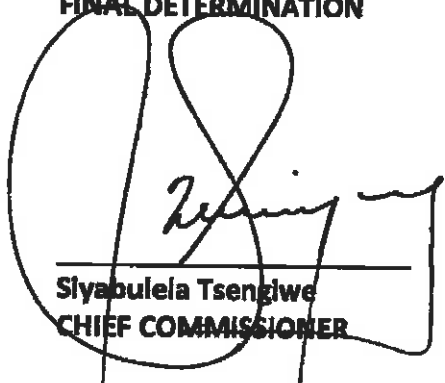


**Report No. 551**

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

The International Trade Administration Commission of South Africa herewith presents its  
**Report No. 551: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF A SAFEGUARD  
AGAINST THE INCREASED IMPORTS OF CERTAIN FLAT HOT-ROLLED STEEL PRODUCTS:  
FINAL DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA  
12/04/2017

## **INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA**

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

#### **SYNOPSIS**

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

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

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

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

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

The Commission made a preliminary determination that:

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

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

**A preliminary report was issued to the interested parties and interested parties were invited to provide comments.**

**The Commission further invited interested parties that wish to make submissions on public interest matters on the investigation. Interested parties made written and oral submissions and those that wished to participate during the public hearings held on 30 August 2016 indicated such, and made presentations during the hearings.**

**Based on information contained in the Commissions Preliminary Report, comments received and public interest submissions, the Commission made a final determination before “essential facts” that:**

- **Events cited are regarded as unforeseen developments that led to the increased volume of imports;**
- **The surge in volume of imports is recent, sudden , sharp and significant enough;**
- **The SACU industry is suffering serious injury;**
- **There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development; and**
- **Notwithstanding the above, it was not in the public interest to impose safeguard measures.**

**Essential facts letters were sent out to all interested parties, informing them of the “essential facts” which were being considered by the Commission, and invited comments from interested parties on those “essential facts” for the Commission’s consideration prior to making a final determination.**

**After considering all parties’ comments received, the Commission made a final determination that:**

- **Events cited can be regarded as unforeseen developments that led to the increased volume of imports;**

- **The surge in volume of imports is recent, sudden, sharp and significant enough;**
- **The SACU industry is suffering serious injury; and**
- **There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development.**

**The Commission made a final determination to recommend to the Minister of Trade and Industry that it will be in the public interest to apply safeguard duties of 12 percent *ad valorem* on certain flat hot rolled steel products for all exporters, excluding imports originating from a developing country member that meet the requirement for exclusion.**

**The Commission further recommended that the duties be imposed for a period of three years, to be liberalised as follows: Year 1 - 12%; Year 2 – 10%; Year 3 – 8%.**

## **1. APPLICATION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

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

### **1.2 APPLICANT**

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

### **1.3 ALLEGATIONS BY THE APPLICANT**

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

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

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

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

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

#### **1.4 INVESTIGATION PERIOD**

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

#### **1.5 INVESTIGATION PROCESS**

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

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

**1.5.3 The investigation was initiated on 24 March 2016.**

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

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

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

- **Duferco Steel Processing (Pty) Ltd;**
- **Safal Steel (Pty) Ltd;**
- **China Chamber of International Commerce;**
- **Government of Japan;**
- **Government of Egypt;**
- **European Commission;**
- **Portland Steel International (Pty) Ltd;**
- **Government of Taiwan;**
- **Government of Turkey;**



- Japanese Manufacturers - Nippon, Kobe & JFE;
- Steelbank Merchants (Pty) Ltd;
- Special Steels (SCS Impex Trading C.C.);
- Gerber Goldschmidt Group SA (Pty) Ltd;
- Government of Brazil;
- Robor (Pty) Ltd;
- TW Profile Services C.C;
- BSi Steel Ltd;
- W.C. Youngman S.A. (Pty) Ltd;
- POSCO;
- China Steel Corporation;
- Aveng Africa (Pty) Ltd. (Aveng Steel);
- MACSTEEL Service Centres SA (Pty) Ltd;
- Tubecon Africa (Pty) Ltd; and
- Safintra South Africa (Pty) Ltd.

## **1.6 PRELIMINARY DETERMINATION**

The Commission made a preliminary determination on 14 June 2016, which was published in Notice No. 440 of 2016 of Government Gazette No. 40153 dated 22 July 2016, with details of the findings contained in Commission's Report No. 533.

The Commission made a preliminary determination that the events cited are regarded as unforeseen developments, and there is evidence of increased imports that have caused serious injury. Furthermore the Commission found that critical circumstances exist, however, the Commission considered that the initiation of a safeguard investigation may already have had an effect of deterring imports to a certain extent. As a result, it expected that the serious injury suffered by the applicant will not worsen even if provisional payments are not imposed.

Further, interested parties made submissions regarding the performance of the applicant and the Commission wanted further interrogation of this matter in the lead-up to the final determination. On this basis, the Commission made a preliminary determination not to impose provisional payments.

**1.6.1 The following interested parties responded and provided comments on preliminary determination.**

- Radium
- SS Profiling
- Roofing and Steel
- Hitecnuts.co.za
- Embassy of Taiwan
- Universal Storage Systems (SA) Pty Ltd
- Steelbank
- Safal
- CCOIC
- Duferco
- Portland Steel International (Pty) Ltd
- European Commission
- Special Steels
- NSSMC, NISSHIN, KOBE, JFE – Japanese Manufacturers
- Barnes Tubing Industry (Pty) Ltd
- Hall Longmore (Pty) Ltd
- Macsteel Service Centres SA (Pty) Ltd
- Embassy of Brazil
- Embassy of Mexico

## **1.7 PUBLIC INTEREST**

The Commission through Notice No. 440 of 2016 of Government Gazette No. 40153 also invited interested parties that wished to make submissions on public interest matters on the investigation. Interested parties made written submissions and those that wished to participate during the public hearings held on 30 August 2016 indicated such, thereafter made presentations during the hearings.

