Report No. 668

INVESTIGATION INTO THE EXTENSION OF THE SAFEGUARD MEASURE ON OTHER SCREWS FULLY THREADED WITH HEXAGON HEADS MADE OF STEEL: FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No. 668: INVESTIGATION INTO THE EXTENSION OF THE SAFEGUARD MEASURE ON OTHER SCREWS FULLY THREADED WITH HEXAGON HEADS MADE OF STEEL: FINAL DETERMINATION**

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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SYNOPSIS

On 21 May 2021, the International Trade Administration Commission ("Commission" or "ITAC") initiated an investigation into the extension of the safeguard measure on other screws fully threaded with hexagon heads made of steel (the subject product) through Notice No. 304 of *Government Gazette* No. 44593 dated 21 May 2021 (the "Initiation Notice").

This followed an application lodged by the South African Fasteners Manufacturers' Association ("SAFMA") and its members CBC Fasteners (Pty) Ltd ("CBC") and Transvaal Pressed Nuts Bolts and Rivets (Pty) Ltd ("TPN"), two of the large producers of the subject product in the Southern African Customs Union ("SACU") which constitute more than 60 percent of SACU's production volume.

The investigation was initiated after the Commission determined that there was *prima facie* evidence that the SACU industry is still experiencing serious injury and that the expiry of the safeguards duties on imports of other screws fully threaded with hexagon heads made of steel will likely lead to the continuation and/or recurrence of serious injury to the SACU industry.

On initiation of the investigation, the World Trade Organisation ("WTO"), and the parties with a significant interest in the exports of the subject product were notified of the initiation of the investigation.

Interested parties responded to the initiation notice by making written and oral representations to the Commission. These representations were taken into consideration by the Commission in making its final determination.

Taking all the information available to it into account, including all comments received during the investigation, the Commission made a final determination to recommend to the Minister of Trade, Industry and Competition (the "Minister") that the following safeguard measures be imposed on imports of other screws fully threaded with hexagon heads made of steel:

Period	Rate of safeguard measure
2 August 2021 – 1 August 2022	35.6%
2 August 2022 – 1 August 2023	30.6%
2 August 2023 – 1 August 2024	25.61%

The Commission further made a final determination to recommend to the Minister to exempt imports for the motor industry under the APDP from the payment of the safeguard duty. No other rebates should be allowed unless a request is received from ITAC. The rebate items in Schedule No. 3 and 4 that will be excluded from the payment of the safeguard duty are 317.06/00.00/03.00 and 460. 460.17/00.00/03.00, and on condition that, the set screws classifiable under tariff subheading 7318.15.39 are eligible products under the APDP.

The Commission also made a final determination to recommend to the Minister that the measures should be imposed against imports from all countries.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 ("ITA Act") and the International Trade Administration Commission Amended Safeguard Regulations ("SGR") and giving due regard to the Article XIX of the WTO General Agreement on Tariffs and Trade, 1994, the WTO Agreement on Safeguards ("Safeguards Agreement") as well as the ITAC guidelines and conditions relating to the extension of safeguard measures provides procedures and process to be followed for the extension of safeguard measures. The guidelines and conditions relating to extension of safeguard measures were published in the Government Gazette No. 43636 on 21 August 2020.

1.2 APPLICANT

The application was lodged by South African Fasteners Manufacturers' Association ("SAFMA" or the "Applicant")) on behalf of its members CBC Fasteners (Pty) Ltd ("CBC") and Transvaal Pressed Nuts Bolts and Rivets (Pty) Ltd ("TPN").

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant submitted that a confluence of events (listed below) forms the basis of the application for an extension of the safeguard duties:

On 15 February 2019, the Commission made a finding that, as a result of unforeseen developments and of the effect of South Africa's and SACU Member States' WTO obligations there was a surge in imports of set screws, which was causing the SACU domestic manufacturing industry to suffer serious injury, which injury could only be remedied through the implementation of safeguard duties. These duties were implemented with retrospective effect to 3 August 2018 and were to be liberalised over three years. They are due to expire on 2 August 2021.

Owing to the temporary nature of the intervention, the SACU industry had to use this time to adjust to become more competitive.

