imposition of safeguard duties.

Commission's consideration

The Commission considered that the Applicant has provided the Commission

with the estimated production volume of DSP, and also stated that DSP is neutral. It is not necessary for the Commission to obtain proof that DSP is neutral as DSP is at liberty to respond to the Commission's initiation notice. The Commission is of the view that the Applicant meets the domestic industry standing requirement, as it represents 83 per cent of the domestic industry by production volume and 100 per cent of those producers who expressed an opinion on the application.

Considering the above, the Commission made a final 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 as follows:

"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 terms of the WTO, it is interpreted to mean that the developments in the market should have been unforeseen at the time of negotiation of the relevant tariff concessions.

The Commission also analysed the effects of the obligations incurred with regard to the subject product under the GATT 1994.

In analysing the effects of the obligations of GATT 1994, the Commission considered that the South African government committed to binding the ordinary customs duty on the imported products of cold-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.

4.2 Information submitted by the Applicant

The Commission considered the information submitted by the Applicant in relation to unforeseen developments. The Applicant submitted that a confluence of events forms the basis of the unforeseen development that

supports this application, which is, ultimately the considerable oversupply of steel, and specifically the subject product, in the world today causing a surge in imports into the SACU. These events are listed below:

The Applicant stated that during the Uruguay Round negotiations in 1986-1994, South Africa did not foresee the following events:

- The unprecedented steep rate of increase in 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 of 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 growth 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 Commission considered the information the Applicant provided indicating that although much of the data provided relates to crude steel, it should be kept in mind that crude steel produced at furnaces cannot be used as it is and needs to be reworked at various mills to produce either long or flat products. Steel products can be worked (rolled in mills) to either long products or flat products depending on the intended end use application of the product. On the flat side all the steel products need to be rolled into hot rolled coil or plate before being processed into further downstream products. The majority of hot rolled products are then cold-rolled to form the subject product in this application.

Therefore, even where there may not be data available specific to cold-rolled steel products, a large portion of the figures in the Application relates to the subject product as it constitutes, after hot rolled flat products, the starting point of several downstream products.

Typically the production spread in developed economies is 70 per cent flat and 30 per cent long to 55 per cent flat and 45 per cent long for developing and underdeveloped economies. In the case of South Africa from a demand perspective it is 60 per cent flat and 40 per cent long.

Comments by Steelbank Merchants and CISA

Steelbank Merchants and CISA stated that the alleged serious injury experienced (which is denied) is not as a result of events that were not foreseen or expected when South Africa made certain "tariff concessions or GATT obligations undertaken" in 1994 and therefore the safeguard mechanism cannot be used. The importer referred the Commission to the Board on Tariffs and Trade Report No 3563 dated 12 April 1995 which was aimed at the implementation of South Africa's customs tariff offer in terms of the Uruguay round of the GATT (Marrakesh Agreement). Steelbank Merchants and CISA indicated that from this Report it is clear that the customs duty on the subject products remained at 5 per cent ad valorem while the binding rate was

set at 10 per cent ad valorem. Thus no customs duty was reduced; the only “concession/obligation” was that the binding rate was set at 10 per cent.

Steelbank Merchants and CISA further indicated that from 1994 up to 2005 there was no surge or unexpected increases in imports as a result of South Africa’s GATT obligations. However, in 2005 the Commission concluded an investigation where the duty structure for iron and steel products classifiable under Chapter 72 was reviewed and the customs duties were reduced on 30 May 2006 from 5 per cent to free of duty on various products, including the products subject to this Safeguard investigation. This decision of the Commission is taken up in Report No 121 “Review of the duty structure for iron and steel products classifiable under Chapter 72”. From the Report it is clear that the Commission made an informed determination to reduce the customs duties based on the competitiveness of the SACU steel industry in the global world steel context and the fact that the SACU industry was practicing import parity pricing. Steelbank Merchants and CISA indicated that it wished to point out that the reduction of the customs duties on these products were not as a result of “obligations incurred by a contracting party under this Agreement” in 1994, but purely as a result of the Commission making a determination and recommendation in 2005. They further indicated that at that stage, according to the “Worldsteel in figures, 2015”, the production of crude steel production rose from 1950 to 2005 by more than 500 per cent, indicating substantial growth, but the Commission still proceeded to reduce the customs duty, even in the wake of objection from the Applicant that the protection for the steel industry was much lower than protection in other countries.

Comments by Japanese exporters

The Japanese exporters argued that the Applicant has a history of abusing its dominant position in the SACU market. They also stated that in demonstrating its standing to bring the present Application, the Applicant states that it manufactures more than 80% of the total SACU production. Because of its dominant position in SACU, the Applicant has for a long time charged downstream fabricators excessive prices.

Commission's consideration

The Commission considered that when the duties were reduced in 2005, the economic situation was different and that there was no steel crisis. Hence the Commission made a recommendation to the Minister of Trade and Industry to reduce the customs duties from 5% to zero in order to reduce the costs for the downstream manufacturers.

The Applicant provided the following to show world steel output, and its increase over the years (The World Steel Outlook in 1995).

As can be seen from the table below, the world production for crude steel in the decades leading up to 1995 (when the WTO commitments entered into force) were relatively stable, with only very gradual and trivial increases. The table below was extracted from "World Steel in figures 2015", published by the Worldsteel Association.

million tonnes

| Years | World | Years | World | Years | World |
|-------|-------|-------|-------|-------|-------|
| 1950 | 189 | 2000 | 850 | 2010 | 1,433 |
| 1955 | 270 | 2001 | 852 | 2011 | 1,537 |
| 1960 | 347 | 2002 | 905 | 2012 | 1,559 |
| 1965 | 456 | 2003 | 971 | 2013 | 1,649 |
| 1970 | 595 | 2004 | 1,063 | 2014 | 1,665 |
| 1975 | 644 | 2005 | 1,148 | | |
| 1980 | 717 | 2006 | 1,250 | | |
| 1985 | 719 | 2007 | 1,348 | | |
| 1990 | 770 | 2008 | 1,343 | | |
| 1995 | 753 | 2009 | 1,238 | | |

(Source, Worldsteel in Figures, 2015)

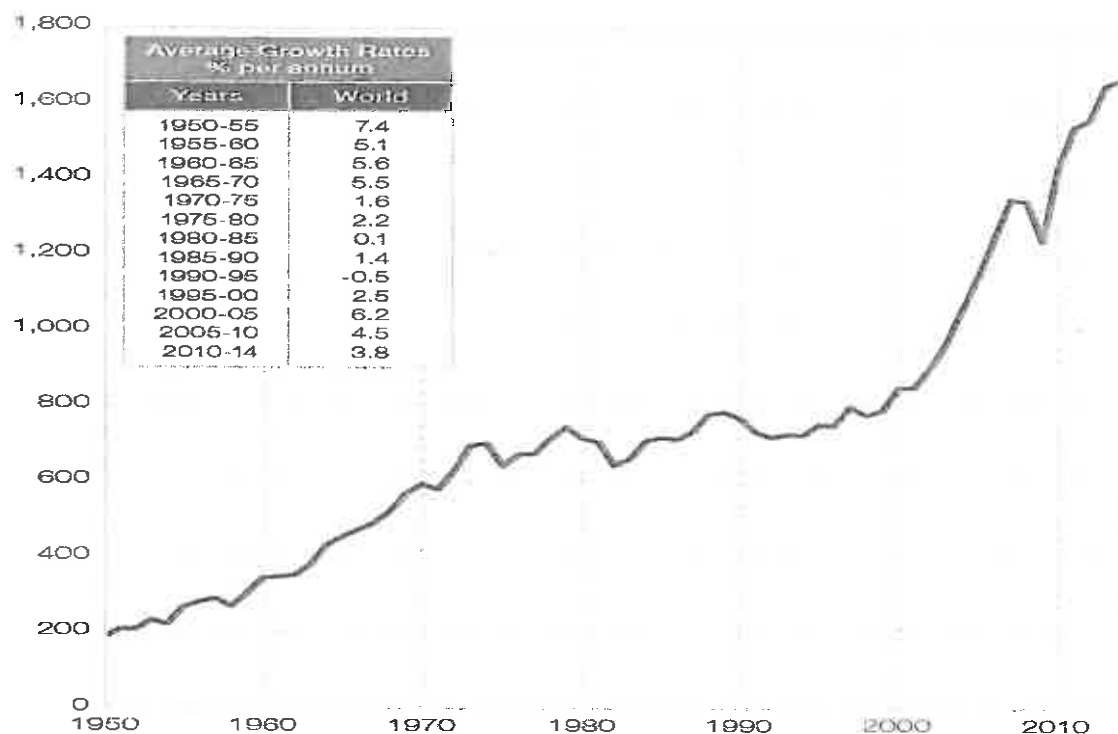
Notably, from 1975 to 1995, the 20 years prior to 1995, world production in crude steel rose from 644 million to 753 million tonnes, that is, 109 million tonnes amounting to a 16.93 percent increase. For the next 20 years, however, the outlook for world production looked significantly more dramatic for crude steel. It increased

by 912 million tonnes (from 753 million to 1.66 billion tonnes), that is an increase of 121.11 percent.

For cold-rolled steel products specifically the Applicant could not secure any data prior to 2011. However it indicated that hot rolled flat products, the product a step before cold-rolled products in the production process, has data available from 1990. This could give an indication of cold-rolled production at the time. The Worldsteel Association, Steel Statistical Yearbook 1999 reports that between 1990 and 1995 production of hot rolled flat products increased by 31 percent from 258 160 thousand metric tonnes to 339 035 thousand metric tons. However the ensuing 20 years experienced a massive 118 percent growth in hot rolled products when world production increased to 740 636 thousand metric tons in 2014.

The Applicant stated that information specific to cold-rolled steel products can be seen in the World Steel monthly production statistics from 2011 to 2015. The volumes reported are production volumes on a monthly basis and if one aggregates the information on a yearly basis it shows the increase in production of cold-rolled products from 148 559 mill metric tonnes in 2011 to 182 210 mill metric tonnes in 2014, a 23 per cent increase in production volumes in just 3 years, despite the world economic slowdown.

The graph below illustrates the steep increase in production of the steel between before and after South Africa made its WTO commitments.



(Source, Steel Statistical Yearbook, 2015)

The Applicant stated that it is important to note that during the Uruguay Round negotiations, global production of steel remained stable with a marginal increase of about 4 percent over the period. It is on the basis of this stable steel production outlook that South Africa set its bound tariff rates and committed not to exceed them. What followed is, however, a massive and unexpected increase in global production.