1.7.1 The following interested parties made submissions on public interest matters on the investigation.

- Safal
- Duferco
- CCOIC
- MACSTEEL Service Centres SA (Pty) Ltd
- Taiwanese Government
- Embassy of Turkey
- Japanese Manufacturers - Nippon, Kobe & JFE
- The Applicant (SAISI)
- Aveng Steel
- NEASA
- Solidarity
- Supertec Ceilings and boards (Pty) Ltd
- NJR Steel Central Buying (Pty) Ltd's
- Turnerland Manufacturing (Pty) Ltd

## **1.8 FINAL BEFORE ESSENTIAL FACTS DETERMINATION**

Based on the details as contained in the Commission's preliminary report, the comments received and public interest, the Commission made a final determination before "essential facts" that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- The surge in volume of imports is recent, sudden, sharp and significant enough;
- The SACU industry is suffering serious injury;
- There is a causal link between the serious injury suffered by the applicant and the surge in volumes of imports resulting from the unforeseen development; and
- Found that it was not in the public interest to impose safeguard measures.

On 19 January 2016 "essential facts" letters were sent out to all interested parties informing them of the "essential facts" which were being considered by the Commission and invited comments from interested parties on those "essential facts" being considered.

1.8.1 The following interested parties responded and provided comments on essential facts letter.

- Duferco
- CCOIC
- Taiwanese Government
- Portland Steel
- Japanese Manufacturers - Nippon, Kobe & JFE
- The Applicant (SAISI)
- POSCO
- Supertec Cellings & Board (Pty) Ltd
- SS Profiling
- TW Profile
- Steelbank
- Safal and Macsteel (Responses received after deadline date for responses)

The Commission considered comments received from interested parties in making its final 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.

### **1.9 Final determination**

The Commission made a final determination that:

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

The Commission made a final determination to recommend to the Minister of Trade and Industry that it will be in the public interest to apply safeguard duties of 12 percent *ad valorem* on certain flat hot rolled steel products for all exporters, excluding imports originating from a developing country member that meet the requirement for exclusion. It further recommended that the duties be applied for a period of three years, to be liberalised as follows: Year 1 - 12%; Year 2 – 10%; Year 3 – 8%.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

### 2.1 IMPORTED PRODUCT

#### 2.1.1 Description

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

#### 2.1.2 Tariff classification

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

Table 2.1.2: Applicable duties and rebates

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

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

Source: SARS

### **2.1.3 Production process**

The production process is as follows:

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



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

In summary the production phases are as follows:

- (1) Melting and refining to set the steel's chemical and metallurgical properties;
- (2) Casting the steel into a semi-finished shape (slab); and
- (3) Hot rolling the input material into a hot rolled plate on a single-stand rolling mill and cooled on a cooling bed prior to cutting and/or further processing.

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

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

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

### **2.2.2 Production process**

The production process is as follows;

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

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

In summary the production phases are as follows:

- (1) Melting and refining to set the steel's chemical and metallurgical properties;
- (2) Casting the steel into a semi-finished shape (slab); and
- (3) Hot rolling the input material into a hot rolled plate on a single-stand rolling mill and cooled on a cooling bed prior to cutting and or further processing.

### **2.2.3 Application or end use**

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

### **2.2.4 Technical characteristics**

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

### **Comments by interested parties**

- (i) Interested parties alleged that ArcelorMittal South Africa Limited (AMSA) cannot make certain product types, certain dimensions (thickness, length and width) and grades especially certain automotive grades.
- (ii) Interested parties want to make a comparison between the imports and locally produced products as per tariff sub-heading.

- (iii) It is alleged that the Commission findings does not show any distinction between the products not produced by applicant with no option to import and the broader products forming part of the investigation.**
- (iv) It is alleged that AMSA acknowledges that a minimal number of products are not produced but the Commission did not detail those products.**
- (v) It is stated that the mere fact that AMSA excluded some tariff sub-headings which are for flat rolled products clearly means these are different products.**

#### **Applicant's response**

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

#### **Commission's consideration**

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

The product under investigation may have sub-categories, and there is no requirement that these sub-categories must be alike. The existing jurisprudence confirms that no specific obligations exist regarding the definition or scope of product under investigation.

The like product determination does not require that every tariff subheading be analysed and a determination of like product be made for each tariff subheading. For interested parties to want a comparison to be made per tariff sub-heading negates the product scope that has been made that all the 21 tariff sub headings are part of that product scope.

Therefore the argument that advances the definition of the product under investigation solely by tariff codes is incorrect. The tariff codes are primarily meant to be a tool for customs clearance purposes and is referred to and incorporated in the product definition for trade remedies investigations to aid the process of duty collection and other customs processes should a measure be imposed.

The subject product is as specified, and it contains various product dimensions which are like products or directly competitive products to the SACU product.

- (iii) There is no requirement for the applicant to make each and every product specification for the subject product as required by interested parties. Specifications of the subject product are endless and are determined between the producer and buyer of the product, and the specifications of the subject product as produced by the applicant is contained in the public file. If interested parties strongly believe there should be products to be excluded due to highly distinctive and specialised engineering nature of the subject product sub-category, SARS may be approached to create a separate tariff sub-heading.

- (iv) The details of the products are contained in the application. To the extent that the issue of like product has been extensively dealt with, the products not produced by AMSA have by extension also been dealt with.**
- (v) Exclusion clarifies product scope. The products excluded from the investigation are not part of product scope. The application made it clear that the products applied for to be included in the scope are not all flat hot rolled products. The application was for certain flat hot-rolled steel products.**

**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 definition of "like product" as per the Amended Safeguard Regulations.**

### **3. INDUSTRY STANDING**

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#### **3.1 DOMESTIC INDUSTRY**

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

#### **Commission's consideration**

The Commission considered that Evraz has since closed its plant.

