Report No. 639

INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF SAFEGUARD MEASURES AGAINST INCREASED IMPORTS OF U, I, H, L AND T SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED, OF A HEIGHT OF 80 MM OR MORE AND OTHER ANGLES, SHAPES AND SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED STEEL PRODUCTS: PRELIMINARY DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No. 639: INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF SAFEGUARD MEASURES AGAINST INCREASED IMPORTS OF U, I, H, L AND T SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED, OF A HEIGHT OF 80 MM OR MORE AND OTHER ANGLES, SHAPES AND SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED STEEL PRODUCTS: PRELIMINARY DETERMINATION**

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PRETORIA
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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF SAFEGUARD MEASURES AGAINST INCREASED IMPORTS OF U, I, H, L AND T SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED, OF A HEIGHT OF 80 MM OR MORE AND OTHER ANGLES, SHAPES AND SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED STEEL PRODUCTS (STRUCTURAL STEEL): PRELIMINARY DETERMINATION

SYNOPSIS

On 19 June 2020, International Trade Administration Commission of South Africa (the Commission or ITAC) initiated an investigation for remedial action in the form of a safeguards against increased imports of structural steel through Notice No. 335 published in *Government Gazette* No. 43447 of 19 June 2020.

The application was lodged by Highveld Structural Mill (Pty) Ltd (Highveld Structural Mill) and ArceloMittal South Africa Ltd (AMSA) (Applicant), the only producer of structural steel in the Southern African Custom Union (SACU).

The investigation was initiated after the Commission considered that there was *prima facie* evidence to show that events cited by the Applicant can be regarded as unforeseen developments, which resulted in a surge in imports of the structural steel, causing serious injury to the SACU industry.

On initiation of the investigation, the WTO and the exporting countries which account for a significant proportion of imports of structural steel into SACU were notified of the initiation of the investigation.

Interested parties commented on the investigation. Their comments were taken into consideration by the Commission in making a preliminary determination.

The Commission made a preliminary determination that the events cited by the Applicant can be regarded as unforeseen developments. The Commission made a preliminary determination that a reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years. The requirements set out by the World Trade Organisation (WTO) and the Amended Safeguard Regulations (SGR) with regard to a surge in imports, are therefore not met. The Commission further made a preliminary determination that although the SACU industry experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors *other* than the increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry.

The Commission therefore made a preliminary determination to recommend to the Minister of Trade, Industry and Competition that the investigation be terminated.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

Highveld Structural Mill (Pty) Ltd (Highveld Structural Mill) and ArceloMittal South Africa Ltd (AMSA) (Applicant) lodged the application being the only producer of structural steel in the SACU.

Since its inception in the 1960's Highveld has always been the only manufacturer of the subject product in the Southern African Customs Union (SACU). Highveld sourced iron ore from Mapochs Mine (Pty) Ltd (Mapochs), processed it into iron and steel, produced billets and blooms that were rolled into the subject products, as well as certain flat steel products, and sold it to its customers.

In 2015, Highveld started experiencing financial difficulties. Highveld's financial position deteriorated to such an extent that on 13 April 2015, Highveld commenced business rescue proceedings. Mapochs commenced with business rescue proceedings on 21 April 2015. In July 2015, Highveld ceased production of all goods, including the structural steel.

Since the commencement of the business rescue proceedings, Highveld was able to refurbish the milling plants but could not source ore and could not produce iron and steel in order to produce blooms and billets for the milling process. It therefore had to find a source for such blooms and billets, either by importing it or by sourcing it locally.

In 2016, Highveld incorporated a new company called Highveld Structural Mill (Pty) Ltd. In December 2016 Highveld Structural Mill, Highveld and AMSA entered into a "contract manufacturing agreement" in terms of which Highveld Structural Mill will provide "manufacturing services" to AMSA, i.e. convert steel blooms into the subject products.

The blooms are manufactured by AMSA and transferred to Highveld that rolls the structural steel and rail products for AMSA. The blooms and final milled products remain the property of AMSA throughout. The structural steel is returned to AMSA that sells it into the market. AMSA sells directly to stockists or traders of the products concerned or to end users in the fabrication, construction or mining industry. Highveld produces the structural steel on behalf of AMSA.

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 of negotiations, South Africa and other SACU states did not foresee the following events:

- The unprecedented steep rate of increase in steel production capacity (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 structural steel);
- Record export volumes by countries with excess capacity, fueled 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 global oversupply of steel (including structural steel) has led to deterioration in the financial situation of steelmakers globally and also in the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector currently; 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 experience further increases in imports of structured steel (the subject product).

The Applicant submitted that although much of the data on unforeseen developments relates to crude steel produced in furnaces, crude steel is the feeding stock of mills to produce various steel products such as long or flat products and structural steel.

1.4 INVESTIGATION PERIOD

The data evaluation for the purposes of determining the increase in the volume of imports and serious injury covered the period 01 January 2014 to 31 December 2019.

1.5 INVESTIGATION PROCESS

1.5.1 The information submitted by the Applicant was verified on 02 July 2019. The Applicant was requested to update the information to 31 December 2019. Subsequent information provided after the on-loco verification was conducted, was verified on an on-going basis as provided.

1.5.2 The application was accepted as being properly documented on 15 June 2020.

1.5.3 The investigation was initiated on 19 June 2020.

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

- MACSTEEL Service Centres SA (Pty) Ltd.
- Aveng Trident Steel (Pty) Ltd
- Battershill Steel Industries - BSI
- Allied SteelRode
- NJR Steel
- ROBOR Group

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

- The European Commission;
- China Iron and Steel Association (CISA)
- Korea Iron and Steel Association (KOSA)
- Siam Yomato Steel (SYS)
- Taiwan Government
- Unique Ventilation and Support System (UVSS)
- Structa technology
- National Employer Association of South Africa (NEASA)
- Steel Service and Allied Industry
- Barnes group of companies and Scaw South Africa (Pty) Ltd
- International Steel Fabricators of South Africa
- Minerals Council of South Africa
- Southern African Institute of Steel Construction
- XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA (Pty) Ltd and NJR Steel Services
- Anglo-American
- Scaw Metals Group
- Government of Indonesia

1.6 COMMENTS FROM INTERESTED PARTIES

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

1.7 PRELIMINARY DETERMINATION

In its meeting of 13 October 2020, the Commission made a preliminary determination that:

- Events cited can be regarded as unforeseen developments;
- A reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years. The requirements set out by the WTO and the SGR with regard to a surge in imports, are therefore not met;
- Although the SACU industry experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors other than the increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry.

The Commission therefore made a preliminary determination to recommend to the Minister of Trade, Industry and Competition that the investigation be terminated.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

U, I, H, L and T sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more and other angles, shapes and sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded (subject product).

2.1.2 Tariff classification

The subject product is imported under the following tariff headings:

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of duty			
				General / MERCUSOR	EU	EFTA	SADC
72.16		Angles, shapes and sections of iron or non-alloy steel					
	7216.3	U, I or H sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more:					
	7216.31	U, I or H sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80mm or more. – U sections	kg	10%	Free	Free	Free
	7216.32	U, I or H sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80mm or more. – I sections	kg	10%	Free	Free	Free
	7216.33	U, I or H sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80mm or more. – H sections	kg	10%	Free	Free	Free
	7216.40	L or T sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more	kg	10%	Free	Free	Free
	7216.50	Other angles, shapes and sections, not further worked than hot-rolled, hot drawn or extruded.	kg	10%	Free	Free	Free
72.28		Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel:					
	7228.70	Angles, shapes and sections	kg	10%	Free	Free	Free

Comments by China Iron and Steel Association (CISA)

CISA stated that on 18 September 2015, the Commission initiated an investigation in the Government Gazette to investigate an application by Highveld Steel for the increase in the custom duty on structural steel classifiable under tariff subheading 7216.31, 7216.32, 7216.33 and 7216.50 from free to 10 percent. CISA stated that this was followed by the initiation of the investigation on 23 October 2015 in the Government Gazette to investigate an application by AMSA for the increase in the custom duty on, amongst other HS7216.40 from free to 10 percent. Both Applicants allege, amongst other, that they experienced low price import competition.

CISA also stated that it is common cause that following these two investigations the custom duties were increased from zero to 10 percent ad valorem on structural steel classifiable under HS 7216.40 on 12 February and HS 7216.31, 7216,32, 7216.33 and 7216.33, HS 7216.40 and 7216.50 are jointly referred to as the "subject product".

What distinguishes the two cases from one another is that although Highveld Steel ceased operation in July 2015 the investigation was published on 18 September 2015 to increase the custom duties on the product not manufactured by the Southern African Custom Union (SACU) industry meaning the subject product must be imported.

CISA further indicated that in the Report 509 dated 24 November 2015 it was recorded in paragraph 52, by the Commission that the objections "centred on the following factors: there is no alternative for users of the product other than to import since the applicant is under business rescue and have ceased operations and there are certain products not manufactured by the Applicant that will be affected by the proposed duty increase". In paragraph 53, the Commission made findings that "the imposition of duties on the structural steel while EVRAZ has temporally ceased its manufacturing operations would have unnecessary cost-raising effects. As such the implementation of the proposed custom duties will have to be deferred until the applicant resumes its operation". This finding to defer the imposition of the tariff increase was recommended to the Minister and therefore the duty was only imposed on 4 August 2017, following the commencement of manufacturing by Highveld Steel in April 2017.

Comments by National Employers Association of South Africa (NEASA)

NEASA indicated that the steel manufactured by the Applicant is a non –alloy steel that is not classifiable under tariff subheading 7228.70, and it is alleged that the only difference in the physical properties of the non –alloy steel manufactured by the Applicant and the imported alloy products, is the addition of boron or chrome.

NEASA also indicated that the Applicant stated that the inclusion of the boron or chrome does not substantially change the physical properties of the product, yet the World Customs Organization (WTO) differs from the view and hence the separate tariff subheadings classifications.

NEASA stated that the tariff subheading 7228.70 provides for a very broad product spectrum of angles, shapes and sections, which extend beyond the scope of the product manufactured by the applicant. Any inclusion of the tariff subheading 7228.70 would also unfairly have an impact on products that falls outside the competitive spectrum.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA indicated that in the Commission's Report 560 in respect of the same products, it was found that a rebate item should be created for a number of products not produced domestically, which include tariff subheading HS7228.70 and HS7216.40. The Commission, on page 6 of its report, specifically found that these products are not manufactured locally and Highveld, the domestic producer, itself supported the application. In Section C1.1 (d) the applicant itself limited the scope of the product.

XA also stated that the current application therefore encompasses a range of products that are not produced in SACU and this only have inflationary effects, as the product do not compete with the product produced by the Applicant.

Comments by Korea Iron and Steel Association (KOSA)

KOSA stated that the production sections in South Africa was a unique situation that fell sharply due to the shutdown of domestic steelmakers from 2015 to 2017, as AMSA began operation in March 2017, production of steel products increased in South Africa, and 10% imports tariff were imposed on all countries except the EU, EFTA and SADC. KOSA also stated that South Africa's annual imports from South Korea dropped to around 10,000 ton after the Applicant began production and South Africa imposed 10 percent tariff on imports while the imports from the areas on which the Commission did not impose tariffs, remained high. KOSA stated that if a safeguard duty is implemented, Korea will be subjected to double remedy with a 10% import tariff and an additional safeguard measure, which is unreasonable.

KOSA further stated that based on the current available information, the present investigation does not satisfy the legal requirements of the Safeguards Agreement. It requested that if the Commission nevertheless determines that the continuation of the present investigation is inevitable, that the scope of the products under investigation be narrowed down.

Comments by Siam Yamato Steel (SYS)

SYS stated that there is inadequate structural steel supply in South Africa and the local producer (Highveld) was unable to satisfy the demand in terms of size rage and quality and delivery due to deteriorated machinery that has not been developing for quite some time, which led the importer importing the material from the exporter to supplement the local producer since 2007.