The per annum average growth rate percentages of crude steel, including the subject product leading up to 1995 was 0.1 percent for the period 1980 - 85; 1.4 percent for the period 1985 – 90; and a negative growth of -0.5 percent for 1990 – 95. After 1995 the average growth rate percentage per annum reached heights of 2.5 percent; 6.2 percent; 4.5 percent; and 3.8 percent for the periods between 1995 and 2014.

This demonstrates that South Africa could not have reasonably foreseen the fast rate of expansion in production of crude steel (including the subject product), taking into consideration that in the two decades prior to accession, there was a very slow growth rate.

Comments by Japanese exporters

The Japanese exporters indicated that the Applicant does not have any data in respect of the subject products to support its argument on the "confluence of circumstances" which allegedly resulted in the over-supply of the subject product. The Japanese exporters further indicated that the analysis of the demand and supply of the subject product upon which the Applicant relies for its claim regarding unforeseen developments is accordingly flawed. The requirement in United States - Steel Safeguards that "[t]he circumstances of unforeseen developments within the meaning of Article XIX:1(a) must be demonstrated as a matter of fact" has therefore not been met. The Japanese exporters stated that the Application should therefore fail for this reason too.

According to the Japanese exporters the Applicant has selectively used the period 1975 to 1995 and compared it with the period 1995 to 2015 to support its claim of an unprecedented increase in the rate of steel production. The Japanese exporters also stated that the Applicant provided no reason for selecting such period or for confining its analysis to such period. The question the Applicant is required to answer is what data was available to the SACU negotiators when the Uruguay round of WTO negotiations was concluded and obligations formally incurred in 1994 (the "GATT Year").

An analysis of the Applicant's data shows that there were instances before the GATT Year when the world production of crude steel increased by 121.11%.

Table 2 shows that crude steel production increased from:

189 million tonnes in 1950 to 595 million tonnes in 1970 - an increase of 214%; and 270 million tonnes in 1955 to 644 million tonnes in 1975 - an increase of 139%.

Table 2: Increase in Crude Steel Production 1950 – 2015

| | 1950 - 1970 | 1955 - 1975 | 1975 - 1995 | 1995 - 2015 |
|--|-------------|-------------|-------------|-------------|
| Volume at beginning of period (million tonnes) | 189 | 270 | 644 | 753 |
| Volume at end of period (million tonnes) | 595 | 644 | 753 | 1621 |
| Number of years | 20 | 20 | 20 | 20 |
| % increase | 215% | 139% | 17% | 115% |

According to the Japanese exporters the increase of 121.11% in crude steel production over a twenty year period is therefore not unprecedented. If South Africa's negotiators had indeed considered 20 year trends when South Africa made its commitments at the WTO, they would have noticed that it is possible to have an increase of over 121.11% in global steel production over a 20 year period.

Applicant's response

The Applicant stated that the increase in world production of crude steel during the period 1950 – 1975 is incomparable with the period of 1995 – 2015 as the global steel industry was at a much different stage of development. When considering what could be foreseen, it does not make sense to reference a peak that was reached during the 1950s. The Applicant stated that a comparison of the 20 years prior to 1995 with the 20 years after 1995 is more appropriate.

The Applicant further stated that the data relating to crude steel is representative of the subject product. The exact quantitative relationship between the data relating to crude steel and the subject product is not as important as the Japanese exporters allege, rather than the trend, which the Applicant submits is sufficiently proven in its application.

Commission's consideration

The Commission considered the contents of the presentation by OECD titled "Policy responses to the steel crisis". The Commission considered that from the outset it is clear that the global steel over supply was more prominent in the period 2002 – 2007 wherein steel production increased by 8.4%. This increase was more than the period

1950 – 1973 which was 5.8%. In the period 1974 – 2001 the growth was 0.7%. It is therefore clear that the negotiators could not have foreseen the current global steel over supply if in the 20 years before the negotiations the increase was only 0.7%.

Global capacity increase

A recent OECD paper titled “Excess Capacity in the Global Steel industry and the Implications of New Investment Projects”, state that the global steel industry's capacity to produce steel has more than doubled since the early 2000s to support growing construction and manufacturing activity, as well as to help build infrastructure particularly in emerging economies.

For example, a publication called “China's Steel Industry and Its Impact on the United States: Issues for Congress”, records that Chinese consumption of crude steel in 1986 was 75.7 million metric tons (“mmt”), more than twice that of West Germany, but its production was only 51.9 mmt. During the WTO negotiations, China was a major export market for the steel industry, including the South African steel industry, due to the longstanding gap between Chinese production capability and demand. At the time China absorbed a substantial portion of the western world's surplus production.

During the course of many emerging countries' rapid industrialization and urbanization, domestic demand for steel increased even further, commercial and residential construction, infrastructure building, and the rise in automobile sales, for example, all used significant amounts of steel, specifically hot rolled flat products which are used for these purposes.

However, crude steel production capacity in many countries expanded, especially from 2000, and the steel supply in those emerging markets, not only met domestic demand, but also began to outpace consumption.

South African negotiators could thus at the time of negotiations prior to 1995 not have foreseen the rapid growth rate percentage per annum in steel capacity of emerging markets that at the time of negotiations, served as profitable export markets for South African steel.

Comments by Japanese exporters

The Japanese exporters stated that the Applicant's above allegations are not supported by facts. According to them the Applicant's data shows the exact opposite: the growth rate in global production capacity was higher before 1994.

The Japanese exporters also indicated that it seems that the Applicant's primary complaint is that the People's Republic of China ("China") developed from a net importer of crude steel to being a net exporter. This on its own does not support the contention that the growth in production capacity was not foreseen. Having identified China as a particular problem the Applicant should seek a focused remedy which targets China. The Japanese exporters further indicated that China was singled out in a number of places in the Application.

Commission's consideration

The Commission considered that the Applicant has provided sufficient proof that the global capacity increase was unforeseen. The Commission is of the opinion that negotiators could not have foreseen that post 1994, China would be a major exporter of crude steel, especially taking into account that at the time of tariff concessions, China was the major importer of steel.

The Commission is of the view that the choice of which trade remedies to apply for, rests with the SACU industry. In this instance, an application for a safeguard measure was received and this is what is being considered by the Commission.

Global over-capacity and a sluggish demand

The OECD publication states that the world's nominal steelmaking capacity is estimated to have reached 2 241 mmt in 2014, a level that is more than twice as high as the 1 060 mmt capacity level observed in 2000.

However, demand has not kept pace with this rapid growth in supply. Although the industry is emerging from a severe cyclical downturn that was triggered by the global economic and financial crisis of 2008-2009, demand recovery has been uneven and sluggish in many economies. In 2013, crude steel demand stood at 1 648 mmt, or

about 516 mmt below nominal capacity, representing one of the highest gaps in the history of the global steel industry.

An example of a country which had and will continue to have a significant effect on global demand for steel is China. China is the world's largest steel producer and the country with the highest demand for steel due to its fast growing economy. However, at the moment it is experiencing a significant economic downturn, resulting in a dramatic decrease in demand for steel and specifically for hot rolled products. This circumstance could not have been foreseen.

In 1994 when South Africa made its tariff commitments it could not have foreseen the oversupply of steel today, caused in part by the sudden and serious economic slowdown of many economies and the resultant decrease in demand for steel.

Comments by Japanese exporters

The Japanese exporters stated that there is no merit in the above allegation. They further stated that this is not the first time there is an oversupply of steel in the world, and it is most probably not the last time.

The report of the Organisation of Economic Cooperation and Development ("OECD Report") titled "Evaluating the Financial Health of the Steel Industry" published in 2015 states, inter alia, as follows:

"[s]everal steel crises have been observed over the past several decades, with at least one crisis having recurred every decade since the 1970s. These crises have been associated with broader regional or global economic recessions. While the internal structural problems of the industry are usually at the origin of steel crises, external events usually trigger them, resulting in severe and protracted downturns in the sector. During these crises, the industry typically experiences unstable and deteriorating conditions, while trade measures proliferate to protect domestic industries from unfair trade practices."

The Japanese exporters also stated that an OECD presentation titled "Policy Responses to steel crises" reports on the steel crises which have been experienced

in the past decades including the 1974, the 1980-1988 and the 1992 - 1996 steel crisis. Significantly, the 1992 - 1996 steel crises occurred during the Uruguay Round negotiations.

The steel industry is cyclical in nature and such cycles ought reasonably to have been known to the SACU negotiators because they "recurred every decade since the 1970s". The report of the United States Department of Commerce: International Trade Administration Report to the President entitled "Global Steel Trade: Structural Problems and Future Solutions" (the "US Steel Report") states that "[t]he steel market is highly cyclical, rising and falling with the ups and downs of the economy. When the economy is growing, the industry counts on being profitable to tide it over when times are bad".

The steel industry is therefore in the middle of a bad cycle but that does not mean this was unforeseen. There is no merit to the allegation that SACU could not have "foreseen the oversupply today" when it incurred obligations under GATT 1994. The Commission should accordingly reject such allegation.

Commission's consideration

The Japanese exporters referred the Commission to the presentation by OECD titled "Policy responses to the steel crisis". What is interesting is that from the outset it is clear that the global steel oversupply was more prominent in the period 2002 – 2007. This period was named the "steel boom". The global steel production increased by 8.4%. This increase was more than the period 1950 – 1973 which was 5.8% and this period was called the growth period. In the period 1974 – 2001 stagnant period the growth rate was 0.7%. It is therefore clear that the negotiators could not have foreseen the current global steel oversupply if in the 20 years before the negotiations the increase was only 0.7%.

The OECD presentation also illustrated how the EU and the US adjusted to the various crises in different periods. Amongst the adjustments an increase in AD investigations as well as safeguards were witnessed in the EU. The US also increased AD investigations in the 80s and again in the 90s. Safeguard investigations were also witnessed in the year 2000. This goes to show that SA is on

the right path in trying to deal with the global oversupply of steel as other markets also implemented remedies.

Record steel exports

Countries with excess capacity are currently showing record export volumes, fuelled by excess steel supply as demand in their own countries contract. For example, China produced and exported a record amount of steel in 2014 as mills sought buyers for the oversupply amid weaker local demand.

According to a recent Bloomberg article, Chinese steel exports will remain strong due to pricing competitiveness and economic recovery in destination countries. Outbound shipments in May 2015 surged to a four-month high of about 9.2 million tons as oversupply and better external demand spurred mills to ship a surplus overseas. China's steel exports rose by a fifth in 2015 to an amount big enough to feed demand in Germany and Japan for a year and leave almost 9 million metric tons to spare.