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**

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##### **4.1 Requirements of Article XIX of GATT**

Article XIX of the GATT provides that:

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

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

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

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



- **The unprecedented steep rate of increase in global steel production capacity (including the subject product) over the ensuing two decades (more than doubled since 1994) to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies;**
- **The significant market downturns in emerging (and other) economies and the resultant contraction in demand for steel that contribute to the imbalance between capacity and demand, that is, the global oversupply of steel (including the subject product);**
- **Record export volumes by countries with excess capacity, fuelled by excess steel supply;**
- **Given the global nature of the steel industry, excess capacity in one region can potentially displace production in other regions, thus harming producers in those markets. This has already led to several trade actions by major steel markets. Recent trade measures by those countries are a result of all the above named unforeseen developments, and the fact that their markets are now protected contracts the global demand for steel even further, exacerbating the problem of increased imports into the SACU;**
- **The oversupply of steel (including the subject product) has led to deterioration in the financial situation of steelmakers globally and also the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector today; and**
- **Despite slowing demand and the existing excess capacity, there are several new investment projects underway and planned (especially in current net-importing countries) in the steel industry that will result in global steelmaking capacity to continue to expand and causing the SACU to expect further increases of imports of the subject product.**

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

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

#### **Commission's consideration of the applicant's submission**

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

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

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

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

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

#### **Comments from Interested parties**

- (i) The unforeseen development of excess steel supply does not only affect domestic producers, thus these developments cited do not meet the requirements of GATT.**
- (ii) The analysis of the increase in global production volumes is flawed as the average increase prior to 1994 was higher than the average increase after 1994. The use of global steel production to motivate unforeseen developments is inconsistent with the WTO Agreement on Safeguards.**
- (iii) Interested parties indicated that the unforeseen development cited is not product related and it's not per tariff subheading.**
- (iv) South Africa did not make any tariff concessions regarding the subject product.**
- (v) The developments or expansions in China and Chinese Taipei were known at the time of negotiations.**

- (vi) **ISCOR ceased to be a state owned enterprise in 1989, when it was listed on the JSE, therefore the restructuring indicated by ITAC is factually incorrect.**
- (vii) **It is pointed out that the preliminary determination of unforeseen development was flawed as it was based on 21 tariff sub-headings. The basis for the contention is the WTO Appellate Report on Steel in which the Appellate Body ruled that, "...the demonstration of unforeseen developments must be performed for each product subject to a safeguard measure."**

**Commission's Consideration of interested parties' comments**

- (i) **Interested parties do not provide reasons for the developments not meeting the requirements of unforeseen development, noting that this unforeseen development although a global phenomenon, affects every country differently, and the domestic industry has sufficiently motivated such.**
- (ii) **The Commission made its own analysis and made a determination based on the increase in volumes after 1994, whereby the average increase in volumes prior to 1994 was 11 million tonnes per annum, while after 1994 the average volume increase was around 20 million tons per annum. This together with all the information submitted was considered and analysed accordingly by the Commission.**
- (iii) **The allegation that unforeseen development is not product related is unfounded. The applicant provided world production figures for the subject product and also used an estimate on the composition of the subject product from the total global steel production. Information on the subject product could only be obtained from 1990 onwards and the applicant wanted to give a broader picture of the steel industry, while also estimating the content of the subject product from the global steel output over the years before 1990. This is therefore product related and is consistent with the WTO Agreement on Safeguards. There is no requirement that unforeseen developments should be by tariff subheading.**

- (iv) South Africa made concessions with regards to the subject products to bind its tariffs to 10% *ad valorem*.
- (v) The interested parties did not provide information on these known developments, and this should be provided to the Commission, and in the absence of such proof, the developments are deemed unknown. Noting that it is not expansions that could not have been unforeseen but expansions at such high levels.
- (vi) The unbundling and restructuring of ISCOR took place in 2001.
- (vii) The Appellate Body stated the following with regards to the US finding on unforeseen developments, "the USITC's explanation relates to steel production in general and does not describe how the unforeseen developments resulted in increased imports in respect of the specific steel products at issue."

In order to appreciate the ruling it is important to realise that the investigation against increased imports of certain steel products. The steel products covered in the investigation were certain carbon flat rolled steel; hot rolled bar; stainless steel rod; tin mill products; stainless steel wire; cold finished bar; rebar; weld pipe and carbon alloy fittings, flanges and tool joints.

The US case product coverage therefore was completely different to the case at hand, that the comparison that interested parties are making is far-fetched. The current investigation is only concerned with the first product in the US product list above.

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

## 5. SURGE OF IMPORTS

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

The Commission made a final determination that the surge occurred in 2013.

### 5.1 Import volumes

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

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

	2012	2013	2014
<b>Total Imports (KG)</b>	253 115 270	575 340 163	438 705 024

The information in the table above indicates that total imports more than doubled from 2012 to 2013, increasing by 127%, although slightly declining by 24% from 2013 to 2014. Imports maintained their surge levels when comparing the increase from 2012 to 2014 as it was an increase of 73% during the period of investigation (full year periods). Even when comparing the increase of the full year 2012 to the 2015 (Jan-July) seven months periods, this is still a significant increase of 68%.

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

	2012 (Jan-July)	2013 (Jan-July)	2014 (Jan-July)	2015 (Jan-July)
<b>Total Imports (kg)</b>	159 576 195	360 469 813	240 532 714	425 118 657

The information in the table above indicates that total imports more than doubled from 2012 to 2013, increasing by 125%, although these imports declined by 33% from 2013 to 2014. But from 2014 to 2015, imports increased again by 76%. Over the injury period, imports increased by 166%.