SYS also stated that it had only supplied the material to South Africa from then and also had monitored its trade to balance demand and supply not to affect the local industry in South Africa negatively.

Applicant's response

The Applicant stated that tariff subheading 7228.70, that provides for: "Angles, shapes and sections" of "other alloy steel" is included under section C1.3 (Customs classification) of the questionnaire in response to section C1.4 as a *possible tariff loophole and indicated that import and injury information on tariff subheading 7228.70 are not included in the application.*

The Applicant also stated that both tariff heading 72.16 and tariff subheading 7228.70 provide for "angles, shapes and sections". Tariff heading 72.16 provides for "angles, shapes and sections of iron or non-alloy steel" and tariff subheading 7228.70 provides for "angles, shapes and sections, of other alloy steel". The Applicant clarified that at the time of importation it will not be possible for the South African Revenue Service to distinguish between the products concerned manufactured from iron or non-alloy steel and that manufactured from other alloy steel.

The Applicant therefore submitted that the Commission should impose any safeguard measures on the applicable tariff subheadings under tariff heading 72.16 and on tariff subheading 7228.70, since, in order to circumvent the safeguard measures, importers will import the products under tariff subheading 7228.70. Importers of any "angles, shapes and sections, of other alloy steel" can then apply to the Commission for a rebate item on the safeguard duty on tariff subheading 7228.70. This rebate item should exclude the general customs duty applicable to tariff subheading 7228.70.

2.1.3 Possible tariff loopholes

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

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of duty			
				General / MERCUSOR	EU	EFTA	SADC
72.28		Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel:					
	7228.70	Angles, shapes and sections	kg	10%	Free	Free	Free

2.1.4 Production process

The Applicant stated that it assumes the production process of the imported subject product will be very similar to the following process:

- Iron ore, coal, fluxes and other raw material are blended and fed to pre-reduction kilns to produce iron.
- The molten iron is delivered from the iron plant to the steel plant and charged to furnaces to produce steel.
- The steel is transferred to continuous casting plants to produce billets, blooms or slabs.
- Profile products are rolled in structural mills.
- All sections are sawn to length, cooled and passed through a roll-straightener.

2.2 SACU PRODUCT

2.2.1 Description

U, I, H, L and T sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more and other angles, shapes and sections of iron or non-alloy steel, not further worked than hot-rolled, hot drawn or extruded; and angles, shapes and sections, of other alloy steel.

2.2.2 Production process

Blooms are manufactured by AMSA and transferred to Highveld's structural mill where the products concerned are milled and shipped to customers.

1. Melting stage

- There are two primary process routes by which blooms are manufactured:
  - the integrated process, which employs blast furnaces and basic oxygen furnaces (BOFs) as for AMSA, and
  - the non-integrated (or "mini mill") production processes which utilize an electric arc furnace (EAF) to produce raw steel.
- In both processes, pig iron, ferrous scrap, and/or direct reduced iron (DRI) are charged into BOFs or EAFs.

- In South Africa, nearly all steel for bloom production is refined from ferrous scrap in a BOF, along with other raw materials that may also be added as part of the BOF charge.
- Alloy agents are added to the liquid steel to impart specific properties to finished steel products. The molten steel is poured or tapped from the furnace to a ladle, which is an open-topped, refractory-lined vessel that has an off-centre opening in its bottom and is equipped with a nozzle. Meanwhile, the primary steelmaking vessel (either EAF or BOF) may be charged with new materials to begin another refining.
- Molten steel typically is further treated in a ladle metallurgy station, where its chemistry is refined to give the steel those properties required for specific applications.
- At the ladle metallurgy, or secondary steel making, station the chemical content (particularly that of carbon and sulphur) is adjusted and alloying agents may be added.
- The steel may be degassed (eliminating oxygen and hydrogen) at low pressures.
- Ladle metallurgy stations are equipped with electric arc power to adjust the temperature of the molten steel for optimum casting and to allow it to serve as a holding reservoir for the tundish.

2. Casting stage

- Once molten steel with the requisite properties has been produced, it is cast into a form that can enter the rolling process.
- Continuous (strand) casting is the method primarily used in South Africa.
- In strand casting, the ladle containing molten steel is transferred from the ladle metallurgy station to the caster and the molten steel is poured at a controlled rate into a refractory-lined tundish (reservoir dam), which in turn controls the rate of flow of the molten steel into the moulds at the top of the caster.
- The tundish may have a special design or employ electromagnetic stirring to ensure homogeneity of the steel.

- The strand caster is designed to produce blooms/billets in the desired cross-sectional dimensions, based on the dimensions of the sections and the design of the rolling mill.
- Blooms/Billets may be sent directly ("hot-charged") into the rolling mill or, depending upon the rolling mill's schedule, sent to a storage yard. While in storage, blooms/billets may be inspected and subjected to one or more conditioning operations (e.g. grinding or turning) to prepare them for hot rolling.

2.2.3 Application or end use

The products concerned are intermediary products in the fabrication, construction and mining industries.

2.2.4 Categories of users

- Fabrication industries
- Construction industries
- Mining industries

2.3 LIKE OR DIRECTLY COMPETITVE PRODUCTS ANALYSIS

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

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

	IMPORTED PRODUCT	SACU PRODUCT
Tariff Headings	7216.31, 7216.32, 7216.33, 7216.40, 7216.50 and 7228.70	7216.31, 7216.32, 7216.33, 7216.40, 7216.50 and 7228.70
Raw materials	• Oxygen • Ferro alloys • Iron ore • Dolomitic Lime • Coal • Anthracite • Electricity	The inputs used by AMSA to produce the blooms and billets are: • Oxygen • Ferro alloys • Iron ore • Dolomitic Lime • Coal • Anthracite • Electricity
Production process	The production process of the imported product is outlined above.	The SACU product production process is outlined in detail above.
Application or end use	The imported product is used in the following industries: • Fabrication industries • Construction industries • Mining industries	The SACU product is used in the following industries: • Fabrication industries • Construction industries • Mining industries

Comments by the China Iron and Steel Association (CISA)

CISA stated that the Application is with regard to tariff subheadings 7216.31, 7216.32, 7216.33, 7216.40, 7216.50, which each contains different shapes and sections and are also referred to as structural steel products. It is noted that in the application, the import statistics are given in total and not supplied on a tariff subheading basis making it impossible for their client to comment on the import data relating to the five different tariff subheadings, nor did the applicant make out a case regarding the import data relating to the specific tariff subheadings. It must be noted that the above five (5) tariff subheadings represent each unique product.

CISA also stated that it is given that unlike anti-dumping and anti-subsidy investigations, the assessment in a safeguard investigation is not limited to "like products" (a product which is identical, meaning- alike in all aspects, to the imported product or which has characteristics closely resembling those of the imported product), but covers also directly competing products. In this regard, it must be recorded that directly competing products are seen as products that can essentially be substituted – one for the other, meaning product which are suitable for the same purpose and accordingly are basically interchangeable.

From the application, it is evident that the applicant has not made a case that the five tariff headings products are like or directly competing products. In this regard it must be noted that structural products are not suitable for the same purpose. Therefore, one needs to understand why the industry needs to mould the steel section into different shapes and use these shapes in different applications, instead of using solid shapes (rectangular, square, circular or other polygons).

Comments by Korea Iron and Steel Association (KOSA)

KOSA stated that the imported product and the domestic product are not like or directly competitive. Korean imports provide greater efficiency to the end-user in terms of product, and any safeguard measures imposed on such steel products which the domestic industry is unable to produce, would only cause unnecessary disruption of essential supply to the downstream industry and end-users.

Comments by Barnes Group of Companies and Scaw South Africa (Barnes)

Barnes stated that the Regulations make it clear that the Commission is required to investigate whether a significant increase in the product concern has resulted to in serious injury, and referred the Commission in particular to paragraph 8.5 of the Regulations which provide that "Each of the factors mentioned in subsection 3 shall be considered for the like and directly competitive products only or where such analysis is not possible for the narrowest group of products for which such analysis can be made." It stated that the Applicant however makes a submission about the collective impact of imports of the product on Highveld, Highveld Structural Mill and AMSA generally, under all of the various different tariff subheadings, rather than specifically for the like and directly competitive products only.

Applicant's response

The Applicant stated that tariff subheading 7228.70, that provides for: "Angles, shapes and sections" of "other alloy steel" is included under section C1.3 (Customs classification) of the questionnaire in response to section C1.4 as a *possible tariff loophole and indicated that import and injury information on tariff subheading 7228.70 are not included in the application.*

The Applicant also stated that both tariff heading 72.16 and tariff subheading 7228.70 provide for "angles, shapes and sections". Tariff heading 72.16 provides for "angles, shapes and sections of iron or non-alloy steel" and tariff subheading 7228.70 provides for "angles, shapes and sections, of other alloy steel".

The Applicant clarified that at the time of importation it will not be possible for the South African Revenue Service to distinguish between the products concerned manufactured from iron or non-alloy steel and that manufactured from other alloy steel.

The Applicant therefore submitted that the Commission should impose any safeguard measures on the applicable tariff subheadings under tariff heading 72.16 and on tariff subheading 7228.70, since, in order to circumvent the safeguard measures, importers will import the products under tariff subheading 7228.70. Importers of any "angles, shapes and sections, of other alloy steel" can then apply to the Commission for a rebate item on the safeguard duty on tariff subheading 7228.70. This rebate item should exclude the general customs duty applicable to tariff subheading 7228.70.

Commission's consideration

The Commission is of the view that the SACU manufactured products and the imported products are like products for purposes of this investigation. The inclusion of products falling under 7228.70 is in order to prevent circumvention from taking place, since it will not be impossible for SARS to identify the difference in the products at the ports of entry.

Taking the above into consideration, the Commission made a preliminary determination that the SACU products and the imported products are "like products", for purposes of comparison, in terms of the Amended Safeguard Regulations.

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

Industry Standing (Total domestic production of like goods for the 12 months preceding the lodging of the application)				
Producer	Production volume- Support Application 2019 (Tons)	Production volume- Oppose application	Production volume- Neutral	Production volume- TOTAL (Tons)
Highveld steel and AMSA	100%		-	100%
Total SACU	100%	-	-	100%

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

4. UNFORESEEN DEVELOPMENTS

4.1 Requirements of Article XIX of GATT

Article XIX of the GATT provides as follows:

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

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

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

4.2 Information submitted by the Applicant

The Applicant stated that in the safeguard investigations on "certain flat hot rolled" and "cold rolled" steel products the Commission found the following to be sufficient unforeseen developments during the Uruguay Round (between 1986 and 1994) that ended more than 24 years ago that led to increased imports of the products concerned:

- The unprecedented steep rate of increase in steel production capacity (more than doubled since 1994) to support growing construction and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies;
- The significant market downturns in emerging (and other) economies and the resultant contraction of demand for steel that contribute to the imbalance between capacity and demand, that is, the global oversupply of steel (including structural steel);

- Record export volumes by countries with excess capacity, fueled 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 over capacity and a flood in the market of low priced products, and the fact that their markets are now protected contracts the global demand for steel even further, exasperating the problem of increased imports into the SACU;
- The global oversupply of steel (including structural steel) has led to deterioration in the financial situation of steelmakers globally and also the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector today; and
- Despite slowing demand growth and the existing excess capacity, there are several new investment projects underway and planned (especially in current net-importing countries) in the steel industry that will result in global steelmaking capacity to continue to expand and causing the SACU to expect further increases of imports of structural steel (the subject product).

The Applicant also stated that the Commission found that although much of the data provided in these investigations relates to crude steel, crude steel produced in furnaces cannot be used as it is and needs to be reworked at various mills to produce either long or flat products.