Comments by Japanese exporters

The Japanese exporters stated that with the above statements the Applicant does not explain how these factors advance its argument on unforeseen developments or how they link to obligations incurred by SACU under GATT 1994.

Commission's consideration

The Applicant's above statements on record steel exports are made in order to highlight the fact that steel exports are at their highest and that the trend will continue for the foreseeable future. This is something that the negotiators could not have foreseen at the time of making tariff commitments in 1995.

Negative effects of over-capacity on the viability of the steel industry

The OECD paper further examined the link between excess capacity and profitability. It has shown that the financial performance of the industry is perhaps worse now than it was during the global steel crises of the late 1990s, in large part due to the significant excess capacity that exists today. Given the global nature of the industry, excess capacity in one region can displace production in other regions,

thus harming producers in those markets and creating risks for trade actions and government interventions to protect domestic industries.

Thus, the excessive levels of steelmaking capacity have negative implications for the steel industry, resulting in oversupply, low prices, weak profitability, bankruptcies and localised job losses. The OECD paper states that global excess capacity is one of the main challenges facing the global steel sector today.

The results of heightened exports can be seen in the increase in imports of the subject product into the SACU.

Steelmaking capacity is projected to continue to expand despite continued weak demand

The results of the 2015 OECD publication indicate that global steelmaking capacity will continue to expand projecting of a slowdown in steel demand. With investment projects continuing to take place in many parts of the world, nominal global steelmaking capacity is expected to climb by a further 120 mmt in the period leading up to 2017, bringing total worldwide capacity to 2 361 mmt. At that point, non-OECD economies are expected to account for approximately 71.4 percent of the world's total capacity.

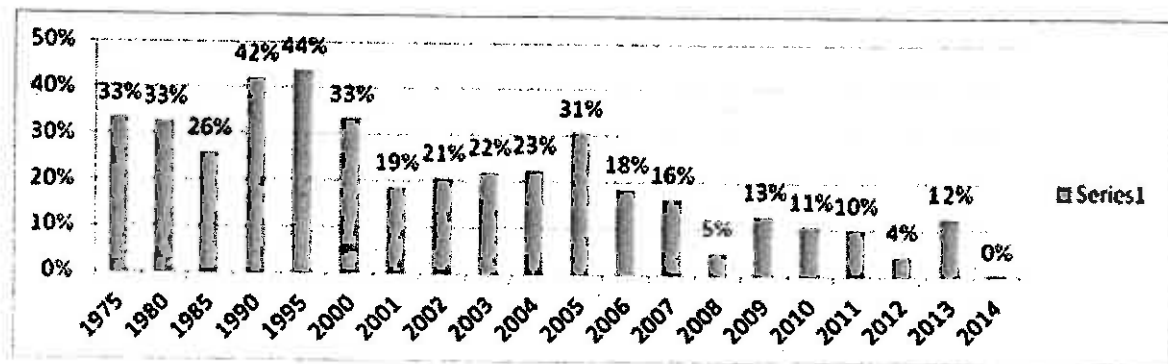
With investment projects continuing to increase in a number of economies while steel consumption growth is anticipated to remain moderate, the global imbalance will continue to pose risks for the industry for the foreseeable future, unless more concerted efforts are made by industry and governments to address the challenge.

Contracting markets for the oversupply of steel

Eight steel associations from Asia, the Americas and Europe said in a joint statement in June 2015 that all regions were "suffering from a dramatic increase in unfair steel imports that is fuelled by massive global overcapacity." As a result, Europe, the Americas and Asia are progressively taking trade remedy actions and increasing general customs duties, so much so that it is expected that the increase in imports already experienced in the SACU over the last years will increase dramatically as other markets for these products are being closed or severely restricted.

Comments by Steelbank Merchants and CISA to the Commission's preliminary report

Steelbank Merchants and CISA stated that the usage of crude steel production cannot be used to substantiate unforeseen developments with regard to HRC or CRC. The reason being that crude Steel (raw steel) is the first solid state after melting, and is suitable for further processing or for sale. Therefore, using the argument that crude steel production increases and therefore cold rolled steel also increases, is just as relevant as claiming that an increase in milk production can be compared with the production of Roquefort cheese. They also stated that even if the crude steel production is used, it is submitted the negotiators would have been able to foresee the substantial increase in production capacity. This is based on the exact same data that the Applicant supplied.



Steelbank Merchants and CISA indicated that the above table indicates the year on year increase in Chinese production. Further, when the production of China is taken over the same period (1975 to 2014), it is evident that from 1975 to 1995 Chinese crude steel production increased by 241%. In the years leading up to 1995, the Chinese production increased from 1985 to 1990 and from 1990 to 1995 with 42% and 44% respectively, the highest over the whole period (1975 to 2014). Therefore, although the "Global production" remained stable during the Uruguay Round, the emerging markets such as China exploded. Therefore, as it was known that China was the major importer of steel, it would also have been known that its production escalated substantially, and thus will have an effect on global capacity increases and the possibility that China would become a major exporter of steel.

Comments by Japanese exporters to the Commission's preliminary report

The Japanese exporters indicated that there is no basis for the Applicant's allegation that an increase of 121% in global crude steel production was not foreseen or was not foreseeable. Historical evidence supports the submission of the Japanese exporters that crude steel production increases of over 121% over a 20 year period have occurred at different times in the history of global steel production.

Comments by Japanese exporters to the Commission's essential facts letter

The Japanese exporters reiterated that both Article XIX: 1(a) and Regulation 1.2(a) impose an obligation on the Commission to evaluate whether the alleged increase in the volume of imports into the SACU was, inter alia, the result of "the effect of the obligations incurred by South Africa (or SACU) under the WTO. The exporters also stated that tariff concessions are specifically mentioned in Article XIX: 1(a) of GATT 1994 as included in the WTO obligations the effect of which should be evaluated. The rationale behind this requirement is that the investigating authority should establish as a fact that the legal and practical effects of the SACU's or South Africa's obligations under WTO are what led to the increase in the volume of imports to such levels as to cause the alleged serious injury suffered by the SACU industry. The only way to demonstrate this would be to show how the WTO prevented South Africa (or SACU) from taking action to stop the increase in the volume of imports. Without such analysis it is not possible to demonstrate the effect of the obligations incurred under GATT 1994.

The Japanese exporters also stated that the Applicant's safeguard application did not address this issue at all and therefore omitted a material jurisdictional requirement. It is therefore fatally defective. For this reason alone the cold-rolled safeguard investigation ought not to have been initiated. According to the exporters this is another reason for the safeguard investigation to be terminated.

Commission's consideration

The Commission is of the view that in 1994 when South Africa made its tariff commitments it could not have foreseen the oversupply of steel today, caused in part by the sudden and serious economic slowdown of many economies and the resultant decrease in demand for steel.

Based on the above information, the Commission made a final determination that unforeseen developments and the effects of the obligations incurred with regard to the subject product under the GATT 1994 led to the surge of imports of the subject product, as per the provisions of Article XIX of GATT 1994.

5. SURGE OF IMPORTS

5.1 Import volumes

The information considered for the increased imports covered the period 1 January 2012 to 31 December 2015.

The following table shows import volumes as sourced from the South African Revenue Service (SARS) for the period January 2012 to December 2015.

Table 5.1: Import volumes (tons)

| Country Name | 2012 | 2013 | 2014 | 2015 |
|--------------|--------|--------|--------|--------|
| Belgium | 1 146 | 4 082 | 2 493 | 1 394 |
| China | 1 074 | 23 649 | 15 166 | 21 742 |
| France | 992 | 470 | 187 | 183 |
| Germany | 3 641 | 6 163 | 4 962 | 6 153 |
| Japan | 2 966 | 5 523 | 3 087 | 3260 |
| Other | 1 791 | 7 317 | 3 522 | 4290 |
| Total | 11 610 | 47 204 | 29 417 | 37 022 |

The information in the table above indicates that the import volumes increased significantly from 2012 to 2015. Total imports increased by 219 percent during this period and although it reduced slightly from 2013 – 2014, it remained at a significantly elevated level and increased by 26 percent from 2014 – 2015.

The Applicant submitted that an unfortunate event on 9 February 2013 (a fire in the VDB plant) that disrupted production for two months influenced production of flat products. This caused the market to act severely, and importers imported even after production locally resumed, which accounts for the spike in 2013 imports. The average monthly import volume in 2012 was 6,824 tonnes, and the import volume for January 2013 was 6,568 tonnes. However, after the fire in February 2013 imports rose to 64,843 tonnes, an 887% increase.

Comments by Steelbank Merchants and CISA

Steelbank Merchants and CISA stated that the Applicant only supplied one figure with regard to imports, substantiating a "surge in imports". Steelbank Merchants and CISA also stated that this is in contravention of the Safeguard Agreement and requested the Commission to obtain information for the subject products and evaluate the impact of the alleged surge on each of these products.

Commission's consideration

The Commission considered that on initiation of the investigation, the publication notice clearly defined the product under investigation as "cold-rolled steel products", imported under the following tariff headings: 7209.15, 7209.16, 7209.17, 7209.18, 7225.50, and 7226.92. As a result the determination of the surge in volumes of imports was based on imports of the subject product, being cold rolled steel products, under these 6 tariff subheadings. Therefore the whole investigation is premised on the defined product scope - "cold-rolled steel products", irrespective of tariff code classification.

Comments by Japanese exporters

The Japanese exporters indicated that the import statistics in the Application include imported products falling under tariff subheadings 7225.50 and 7226.92 (the "Unaffected Products"). The product description for each tariff subheading is as follows:

Tariff subheading 7225.50: "Flat-rolled products of other alloy steel, of a width of 600 mm or more, other, not further worked than cold-rolled (cold-reduced)"; and

Tariff subheading 7226.92: "Flat-rolled products of other alloy steel, of a width of less than 600 mm, other, not further worked than cold-rolled (cold-reduced)".

The Japanese exporters also indicated that the imported products which are identified in the application are imported under tariff subheadings 7209.15, 7209.16, 7209.17, and 7209.18 (the "Affected Products"). These products are

manufactured from non-alloy steel and have a width of 600 mm or more. Their chemical composition is different to that of Unaffected Products. They further, indicated that tariff subheadings 7225.50 and 7226.92 were included in the Application because they are "viewed as loopholes as the subject product may also be imported thereunder." Products of other alloy steel imported under these two tariff subheadings do not form part of the investigation.