### **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 South African Revenues Services (SARS) relative to production for the period 2012 to 2015.

### **Full year Analyses**

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

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

	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Total imports (kg)</b>	<b>253 115 270</b>	<b>575 340 163</b>	<b>438 705 024</b>
<b>*Applicant's production (kg)</b>	<b>100</b>	<b>90.2</b>	<b>96.3</b>
<b>*Imports as % of the applicants total production volumes</b>	<b>100</b>	<b>253</b>	<b>181</b>

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

The information in the table above indicates that in absolute terms, imports increased by 127%, and declined by 23% from 2013 to 2014, throughout the period of investigation (2012 to 2014) imports increased by 73%.

It also indicates that imports relative to production increased by 153 index points from 2012 to 2013, declined by 72 Index points from 2013 to 2014, representing an overall increase of 81 index points during the period of investigation.

### Seven months period (Jan – July) Analyses

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

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

	2012 (Jan –July)	2013 (Jan –July)	2014 (Jan –July)	2015 (Jan –July)
<b>Total imports (kg)</b>	<b>159 576 195</b>	<b>360 469 813</b>	<b>240 532 714</b>	<b>425 118 657</b>
<b>Applicant's production (kg)</b>	<b>100</b>	<b>85.50</b>	<b>88.12</b>	<b>85.67</b>
<b>Imports as a% of the applicants total production volumes</b>	<b>100</b>	<b>262.20</b>	<b>169..51</b>	<b>308.54</b>

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

The information in the table above indicates that imports in absolute terms increased by 125% between 2012 and 2013 and thereafter decreased by 33% between 2013 and 2014. From 2014 to 2015 it again increased by 76%. Over the period 2012 to 2015, there was an overall increase of 166% in imports.

It also indicates that imports relative to production increased by 162 index points from 2012 to 2013, decreased by 62 index points from 2013 to 2014, and thereafter increased by 139 index points from 2014 to 2015. The rate of increase in total imports relative to total production volumes from 2012 to 2015 was 208 index points.

The Commission considered that the surge occurred in 2013 (1 January 2013 to 31 December 2013 and 1 January 2013 to 31 July 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 the 2014 full year period. When looking at the 7 month period, there was a decline in 2014. However, it was not lower than the period prior to the surge. The rate and amount of increase from 2012 to 2013 can be seen as sudden or abrupt, and this abrupt disturbance in the SACU market by imports was maintained throughout the period of investigation both in relative terms and absolute terms.



- The rate and amount was sustained in the full year period throughout the investigation period. When analysing the 7 months period, there was a decline in the rate and amount of imports in 2014, but this decline did not last as import volumes increased substantially in 2015.
- The amount of increase of 2013 was the highest and is significant enough when looking at both the full year and 7 month period.
- The period 2013 is recent enough to meet the conditions of the safeguard agreement. This must be considered in line with the fact that although there were slight intermittent declines, the increase has been maintained throughout the period of investigation.

#### **Comments from interested parties**

- (i) There is no surge in various products or tariff subheadings, except for an increase in Chinese imports, while five tariff subheadings show no surge at all.
- (ii) Some imports of tariff code 7208.90 were unusually higher due to misclassification by an importer.
- (iii) The investigation period is not recent, since the investigation was initiated 8 months after the end of the investigation period.
- (iv) ITAC's import information differs from that of the applicant.
- (v) The interest parties stated that AMSA took corrective measures such as importing crude steel to address the fire incident, AMSA's own imports caused the surge and should be excluded.
- (vi) Interested parties alleged that at initiation, ITAC did not disclose or comment on the EU's request to provide a breakdown of the import flows by origin.

#### **Commission's consideration**

- (i) The mere fact that certain tariff sub-headings show no surge does not mean that there is no surge in imports of the product subject to this investigation. The surge is based on analysis of imports for the product under investigation, which is

defined as flat hot rolled products, imported under all tariff subheadings indicated in 2.1.2 of this report. The 21 tariff sub-headings are all part of the one product under investigation.

- (ii) This allegation of misclassification is not substantiated with evidence. This should also be raised with the authorities responsible for dealing with customs administration.
- (iii) It was considered that interested parties could be confusing recentness with the requirements of an anti-dumping investigation, which is stated in the Anti-Dumping Regulations (ADR) as information for dumping may not be older than 6 months when an investigation is initiated, which is not the case in the Amended Safeguard Regulations.
- (iv) The Import information in the report is from SARS, which is for South African imports, not SACU, and these imports also include imports from all BLNS countries. These had to be excluded. It is also noted that one tariff subheading was erroneously excluded from calculating total imports in 2012 and 2013. This error does affect the actual figure, but the picture and trend is still the same.
- (v) AMSA did not import hot rolled products during the POI, it only imported crude steel, which is to be further processed into hot rolled products. Therefore there is no need to deduct AMSA's own imports since crude steel is not subject to this investigation and falls under different tariff subheading(s).
- (vi) The EU was informed that the relevant authority that deals with import statistics is SARS, and were informed to request import statistics of the subject product from SARS.