The Applicant stated that the same applies to the product milled and rolled by Highveld. The blooms and billets (crude steel products) currently produced by AMSA and those previously produced by Highveld, can only be processed further into either long or flat products. In Highveld's case this can currently only be processed into the products concerned. AMSA therefore either takes the blooms and billets into its own medium -, bar - or rods mills, or transfer it to Highveld for processing into the goods concerned.

The Applicant indicated that before turning to each circumstance, it should be noted at the outset that although much of the data below relates to crude steel produced in furnaces, crude steel is the feeding stock of mills to produce various steel products such as long or flat products and, for the applicant's purposes, structural steel.

The Applicant provided a publication from the World Steel Association, "World Steel in Figures 2018". The publication reported that production of crude steel increased gradually from 1950 to 1980. From 1980 to 2000, the period over which the Uruguay Round was held, there were no significant increases in the production of crude steel. The publication further reported that from 2000 to 2017 production increased from 850 million tonnes to 1,689 million tonnes, an increase of 99%.

The Applicant indicated that at the time of the Uruguay Round it could not have been foreseen that production will double in ten years. This was not the trend in the preceding decades: from 1970 to 1980, production increased by 21%, from 1980 to 1990 by 7% and from 1990 to 2000 by 10%. From 2000 to 2010 however, it increased by 69%. This significant and unexpected increase could not have been foreseen at the time.

Comments by National Employers Association of South Africa (NEASA)

NEASA stated that the applicant pointed out that the referred Commission Reports 511 and 555, much of the data relates to crude steel, and with its comments concerning unforeseen events during the Uruguay Round (between 1986 and 1994), further rely on crude steel produced at furnaces, which is the feeding stock of mills to produce various steel products.

NEASA also stated that the presentation to blanketly apply the investigation rational of Report 551 and 555 that focused on "certain flat hot rolled and cold rolled steel products" to the current investigation Safeguard Application is factually flawed and opportunistic. Hot rolled and cold rolled steel are classified as primary input product or raw material that are positioned at the beginning of the steel production process. The downstream manufacturing process and products concerned that use these raw materials are separate from the primary production and diverse in nature, with structural steel production being the one of the downstream categories.

NEASA stated that in reliance on the World Steel Association publication "World Steel figures 2018" as per Annexure E.1 of the application, the narrative is set of gradual crude steel increased from 1950 to 1980. The Applicant incorrectly state that 1980 to 2000, was the period when the Uruguay Round was held and during which no significant increase in the production of crude steel were experienced. NEASA indicated that such portrayals are not correct, as the data from Annexure E.1 clearly depicts. The production of crude steel rose from 1950 to 1980 with 279.37 percent, for the period 1950 to 1995 with 298.41 percent and for the period of 1980 to 2000 with 18.55 percent. The growth from 1950 to 2000 was 349.74 percent. Over the period 2000 to 2017 of the crude steel production increased by 103.53 percent.

NEASA also indicated that a substantial increase in steel production took place and was known between 1950 and 2000. Therefore, the negotiators at the WTO would have been aware of the exaggerated growth of the steel production capacity and thus the increase capacity and production should have been and were foreseen. The average increase per year over the period 1950 to 1980 was 9.31 percent, for 1950 to 2000, it was 6.99 percent and for 2000 to 2017, it was 6.09 percent.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA stated that in US- Steel Safeguards, The Appellate Body held as follows:

"it is evident, therefore that not just any development that is "unforeseen" will do, to trigger the right to apply a safeguard measure, the development must be as to result in increased imports of the product "such product: that is subject to the safeguard. Moreover, any product, as Article XIX:1(a) provides, may, potentially, be subject to that safeguard measure, provided that the alleged unforeseen development result in increased imports of that specific product (such product). XA stated that they agree with the panel that, with respect to the specific products subject to the respective determinations, the competent authorities are required by Article XIX:1(a) of the GATT to demonstrate that the unforeseen development "identified have <u>resulted</u> in increased imports of the specific products subject to each safeguard measure at issue.

XA also stated that it is specially noted that the Applicant has not submitted any evidence relating to structural steel and even less as regards the different products U, I, H, L and T sections. <u>All information relates to crude steel, which does not form the subject of this investigation</u>

XA indicated that the Applicant submitted Annexure E1 (World Steel brochure) which shows that there were 5 year period during which growth in the world steel industry exceeded the growth period in 2005-2010, 2010-2015, 2015-2017. According, this cannot be regarded as an unforeseen development but only as a foreseen development. This further confirmed by the panel's decision in Argentina-Preserved Peaches, where it included that the investigation authorities had to consider what had happened in previous periods in determining the unforeseen development.

Comments by Barnes Group of Companies including Scaw South Africa (Barnes)

Barnes stated that unforeseen development is defined as an event or chain of events that was unforeseen at the time the WTO Member negotiated its concessions, Barnes submitted that none of the developments mentioned in the application can be said as unforeseen.

Barnes also stated that the notice indicates that unforeseen developments and the effect of the obligation incurred under the GATT 1994 led to the increased volume of imports in absolute and relative terms. None of the events described in the notice can be described as unforeseen. The production of crude steel production rose from 1950 to 2005 by more than 500 percent to put this in a better perspective, crude steel production increased from 1950 to 1995 with 298% and from 1995 to 2014 only with 121%. A substantial increase in steel production took place and accordingly, was already known and foreseeable between 1950 and 1995 and hence, was apparent during the Uruguay Round negotiations in 1986-1994.

Barnes further stated that the applicant should not be permitted to use the safeguard duty process in order to avoid adjusting to normal and foreseeable changes in the global trading conditions, in the same way as all other global producers.

Commission's consideration

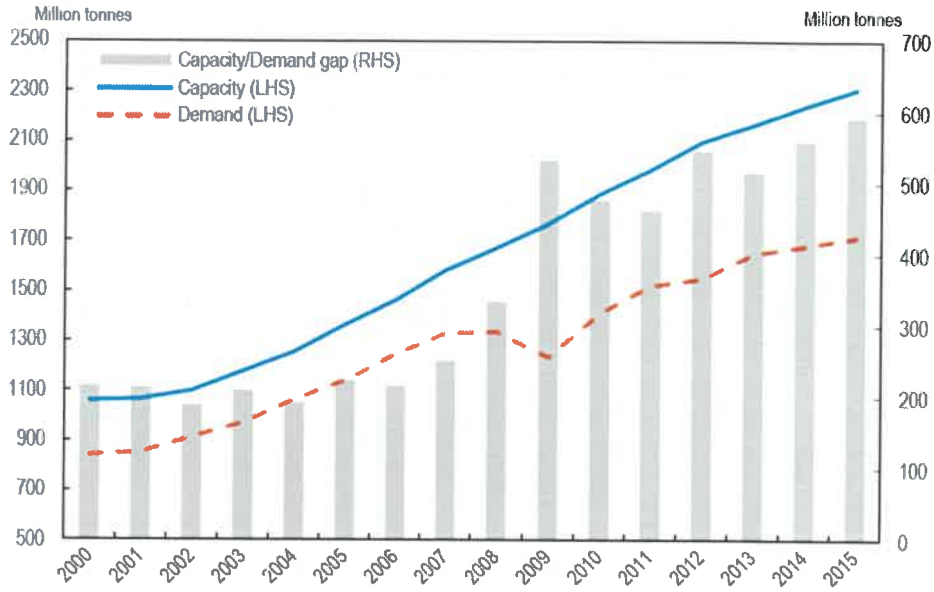
The Commission considered that the Applicant has provided sufficient evidence to prove that the global capacity increase was unforeseen. It would not have been possible for the negotiators to foresee that post 1994 China will be a major exporter of crude steel, especially taking into account that at the time of tariff concessions China was the major importer of steel.

The Applicant also provided a report published by the Organisation for Economic Cooperation and Development (OECD) in 2015 and stated the following:

- **Excess capacity remains high.** The global steel industry's capacity to produce steel has more than doubled since the early 2000s to support growing construction and manufacturing activity, as well as to help build infrastructure particularly in emerging economies. With investment projects continuing to increase in a number of economies, and while steel consumption growth is anticipated to remain moderate, the global imbalance between capacity and demand will continue to pose risks for the industry for the foreseeable future (see the graph below), unless more concerted efforts are made by industry and governments to address the challenge.

  Global nominal steelmaking capacity is projected to increase to 2.36 billion tonnes by 2017, up from 2.16 billion tonnes in 2013.

  Non-OECD economies will continue to lead the capacity expansion in the global steel industry, with their share of world capacity expected to increase to 71.4% by 2017.



- **Government interventions are contributing to global excess capacity.** Specific concerns related to government steel policies include continued government subsidies (notably subsidies for the creation of new capacity or the maintenance of inefficient capacities) and continued approvals for new steel facilities. Governments have also noted that trade related measures, constraints on foreign investment, and the activities of government financial agencies are contributing to global excess capacity and creating difficulties for the industry in addition to weak market conditions.
    - Canada found imports of structural steel products from China, Korea and Spain caused injury to its industry in 2017.
- **Excess capacity is hurting the global steel industry.** Excessive levels of steelmaking capacity have important implications for the steel industry, resulting in over-supply, low prices, weak profitability, bankruptcies and localised job losses. Given the global nature of the industry, excess capacity in one region can displace production in other regions, thus harming producers in those markets and creating risks for trade actions and government interventions to protect domestic industries. It can also lead to wasteful energy use and thus have negative environmental impacts.

The Applicant further provided a publication titled: "China's Steel Industry and Its Impact on the United States: Issues for Congress" (2010), which stated that Chinese consumption of crude steel in 1986 was 75.7 million metric tonnes, its production was only 51.9 million metric tonnes. During the WTO negotiations, China was a major export market for the steel industry. From 2000 steel supply in emerging markets, not only met domestic demand, but also began to outpace consumption.

- **Record steel exports**

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

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

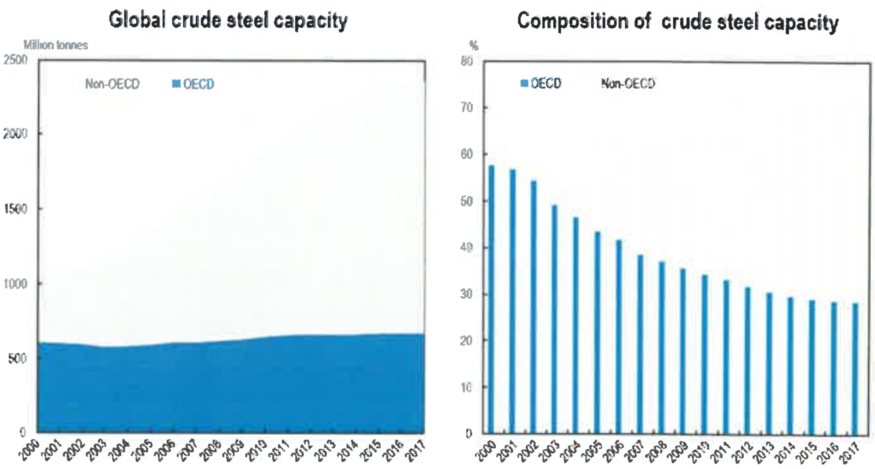
The Applicant stated that the OECD paper referred to above examine the link between excess capacity and profitability. The financial performance of the industry is worse now than it was during the global steel crises of the late 1990s, in large part due to the significant excess capacity that exists today. Given the global nature of the industry, excess capacity in one region can displace production in other regions, thus harming producers in those markets and creating risks for trade actions and government interventions to protect domestic industries.

The Applicant also stated that the excessive levels of steelmaking capacity have negative implications for the steel industry, resulting in oversupply, low prices, weak profitability, bankruptcies and localised job losses. The OECD paper states that global excess capacity is one of the main challenges facing the global steel sector, today. The results of heightened exports can be seen in the increase in imports of the subject product into the SACU.