Furthermore the Japanese exporters indicated that there is no reason for the Applicant to include in its injury analysis the import data relating to unaffected products even if the Applicant's argument that tariff subheadings 7225.50 and 7226.92 could be used to circumvent safeguard measures was correct (which is denied). The Japanese exporters also indicated that the inclusion of unaffected products in the serious injury analysis (particularly the import statistics) is incorrect, which renders the Applicant's entire serious injury analysis fatally flawed. Therefore in view of the "very high" and "exacting" standards the Commission is required to apply in the present matter, it is submitted that the Commission should reject the Applicant's serious injury analysis.

Applicant's response

The Applicant indicated that the difference between alloy and low-carbon steel is as follows in general terms:

- A low carbon steel is defined as having a carbon content of less or equal to 0.3%;*
- A medium carbon steel is defined as having a carbon content of $0.3 < C \leq 0.6\%$;*
- A high carbon steel is general defined as having a carbon content of 0.6%*

The Applicant further indicated that in terms of the harmonized system alloy steel can be defined as having at least the following, by weight:

- Manganese (Mn) $0.5\% < Mn \leq 1.2\%$ and Silicon (Si) $0.6\% \leq Si \leq 2.3\%$;*
- Boron (B) $\geq 0.0008\%$ or Chrome (Cr) as follows $0.5\% \leq Cr \leq 2\%$; or Molybdenum (Mo) equal or less than 0.5%.*

The Applicant indicated that it can produce cold-rolled steel products according to any of the abovementioned requirements and specifications. It also indicated that the addition of these elements does not significantly enhance the characteristics of cold rolled products except the chrome adds strength. The increase in strength can be achieved by other more economical chemical additions such as vanadium etc. It is therefore of the view that addition of boron until January 2014 and subsequently the addition of chrome, by Chinese steel manufacturers, only serves to place Chinese manufacturers in a position to claim the Chinese VAT rebate associated with value added exports.

Commission's consideration

The Commission considered that on initiation of the investigation, the publication notice clearly defined the product under investigation as "cold-rolled steel products", imported under the following tariff headings: 7209.15, 7209.16, 7209.17, 7209.18, 7225.50, and 7226.92. As a result the determination of the surge in volumes of imports was based on imports of the subject product, being cold rolled steel products, under these 6 tariff subheadings. Therefore the whole investigation is premised on the defined product scope - "cold-rolled steel products", irrespective of tariff code classification.

On this basis, interested parties argue that the use of consolidated figures (one subject product in 6 tariff subheadings) for the purposes of analysing the surge in the volume of imports and serious injury analysis is in violation of the Safeguard Agreement. Thus they argue that the surge and serious injury be presented and analysed per tariff subheading and not grouped together for the 6 tariff codes, on the grounds that some tariff codes show a surge, while others do not. In addition, interested parties argue that products in the 6 tariff subheadings are not alike.

Therefore the definition of the product under investigation solely by tariff codes is incorrect. The scope of the product under investigation is defined as "cold-rolled steel products", irrespective of tariff codes with specifications

defined in Section 2 of this report. The product under investigation may have sub-categories, and there is no requirement that these sub categories must be alike.

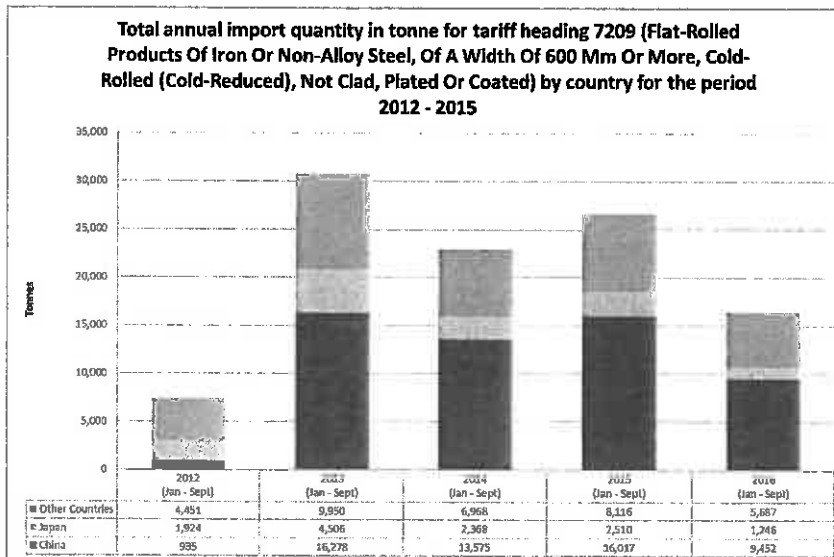
Comments by Steelbank Merchants and CISA to the Commission's preliminary report

Steelbank Merchants and CISA indicated that the Commission states in Table 5.1 that total import volumes in 2012 were 11 610 tonnes, but then claims that "average monthly import volume in 2012 was 6,824 tonnes" – they requested the Commission to substantiate and explain this allegation.

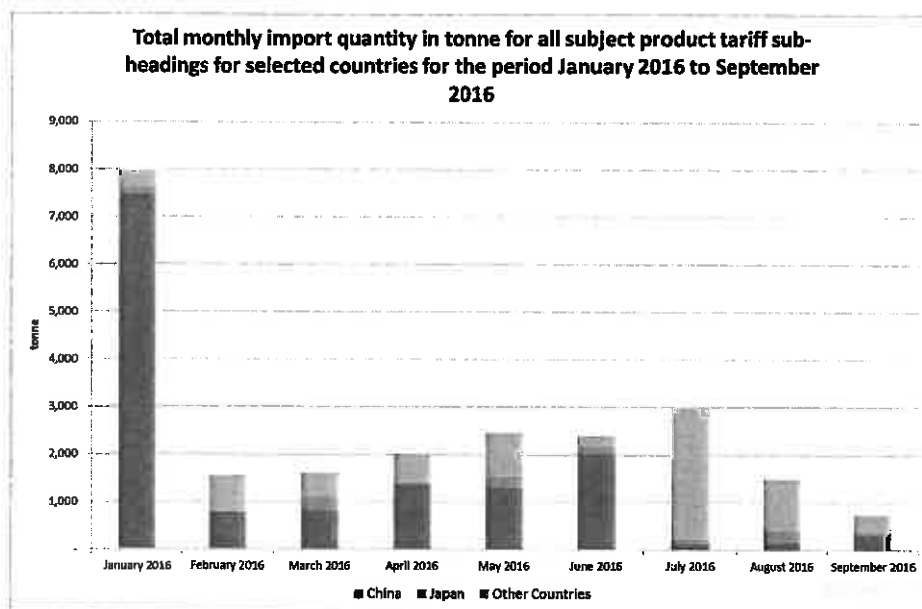
Comments by Japanese exporters to the preliminary report

The Japanese exporters stated that there is a clear and substantial decline in import volumes after 2013. Total imports declined by 38% between 2013 and 2014 from 47 204 tonnes to 29 417 tonnes. Although there was an increase in import volumes in 2015 when compared to 2014, the 2015 import volumes were still 22% below the 2013 volumes still showing a significant decline when compared to 2013.

The Japanese exporters also stated that a review of the most recent import volumes shows that there has been a significant decline in imports in 2016 particularly since the imposition of the MFN duty of 10%. The table below shows import volumes for the period January to September, 2012 to 2016. It is clear below that the 2016 import volumes are significantly lower than the import volumes of the previous years if 2012 is excluded.



Japanese exporters indicated that the table below shows import volumes for the period January to September 2016. Since the MFN Duties were imposed in February 2016, there has been a significant decline in the monthly import volumes. This shows that the MFN duties introduced to protect the domestic industry have provided sufficient protection to reduce imports.



Commission's consideration

The Commission noted that although the tables depict information regarding imports for 2016 and in another instance exclude 2012, the period of investigation is January 2012 to December 2015 and only information

pertaining to this period should be included.

Comments by Japanese exporters to the Commission's essential facts letter

Japanese exporters stated that the Commission states that total imports increased by 219 percent from 2012 to 2013. This statement ignores the fact that such increase came from a low base. In any event, the consolidation of the volume of different products which are classifiable under the different tariff subheadings into one global figure is, as previously argued, incorrect in law.

Japanese exporters further stated that the volume of imports "reduced slightly" between 2013 and 2014, but increased by 26 percent from 2014-2015. The reduction in the volume of imports between 2013 and 2014 was 38%. With respect, this is not a slight reduction. Interestingly the Commission considers the 26% increase in import volumes between 2014 and 2015 to be significant.

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that having found that a surge exists, in the absence of finding that the surge no longer exists, the fact that imports have declined slightly is irrelevant and should not be taken into account by the Commission in the manner that it intends to do. The relevant period for the determination is 2012 to 2015. More importantly, even if such information was relevant, the Commission fails to take into account the fact that the data supports that a surge still continues. Even with the slight decline, the problem of the Applicant's members suffering injury remains. According to the available statistics, and as already accepted by the Commission, there has been a surge in imports. As set out in the preliminary determination dated 31 October 2016, an increase in imports of 219% is reflected over the injury period (2012 -2015).

The Applicant further stated that it is important to note that the 2016 volumes are still 2.4 times higher than the 2012 import volumes, the year before the surge. In light of this the import volumes of Q1 2016 reflected the second highest import volumes (17 346 tonnes) for the eight quarters from January