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**

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### **6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION**

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

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

### **6.2 CONSEQUENT IMPACT OF THE INCREASED IMPORTS ON THE INDUSTRY**

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

#### **6.2.1 Actual and potential decline in sales**

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

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

	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Total sales volumes (metric tons)</b>	100	92	87

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

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

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

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

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

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

## **6.2.2 Profit**

The following table shows the applicant's profit situation:

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

	2012	2013	2014
<b>Total gross profits (R)</b>	Negative	Negative	Positive
<b>*AMSA total net profits (R)</b>	Negative	Negative	Negative

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

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

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

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

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

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

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

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

### **6.2.3 Output**

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

**Table 6.2.3(a): Output January - December**

metric tons	2012	2013	2014
<b>Total Production</b>	100	90	96

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

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

**Table 6.2.3 (b): Output (Jan – July)**

metric tons	Jan - Jul 2012	Jan - Jul 2013	Jan - Jul 2014	Jan - Jul 2015
<b>Total Production</b>	100	86	88	86

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

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

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

#### 6.2.4 Market share

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

**Table 6.2.4 (a): Market share January to December**

Metric Ton	2012	2013	2014
Total SACU market	100	115	103
Applicant's Sales	100	92	87
Other SACU producers	100	129	121
Total Imports	253 115	575 340	438 705
Applicant's share as % of total market	100	81	83
Other SACU producers' share as a % of total market	100	113	115
Total Imports as % of total market	100	198	168

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

The SACU market increased by 15 index points from 2012 to 2013, and declined by 8 index points from 2013 to 2014, reflecting an overall 3 index points increase. The applicant's share of the market declined by 19 index points from 2012 to 2013 and slightly increased by 2 index points from 2013 to 2014, reflecting an overall decline of 17 index points. The applicant lost a significant share of the market in 2013, and while it gained 2 index points of market share in 2014, in the 2012 -2014 period there was an overall decline in its market share.

**Table 6.2.4(b): Market share January to July**

Metric Ton	2012	2013	2014	2015
*Total SACU market	100	121	89	105
*Applicant's Sales volumes	100	99	74	79
*Other SACU producers	100	139	111	73
Total net Imports	159 576	360 739	240 533	425 119
*Applicant's share as % of total market	100	82	86	73
*Other SACU producers' share as a % of total market	100	116	129	67
*Total Imports as % of total market	100	187	170	255

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

The SACU market increased by 21 index points from 2012 to 2013, declined by 35 index points from 2013 to 2014, and recovering by 21 index points from 2014 to 2015, reflecting an overall 3 index points increase. The applicant's share of the market declined by 18 index points from 2012 to 2013 and slightly increased by 4 index points from 2013 to 2014. It declined further by 13 index points from 2014 to 2015, reflecting an overall decline of 27 index points.

### 6.2.5 Productivity

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

**Table 6.2.5 (a): January – December Productivity**

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

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

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

**Table 6.2.5(b): Jan – Jul Productivity**

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

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

Productivity decreased by 5 index points from 2012 to 2013, and further decreased by 2 index points from 2013 to 2014. From 2014 to 2015 it again decreased by 8 points, resulting in an overall decline of 15 index points during the period of

investigation. Productivity in 2013 declined in line with output and employment, and it never recovered since.

#### 6.2.6 Utilisation of production capacity

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

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

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

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

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

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

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

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

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



## 6.2.7 Employment

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

**Table 6.2.7(a): January to December Employment**

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

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

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

**Table 6.2.7(b): January to July Employment**

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

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

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

### **ADDITIONAL INJURY FACTORS CONSIDERED**

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

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

### **Comments from Interested parties**

- (i) The increase in the volumes of imports is as a result of AMSA's capacity shortages such as those caused by a fire at its Vanderbijlpark steel plant.**
- (ii) The applicant is using a wrong instrument to tackle its injury, since most of the imports are from China, and therefore should use any remedy to target China.**
- (iii) AMSA provided various products which have various uses, but did not analyse each product to determine injury. It merely consolidated the data, thus not making a like for like product analysis, or directly competitive analysis. Some products imported are not like or directly competitive products to those manufactured by the SACU industry.**
- (iv) The main reason for the serious injury suffered by the applicant is not imports, but the rise in electricity prices.**
- (v) The injury information is not indexed.**
- (vi) Assessing injury without the knowledge of the impact of the 10% ordinary customs duty will result in ITAC not having a clear picture of the impact of injury.**

### **Applicant's response**

- (i) AMSA indicated that capacity constraints in the past have been caused by issues such as accidents, like the fire in its Vanderbijlpark plant. To cope with demand and minimise the impact of such, AMSA took a variety of actions such as:**
  - Ensuring that it increases production in its Saldanha plant to deal with demand;**
  - Fast tracking the repairs on the plant;**
  - Diverted some products destined for its export market to local customers; and**
  - Imported steel slabs from its sister companies.**
- (ii) AMSA indicated that it had embarked on various cost saving measures to mitigate the increase in electricity prices, including considering investing in a gas to energy program.**

### **Commission's consideration**

- (i) The fire affected an estimated 361 000 tons of liquid steel production, not the subject product, although this had an effect on the subject product, and it noted the measures that AMSA took to mitigate the impact of the accident.**
- (ii) All the requirements of a safeguard have been met.**
- (iii) The products considered were like products, and within the products, there are various models or categories which are classified under various tariff codes. There is therefore no need for the applicant to make an analysis on a model by model or category by category basis. There is no provision in the Safeguard Agreement that stipulates how the definition or scope of the product under investigation must be defined and interested parties also did not identify such.**
- (iv) Electricity prices are in line with the prices from other developed and developing nations, and in some instances lower than those.**
- (v) The injury information is indexed, and the information sent to interested parties was similar to that in the application.**
- (vi) Injury information is assessed based on information that relates to the period of investigation.**

### **6.3 Summary - serious injury**

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

**Table 6.3.1: Serious Injury Indicators (2012 -2014)**

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

**Table 6.3.2: Serious Injury Indicators (Jan-July)**

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

Having assessed each injury factor and noting that on the whole/overall, there is a decline in the industry's performance as listed above, the Commission made a final determination that the domestic industry is suffering serious injury.