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

The Applicant provided information from the OECD publication that indicates that global steelmaking capacity will continue to expand with a projecting of a slowdown in steel demand. With investment projects continuing to take place in many parts of the world, nominal global steelmaking capacity is expected to climb by a further 120 mmt in the period leading up to 2017, bringing total worldwide capacity to 2 361 mmt. At that point, non-OECD economies are expected to account for approximately 71.4% of the world's total capacity. The Applicant also stated that due to the flexibilities of steel mills it is impossible to attribute a specific percentage to hot rolled flat products. However, as this is the input product for down-stream products, it must be presumed that capacity for the subject product will increase:

Figure 1. Nominal crude steel capacity in OECD and Non-OECD economies



Source: OECD Secretariat.

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

- **Contracting markets for the oversupply of steel**

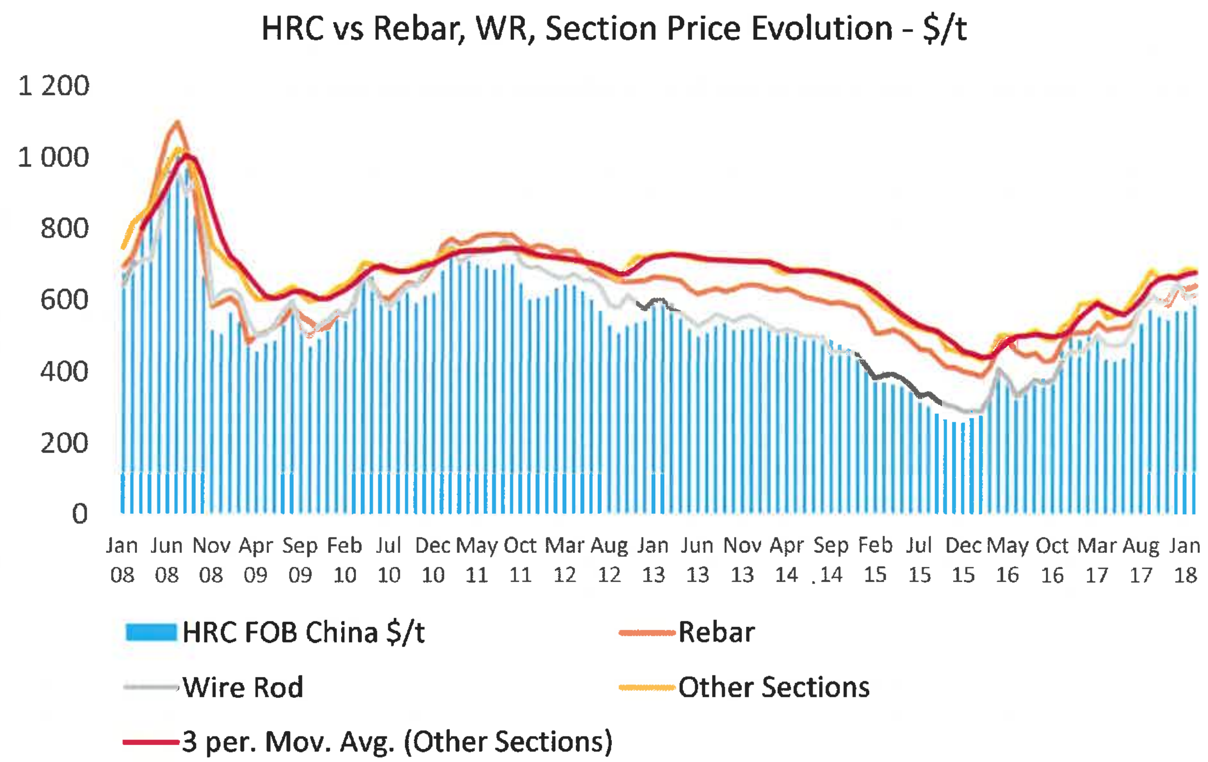
The Applicant stated that eight steel associations from Asia, the United States of America and Europe said in a joint statement in June 2015 that all regions were "suffering from a dramatic increase in unfair steel imports that is fuelled by massive global overcapacity." As a result, Europe, the United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

The Applicant also stated that on 12 February 2016 the European Union Trade Commissioner Cecilia Malmström announced in a press release, that: "The steel sector currently faces a range of challenges. EU trade defence instruments cannot on their own solve all those problems, but the European Commission is acting and applying the instruments at its disposal to support and ensure a level-playing field. We cannot allow unfair competition from artificially cheap imports to threaten our industry. I am determined to use all means possible to ensure that our trading partners play by the rules. We have so far put in place trade defense measures for more than 30 different types of steel products, and we will continue to effectively address legitimate concerns of our industry." The Applicant stated that the press release indicated that the EU has 37 trade defense measures in place on imports of steel products, while nine investigations are still ongoing. In parallel, the Commission has also proposed to modernise and make more effective the use of Trade.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

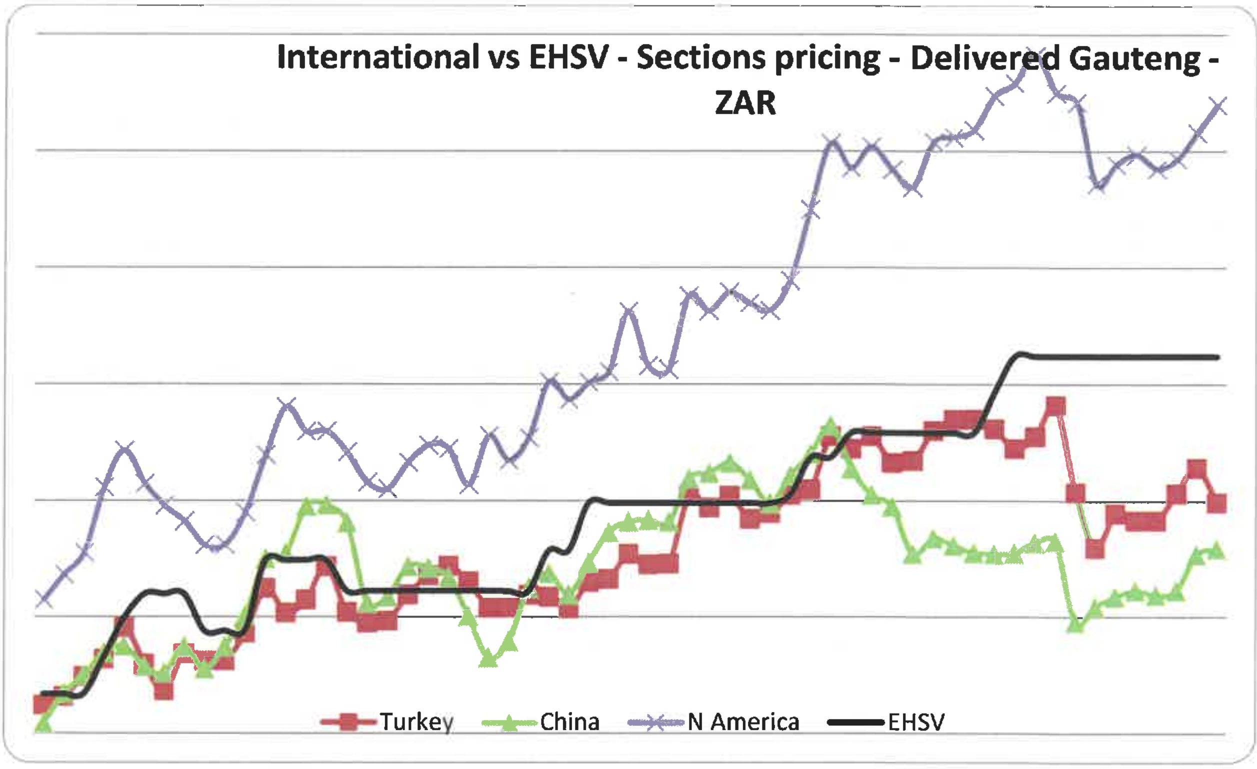
XA stated that what is clear from this graph is that there has been a virtually constant increase in capacity since at least 2003. There has been no sudden surge in capacity which again points to lack of any unforeseen developments. In addition, the Applicant's own information from pages 14-15 of world steel brochure contradicts the information in the graph as it indicated that between 2007 and 2017 the oversupply decreased by 19%. Thus this applicant itself has submitted contradicting information on which no reliance can be placed. XA also stated that there is no objective evidence in the application to show that "The unprecedented steep rate increase in steel production capacity) more than *double since 1994) to support growing construction and manufacturing activity as well as build infrastructure particularly in emerging economy.*

Structural Steel prices



The Applicant stated that the graph below details the comparative – delivered (landed) costs in Gauteng for **structural steel products** from 2010 to 2015. International section prices from Eastern countries from 2014 have been falling to below sustainable levels for Highveld. The graph details Highveld pricing at the unsuppressed levels as it was not economical to produce sections and sell them at pricing equivalent to the imported prices.

Highveld landed Gauteng price had to be similar to the landed price of import material to compete in the market place.



Around November 2010 prices for **structural steel products** in North America were around R7,000 per ton. Equivalent prices from Turkey and China were around R6,000 per ton. Highveld had to compete with prices out of China, i.e. around the R6,000 levels. Highveld was not able to achieve prices around the R7,000 levels. In fact, over the years the difference between price levels in North America and that from the East grew exponentially over the years from 2010 to 2015.

From January 2014 prices from China dropped from close to R9,000 per ton to around R7,500 per ton in June 2014 at rates far exceeding that in North America and from Turkey, for example. Although world prices dropped in 2015, prices from China dropped to levels far lower than the rest of the world and at levels Highveld could no longer compete. The levels at which prices from China dropped to prices significant lower than world process and at levels that Highveld could not make any profits, could never have been foreseen.

For the period 2013 to 2015 year to date, Highveld's total cost for the products concerned were higher than the landed cost of imported material. Over this period Highveld suffered significant losses. This was not sustainable and

Highveld went into business rescue and ceased production in July 2015. ArcelorMittal, together with Highveld, now faces the same dire circumstances.

The Applicant stated that before Highveld and ArcelorMittal entered into the manufacturing agreement, Highveld was the only producer of structural steel products in the SACU.

The above confluence of circumstances leads to a considerable oversupply of steel. Crude steel cannot be used as it is and needs to be reworked into steel products. This includes structural steel products that are the subject of this application. The above circumstances could not have been, and were not, foreseen at the time of the GATT 1994 negotiations.

At the time of the GATT negotiations in 1994, imports of structural steel into South Africa was around 8,000 tons per year in the 1990's. In the 2000's there were a few years in which there were surges in imports, but in general imports remained under 8,000 tons per year. However, since 2010 imports were consistently between 40,000 and 80,000 tons whilst Highveld was still in full production. This coincides with the periods set out above over which steel production capacity increased exponentially. Highveld iterates that it could not at the time of the GATT negotiations have been anticipated that steel production capacities would increase to the above levels and that the oversupply would lead the producers to find alternative markets for its steel and structural steel products. This resulted in an increase in imports of the subject products causing serious injury to Highveld.

Applicant's conclusion

The Applicant stated that the above confluence of circumstances leading to a considerable oversupply of steel could not have been foreseen at the time of the GATT 1994 negotiations and it has resulted in an increase in imports of the subject products causing serious injury to the SACU industry.

Comments by International Steel Fabricators (ISF)

ISF stated that the Highveld local prices to the landed imported Chinese and Turkish prices for the period 2010-2015 indicates that the Highveld prices were the same as the Turkish and Chinese prices. The graph states the price level from 2010-2015. Imports from China only represented 14%, Korea 16% and Thailand 27%. The world tonnage price in Rand terms shows clear upward trend from 2005 to 2019 i.e. from 4562 to 9274 an average increase of 5.2% compounded to 103%. The world price in dollar terms increased from $529 to $667 i.e. 26% over the same period. (Again the 2008 "blip "even breaching the $1000 caused the overall trend line to be slightly negative. As the USD consumer price index inflated by 31% over the same period, a slight real decrease in the world price occurred.