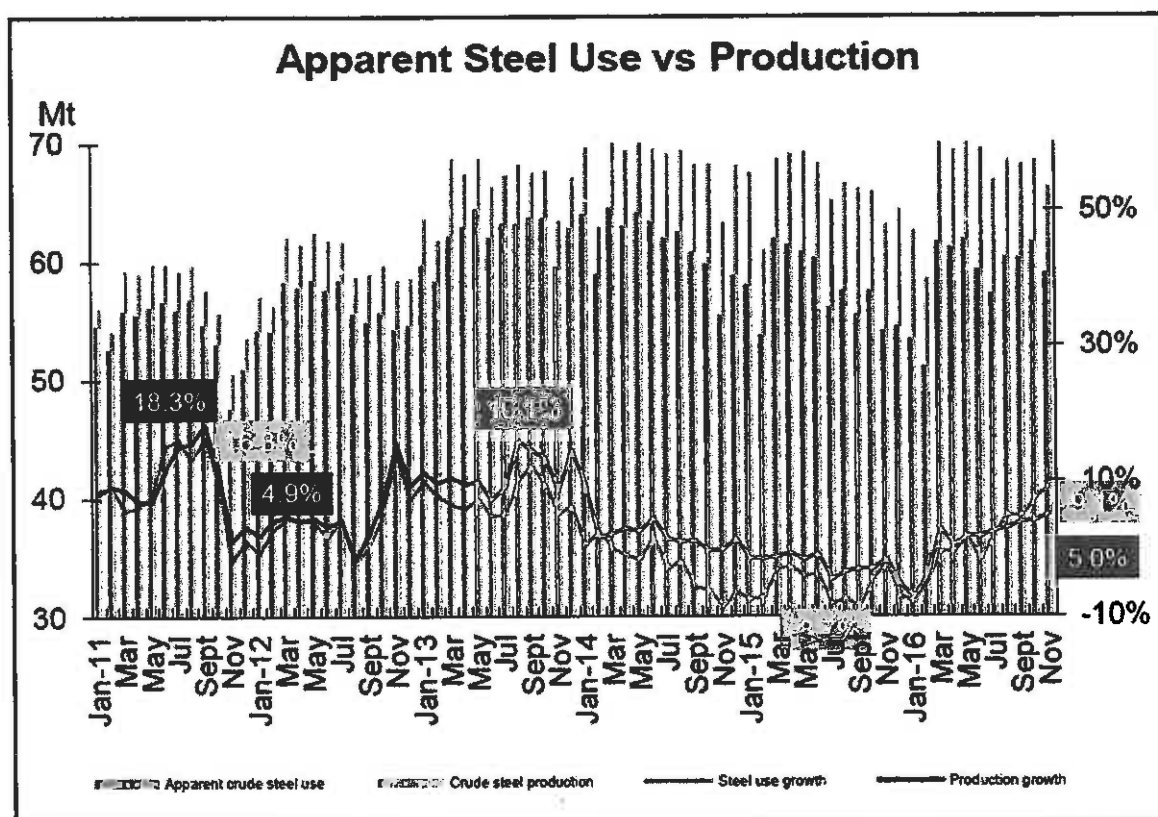
2015 – December 2016. Furthermore, import volumes in 2016 (13 553 tonnes average per quarter) still reflect the surge compared to 2012 (9 531 tonnes average per quarter). The Applicant also stated that it is evident that import volumes are still on the increase and although import volumes decreased in 2016 from 2015, import volumes in 2016 still reflect 75% of import volumes for 2015 (and 95% of import volumes for 2014) and therefore the surge in imports continues. It is respectfully submitted that the slight decline in imports is also irrelevant because of the temporary actions in China and do not create a sustainable solution.

The Applicant also stated that the Commission attributes the decline to the imposition of the 10% duties and policy changes in China. The Applicant believes that the relative decline in imports is due to a number of reasons, and includes the threat of safeguard duties being implemented. The Applicant further stated that it is no coincidence that a steady decline can be seen in imports from August 2016 as the investigation was initiated on 29 July 2016, as 20 973 tonnes of the total 27 796 was imported between January 2016 and July 2016 and only 6 824 tonnes in the 5 month period thereafter (i.e. August 2016 – December 2018).

The Applicant stated that there have been other factors as well, including a general economic decline and lower exports from China. Furthermore, the low levels of economic activity led to high stock levels in the domestic market and the majority of customers embarked on destocking drives during the year to try to balance their levels to that of the lower market consumption. This means that the decline is a temporary one and is not a lasting solution to the harm being suffered due to the surge in imports. It appears that the Commission is treating the slight decline in 2016 as having addressed the harm caused by the surge in imports, which is not correct.

The Applicant also stated that the graph below provided by Worldsteel indicates that during 2015 Chinese crude steel production fell over the course of the year but which was followed by a concomitant trend in apparent use of the product domestically. This provided a fairly consistent flow of material into

South Africa, a primary destination for the majority of the year. As depicted in the graph, the steel use trend in China was mainly on the decline during 2015 but started to reverse as from 2016. The latter effectively led to less material being available to the export market for 2016 – although production has increased, it was largely absorbed by their domestic market. However, without adequate protection, South Africa remains exposed to the ongoing global production, which has increased once again, and which will continue to result in a surge in imports in South Africa.



5.2 Increased imports

Article 4.5 of the Safeguard Agreement 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 SARS relative to production for the period 2012 to 2015. The impact of imports is analysed in absolute and relative terms to production for the full year period 2012 to 2015.

Table 5.2: Increase in import volumes in absolute and relative terms

| Tons | 2012 | 2013 | 2014 | 2015 |
|---|-------------|-------------|-------------|-------------|
| Total imports | 11 610 | 47 203 | 29 417 | 37 022 |
| Applicant total production | 100 | 86 | 86 | 75 |
| Imports as a % of the Applicant's output | 100 | 473 | 295 | 426 |

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

The information in the table above indicates that the import volumes increased significantly from 2012 to 2015. Total imports increased by 219 percent during this period and although it reduced slightly from 2013 – 2014, it remained at a significantly elevated level and increased by 26 percent from 2014 – 2015.

It also indicates that imports relative to production increased by 373 index points from 2012 to 2013, declined by 178 index points from 2013 to 2014, and thereafter increased by 131 index points from 2014 to 2015. The rate of increase in total imports relative to total production volumes from 2012 to 2015 was 326 index points.

The Commission considered that the surge occurred in 2013 (1 January 2013 to 31 December 2013)

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

- The surge in absolute terms began in 2013 and it maintained its levels in 2014. 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 amount of increase in 2013 was the highest and is significant enough.

- 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.

Based on the above, the Commission made a final 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

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The injury analysis relates to information submitted by ArcelorMittal South Africa Limited (AMSA), representing 83 per cent of the domestic industry by production volume.

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

Comments by Japanese exporters to the Commission’s preliminary report

- *Japanese exporters stated that in the preliminary report the Commission incorrectly stated that AMSA represents 83% of the domestic industry. They also stated that the Commission has only relied on the allegations made by the Applicant and has not considered the submissions made by the Japanese exporters that DSP can import hot-rolled material to manufacture cold rolled products from ports of entry other than Saldanha.*
- *The Japanese exporters further stated that in the Applicant’s response to the Japanese exporters original response the Applicant argued that the cost of transporting imports from South African ports, other than Saldanha, would “[erode] the cost advantage [to DSP] due to the extremely high inland logistical costs.” However the Applicant conceded that Chinese imports would not be affected by high inland costs. This fatal concession by the Applicant confirmed the Japanese exporters’ submission that DSP can import its hot rolled material through other ports of entry because, on the Applicant’s own version comes from DSP’s holding company, Hebei Metals and Mineral Corp. Ltd, a Chinese mill. This submission was made by the Japanese exporters in a letter to the Commission dated 14 October 2016 and the Commission has ignored this submission. The Japanese exporters reiterate that there is no basis for the Commission to rely on Saldanha imports to determine DSP’s production volumes as alleged by the Applicant. The argument that the*

Commission is relying on available information is not correct in this case. The Commission should show that it is reasonable for it to rely on the information available to it. In the present case, it is manifestly unreasonable for the Commission to do so. The basis of the analysis of the Applicant's standing to bring the application is therefore flawed.

Commission's consideration

The Commission considered that other than stating that the Commission placed reliance solely on the allegations made by the Applicant, the Japanese exporters did not provide any concrete reasons why the Commission should not rely on best information available. DSP did not come forward to dispute the information submitted by the Applicant.

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: Sales volumes

| | 2012 | 2013 | 2014 | 2015 |
|---------------------------|------|------|------|------|
| Sales volume (Ton) | 100 | 94 | 82 | 81 |

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

The Applicant's sales volume decreased by 6 index points from 2012 to 2013, and decreased by 12 index points from 2013 to 2014. The table above from 2012 to 2015 also indicates that the Applicants' sales volume decreased by 19 index points during the period of investigation. The Commission considered this decline in sales volumes, especially considering that it coincides with the period of the surge.

Comments by Japanese exporters to the Commission's preliminary report

The Japanese exporters stated that in table 6.2.1 of the preliminary report, the Commission considered AMSA's alleged decline in sales volumes and failed to consider the increase in the sales volumes of other SACU producers which were clearly shown to have increased between 2012 and 2014. The increase in domestic sales volumes of other SACU producers shows that AMSA lost sales volumes to domestic SACU competition during the period. The alleged decline in AMSA's sales volumes coincided with the increase in the sales volumes of other SACU producers. In any event, the Applicant's estimates of the SACU industry sales, particularly DSP are incorrect.

6.2.2 Profit

The following table shows the Applicant's profit situation:

Table 6.2.2: Profits

| | 2012 | 2013 | 2014 | 2015 |
|----------------------------------|------|------|------|------|
| Applicant's gross loss | 100 | 95 | 19 | 127 |
| Applicant's Units sold (tons) | 100 | 94 | 82 | 81 |
| Applicant's total gross loss (R) | 100 | 90 | 16 | 102 |
| Applicant's net loss R/ton | 100 | 98 | 7 | 116 |
| Applicant's Units sold (tons) | 100 | 94 | 82 | 81 |
| Applicant's net loss (R) | 100 | 93 | 6 | 93 |

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. While there is a slight improvement, in the loss situation, this is indicative of the delicate state of the industry.

The Applicant is also making losses when it comes to gross profit, 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.

Comments by the Japanese exporters

The Japanese exporters stated that it is clear that the Applicants financial

position improved in the absence of any safeguard measure. They also indicated that it should be noted that the Applicant's financial position in 2013 was adversely impacted by the fire outbreak at its Vanderbijlpark plant and should not be attributed to imports. Therefore the Applicant 2014 losses were caused by the expenditure incurred by the company in the Newcastle blast furnace relining.

Response by the Applicant

The Applicant stated that not one of these two incidents mentioned by Japanese exporters impacts on the subject product i.e. cold-rolled steel product and that injury information is specific to the subject product.

Comments by Japanese exporters to the Commission's preliminary report

The Japanese exporters stated that the fact that AMSA's net losses are declining confirms that the situation for the company is improving without safeguard measures in place. The improvement in the SACU industry's profit position over the injury investigation period shows that the alleged injury is not serious. Further, MFN duties that were imposed on the Subject Product in February 2016 resulting in the decline in 2016 import volumes; AMSA's profit situation can be expected to improve further without any safeguard measures in place.

The Japanese exporters also stated that the Commission's statement about the delicate state of the industry is unsubstantiated. Facts from recent financial information published by AMSA indicate that AMSA is now in a strong position to increase domestic sales volumes and prices which will lead to further significant improvements in its profitability.

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: Output

| | 2012 | 2013 | 2014 | 2015 |
|--|------|------|------|------|
| Total production of product concerned (includes exports) | 100 | 86 | 86 | 75 |
| *Estimate of other SACU producers production for SACU consumption | 100 | 151 | 107 | 64 |

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

*The Applicant indicated that it does not have DSP actual production figures. However, it estimated DSP production output of cold-rolled steel products using the following method: "All hot rolled coil imports to Saldanha is destined for the DSP mill. Therefore, the Applicant can estimate the input of hot rolled coil into the DSP mill by adding AMSA's sales of hot rolled coil to DSP to the SARS import volumes of hot rolled coil to Saldanha. DSP should then logically convert all the tonnage hot rolled coil inputs they have received into the mill to cold-rolled steel products like either cold-rolled or galvanised coil."