## 7. CAUSAL LINK

### 7.1 VOLUME OF IMPORTS AND MARKET SHARE

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

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

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

	2012	2013	2014
Total Imports (Kg)	253 115 270	575 340 163	438 705 024

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

**Table 7.1 (b): Market share January to December**

Ton	2012	2013	2014
*Total SACU market	100	115	103
*Applicant's Sales	100	91	87
*Other SACU producers	100	129	121
Total net imports	253 115 270	575 340 163	438 705 024
*Applicant's share as % of total market	100	80	85
*Other SACU producers' share as a % of total market	100	113	119
*Total Imports as % of total market	100	198	168

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

The SACU market increased from 2012 to 2013 by 15 index points, while the applicant's share of the market declined by 19 percentage index points, and the market share of imports increased by 13 index points. From 2013 to 2014, the SACU market declined by 8 index points, while the applicant's share of the market slightly

increased 2 index points while the share held by imports also increased by 2 index points.

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

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

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

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

	2012 (Jan-July)	2013 (Jan-July)	2014 (Jan-July)	2015 (Jan-July)
<b>Total Imports (Kg)</b>	159 576 195	308 029 143	242 005 994	425 118 657

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

**Table 7.1 (d): Market share January to July**

Ton	2012	2013	2014	2015
<b>*Total SACU market</b>	100	121	89	105
<b>*Applicant's Sales volumes</b>	100	99	74	79
<b>*Other SACU producers</b>	100	139	111	73
<b>Total net Imports</b>	124 056 984	308 029 143	180 710 362	425 118 657
<b>*Applicant's share as % of total market</b>	100	82	86	73
<b>*Other SACU producers' share as a % of total market</b>	100	116	129	67
<b>*Total net Imports as % of total market</b>	100	187	170	255

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

The SACU market increased from 2012 to 2013 by 21 index points, the applicant's share of the market declined by 18 index points, while the market share of imports sharply increased by 105 index points. From 2013 to 2014 the SACU market declined by 35 index points, the applicant's share of the market slightly increased by 4 index points, and the imports' share of the market declined by 37 index points. From 2014 to 2015 the SACU market share picked up again by 21 index points, the applicant's market share declined by 13 index points and that of imports significantly increased by 148 index points.

Over the period the SACU market grew by 3 index points, the applicant's share of the market significantly declined by 27 index points. However, the share of the market held by imports drastically increased by 216 index points.

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

## 7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

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

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

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

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

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

- **Quality**

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

#### **Comments from Interested parties**

- (i) One interested party indicated that the applicant does not conduct ultra-sonic testing for certain product dimensions.
- (ii) Other interested parties indicated that the applicant's products are of a poor quality.

#### **Commission's consideration**

- (i) The applicant indicated that the ultra-sonic testing is performed only on certain, not all product dimensions. Other quality tests are however conducted.



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

• **Delivery times**

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

**Comments from Interested parties**

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

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

**Applicant's response**

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

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

manufacturers around the world do encounter problems from time to time, and it therefore does not mean they are inefficient.

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

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

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

#### **Commission's Consideration**

- (i) The two unusual instances when the applicant could not meet demand on their own are not sufficient to conclude that the domestic industry cannot meet demand. The actual production and production capacity of the applicant surpass the SACU market requirements.
- (ii) The world cup incident is outside the investigation period and it was a unique situation.

- **Service and after sales**

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

**(i) 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.

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

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

**Commission's consideration**

Comments from interested parties and the applicant's information with regards to quality, delivery time, after sales services, warranties and technical specifications of the customers was considered, and found that the applicant provided reasonable responses to deal with such concerns, and also undertook corrective measures where required, it noted that such concerns are a normal part of providing goods and services.

**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 trade unions. During the last three years, each year AMSA has managed to sign a wage agreement with trade unions without having had labour unrest or strikes. This should be appreciated against the backdrop of industrial action in the Steel Industry and other related industries during the same period. In 2015 AMSA has managed to sign a 2 year agreement with Numsa and a 3 year agreement with Solidarity. This was achieved at a settlement lower than the industry average.

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

## 7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

**Table: 7.5**

<b>Strikes, go-slows or lock outs during the past twelve months</b>	Despite the continued economic slump in the Steel Industry, in general, AMSA is in a favourable position with regard to the relations that they share with trade unions. During the last three years, each year AMSA has managed to sign a wage agreement with organised trade unions without labour unrest or strikes
<b>Contraction in demand or changes in patterns of consumption</b>	By using sales and import volumes between 2012 and 2015 (extrapolated) the Applicant calculated that the total market for the subject product has increased by 15% between 2014 and 2015.
<b>Productivity of the domestic industry vis-a-vis that of the exporters</b>	It is on par.

## **7.6 OTHER INFORMATION ON CAUSALITY**

The closure of Evraz Highveld, the second largest steel plant in the SACU has resulted in the loss of thousands of jobs. This closure is attributed to the surge in imports. The Commission therefore considered that for the industry to survive the remaining producer of the subject product needs to be appropriately protected from the surge in imports to ensure that it does not suffer the same fate as Evraz.