ISF also stated that the Applicant refer only to the GATT agreement period ending 1994 to qualify in terms of the unforeseen requirement. ISF stated that it is its opinion that this alone does not qualify. It is their findings that the analysis of the actual and substantiated information proves that all surge in the importation of said product during the 15 years was foreseen. The initial commencement of the importation of competitive said product is directly linked to Highveld 's own inability to adequately service the market as well as its later direct entry as a steel merchant competitor in the supply of said product to the fabricators. The author at that stage already warned Highveld management that it will lead to a surge in importation. The two surges in 2009 and 2012 period due to that procurement for new power station was foreseen. The 2015 and 2016 surges were foreseen as Highveld totally terminated its production of said product.

Comments by XA on behalf of *Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)*

XA stated that it has been shown that in order to find unforeseen development, it is incumbent on the applicant to submit information as to which unforeseen development were foreseen, how the actual developments differed from the foreseen developments, that these developments were unforeseen, that is, that they could and should not reasonably have been foreseen, that the information must be objective and relate to the specific product under investigation. It has been further shown that the applicant has failed to show that the developments it complains of were unforeseen, *for instance as growth in the industry between 1995 and 2017 was in line with the level of growth in the 24 year period to 1994, that allegations of additional investments are countered by its own information showing active step undertaken by the Chinese government to reduce capacity and that there is no objective information relating to the subject product at all.*

XA further stated that the applicant failed to demonstrate that there were any unforeseen developments. However, it is then a further legal requirement, both terms of South African law and international law, that is must be shown that the unforeseen development caused the increase in imports. The applicant did not even attempt to draw any such link in its application. On the contrary, the information shows that imports increased before some of the alleged unforeseen development took place and that imports decreased after the alleged unforeseen development, such as the alleged increased use of trade remedies by other countries.

XA stated that the Applicant has failed to:

- *prove the existence of any unforeseen developments;*
- *prove any object evidence in support of its allegations;*
- *provide any evidence related to the subject product; and*
- *show how any of these developments actually led to an increase of the subject product into SACU.*

XA stated that it is an absolute requirement that it must be shown that GATT obligations, including tariff concessions, are preventing the protection of an industry, it has not provided information on whether South Africa has incurred any GATT obligations on the product and if it did, what those obligations are, as such, a critical requirement for initiating an investigation is missing and the investigation should be terminated.

Comments by Minerals Council of South Africa (MCSA)

MCSA stated that the primary basis of fact that in the Uruguay Round of multilateral trade discussion, between 1986 and 1994, the negotiator did not foresee:

- *The future unprecedented steep increase in global steel production capacity in emerging economies to support their development;*

- *The downturn in emerging market economic activity resulting in a decrease in the domestic demand of steel, in these emerging economies, and consequential imbalance between capacity and consumption;*
- *The ensuing record export volumes by countries with excess capacity; and*
- *The global oversupply of steel because of the developments listed above*

The accuracy and factual nature of these developments is acknowledge, however, the development did not occur as sudden events, but rather an extended period.

Commission's consideration

Obligations incurred under the GATT 1994:

When South Africa became a member ("accede to") the WTO, it made certain commitments with regards to its tariff structure. The SA government committed to binding the ordinary customs duty on the imported products of steel products at 10 per cent ad valorem. The effects of these obligations were that the industry went through a restructuring that saw the state owned entity unbundled and privatised and the Government 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.

Commission's consideration

It is the Commission's opinion that 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 the levels stated could not have been foreseen prior to 1994. This increased production therefore filtered through all steel producing markets in the world, especially led by the increase in production from China as both a high producer and consumer of steel including the subject product.

This increased production led to an oversupply of steel and the subject product in the global markets, and this oversupply was unforeseen. The oversupply of steel and the subject product is a world phenomenon, as producers and consumers of the subject product reduced their consumption patterns of the subject product, however production continued, leading to world steel and the subject product filtering through all world market as exports from producing countries, such as China increased. This is seen by the massive exports of the steel and 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 in the world markets which has filtered through their markets.

Therefore, the unforeseen development considered by the Commission is that it could not have been foreseen that world steel production would have increased at to levels as high as these after 1994, this increase then led to an oversupply of steel throughout the world. The oversupply is also helped by contracting demand in steel all over the world, thus resulting in steel producing economies looking for other markets or exports for its steel.

It is the Commission's opinion that all the points cited as unforeseen development form a pattern.

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

5. SURGE OF IMPORTS

5.1 Import volumes

A surge in imports exists when the alleged increase in imports meets the requirements of them being recent enough, sudden enough, sharp enough and significant enough.

The provisions made by the Amended Safeguard Regulations with regard to surge to justify the imposition of safeguard measures is that the Commission should determine whether such increase in imports has occurred as a result of unforeseen developments and are being imported into the SACU in such increased quantities, absolute or relative to SACU production, and under such conditions as to cause or threaten to cause serious injury to the SACU industry.

The following table shows the volume of the imports from January 2014 to December 2019:

Table 5.1: Import volumes (Kg)

Year	2014	2015	2016	2017	2018	2019
Kg's		Highveld ceased production July 2015	December 2016 Highveld-AMSA agreement	Production: March and Sales: April 2017		
H721631: U sections	178 201	493 255	22 637 685	8 975 237	339 853	2 205 485
H721632: I sections	15 880 788	2 223 659	10 398 328	3 950 433	10 628 984	10 454 284
H721633: H sections	11 782 202	59 160 267	107 936 099	79 950 405	27 239 132	20 822 785
H721640: L or T sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more	165 751	170 612	2 235 012	783 402	146 968	57 487
H721650: Other angles, shapes and sections, not further worked than hot-rolled, hot-drawn or extrude	5 543 214	5 397 884	4 674 813	5 355 944	4 108 188	4 208 806
Total	**33 550 156**	**67 445 677**	**147 881 937**	**99 015 421**	**42 463 125**	**37 748 847**
Change from 2014		**101%**	**341%**	**195%**	**27%**	**13%**

The information in the table above indicates that the import volumes increased significantly from 2014 to 2015. Total imports increased by 101 percent from 2014 to 2015. Total imports continued to increase up to the year 2016 and thereafter decreased when domestic production resumed. In 2019 the imports continued to decrease to levels just higher than 2014.

Comments by European Commission

The European Commission indicated that Article 2.1 of the WTO Agreement on safeguard (WTO AS), safeguard measures can only be applied if it has been determined that:

"Such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic that produces like or direct competitive products. In addition, WTO jurisprudence "requires that the increase in imports must have been recent enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury"

The European Commission also stated that while imports increased during the investigation period (2014-2019) there are serious doubts that this increase is in line with the requirements established by WTO case law. The sharp increase in imports took place in 2015 and 2016 (+101% and +120% respectively) and cannot be considered as "recent enough. According to the complaint, imports fell by 33% in 2017, 57% in 2018 and 11% 2019 i.e. the most recent period. The increase of imports in 2015 and 2016 was the consequences of a complete shutdown of domestic production.

The European Commission indicated that the WTO jurisprudence has also established that a determination of whether there is an increase of imports cannot, therefore, be made merely by comparing the end points of the period of investigation, indeed in cases where an examination does not demonstrate for instance, a clear and uninterrupted upward trend in imports volumes, a simple end –point –to -end-point analysis could easily be manipulated to lead to different results, depending on the choice of end point.

The European Commission further indicated that a demonstration of any increase in imports between two points in time is not sufficient to demonstrate increased imports for purpose of Article XIX and 2.1 rather, as competent authorities are required to examine the trends in imports over entire period of investigation.

The European Commission stated that in this case there's no clear and uninterrupted upward trend. The most recent period shows a significant decrease of imports during three consecutive years.

Comments by Korea Iron and Steel Association (KOSA)

KOSA indicated that Article 2.1 of the WTO Agreement clearly states that the member of WTO, which South Africa is, may apply for a safeguard measure only in a certain condition

"A member may apply a safeguard measure to a product only if that member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic that produces like or direct competitive products".

KOSA also indicated that the WTO Agreement on safeguards can only be imposed when there is a solid ground to determine the following characteristics (1) The increase of imports, (2) the serious injury, (3) the causation link between the increased imports and serious injury. The imports of sections show a rapid decrease during the recent three years of the period of investigation and the fluctuation of the imports flow due to the change of the business environment in the South African steel industry, therefore does not even meet the first requirements of the WTO Agreement on safeguard, which is increased imports.

KOSA stated that in 2017, AMSA took over a Highveld Structural Mill in South Africa and resumed operation, at the same time the 10% tariffs were imposed on imported steel sections and imports declined sharply for the third consecutive year. Over the past three years, production in South Africa has increased significantly while imports have dropped dramatically. Therefore, it does not apply to the increase imports, which is a safeguards requirement.

Comments by Barnes Group of Companies (Barnes)

Barnes indicated that the Applicant refers to increased quantities of imports and serious injury for the period of 01 January 2014 to 31 December 2019. This clearly does not meet the requirements set out in the Regulation that a safeguard measure can only be imposed in response to a rapid increase in imports.

The application measures only increase relative to 2014, however there is very high variation year on year for example 2018 saw a 41% total decrease in the value of imports relative to 2017, whether there is an oversupply in South Africa and a reduce in price (which the application alleges) cannot be determined without identifying changes over the period. The 101% increase referred to on page 38 relates to volume increase between 2014/15, but ignores the 33% decrease between 2017/16 or the 57% decrease between 2017/18.

Comments by XA on behalf of *Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)*

XA quoted that "A safeguard measure may only be imposed in response to a rapid and significant increase in imports of a product as a result of an unforeseen development"

XA stated that the statement above is categorical since the imports of the subject product increased in 2015 and 2016 as a result of the closure of the domestic industry (self-inflicted injury), there has been no surge of imports and no safeguard measures can be undertaken, let alone the safeguard measure imposed. If the Commission decides to continue with this investigation, the 2015 and 2016 information should be disregarded, any safeguard measure should consider information from 2017 when there was domestic production.

XA also stated that the applicant alleges that the Commission has previously found that a period of 5 years is recent enough for the purposes of finding increased imports in safeguard investigations. However, while there is nothing wrong with having a 5 year investigation period, it is important to note that the Appellate body has ruled` explicitly that the increase imports must be the result of unforeseen developments and that this requires a temporal link between the unforeseen development and the increased imports.

XA stated that the Applicant claimed that as the domestic consumption decreased and the economy slowed, commodity prices placed pressure on the mining activities and Government infrastructure spend is slow to materialize, Highveld experienced a decrease in domestic orders and had to sell the remaining capacity at lower revenue. At the same time imports increased and imports prices decreased.

XA stated that imports increased because the domestic industry could not supply. According to XA the information submitted by the Applicant shows that there were a wide variety of causes for Highveld's injury yet virtually nowhere is any reference made to imports. Highveld financial statements for 2014 indicate a variety of reasons for its poor performance but does not mention imports, while the business rescue plan only refers to imports in passing. In 2014 the Applicant itself concedes is the year before imports increased, the industry experienced significant losses. These losses increased in the first half of 2015, which forced the industry into business rescue. When it stopped production, there was no option but to import the structural steel, which is why 2015 shows a significant increase in imports of the subject product. In 2016, there was no domestic production, which means all local requirements had to be imported. This is clearly reflected in the imports statistics. In 2017, when AMSA restarted the domestic industry the second quarter, imports immediately started to decrease again. In 2018, imports decreased further and AMSA gained significant market share, despite the established links converters had with their oversea suppliers. In 2019, imports decreased even further, showing that imports had decreased for 3 years in a row.

XA stated that the Appellate Body has ruled on a number of occasions that the increase in imports must have been recent. In Argentina –Footwear it specifically rejected a scenario similar to the current to the current scenario, where imports had decreased for a number of consecutive periods and found that this did not meet the requirements of Article XIX of GATT or the Agreement on safeguard.