The output decreased by 14 index points from 2012 to 2013, remained the same for the period 2013 to 2014, and during the POI 2012 to 2015, it decreased by 25 index points. The decline in output took place in the period of the surge.

Comments by the Japanese exporters

The Japanese exporters stated that in 2013, when AMSA's total production volumes allegedly declined by 14 index points, the production volumes for the other SACU producers increased by 51 index points. Further, in 2014, the production volumes of other SACU producers increased by 7 index points relative to the 2012 base year volumes whereas AMSA's production volumes for SACU were 20 index point lower than 2012 volumes.

AMSA's alleged loss of production volume was therefore due to domestic SACU competition and not imports. It was also due to operational problems such as the fire at its Vanderbijlpark plant.

Applicant's response

The Applicant indicated that it should be noted that the increase in import volumes between 2012 and 2015 were much higher than the increase in other SACU's sales/production between 2012 and 2015. The huge shift in the market share between 2012 and 2013 from the total held by SACU producers (100 to 89 indexed points) clearly indicates that the alleged loss in production

volume is due to imports not domestic circumstances.

The Applicant also stated that the fire incident occurred in the steel making process and not in the downstream cold-rolled process. Hot rolled was sourced from Saldanha with minimum impact on the cold-rolled process (downstream) operations, and therefore no change in its production volumes.

Commission's consideration

The Commission considered that production decline is significant and started at the time of the surge, in 2013.

6.2.4 Market share

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

Table 6.2.4: Market share

| | 2012 | 2013 | 2014 | 2015 |
|---|--------|--------|--------|--------|
| Applicant sales volume (tons) | 100 | 94 | 82 | 81 |
| Estimated sales by other SACU producers (tons) | 100 | 151 | 107 | 64 |
| Estimated total volume of SACU sales by SACU producers (tons) | 100 | 103 | 86 | 78 |
| Volume of imports (tons) | 11 610 | 47 204 | 29 417 | 37 022 |
| Applicant market share | 100 | 81 | 88 | 91 |
| Total SACU market | 100 | 116 | 93 | 88 |
| Total market share held by SACU producers | 100 | 89 | 93 | 88 |
| Market share held by imports | 100 | 375 | 275 | 400 |

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

The SACU market increased by 16 index points from 2012 to 2013, declined by 23 index points from 2013 to 2014, and declined by 5 index points from 2014 to 2015 reflecting an overall 12 index points increase. The Applicant's share of the market declined by 19 index points from 2012 to 2013, slightly increased by 7 index points from 2013 to 2014, and increased again by 3 index points from 2014 to 2015 reflecting an overall decline of 9 index points. The Applicant lost a significant share of the market in 2013, and while it gained 7 index points of market share in 2014, in the 2012 -2015 period there was an overall decline in its market share.

Comments by the Japanese exporters

The Japanese exporters stated that it is not clear from the Application how the size of the SACU market (by volume) was calculated. It appears however, that the calculation of the market share of the SACU Industry (by volume) was determined based on the SACU production volumes which the Applicant indicates are equal to the sales volumes. This is inferred from paragraph F4.2 of the Application where the Applicant states that "[a]s AMSA produce[s] to order, it is of the view that production volumes for cold rolled (which are sold as cold rolled) equals sales volumes." The SACU Industry's production volume was calculated using AMSA's actual production data and an estimated production volume of DSP. The reason the Applicant had to estimate production volumes for DSP is that DSP is not participating in the investigation.

The Japanese exporters also stated that the Applicant's estimate for DSP's production volumes is flawed. It is based on the import volumes of hot-rolled steel from Saldanha. This approach fails to consider imports of hot-rolled coil through other SACU ports of entry such as Durban, Port Elizabeth and East London. The Applicant does not explain why it chose the Saldanha port instead of Durban or any other port. The Applicant also does not explain the method (or formula) it used in converting the volumes of DSP's hot rolled imports into the production volume of DSP's cold rolled products (ie the DSP's products which are like, or directly competitive products with, the Subject Products). It appears that the Applicant has understated the volume DSP's imports of hot rolled steel, which means that it also understated DSP's production volume for cold rolled steel.

The Japanese exporters further stated that this error in the determination of DSP's production volumes renders the Applicant's calculation of the size of the SACU market incorrect, and by extension, the entire Applicant's market share information. The interested party requested the Commission to reject the Applicant's claim that the SACU Industry has suffered serious injury.

Applicant's response

The Applicant stated that the production volumes reflected in the application are based on its actual production as well as DSP estimated production for which the basis of estimation was supplied. The Applicant also stated that it used a very well defined and thought through process. The Applicant stated that any imports from other ports (or countries other than China) would have eroded the cost advantage due to the extremely high inland logistical cost.

Commission's consideration

The Commission considered that the Applicant's basis of estimation of DSP's production volumes is reasonable and can be treated as best information available, as none of the interested parties are coming forth with counter methodology that can be used to estimate DSP's production volume. The Commission used the Applicant's information as facts available.

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: Productivity

| | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|
| Applicant's Total production volume (Ton) | 100 | 86 | 86 | 75 |
| Applicant's Number of employees (Steelmaking, Ironmaking and HRC manufacturing) | 100 | 89 | 93 | 99 |
| AMSA's Number of employees (CRC manufacturing only) | 100 | 103 | 73 | 84 |
| Applicant's tons per employee | 100 | 84 | 118 | 89 |
| Applicant's Total employment - Steelmaking, Ironmaking and HRC and CR | 100 | 90 | 93 | 98 |
| Applicant's Total investment | 100 | 98 | 97 | 98 |
| Applicant's Output ratio * | 100 | 89 | 89 | 78 |

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

Productivity decreased by 16 index points from 2012 to 2013. From 2013 to 2014, it increased by 34 index points. It decreased by 29 index points from 2014 to 2015, resulting in an 11 index points decrease over the period 2012 to 2015.

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: Utilisation of production capacity

| | 2012 | 2013 | 2014 | 2015 |
|--|------|------|------|------|
| Applicant's capacity Achievable (Tons) | 100 | 100 | 100 | 100 |
| Applicant's capacity utilisation % | 100 | 86 | 86 | 76 |

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

Capacity utilisation decreased by 14 percentage points from 2012 to 2013, remained the same for the period 2013 to 2014, and declined by 11 index points from 2014 to 2015 resulting in a 24 percentage points decline from 2012 to 2015. Capacity utilisation declined in line with a declining output during 2013.

6.2.7 Employment

The following table provides the Applicant's change in total employment figures:

Table 6.2.7: Employment

| | 2012 | 2013 | 2014 | 2015 |
|---|------|------|------|------|
| Applicant's Number of employees (CRC manufacturing only) | 100 | 103 | 73 | 84 |
| Applicant's Total employment - Steelmaking, Ironmaking and HRC and CR | 100 | 90 | 93 | 98 |

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

Employment related to production of the subject product increased by 3 index points from 2012 to 2013. From 2013 to 2014, it decreased by 30 index points, and increased slightly by 11 index points from 2014 to 2015.

ADDITIONAL INJURY FACTORS CONSIDERED

The Applicant indicated that 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 of whether to mothball, close and/or place some of its plants under care and maintenance.

Comments by Japanese exporters to the Commission's preliminary report

Japanese exporters stated that a review of AMSA's financial results for the six months ended 30 June 2016 shows significant improvements in AMSA's performance as a result of the imposition of MFN duties. According to AMSA's financial statements for the six months ended 30 June 2016; total sales volumes were up by 10% (210 000 tonnes) against the comparative period in 2015, primarily due to the 10% import duties, market restocking and the closure of Evraz Highveld Steel which increased local sales by 15%, partially to offset a 5% decrease in export sales; and AMSA's revenue for the period increased 3% to R17 006 million following a 10% increase in sales volumes; flat steel shipments were up 10% and long steel by 12%.

Japanese exporters further stated that AMSA's financial results for the half year ended June 2016 show that AMSA's operating conditions (including sales volumes and prices) have improved and are expected to continue to do so. The company's financial performance during the first quarter of 2016 also improved considerably when compared to the same period in 2015. AMSA's financial performance has therefore adjusted to meet import competition as these improvements are taking place despite the absence of safeguard measures. As such there would be no lawful basis for the Commission to recommend the imposition of any safeguard measures as AMSA's sales volumes and prices are increasing which demonstrates that it is no longer experiencing serious injury or a threat thereof. This is particularly important in view of the recent imposition of a 10% MFN duty and the consequent decrease in the volume of imports in 2016.

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that it has once again submitted that the increase in global prices is not a relevant consideration in relation to the imposition of safeguard duties, as the injury continues. The surge in import also continues and therefore there has been no restoration of effective competition. If such a

consideration was relevant, the Commission should have regard to the fact that the prices in the steel industry are volatile and unpredictable and the recent increases do not establish a certain and sustainable trend or provide adequate evidence of the restoration of effective competition. It should also be pointed out that ArcelorMittal's price increases will be limited by the international price basket contemplated in the pricing principles being finalised with Government. The Applicant further stated that it continues to make losses. In its trading statement issued on 6 February 2017 it has explained that the decline in losses from R4 736 million to R1 092 million is attributable mainly to once-off items that affected the 2015 financial year. Sales volumes declined and the Applicant continues in a loss making position, which has been the case for the last 5 years, and is not sustainable for much longer. The Applicant remains a going concern at this stage largely due to the support from ArcelorMittal Holdings AG.

Commission's consideration

The Commission considered that although the Applicant states that it continues to make losses, there is a 23.1 per cent reduction in their losses which is indicative of an improvement.

6.3 Summary - serious injury

Based on the above information, the evaluation of the injury information of the Applicant for the period 2012 to 2015 is shown in table 6.3.1.

Table 6.3.1: Serious Injury Indicators

| | |
|-----------------------------------|-----------|
| Imports in absolute terms | Increased |
| Imports in relative terms | Increased |
| Sales volumes (Tons) | Decreased |
| Net Losses (R) | Decreased |
| Output (Tons) | Decreased |
| Market share (Applicant) | Decreased |
| Productivity (Units per employee) | Decreased |
| Utilisation of capacity (%) | Decreased |
| Employment (number of employees) | Decreased |

Having assessed each injury factor and noting that there is a decline in the industry's performance as listed above, the Commission made a final determination that the domestic industry was experiencing serious injury during the period of investigation.