### **Comments from interested parties**

- (i) AMSA will be the sole provider of the subject product should the duties be imposed, thus leading to monopolistic tendencies, considering the fact that it has been previously found guilty by the Competition Commission & Tribunal of anti-competitive behavior.**
- (ii) Injury is caused by supply constraints as a result of maintenance issues, and low productivity because plants are old.**
- (iii) It is alleged that the biggest factor that led to increased HRC import was AMSA's pricing policy, as imported product sometimes costs higher than AMSA's product.**
- (iv) The interested party indicated that any increase in steel prices, will result in it not being competitive against European and Brazilian producers in the agricultural machinery market locally and in their export market. Furthermore the price increase will lead to job losses, and closure of their plant and becoming an importer.**

### **Applicant's response**

- (i) AMSA indicated that it meets demand, except for two circumstances, when there was a fire in its Vanderbijlpark plant and when Evraz closed down. In the case of the fire AMSA responded efficiently to restore operations and used alternative measures to supply the domestic industry. When Evraz closed down, AMSA had to accommodate some of its customers, resulting in many more orders than usual. AMSA therefore is upgrading its plant to deal with the demand.**

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

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

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

#### **Commission's consideration**

**(i) Although AMSA has been found guilty of anti-competitive behavior before, it does not mean it should be disqualified from applying for a safeguard measure. A settlement has been reached between AMSA and the Competition Commission.**

**(ii) No evidence was found to substantiate the claim of low maintenance and low productivity resulting from old plants. AMSA is continuously upgrading its plant. It is noted that AMSA's production and its production capacity, surpass the requirements of the SACU market and it can supply the full market requirement.**

**(iii) The Applicant has shown that its prices of the subject product are in line with the International basket price of the subject product. The applicant also indicated that price movements also take into account market conditions. The applicant together with government has agreed on pricing principles that will ensure that prices are not raised as a result of safeguard duties. It has also agreed to pricing that will put re-rollers in a position they would have been had they imported without the duties.**

- **Supply constraints**

**Comments from interested parties**

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

**Applicant's response**

The applicant indicated that there have been continuous capital expenditure and investments made to maintain and upgrade technology to internationally benchmarked standards as reflected in financial statements.

**Commission's consideration**

The Commission noted the continuous capital expenditure and investments made by AMSA to help improve productivity and other supply related constraints.

## **7.7 Summary - Causal link**

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

## **8. PUBLIC INTEREST**

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A public interest hearing was held on 30 August 2016. Various interested parties made submissions on public interest issues that needed to be considered prior to the Commission making its final determination. The Commission on 19 January 2017 issued essential facts letters, stating that it was considering that it would not be in the public interest to apply safeguard duties. Comments on the essential facts letters on public interest were received from interested parties and the applicant. The Commission considered all comments received, and made a final determination that the application of a safeguard measure would be in the public interest for the following reasons:

- There are several factors that contributed to a decline in imports in the first half of 2016 including: the initiation and later imposition of 10% increase in the general rate of customs duty on hot-rolled coil; the initiation of a safeguard investigation; and policy changes by the single largest steel producer, China, aimed at cutting back production and exports. On this basis the Commission took note of the trade distorting effects of the surge of imports and also could not conclude that there has been a restoration of effective competition;
- An agreement has been reached between government and AMSA on fair pricing principles on primary steel to guard against adverse impact downstream;
- AMSA committed to abide by the pricing methodology it offered for re-rollers when government approved the 10% increase in the general rate of customs duty on hot-rolled coil;
- The Commission has already initiated investigations to evaluate an increase in general rates of duty on finished products manufactured by the downstream steel industry;
- The quantum of a safeguard duty of 12% in the first year and sliding downwards in the last two years would contribute temporarily in maintaining domestic primary steel productive capacity without an undue cost raising effect downstream;



- **Pricing commitments made by AMSA will be closely monitored by the Committee of the Commission on Steel; and**
- **The Commission has sought to take a balanced approach so that the entire value chain is economically viable and production, investment and jobs are sustained in the whole value chain.**

## 9. FINDINGS

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### 9.1 Unforeseen Developments

The Commission made a final determination that the events cited by the applicant can be regarded as unforeseen developments which 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 (Full year)**

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

**Table 9.2.2: Serious Injury Indicators (Jan-July)**

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

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

### **9.3 Surge of Imports**

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

### **9.4 Causal link**

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

### **9.5 Public interest**

The Commission in making its final determination found that it would be in the public interest to apply safeguard measures.

### **9.6 Safeguard measures**

The Commission made a final determination to recommend to the Minister of Trade and Industry that it will be in the public interest to apply safeguard duties of 12 percent *ad valorem* on certain flat hot rolled steel products for all exporters, excluding imports originating from a developing country member that meet the requirement for exclusion. It further recommended that the duties be imposed for a period of three years, to be liberalised as follows: Year 1 - 12%; Year 2 – 10%; Year 3 – 8%.

## **10. Definitive safeguard measures**

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In terms of the SGR 21.1, "A safeguard measure may be applied only-

- To the extent necessary to prevent or remedy serious injury or threat thereof; and
- To facilitate adjustment of the SACU industry".

SGR 21.5 states that, "the Commission may recommend a definitive safeguard measure in the form of

- A customs duty;
- A quantitative restriction; or
- A combination of the measures contemplated under paragraph (a) and (b)".

### **10.1 Relief Sought (Duty)**

The Applicant requested the relief in the form of a safeguard duty in terms of section 21.5 (a) of the Amended Safeguard Regulations. The quantum of relief required is such that the imported price of the flat hot rolled steel products is comparable to the unsuppressed price of the subject product by the applicant.

The applicant submitted that its current selling prices of products are 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 was calculated for the purpose of the relief sought.

**The applicant's basis for the calculation is as follows:**

The applicant submitted that its current selling prices of products are 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 was calculated for the purpose of the relief sought. The applicant then

added a reasonable profit margin based on an international study. The study indicated that the steel industries across the world require a 17% average EBITDA (that is, Earnings before Interest, Tax, Depreciation and Amortisation) margin to be sustainable in the long term. However after taking into account South African conditions It was determined by the applicant that the EBIDTA should be higher than the 17% EBIDTA.

When 17 % EBIDTA is used the price disadvantage to be applied as a safeguard measure was found to be 20%.

#### **Commission's Consideration**

The Commission in calculating the safeguard measure decided to take a balanced approach regarding the measure to be imposed, and hence decided to use 10% EBIDTA which is used on the pricing principle agreement with government, instead of the 17% proposed by the applicant.