Commission's consideration

According to the information provided by the Applicant, the surge of imports took place in the years 2014 – 2015. Highveld ceased production in July 2015 and resumed production in March 2017 and sales in April 2017 under its manufacturing agreement *with AMSA. The increase in imports in 2015 and 2016 is therefore as a result of the unavailability of domestically produced structural steel. After resuming sales in April 2017 the total imports decreased by 146 per cent by December 2017; decreased by 168 per cent by December 2018 and further decreased by 14% in 2019.*

The volume of imports has therefore declined continuously and significantly during each of the most recent years of the period, to a just higher than that in 2014.

Comments received with regard to Article 9.1 of the Safeguard Agreement

Comments by China Iron and Steel Association (CISA)

CISA stated that it is also important to note that Highveld Steel ceased the manufacturing of the subject products between July 2015 and April 2017. As a result, the customers of Highveld Steel that required the subject products, had to import all their needs over this period, as no local manufacturer existed. It is exactly why the commission also not imposed the increased customs duty immediately but deferred the imposition – as there was no domestic manufacturer and the duties would "have an unnecessary cost-raising effect". The natural effect would be that the imports would have remarkably increased during this period when no domestic industry existed.

CISA stated that Article 9.1 of the Safeguard Agreement stipulates that:
"Safeguard measures shall not be applied against a product originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed 3 per cent".

The People's Republic of China as a developing country must be considered on the condition that its share of imports of the subject product does not exceed 3 percent of the subject product, to be exempted from the safeguard duty.

The panel in the Dominican Republic – Safeguards Measures on the imports of Polypropylene Bags and Tubular Fabric – Final report of the panel WT/DS415/R WT/DS416/R, WT/DS417/R, WT/DS418/R (Dominican Republic–safeguards measures report held that "Members which apply safeguards measures are obliged to adopt all reasonable measures available to them to exclude all developing countries that meet the requirements in article 9.1 of the Agreement on safeguards.

Based on the SARS imports data, imports for 2019 of the subject product do not exceed 3 percent, but had an import share of 3 percent and it accordingly submitted that China does comply with Article 9.1 of the Safeguards Agreement for exemption, should there be a prima facie case presented by the Applicant, which CISA denies as being the case.

Comments by Taiwan Government

Taiwan indicated that imports of the iron or non-alloy steel products under the investigation between 2014 to 2019 from Taiwan to South Africa were consistently less than three percent. Pursuant to Article 9.1 of the Agreement on safeguard, safeguards measures shall not be applied against products originating in a developing country member as long as its share of imports of the product concern in the importing member does not exceed the three percent (de minimis). Thus, if the Ministry decides to impose final safeguard measures on the products concern in this case, it would only be fair that Taiwan is exempted from such safeguard measures.

Comments by Government of Indonesia

The Government of Indonesia stated that they have examined the export data which was administered by the Indonesia statistics agency. It was confirmed that there was no export activity of the subject product on the safeguard investigation from Indonesia to South Africa. Therefore, on the basis of Article 9.1 of the WTO Agreement of the safeguard which provides special treatment for the WTO developing country members. The GOI respectively request the Commission to exempt Indonesia from the likelihood of the safeguard measures imposition against the imports of U, I, H, L and T sections of Iron or non- alloy steel.

Commission's consideration

The Commission considered comments made with regard to Article 9.1 of the Safeguard Agreement. The Commission is of the view that should it decide to impose Safeguard measures, imports originating from developing countries that are members of the WTO shall be exempted as long as their share of imports of the product concerned into the SACU does not exceed 3 per cent.

5.2 Increased imports

Article 4.5 of the Safeguard Agreement points out that to examine the impact the increased imports have caused or are threatening to cause serious injury to a domestic industry, the competent authorities shall evaluate, in particular, the rate and amount of the increase in imports of the subject product in absolute and relative terms.

The following table shows the volume of imports of the subject product as sourced from the South African Revenue Service (SARS) relative to production for the period 01 January 2014 to 31 December 2019.

In the following sub-section, the impact of imports is analysed in absolute and relative terms to production for the full year period 01 January 2014 to 31 December 2019.

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

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Production from March 2017	2018	2019
	Highveld			AMSA		
Imports	33,550,156	67,445,677	148,262,189	99,462,008	42,998,438	37 748 847
Applicant total production	100	46	0	35	63	41
Imports as a % of the Applicant's output	100	439	0	839	206	272

*These figures were indexed due to confidentiality using 2014 as the base year

The table above indicates that imports as a percentage of the Applicant's output increased significantly in 2015 as a result of the Applicant ceasing to produce the subject product. In 2016, there was no production of the subject product in the SACU. The Applicant resumed production of the subject product in March 2017. Imports as a percentage of Applicant's output declined in 2018 as compared to 2017, it however increased in 2019 as compared to 2018. Both imports and the Applicant's output declined.

Commission's consideration

The Commission noted that import levels in an end-period-to-end-period comparison show that import levels have almost returned to the pre-surge level, being only up 13 per cent from import levels in 2014. The trend in import volumes in the post-surge period shows a continuous and significant decline. The decrease post-surge has been ongoing and this intervening decrease is nearly equal to the initial increase to the surge level. This type of trend led the Panel in Argentina - Footwear (EC) to hold that, "[w]here ... the volume of imports has declined continuously and significantly during each of the most recent years of the period, more than a 'temporary' reversal of an increase has taken place".

Based on the above, the Commission made a preliminary determination that a reversal in the increase in imports has taken place and the surge in volume of imports does not meet the requirements set out by the WTO and the SGR.

6. SERIOUS INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following serious injury analysis relates to Highveld for the period 01 January 2014 to 31 July 2015 and to AMSA for the period 01 March 2017 to 31 December 2019. AMSA is currently representing 100 per cent of the domestic industry by production volume.

Article 4.1 (c) states that "in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products".

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

6.2 CONSEQUENT IMPACT OF THE INCREASED IMPORTS ON THE INDUSTRY

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

6.2.1 Actual and potential decline in sales

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

Table 6.2.1: Sales volumes

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld			AMSA		
SACU Sales Volume	100	46	0	32	63	46

These figures were indexed due to confidentiality using 2014 as the base year

The information in the above table indicates that the Applicant's sales volume decreased by 54 index points from 2014 to 2015. The Applicant ceased sales of the subject product in July 2015. The Applicant resumed sales of the subject product in April 2017. The Applicant sales increased in 2017 and 2018. The sales volumes however declined slightly in 2019.

6.2.2 Profit

The following table shows the Applicant's profit situation:

Table 6.2.2: Profits

	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
Gross Profit Margin	100	119	-	52	66	44
Gross Profit per unit (ton)	100	147	-	111	-151	-103
Units sold (t)	100	46	-	0	0	0
Total Gross Profit	100	67	-	29	-100	-44
Net Profit Margin	100	125	-	216	20	28
Net Profit per Unit (t)	100	122	-	251	25	36

These figures were indexed due to confidentiality using the year ending 2014 as the base year

The Applicant stated that due to the surge of imports, its gross profit from its sales has decreased significantly from 2014 to 2015. In the same manner the net profit has also decreased significantly, therefore resulting in it suffering serious injury.

The table above shows that the Applicant was experiencing significant losses in 2014 financial year and that the loss situation has improved in the years 2017 and 2018. The Commission noted that the reason could be that 2017 analysis were made from a zero base as the Applicant shut all production activities in 2015 and that the improvement might not be a true reflection of what the actual position is.

6.2.3 Output

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

Table 6.2.3: Output

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Production from March 2017	2018	2019
	Highveld					
Capacity	100	100	0	100	100	100
Total Production	100	46	0	35	63	41
Production for SACU consumption	100	46	0	32	63	46
Capacity Utilisation	100	46	0	35	63	41

*These figures were indexed due to confidentiality using 2014 as the base year

The table above shows that the Applicant's production volume declined in 2015 in comparison to 2014 and that the Applicant ceased production in July 2015. There was no production in 2016. The Applicant resumed production in March 2017. The Applicant's production volume increased in 2017 and 2018. The production however declined in 2019 by 22 index points when compared to 2018. The decline in the Applicant's output could be attributable to the decline in the size of the market since the Applicant produces as per orders from its customers.

6.2.4 Market share

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

Table 6.2.4: Market share

*These figures were indexed due to confidentiality using 2014 as the base year

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld			AMSA		
SACU Sales Volume	100	46	0	32	63	46
Imports	33,550,156	67,445,677	148,262,189	99,462,008	42,998,438	37 748 847
Total Market	**100**	**74**	**80**	**80**	**75**	**58**
Applicant's market share	100	62	0	40	84	79
Market share held by imports	100	272	0	372	172	194

The above table indicates that the Applicant's market share declined in 2015 and that there were no sales of the subject products in 2016, as the Applicant ceased production. The Applicant resumed sales of the subject product in April 2017. The

Applicant's market share increased in 2017 and 2018 whilst the market share held by imports decreased significantly. The Applicant's market share decreased slightly in 2019 as compared to 2018, as a result of a decrease in production and a decrease in imports in the same year.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA stated that on the information provided in the application the Applicant gained approximately 32% market share in 2017 which translates to 53% market share during the nine months of the year it was in operation. This is also in line with the importer's domestic purchase data. In 2018, imports continued on a downward trend, the Applicant further increased its market share by approximately 70% as noted in the application.

6.2.5 Productivity

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

Table 6.2.5: Productivity

units	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
Total Production	100	46		35	63	41
Employees (manufacturing)	100	99		24	22	20
Units per employee	100	46		45	289	203
Total Employment	100	81		13	11	10
Total Investment	100	27		43	25	12
Output ratio	100	161		84	304	414

*These figures were indexed due to confidentiality using 2014 as the base year

The table above shows that productivity has decreased significantly when comparing 2018 financial year with the 2019 financial year. The output ratio increased significantly in 2017 compared to 2018.

6.2.6 Utilisation of production capacity

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

Table 6.2.6: Utilisation of production capacity

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Production from March 2017	2018	2019
	Highveld					
Capacity	100	100	0	100	100	100
Total Production	100	46	0	35	63	41
Production for SACU consumption	100	46	0	32	63	46
Capacity Utilisation	100	46	0	35	63	41

These figures were indexed due to confidentiality using 2014 as the base year

The Applicant's capacity utilization declined in 2015 and there was no production of the subject product in 2016. The Applicant resumed production of the subject product in March 2017. Although capacity utilization increased in 2017 and 2018, it decreased slightly in 2019.

6.2.7 Employment

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

Table 6.2.7: Employment

	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld					
Shifts	100	100		50	50	50
Workers per shift	100	100		48	43	40
Total Employment	100	81		13	11	10

These figures were indexed due to confidentiality using 2014 as the base year

The above table shows a decrease in the number of employees. The number of employees decreased significantly during the period of investigation. The Commission noted that the Applicant ceased the production and sales of the subject product from October 2015 to April 2017.

The Applicant provided the following price information:

6.2.8 Price Depression

Price depression takes place where the SACU industry's ex-factory selling price decreases during the investigation period.

The below table show the domestic industry's ex-factory selling price per ton.

Table 6.2.8 Price depression

R	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld			ArcellorMittal		
Net selling price per Ton	100	97		102	121	118

These figures were indexed due to confidentiality using 2014 as the base year

The above table shows that the Applicant's selling price has increased throughout the period of investigation. There was a slight decrease in selling price in the 2015 financial year but the prices increased after the Applicant resumed sales in April 2017.

6.2.9 Price undercutting

The following table compare the SACU industry's ex-factory prices with the landed cost of the imported product:

Table 6.2.9 Price undercutting

	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld			ArcelorMittal		
Net selling price per ton	100	97		102	121	118
Import FOB prices R/Ton	7 289	7 066	6 657	6 695	9 224	8.859
Landed cost R/Ton	8 018	7 773	7 323	7 364	11 069	10631
Price undercutting	100	97		267	-167	-126
Price undercutting %	100	100		250	-133	-100
Gross Profit Margin %	100	119		247	24	33

These figures were indexed due to confidentiality using 2014 as the base year

The table above shows that there was no price undercutting in the 2018 and 2019 financial years when you compare the Applicant's selling price and the landed price.