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 -2015), there was an overall increase in imports, especially during the period of the surge.

Table 7.1 (a): Import volumes (tons)

| | 2012 | 2013 | 2014 | 2015 |
|--------------|---------------|---------------|---------------|---------------|
| Total | 11 610 | 47 204 | 29 417 | 37 022 |

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

Table 7.1 (b): Market share

| | 2012 | 2013 | 2014 | 2015 |
|---|--------|--------|--------|--------|
| Applicant sales volume (tons) | 100 | 94 | 82 | 81 |
| Estimated sales by other SACU producers (tons) | 100 | 151 | 107 | 64 |
| Estimated total volume of SACU sales by SACU producers (tons) | 100 | 103 | 86 | 78 |
| Volume of imports (tons) | 11 610 | 47 204 | 29 417 | 37 022 |
| Applicant market share | 100 | 81 | 88 | 91 |
| Total SACU market | 100 | 116 | 93 | 88 |
| Total market share held by SACU producers | 100 | 89 | 93 | 88 |
| Market share held by imports | 100 | 375 | 275 | 400 |

This table was indexed due to confidentiality using 2012 as the base year

The SACU market increased from 2012 to 2013 by 16 index points, while the Applicant's share of the market declined by 19 percentage index points, and the market share of imports increased by 6 index points. From 2013 to 2014, the SACU market declined by 23 index points, while the Applicant's share of the market increased by 7 index points while the share held by imports increased by 100 index points.

Over the period of investigation, the SACU market decreased by 12 index points, the Applicant's share of the market declined by 19 index points, while the market share of imports increased by 300 index points. The significant decline in market share coincides with the surge of imports recorded during the period of investigation.

Comments by Steelbank Merchants and CISA

Steelbank Merchants and CISA indicated it is noted that under the market share heading the Applicant claims that there is a clear correlation between market share decrease and import volume. However, the Applicant is silent with regard to the fire incident that reduced capacity and sales at the Vanderbijlpark mill. Steelbank Merchants and CISA therefore request the Commission to investigate this issue in detail.

Applicant's response

The Applicant stated that the fire incident incurred in the steelmaking process and not in the downstream cold rolled process. The Applicant also stated that hot rolled was sourced from Saldanha with minimum impact on the cold rolled (downstream) operations.

Comments by European Commission

The European Commission indicated that as far as causality is concerned, there is also abundant WTO jurisprudence, and almost all the WTO challenges on this issue have prevailed, including concerning the requirement for a proper non attribution analysis. For example, the WTO Appellate Body in the US – Wheat Gluten², has stated:

"The need to ensure a proper attribution of "injury" under Article 4.2(b) indicates that competent authorities must take account, in their determination, of the effects of increased imports as distinguished from the effects of other factors."

Causality and the non-attribution analysis in this case seem particularly important since, for example, from the non-confidential application it appears that the level of the market share of imports is relatively low, and there may be factors other than imports that may have affected the situation of the

domestic industry

Comments by Japanese exporters

The Japanese exporters stated that this response does not furnish any evidence required in order to show the causal link between imports of the subject products and the alleged injury to the SACU Industry. It does not meet the requirements of Regulation 10 of the Safeguard Regulations, Article 4.2(b) of the Agreement on Safeguards, and is inconsistent with the approach which the WTO Appellate Body has adopted in interpreting Article 4.2(b).

The Japanese exporters also stated that Regulation 10 of the Amended Safeguard Regulations (the "SGR") which deals with "causality" stipulates as follows:

"In considering whether there is a causal link between the imports of the product concerned and the serious injury [ITAC] shall consider all relevant factors including factors other than the imports of the product concerned that may have contributed to the SACU industry's injury, provided that a participating interested party has submitted, or [ITAC] otherwise has, information on such factor or factors.

The injury caused by other factors shall not be attributed to the increased imports."

The Japanese exporters stated that In US - Line Pipe, in interpreting Article 4.2(b) of the Agreement on Safeguards, the Appellate Body held that:

"Article 4.2(b) of the Agreement on Safeguards establishes two distinct legal requirements for competent authorities in the application of a safeguard measure. First, there must be a demonstration of the "existence of the causal link between increased imports of the product concerned and serious injury or threat thereof ". Second, the injury caused by factors other than the increased imports must not be attributed to increased imports."

According to the Japanese exporters the Applicant did not prove that its alleged serious injury was a result of imports as opposed to other factors which are not related to imports. On 25 May 2016 AMSA submitted to ITAC its development plan required in terms of its application for safeguard measures in respect of hot-rolled product (the "HR Development Plan"). The HR Development Plan is relevant here as it refers to factors which affected AMSA's cost of production for not only hot rolled products but also cold rolled products. These factors were listed as the:

- increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance;*
- inability to benefit from declining international iron ore prices because of the supply agreement concluded between the Applicant and Sishen Iron Ore Ltd ("Sishen"). According to the Development Plan, "ArcelorMittal South Africa had an iron ore supply agreement with Sishen Iron Ore at cost plus 20% and was therefore not able to benefit fully from the recent trend of declining international iron ore prices as the price was subject to a floor (namely, Sishen's costs)";*
- increase in energy costs (gas and electricity). The Applicant stated that "Sasol has increased its gas prices and has not entertained any negotiation or discussion in this regard";*
- unplanned power outages that adversely affected their operations; and*
- lack of sufficient locomotives from Transnet coupled with the high prices charged by Transnet. In this regard, the Applicant states that "the availability of sufficient locomotives from Transnet and their high price increases are also having a negative impact on operations and ongoing sustainability.*

The Japanese exporters further stated that in 2013 a fire erupted at the Applicant's Vanderbijlpark plant. The fire disrupted operations for a period of two months and hampered the Applicant's ability to meet local market demands. The domestic consumers of the subject products had no

alternative but to resort to imports in order to keep their operations running. The interested party stated that the alleged injury in 2013, (if any) was not caused by imports.

The Japanese exporters also stated that in the Applicant's 2014 annual report, it (the Applicant) attributed its losses to the Newcastle reline investment. The Applicant stated that "[t]he Newcastle reline had a profound impact on our 2014 results with an EBITDA that reduced from R1 768 million to R1 258 million and an operating loss of R301 million against a profit of R47 million in 2013." The alleged injury in 2014 experienced by the Applicant cannot be attributed to imports.

The Japanese exporters stated that the factors outlined above are the real cause of the alleged serious injury to the SACU Industry. They constitute evidence of the absence of the causal connection between imports and the alleged serious injury. The Application is silent on these issues.

Applicant's response

The Applicant stated that the product range covered by its Application is very much a 'like' product that can be manufactured in South Africa or globally and therefore remains a threat to the South African Industry.

With regard to the factors listed in the hot rolled development plan, the fire in 2013 and the Newcastle reline, the Applicant stated that it should be noted that the factors in the HR Development plan were taken out of context as these factors were listed as uncontrollable costs (from a price perspective) which relates to input costs over which the Applicant has no control and not as factors which are causing the serious injury.

The Applicant also stated that the fire incident occurred in the steelmaking process and not in the downstream cold rolled process. The Applicant also stated that hot rolled was sourced from Saldanha with minimum impact on the cold rolled (downstream) operations.

The Applicant stated that the Newcastle reline relates to long products and not the subject products and seeing that the injury information supplied in the application only relates to the subject product the Newcastle reline would be of no relevance in this case.

The Applicant stated that these factors have no role to play in determining whether injury attributable to imports constitutes “serious injury”.

Commission’s consideration

The Commission considered that although there are factors other than the imports that contributed to the injury, such as the increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance; these factors did not sufficiently detract from the causal link between the serious injury experienced by the Applicant and the surge in volumes of imports resulting from the unforeseen developments.

Comments by interested parties to the Commission’s preliminary report

Interested parties stated that SAISI pointed out that a fire at the Vanderbijlpark plant “influenced production of flat products” and caused the market to react severely, the Commission even indicated that imports “rose to 64,843 tonnes, an 887% increase” in February, after the fire. Clearly the fire can be causally linked to the surge in imports, until AMSA could supply again, and beyond. It is clear that the surge in imports was a result of the fire and not the unforeseen developments that was claimed not to have been foreseen in 1994 and 1995.

Commission’s consideration

The Commission reiterates that although there are other factors that could be causing injury to the Applicant, it is still of the view that these factors did not sufficiently detract from the causal link between the serious injury experienced by the Applicant and the surge in volumes of imports resulting from the unforeseen developments during the period of investigation.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators (2012 -2015)

| | |
|-----------------------------------|-----------|
| Imports in absolute terms | Increased |
| Imports in relative terms | Increased |
| Sales volumes (Tons) | Decreased |
| Net Losses (R) | Decreased |
| Output (Tons) | Decreased |
| Market share (Applicant) | Decreased |
| Productivity (Units per employee) | Decreased |
| Utilisation of capacity (%) | Decreased |
| Employment (number of employees) | Decreased |

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

- **Quality**

The Applicant stated that the quality of AMSA's cold-rolled products is generally regarded as good, even for demanding applications. Cold-rolled coil is 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 control of radioactivity, conflict minerals and environmental impact (ISO 14001).

- **Delivery times**

The Applicant stated that the normal lead time from order placement to delivery is six weeks for cold-rolled products. A selection of products are produced in advance affording a shorter lead time, however some products require more processing necessitating longer lead times.

- **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 warranties 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.

- **Cold-rolled steel 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.

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 their 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 trade unions 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 percentage that is 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 of AMSA as an employer.

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

Table: 7.5

| | |
|--|--|
| Strikes, go-slows or lock outs during the past twelve months | The Applicant stated that there were no strikes, go-slows or lock outs during the past three years. Further stated that as mentioned above, 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 trade unions without having labour unrest or strikes |
| Contraction in demand or changes in patterns of consumption | The Applicant stated that the total market for the subject product has decreased by 29 index points between 2014 and 2015. Yet, sales by the SACU producers contracted by 34 index points while import volumes increased by 30 percent, thus displacing local sales. |
| Productivity of the domestic industry vis-a-vis that of the exporters | The Applicant stated that the productivity of the domestic industry is on par with that of the exporters. |
| Development in technology | The Applicant indicated that there were no technology developments during the period of investigation. |

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a final determination that although there are factors other than the imports that contributed to the injury, such as the increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance; these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury experienced by the Applicant.