When 10 % EBIDTA is used the price disadvantage to be applied as a safeguard measure was found to be 12%

#### **Comments by interested parties**

- (i) Interested parties indicated that ITAC did not explain the calculation of the relief sought.
- (ii) Brazil, Chinese Taipei and Turkey requested to be excluded from any definitive safeguard measure based on the fact that they are developing nations with imports of less than 3%.

#### **Commission's Consideration**

- (i) The calculation of the relief sought is contained in the application which was provided to interested parties, together with a step by step process of how the applicant calculated the relief sought. The applicant sought relief of between 24 and 27 percent.

- (ii) The investigation has been conducted in accordance with the Safeguard Regulations and WTO Safeguard Agreement, and therefore all processes and requirements contained have been followed, including those related to developing countries.

### Safeguard measures

The Commission made a final determination to recommended to the Minister of Trade and Industry that it is in the public interest to apply a safeguard duty of 12 percent *ad valorem* on certain flat hot rolled steel products. In the 12 percent *ad valorem* safeguard duty the EBITDA used is per the pricing principle agreement between AMSA and government. In addition, the 10% ordinary customs duty has been included in the duty calculation to account for the fact that the landed cost of imported goods includes any applicable duties. It further recommended that the duties be imposed for a period of three years, to be liberalised as follows: Year 1 - 12%; Year 2 – 10%; Year 3 – 8%.

The recommended safeguard duties to be imposed on certain flat hot-rolled steel products for all exporters, excluding imports originating from developing country members that meet the requirements for exclusion, are classifiable under the following tariff subheadings:

**Table 10.1: Applicable tariff subheadings**

Tariff sub-heading	Description
72.08	<b>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:</b>
7208.10	-In coils, not further worked than hot-rolled, with patterns in relief
7208.2	- Other, in coils, not further worked than hot-rolled, pickled:
7208.25	-- Of a thickness of 4.75 mm or more
7208.26	-- Of a thickness of 3 mm or more but less than 4.75 mm
7208.27	-- Of a thickness of less than 3 mm
7208.3	- Other, in coils, not further worked than hot-rolled:
7208.36	-- Of a thickness exceeding 10 mm
7208.37	-- Of a thickness of 4,75 mm or more but not exceeding 10 mm
7208.38	-- Of a thickness of 3 mm or more but less than 4,75 mm

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

## **11. FINAL DETERMINATION**

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The Commission made a final determination that:

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

The Commission made a final determination to recommend to the Minister of Trade and Industry that it will be in the public interest to apply safeguard duties of 12 percent ad valorem on certain flat hot rolled steel products classifiable under the tariff subheadings contained in Table 10.1 above, for all exporters, excluding imports originating from a developing country member (List attached) that meet the requirement for exclusion. It further recommended that the duty be imposed for a period of three years, to be liberalised as follows: Year 1 - 12%; Year 2 – 10%; Year 3 – 8%.



**(i) Developing country list to be excluded from duty**

A safeguard measure shall not be applied to low volume from developing country Members. That is, where imports from a single developing country Member account for no more than 3 percent of the total imports of the product concerned, and provided developing country Members below this threshold on an individual basis do not collectively account for more than 9 percent of those imports, such imports shall be excluded from the measure.

**DEVELOPING COUNTRIES TO BE EXCLUDED FROM THE DUTY**

Afghanistan	Guinea	Panama
Albania	Guinea-Bissau	Papua New Guinea
Algeria	Guyana	Paraguay
American Samoa	Haiti	Peru
Angola	Honduras	Philippines
Argentina		Romania
Armenia	Indonesia	Russian Federation
Azerbaijan	Iran, Islamic Rep. of	Rwanda
Bangladesh	Iraq	Samoa
Belarus	Jamaica	Sao Tome and Principe
Belize	Jordan	Senegal
Benin	Kazakhstan	Serbia
Bhutan	Kenya	Seychelles
Bolivia (Plurinational State of)	Kiribati	Sierra Leone
Bosnia and Herzegovina	Korea, Democ. P. Rep. of	Solomon Islands
Botswana	Kosovo	Somalia
Brazil	Kyrgyz Republic	
Bulgaria	Lao People's Democ. Rep.	South Sudan
Burkina Faso	Latvia	Sri Lanka
Burundi	Lebanon	St. Kitts and Nevis
Cambodia	Lesotho	St. Lucia
Cameroon	Liberia	St. Vincent and the Grenadines
Cape Verde	Libya	Sudan
Central African Republic	Lithuania	Suriname

Chad	Macedonia, the F.Y.R. of	Swaziland
Chile	Madagascar	Syrian Arab Republic
Chinese Taipei (Taiwan)	Malawi	Tajikistan
Colombia	Malaysia	Tanzania, United Republic of
Comoros	Maldives	Thailand
Congo, Democ. Republic of the	Mali	Timor-Leste
Congo, Rep.	Marshall Islands	Togo
Costa Rica	Mauritania	Tonga
Côte d'Ivoire	Mauritius	Tunisia
Cuba	Mexico	Turkey
Djibouti	Micronesia, Fed. States of	Turkmenistan
Dominica	Moldova	Tuvalu
Dominican Republic	Mongolia	Uganda
Ecuador	Montenegro	Ukraine
Egypt, Arab Rep.	Morocco	Uruguay
El Salvador	Mozambique	Uzbekistan
Eritrea	Myanmar	Vanuatu
Ethiopia	Namibia	Venezuela, (Bolivarian Republic of)
Fiji	Nepal	Vietnam
Gabon	Nicaragua	West Bank and Gaza*)
Gambia, The	Niger	Yemen
Georgia	Nigeria	Zambia
Ghana	Pakistan	Zimbabwe
Grenada	Palau	
Guatemala		