The Applicant stated that its prices follow the international prices. The Applicant stated that international prices improved in 2018 and it was able to increase prices between 2017 and 2018. The Applicant also stated that even at these prices it experienced gross margin losses. Prices out of China remain low at R6 151 per ton, undercutting the Applicant's prices.

The Applicant further stated that at the above landed costs of the imported like products it experienced gross losses as exhibited above and as a result price depression, suppression and undercutting.

Commission's consideration

The Commission noted that the Applicant's assertion is incorrect as the above table shows that the Applicant experienced no price depression or price undercutting as the imported product's landed price is more than the Applicant's selling price.

6.3 Summary - serious injury

Based on the above information, the evaluation of the injury information of the Applicant for the period 2014 to 2019 is shown in table 6.3.1.

Table 6.3.1: Serious Injury Indicators

	2014 - 2019
Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (kg)	Decreased
Net Losses (R)	Decreased
Output (kg)	Decreased
Market share (Applicant)	Decreased
Productivity (units per employee)	Increased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

Commission's consideration

The Commission considered that the Applicant ceased production in 2015 and resumed production again in March/April 2017. Serious injury therefore occurred with the closure of the plant in 2016. Although the Applicant resumed *production in 2017 and some improvement has taken place with regard to its financial position, the analysis over the period of investigation, being January 2014 to December 2019 indicates that it experienced serious injury over the period.*

The Commission is of the view that the Applicant experienced serious injury that led to the shutting down of all production facilities. When comparing the period of 2014 to the period January to December 2019 the Applicant's injury indicators show a significant decrease. The Applicant experienced decrease in sales, output, productivity, market share, and capacity utilisation. The Applicant is still making a loss.

Comments by European Commission

The European Commission stated that unlike in anti-dumping or anti-subsidy investigations, safeguards do not concern unfair imports and therefore the criteria required by the WTO to impose this type of measures are extremely strict in terms of the standard of injury and causality, the WTO jurisprudence has clearly concluded that the level of injury required for the imposition of the safeguard measures must be serious and therefore more important than that required for the imposition of anti-dumping and anti-subsidy measures.

The European Commission also stated that since the start of operations in mid-2017, the Applicant was able to improve performance: capacity utilization and production increased by 17%, sales by 44%, market share doubled, while market share of imports decreased by 48% over the same period. Gross profit margins are negative; however, this need to be analyzed in the content of the start-up period.

Based on the information provided it cannot be concluded that the domestic industry is suffering serious injury due to increased imports, any difficulties that the domestic industry may be experiencing are most likely linked to factors other than imports. In any event, imports decreased so the conditions to apply safeguards are not fulfilled.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA stated that Highveld, the biggest part of the industry, closed down completely, mainly as a result of factors endogenous to Highveld and very little reference is made to any role played by imports. The information of the industry prior to its closure is therefore irrelevant to the current inquiry, as imports had to provide the full market demand in the absence of domestic production. Once the production restarted, imports decreased for three years in a row, by a total of 75%. The industry's losses were significantly smaller than they were in 2014 or 2015 there was no price depression or price undercutting and price suppression was a result of increased input costs.

XA also stated that although employment decreased, this was as a result of over employment in 2014 and 2015, as clearly set out in the Business Rescue Plan. Over the past three years' sales, industry market share, production, employment, capacity utilization and productivity have all increased, while the industry's losses in 2019 were significantly lower than they were in 2014. Overall the information shows an industry that is strongly on the rebound.

Commission's consideration

The Commission noted the comments by the interested parties, that when you compare injury indicators for the period 01 July 2017 to 31 December 2019 there is a significant improvement on the Applicant's performance. In initiating this investigation, the Commission took into account the entire investigation period i.e. 01 January 2014 to 31 December 2019. The Commission took into account the fact that the Applicant ceased production of the subject product for two (2) years. When making a determination on injury 2014 was used as a base year.

The Commission made a preliminary determination that the SACU industry experienced serious injury during the period of investigation.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

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

The following table compares the market share of the SACU industry with that of imports for the full year period (2014 – 2019):

Table 7.1: Market share

*This table was indexed due to confidentiality using 2014 as the base year

Kg's	2014	2015 Highveld ceased production: July 2015	2016	2017 Sales from April 2017	2018	2019
	Highveld			AMSA		
SACU Sales Volume	100	46	0	32	63	46
Imports	33,550,156	67,445,677	148,262,189	99,462,008	42,998,438	37 748 847
Total Market	**100**	**74**	**80**	**80**	**75**	**58**
Applicant's market share	100	62	0	40	84	79
Market share held by imports	100	272	0	372	172	194

The above table indicates that the Applicant's market share declined in 2015 and that there were no sales of the subject products in 2016. The Applicant resumed sales of the subject product in April 2017. The Applicant's market share increased in 2017 and 2018, whilst the market share held by imports decreased dramatically. The Applicant's market share decreased slightly in 2019 as compared to 2018, as a result of a decrease in production and a decrease in imports in the same year.

Comments by XA Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA stated that "regarding the coincidence in the movements, they agree with the panel in US –Steel safeguards that upward movements in imports should normally occur at the same time as downward movements in injury factors in order for coincidence to be indicative of causal link. However, <u>this coincidence, by itself and</u>

without explanation, is not sufficient to establish a causal link between increased imports and serious injury or threat thereof. A worsening in the condition of a domestic industry may be wholly unconnected to increased imports and may instead be caused by one or more other development, occurring at the same time as increased imports, such as declining consumption, inefficient production methodologies, increased costs etc.

XA also stated Article 4.2(b) second sentence, confirms that factors other than imports may be causing injury at the same time as increased imports. By enquiring that injury caused by such factors not be attributed to increased imports, this provision seeks to ensure that safeguard measures are only applied in appropriated circumstances, that is, when increased imports are causing or threatening to cause serious injury, they therefore reject Ukraine's view that coincidence between increased imports and the worsening in the injury is sufficient in itself to raise a presumption that a causal link exits between these two developments.

XA further stated that where imports decreased, yet market share increased, this shows recession for that product and the authority should closely analyse the impact of the recession. This is clearly what happened in 2019, when imports decreased significantly, yet gained market share when compared to 2018. In the current investigation, it is evident that the Applicant's gross profit margin changed from -0.52 to -0.66 between 2017 and 2018, despite the fact that imports decrease by 57% over the same period. The Applicant's gross profit per tonne changed from 1.11 to -1.51 during this period and its total gross profit changed from 0.29 to -1.00. During the same period, its number of manufacturing employees also decreased and whereas there was price undercutting in 2017 there was no such price undercutting in 2018. All of these factors appear removed from trend in imports. In 2019 AMSA's production, sales and capacity utilisation all decreased, despite another significant decrease in imports. From the above XA stated that they believe that there is no clear coincidence between imports trends and trends in the industry's performance and even if some coincidence could be found, any injury would have been caused by other factors.

Comments by European Commission

The European Commission stated that with Article 4.2 (b) of the WTO AS, a determination of serious injury "shall not be made unless the investigation demonstrates, on the basis of objective evidence, existence of the casual link between increased imports of the subject concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports".

The European Commission also indicated that the evolution of imports is linked to a very specific situation of the SACU market, which is the closing down of all production from mid- 2015 until mid- 2017. Imports had then to cater the entire domestic demand and consequently they increased sharply.

WTO AS requires that there is a causal link between the increase of imports and serious injury of the domestic industry, this is not the case in this investigation since the increase in imports did not cause any injury to the domestic industry, simply because there was none.

The European Commission stated that the Applicant resumed local production, imports decreased significantly and continuously by 62%, while domestic industry sales increased by 44% over the period analyzed, therefore, factors other than the increase of imports must have had an impact on the situation of the domestic industry and need to be analyzed, the complaint refers to the existence of other factors causes the injury in the beginning of the period of investigation. A few years later the Applicant does not seem to mange to be profitable and therefore the investigating authorities should examine whether the old causes of injury still prevail.

Comments by International Steel Fabricators (ISF)

ISF stated that any injury to the SACU industry is not causally due to the importation of the product but causally due to the capacities and actions of Highveld, the current lack of local demand due to slow economy and in general due to the current cost profile of the producers as compared to two decades ago when e.g. Iscor (predecessor of the current AMSA and current steel supplier to the Highveld rolling mil) fell in the lowest cost quartile of global steel producers. Although the rate of many *cost factors e.g. electricity and labour, fall outside the control off mills, the mills inflicted a major continuous damage to themselves.*

Commission's consideration

The Commission noted that when the Applicant resumed production of the subject product in 2017, imports decreased significantly and the Applicant's performance showed an improvement. In 2019, although imports continued to decrease, the Applicant's performance, in the form of a decline in production, sales and capacity utilization decreased as well. The Commission is of the view that it would be difficult to suggest that imports are the cause of this injury experienced by the Applicant. It is further noted that the size of the market has reduced in 2019.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators (2014 - 2019)

	2014 – 2019
Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (kg)	Decreased
Net Losses (R)	Decreased
Output (kg)	Decreased
Market share (Applicant)	Decreased
Productivity (units per employee)	Increased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

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

- **Quality**

The Applicant stated that it is an ISO 9002 accredited company and certified to manufacture the subject products to various standards. The South African customer base has been buying and utilising its products in the South African market place for over 45 years and the market impression of the quality of the products is very high.

- **Delivery times**

The Applicant stated that since it is a domestic mill, its delivery times are shorter than international mills. It also indicated that it has always been recognised in the market place as a producer who delivers well against the constraints of a 24/7 operation and it is recognised for being flexible to customer's needs when required.

- **Service and after sales**

The Applicant stated that customers view the service offered and delivered by it as good. The Applicant also stated it is seen as a flexible manufacturer who listens to customers and has an active sales force who constantly supply feedback.

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

The Applicant stated that it has worked in conjunction with the South African Institute of Steel Construction (SAISC) for many years in developing design and fabrication standards for the South African market, both entities jointly developed "The Red Book" (the SAISC design handbook). This has been developed for the Applicant's customers and the Applicant continually offer technical training, training on new products and information regarding its business to customers.

The Applicant also stated that its products are certified and guaranteed to meet these specifications or they will be replaced. The Applicant further stated that its claims procedure is well known by customers and there are KPI metrics in place to monitor the turnaround time for claims. Customer feedback indicates that the claims system is effective.

Comments by International Steel Fabricators of South Africa (ISF)

The quality of the product

ISF indicated that the state by the Applicant that "the market impression of the quality of our products is very high". This opinion is not substantiated by any customer survey. In fact, the product from the second-hand mill installed 50 years ago has never been very high, but seen as fit for purpose. Especially the heavier products were always a problem due to shape deviations, with recurring folds and cracks occurring at the web / flange seam being a continuous headache.

ISF also indicated that fabricators supplying high quality demanding clients had to check each individual section for shape deviations for possible re-indexing on fabricator beam lines. Some of the larger fabricators installed intelligent automatic indexing equipment to overcome the problem. After experiencing e.g. the higher quality of Thai imported product, the industry's preference was clearly for the imported product.

ISF further stated that the new distributor of these products, AMSA, could have easily conducted a formal customer to respond to the questions regard quality, delivery times and service as only a handful of steel merchants are the local clients.

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

ISF stated that the reference to its relationship to the South African Institute of Steel Construction (SAISC), the "Red Book", etc. is totally out of date and refers to pre-2007 cooperation. The later Highveld did not continue with the historic relationship and did not even honour its agreed financial commitments and the SAISC had to write-off substantial amounts as bad debts.