8. PRICE DISADVANTAGE

8.1 Calculation of price disadvantage

8.1.1 Unsuppressed selling price

The Applicant stated that it is experiencing substantial price depression as well as price suppression and is currently selling products below the cost of production. The current selling prices of products are therefore not representative of selling prices which would allow AMSA to make a reasonable profit. As such, an unsuppressed price based on producer price inflation for production costs and consumer price inflation for SG&A costs was calculated for the purpose of the relief sought.

The Applicant's basis for the calculation is as follows:

1. As a starting point the previous year's cost of production was used.
2. The production costs were then adjusted with the relevant year's average manufacturing inflation rate as obtained from Statistics South Africa's website in order to calculate the production cost for the current year.
3. The selling and administrative expense and finance expense for the previous year were then adjusted with the average normal consumer price index for the relevant year as obtained from Statistics South Africa's website in order to calculate the selling and administrative and finance expense for the current year.
4. The newly calculated selling and administrative and finance expenses were then added to the newly calculated production cost to calculate the reasonable cost to make and sell for the relevant year.
5. A profit was then calculated based on a reasonable profit percentage. Reasonable profit margin: A fair return should be based on the cost of financing in South Africa and capital required to sustain operations. In this respect, independent research by an international consultant /third party (McKinsey group) indicated that the steel industry requires a 17% average EBITDA (that is, Earnings before Interest, Tax, Depreciation and Amortisation) margin to be sustainable in the long term. However, in South Africa, the required return is roughly 20% due to local conditions,

including higher cost of debt and effective tax rates than the global percentage.

6. The reasonable profit was then added to the calculated selling administrative and finance expense and the calculated production cost to calculate the unsuppressed price for the current year.

Using the above methodology, the Applicant calculated a safeguard measure of 12.67%. The Applicant therefore requested that a safeguard measure of 12.67% be imposed on all imports of cold rolled steel products.

For purposes of its preliminary determination, the Commission calculated the measure based on the price disadvantage between the Applicant's unsuppressed selling price and the landed cost of the imported product. The Applicant's unsuppressed selling price was calculated using its actual cost of production and adding a 17 per cent EBITDA as provided by the Applicant. This resulted in a provisional safeguard measure of 3.26 per cent.

For purposes of its final determination, the Commission noted the agreement between AMSA, the Competition Commission and Government on fair pricing principles. The agreement states that AMSA's EBITDA should be kept at between 10 per cent and 15 per cent. The Commission decided to apply an average EBITDA of 12.5 per cent, which resulted in a price disadvantage margin of -0.01 per cent.

Comments by Steelbank and CISA to the Commission's essential facts letter

Steelbank and CISA stated that an average 12.5 percent EBITDA margin is also not realistic for the Commission to use in the post-financial 2008-2009 crisis period and therefore should not be used as a starting point. It would be more accurate and realistic to use, according to the McKinsey&Company research, an average based on the "Mid-term cycle bottom" (7%) and the "Mid-term peak" (14%) as indicated in the mentioned study over the period 2013 to 2018, that would result in a 10.5% EBITDA margin.

Steelbank and CISA further stated that the European Commission, in a recent Anti-Dumping case on hot rolled steel from China considered that 7% is a realistic and

achievable margin, and uses earnings before taxes ("EBT") instead of EBITDA and that it requests the Commission to use either the 10,5% or the 7% margin in the calculation.

Comments by the Applicant to the Commission's essential facts letter

The Applicant stated that the application of the 10% general duty implemented on 12 April 2016 in the 2015 price disadvantage is not appropriate and that the 10% general duty does not contribute to a decline in imports and does not have a positive impact in restoring effective competition.

The Applicant submitted that the 10% duty was only gazetted on 12 February 2016 and therefore cannot be taken into account for the calculation of the unsuppressed selling price of 2015. The Applicant further stated that the only way the Commission can take the 10% general duty into account, is to apply the 10% general duty to the 2016 figures, the period in which the 10% general duty became relevant. The period of 2016 in any event falls outside the relevant period to consider.

However, for purposes of consistence and transparency and in order for the Commission to take the effect of the 10% duty into account the Applicant has calculated the price disadvantage for 2016 below:

January – December

| (R/ton) | 2015 | 2016 |
|--|--------|--------|
| AMSA's weighted Un-suppressed Cold Rolled Product ex-factory selling price | 100* | 108* |
| Weighted average price of imports - Landed cost | R8,852 | R9,850 |
| Difference in price per unit (Price disadvantage) | 100* | 73* |
| Weighted average price of imports - FOB price | R8,546 | R8,576 |
| Difference in price per unit % (Price disadvantage as % of FOB price) | 8.76% | 6.37% |

| | | |
|--------------------|--------|--------|
| FOB | R8,546 | R8,576 |
| Freight | 306 | 416.19 |
| Duty 10% | | 857.58 |
| Landed cost | R8,852 | R9,850 |

*Indexed using base year = 2015 due to confidentiality of information

In a nutshell, the Applicant indicated that the 8.76% difference noted in the unsuppressed prices calculation for January – December 2015 was not addressed by the imposition of the 10% general duty implemented on 12 February 2016 as the Commission and other interested parties suggested.

The Applicant emphasised that the price disadvantage would have been 16.37% in the absence of the 10% general duty. The fact that there is still a price disadvantage in 2016 is evidence that the prices are adjusted to accommodate for the increase in the general duty from 12 February 2016 according to the Applicant.

Automotive Sector

The Applicant suggested that all imports that are destined for the automotive industry should be excluded (i.e the EU countries, Japan and Korea) for the purpose of calculating the price disadvantage. Then there would be a positive price disadvantage. The Applicant indicated that the reason why it is necessary that the automotive products should be excluded is that the extreme high surface finished specifications are not manufactured in South Africa, and even if these products are considered, then the higher costs of manufacturing of these products should be considered in determining the price difference.

The Applicant further stated that the application of the above is also consistent with the law, which requires the treatment to be equal. The Applicant stated that the Commission considered that the principle of parallelism requires that the imports included in the application of the measure should correspond to the imports included in determining the surge of imports and serious injury. This is correct and the Applicant is suggesting such treatment – at no stage is the Applicant suggesting different treatment as was the case referred to by the Commission.

Commission's consideration

The principle of parallelism requires that the imports included in a safeguard investigation should correspond to the imports included in the application of the measure.

In Argentina — Footwear (EC), the Appellate Body examined “whether there

is an implied 'parallelism between the scope of a safeguard investigation and the scope of the application of safeguard measures." In this connection, the Appellate Body held:

"Taken together, the provisions of Articles 2.1 and 4.1(c) of the Agreement on Safeguards demonstrate that a Member of the WTO may only apply a safeguard measure after that Member has determined that a product is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause serious injury to its domestic industry within its territory. According to Articles 2.1 and 4.1(c), therefore, all of the relevant aspects of a safeguard investigation must be conducted by the Member that ultimately applies the safeguard measure, on the basis of increased imports entering its territory and causing or threatening to cause serious injury to the domestic industry within its territory.

While Articles 2.1 and 4.1(c) set out the conditions for imposing a safeguard measure and the requirements for the scope of a safeguard investigation, these provisions do not resolve the matter of the scope of application of a safeguard measure. In that context, Article 2.2 of the Agreement on Safeguards provides:

'Safeguard measures shall be applied to a product being imported irrespective of its source.'

As we have noted, in this case, Argentina applied the safeguard measures at issue after conducting an investigation of products being imported into Argentine territory and the effects of those imports on Argentina's domestic industry. In applying safeguard measures on the basis of this investigation in this case, Argentina was also required under Article 2.2 to apply those measures to imports from all sources, including from other MERCOSUR member States.

On the basis of this reasoning, and on the facts of this case, we find that Argentina's investigation, which evaluated whether serious injury or the threat thereof was caused by imports from all sources, could only lead to the

imposition of safeguard measures on imports from all sources. Therefore, we conclude that Argentina's investigation, in this case, cannot serve as a basis for excluding imports from other MERCOSUR member States from the application of the safeguard measures."

The Commission took note of the above comments by the Applicant as well as the content of the above case and considered that should the Commission exclude imports destined for the Automotive sector, the Commission would be in violation of the principle of parallelism. The Commission noted that when the safeguard measure is applied, it is applied against all imports irrespective of the source. The only imports that can be excluded are those that originate from developing countries with imports of less than 3% of the total imports. It should also be noted that there has not been an instance where the principle of parallelism is applied in the manner the Applicant requests the Commission to do.

The Commission calculated the price disadvantage as follows:

Price disadvantage calculation

| (R/ton) | 12.5% EBITDA |
|--|-----------------|
| Unsuppressed ex-factory price per unit | 100* |
| Landed cost | 9 706 |
| Price disadvantage | -100* |
| Weighted average FOB export price | 8 546 |
| Price disadvantage as a % of FOB | -0.01% |

*Confidential figures

The Commission made a final determination that the Applicant is not experiencing any price disadvantage.

9. SUMMARY OF FINDINGS

9.1 Unforeseen Developments

The Commission made a final determination that unforeseen developments and the effects of the obligations incurred with regard to the subject product under the GATT 1994 led to the alleged 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

| | |
|-----------------------------------|-----------|
| Imports in absolute terms | Increased |
| Imports in relative terms | Increased |
| Sales volumes (Tons) | Decreased |
| Net Losses (R) | Decreased |
| Output (Tons) | Decreased |
| Market share (Applicant) | Decreased |
| Productivity (Units per employee) | Decreased |
| Utilisation of capacity (%) | Decreased |
| Employment (number of employees) | Decreased |

The Commission made a final determination that the information analysed indicates that the Applicant is experiencing serious injury.

9.3 Surge of Imports

The Commission made a final determination that the surge in volume of imports is recent enough, sudden enough, sharp enough and significant enough.

9.4 Causal link

The Commission made a final determination that although there are factors other than the imports that contributed to the injury, such as the increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance; these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury experienced by the Applicant.

9.5 Price Disadvantage

The Commission made a final determination that the Applicant is not experiencing any price disadvantage.

10. FINAL DETERMINATION

The Commission made a final determination that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- Surge in volume of imports is recent enough, sudden enough, sharp enough and significant enough;
- The SACU industry is experiencing serious injury; and
- Although there are factors other than the imports that contributed to the injury, such as the increase in the cost of raw material, auxiliaries and consumables, manpower and maintenance; these factors did not sufficiently detract from the causal link between the serious injury experienced by the Applicant and the surge in volumes of imports resulting from the unforeseen developments.

However, in calculating the possible measure to be imposed, it was determined that the Applicant is not experiencing a price disadvantage when comparing its unsuppressed selling price to the landed price of the imports.

The Commission therefore decided to recommended to the Minister of Trade and Industry that the investigation be terminated.