ISF also stated that to its knowledge, there is currently no formal relationships between the SAISC and Highveld or HSM or AMSA or SAISI the industry association for steel mills.

7.4 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY

The Applicant stated that the general state of the workforce and the attitude towards the company is healthy. Since 2010, it has taken part in the "Best Companies to work for Survey" and the results have always been positive. The Applicant also stated that wage negotiations are conducted between management and the unions directly.

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

Table: 7.5

Strikes, go-slows or lock outs during the past twelve months	The Applicant stated that there were no strikes, go-slows or lock outs. The Applicant stated that it concluded a 2-year wage deal in 2014. There has also been no industrial action seen at Highveld during the entire business rescue proceedings.
Contraction in demand or changes in patterns of consumption	The Applicant stated that the effect of a slowdown in South African economic growth and low priced imports is seen from Sept 2015 with order book days decreasing from 69 days to 10 days up to July 2015.
Productivity of the domestic industry vis-a-vis that of the exporters	The Applicant stated that the it is difficult to quantify the exact productivity of the exporters, it is dependent on the design and installed capacity of the equipment available to the producers of sections.
Development in technology	The Applicant indicated that there were no technology developments during the period of investigation.

Comments by XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA and NJR Steel Services (XA)

XA stated that as regards market conditions, both Highveld's financial statements and AMSA's financial statements indicate difficult market conditions. However, the following provides some insight into these trading difficulties:

- *In column 1 of Highveld's 2014 financial statements it is indicated that it had experienced "lower equipment availability and poor steel plant and structural mill yields", as well as "operational challenges... on the slab caster and the basic oxygen furnaces"; while "Kiln operational stability was compromised in the first quarter due to unusually wet weather conditions, resulting in higher kilowatt-hour per ton electricity consumption in the plant."*
- *On p 2 of Highveld's 2015 operational results it is indicated that "Liquid iron production was reduced as a result of poor domestic demand as well as cash*

constraints"; The sections mill was negatively impacted by rolling low volumes of different profiles which contributed to low utilization rates and lower output"; "Fines ore production decreased due to temporary mine stoppage: and that "Steel pricing was reduced significantly due to unprecedentedly low domestic demand".

- *On p 4 of AMSA's 2019 financial statements it is indicated that "real gross domestic product (GDP) growth is anticipated to reach only 0.3%. Unsurprisingly, the apparent steel consumption decreased by 6% to 4.5 million tonnes for the year. Muted or negative growth in key steel-consuming sectors, a limited number of infrastructure projects, electricity supply constraints, and low business confidence were some of the aspects contributing to this outcome. This situation was compounded by reduced credit availability with some credit line insurers exiting the steel market. As noted earlier, an increased number of steel-consuming companies entered business rescue or were merging operations in order to survive."*
- *In Highveld's letter "Further renewal of cautionary announcement and plant stoppage" to its shareholders, it is indicated that "It was decided to cease the production of the Ironmaking division of the Company, which was necessitated by amongst others delayed debtors payments, inadequate cash to procure the required raw materials to continue manufacturing operations; difficulties experienced with access to funding; and continued inability to pay major creditors timeously."*
- *On p 6 of AMSA's 2019 financial statements it is indicated that "The company's raw material basket (iron ore, coking coal and scrap), which represents 51% (2018: 50%) of costs, increased by 12% in rand terms, driven by sharp increases in iron ore. Consumables and auxiliaries, which represented approximately 29% of costs (2018: 29%), increased by 13%"; "Increases in electricity, port and rail tariffs had a detrimental impact on the company's international competitiveness. These unaffordable increases, off an already inflated base, resulted in R439 million of additional costs against the comparable period"; "Net impairment charges for the year amounted to R1 401 million against R10 million for 2018"; and "Income from equity-accounted investments decreased by R155 million".*

- *On p 7 of AMSA's 2019 financial statements it is indicated that "The company has been engaging the Competition Commission regarding the payment of the administrative penalty that was due in November 2019…"*

XA stated that all of the above market conditions point to issues that had a major impact on the industry's prices, production and sales volumes, capacity utilisation and its ability to compete in general. Along with the issues highlighted under "price information" and "product differences", these are all issues that need to be taken into consideration in ITAC's non-attribution evaluation, as part of its causal link analysis.

XA also stated that it is incumbent on the applicant to show, and ITAC to find, that it was increased imports that caused a deterioration of the domestic industry's performance, to the point of serious injury, and not merely that increased imports were present at the same time as the industry's deteriorating performance. Thus, it has to be analysed whether and how these increased imports affected the domestic industry. This is exactly where the applicant runs into serious problems, as Highveld specifically identified a multitude of factors that caused its injury. Thus, for instance, In Highveld's financial statements for the 6-months period ended June 2014, it indicates significant losses both for 2013 (full year) and 2014.

XA stated that under point 2 (Key Financials), the Applicant specifically indicates as follows:
"The operating loss for H1 2014 was R271 million, compared to a profit of R49 million for H1 2013, mainly attributed to lower equipment availability and poor steel plant and structural mills yields. The company increased its maintenance costs to R251 million in H1 2014 from R166 million in H1 2013 to improve operational performance. The EBITDA for the period was a negative of R135 million, compared to a R199 million profit for the same period in 2013. During the first half of 2014 sales revenue of R 199 million was up by 12% and reflected higher average prices compared to the first half of 2013".

"Revenue from sales of goods increased to R3 195 million, compared to R2 864 million for H1 2013. This increase in revenue is as a result of favourable steel product pricing".

"There is visible change in market purchasing trends from imports to domestic supply, combined with notable progress towards production improvement and labour stability…".

XA also stated that despite a clear move away from imports to domestic supply, and despite "favourable steel product pricing", Highveld still turned an operating profit of R49 million in H1 2013 into an operating loss of R271 million in H1 2014. Clearly, with the "visible change in market purchasing trends from imports to domestic supply", imports had nothing to do with Highveld's injury. It is further noted that the operating profit of R49 million in H1 2013 turned into an operating loss of R293 million for the whole of 2013, indicating an H2 2013 operating loss of R342 million. Thus, Highveld's performance in H1 2014 was a significant improvement over H2 2013, yet it was racking up hundreds of millions of Rands in losses – despite "favourable steel product pricing".

Under point 7 (Outlook), Highveld then indicates the following:
"The industrial action in the platinum and more recently engineering and metals industries will negatively affect sales to the domestic market in the short term and revenue will be under pressure in H2 2014 as a result. Given the low GDP growth forecast for the local economy and the slow pace of implementation of the government infrastructure spending programme, the domestic steel industry is not expected to expand significantly in the near future. The industry will be further pressurized by a volatile labour market, notable energy tariff increases and electricity supply concerns".

"Global steel markets will remain under pressure for the remainder of 2014 as the market struggles with overcapacity and supply prices are predicted to remain static and a market recovery in global steel demand is not expected during the remainder of 2014".

XA further stated that Highveld point to several reasons for further injury in the rest of 2014, with no reference to increased imports. As regards imports, it merely points out that there is ongoing over-capacity, but not that this would lead to additional exports to SACU, and that "supply prices are predicted to remain static", this, after having indicated that there was "favourable steel product pricing" in H1 2014.

XA also stated that for 2014, which pre-dates any increased imports, yet in which Highveld incurred significant losses, Highveld makes absolutely no reference to imports as a cause of its problems. These problems simply continued in 2015, when it was also identified by the Business Rescue Practitioners that Highveld was significantly over-staffed and it proposed that at least half the workforce should be retrenched. On the contrary, it indicates that there had been a move away from imports to domestic supply. Accordingly, there can be no "genuine and substantial relationship of cause and effect" between increased imports and the industry's performance.

XA Stated that the list below sets out a variety of other factors that caused, or, at a minimum, contributed, to the domestic industry's injury. XA Stated that this list is not exhaustive, and they reserve the right to add to the list as more information becomes available, and request that the Commission itself also consider whatever relevant information it comes across during the course of its investigation.

1. *Decreased domestic market*
2. *Domestic economic conditions*
3. *Industry losses prior to increase in imports*
4. *No price undercutting in 2018 and 2019*
5. *Impairments at AMSA*
6. *Over-employment*
7. *Equipment availability and plant yields*
8. *Unaffordable regulated tariffs*
9. *Developmentally priced raw materials*
10. *Decreased investment income*
11. *Competition Commission finding on collusion*
12. *Additional taxes due to SARS*
13. *Additional cost incurred in toll production*
14. *Decreased export sales*

15. Adverse weather conditions
16. Funding and access to cash
17. Decreased prices for other products
18. Fruitless trade remedies actions
19. Other issues

Commission's consideration

The Commission made a determination during the initiation of the investigation that the Applicant provided sufficient evidence that there was a causal link between the surge of imports and the serious injury experienced by the Applicant. However, comments received from various interested parties during the investigation revealed that the Applicant's injury could be attributed to a number of factors other than the increase in imports.

The Applicant in its 2014 financial reports showed that the operating loss for H1 2014 was R271 million, compared to a profit of R49 million for H1 2013, the Applicant mainly attributed the loss to lower equipment availability and poor steel plant and structural mills yields. The Applicant increased its maintenance costs to R251 million in H1 2014 from R166 million in H1 2013 to improve operational performance. The EBITDA for the period was a negative of R135 million, compared to a R199 million profit for the same period in 2013. During the first half of 2014, sales revenue of R199 million was up by 12% and reflected higher average prices compared to the first half of 2013. This information is contained in the Applicant's financial reports of 2014.

The Business Rescue Plan stated the following as the factors causing injury to the Applicant:

- *The company has been loss making since 2010;*
- *In particular, the poor financial performance of the company was attributable amongst other things, to the following factors:*
    - *Historical operational difficulties and sustained financial losses within a capital constrained operating environment;*
    - *weakened global steel and vanadium markets; and*
    - *the reduction of domestic steel demand.*

The Commission is of the view that from the analysis of imports trends; the Business Rescue plan and the comments made by various interested parties the injury experienced by the Applicant can be attributable to a number of factors other than the increased imports in the period 2014 – 2015. The Commission is of the view that these factors sufficiently detract from the causal link between the increase in imports during the period 2014 to 2015 and the serious injury experienced by the Applicant.

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a preliminary determination that there is sufficient information to indicate that the serious injury experienced by the SACU industry can be attributable to factors *other* than the alleged surge in the volume of imports and that these factors sufficiently detract from the causal link between the increased imports and the injury experienced by the industry.

8. SUMMARY OF FINDINGS

8.1 Unforeseen Developments

The Commission made a preliminary determination that unforeseen developments and the effects of the obligations incurred with regard to the subject product under the GATT 1994 led to the surge in imports of the subject product in the period 2014 to 2015, as per the provisions of Article XIX of GATT 1994 and the SGR.

8.2 Surge of Imports

The Commission made a preliminary determination that a reversal in the increase in imports has taken place and the surge in volume of imports does not meet the requirements set out by the WTO and the SGR.

8.3 Serious injury

The conclusion on injury indicators is as follows:

Table 8.3.1: Serious injury

	2014 – 2019
Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (kg)	Decreased
Net Losses (R)	Decreased
Output (kg)	Decreased
Market share (Applicant)	Decreased
Productivity (units per employee)	Increased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

The Commission made a preliminary determination that the information analysed indicates that the Applicant experienced serious injury during the period of investigation.

8.4 Causal link

The Commission made a preliminary determination that there is sufficient information to indicate that the serious injury experienced by the SACU industry can be attributable to factors other than the alleged surge in the volume of imports and that these other factors sufficiently detract from the causal link between the increased imports and the injury experienced by the industry.

9. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- Events cited can be regarded as unforeseen developments;
- A reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years. The requirements set out by the WTO and the SGR with regard to a surge in imports, are therefore not met;
- Although the SACU industry experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors other than the increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry.

The Commission made a preliminary determination to recommend to the Minister of Trade, Industry and Competition that the investigation be terminated.