The SACU industry initially regained some of the market share previously lost to imports, thereby increased its production significantly. However, importers, mainly through importing from developing countries which were exempted from paying the safeguard duties, started to erode the effectiveness of the safeguard protection. This, together with the decline in the SACU economy, and decline in local demand for steel and fasteners in particular, not only resulted in the recurrence of serious injury to the industry concerned, but also significantly impacted the pace of adjustment, almost reversing all the gains that the SACU industry had made.

The SGR allow for the extension of duties in cases where the expiry of the duties will lead to the industry regressing back to pre-safeguard injury levels, and where the industry has already started adjusting.

What is clear from the evidence presented to the Commission is that both customs and safeguard duties are required to stem the flow of imports and to afford the SACU industry space to grow and achieve its adjustment goals.

SAFMA has remained committed to achieving the obligations that have been agreed in both its tariff application as well as its adjustment plan and is continuing to engage with Government both on an industry level as well as through the Steel Masterplan in order to advance its recovery and growth.

It is a well-known fact that the SACU steel industry is in distress. Furthermore, COVID-19 changed the situation for the worse. Not only did the economy contract by 8% in 2020 but it is not expected to return to its weak pre-pandemic level before 2024. Effective Safeguard Duties play an important role in containing import volumes. The retention and growth of both production and volume is of critical importance for the survival of the Fastener Industry in SACU.

The potential loss of SACU's primary steel production will leave SACU at the mercy of the global supply chains over the longer-term, which will inevitably result in the closure of this sector, precluding SACU from utilising its comparative resource endowment advantage.

A termination of the existing safeguard duty will result in a surge of imports, which is likely to cause serious injury (and possibly irreversible harm) to the Fastener Industry in SACU.

1.4 INVESTIGATION PERIOD

The period of investigation to for serious injury is 01 January 2020 to 31 December 2020, plus, an estimate injury 01 January 2021 to 31 December 2022.

Comments from Fastener Distribution Association ("FDA")

FDA commented as set out below:

FDA stated that the investigation period provides a misleading picture. SAFMA provided information for January 2018 to December 2020. No injury information was provided for the original investigation period, though this was the period which led to the current safeguard duty. FDA stated that it could not analyze the information based on what has happened since 2018, which is when the current safeguard measure took effect, but which is also the only period covered in the safeguard review application. FDA contends that for a proper analysis to be undertaken, it is necessary to compare the most recent information with the information that led to the imposition of the safeguard duty in the first place.

FDA stated that the investigation period for injury in the original investigation was July 2014 to June 2017. According to FDA, the Applicant, at the request of other interested parties, provided information for the period July 2012 to June 2017. The investigation period for increased imports in the original investigation was from July 2012 to June 2017.

FDA stated that it cannot be determined whether the safeguard is still required if information comparing the industry's performance over the review period

(January 2018 to December 2020) with its performance over the original investigation period is not available, as there would be no basis for comparison. According to FDA, the question is not whether the information for the past 3 years shows injury, but whether, when compared to the information from the original investigation, it shows that injury is still occurring or is likely to continue or recur should the safeguard measure not be extended. FDA therefore, insisted that the Applicant should update the injury information to show a comparison of the period of the original investigation to the period applicable to current investigation. According to FDA, the fundamental question in this investigation is whether injury is likely to continue and in FDA's view, this is highly unlikely given the sharp decline in imports.

Comments from NSS Fasteners ("NSS Fasteners")

NSS Fasteners commented as set out below.

NSS Fasteners stated that the safeguard duties went into effect on 1 August 2018. According to NSS, the Applicants provided information for the period January 2018 to December 2018 and thereby implying that the safeguard period was from January 2018 to December 2018. This, in NSS' view, is a misrepresentation of the data and the benchmark period should have been 1 August 2017 to 31 July 2018, which was the period preceding the imposition of the safeguard duties on 1 August 2018.

Responses from Applicant

The Applicant stated that it is unclear how this matter will significantly impact on the premise that in the absence of safeguard protection the fastener manufacturing industry will again suffer serious injury. As outlined in the application, there is a clear lapse and stay scenario which is reasoned and reasonable. Implicit in the focus on the likelihood of a recurrence of harm is a consideration of whether the safeguard duty reaches its goal of restraining import growth. If the safeguard duty was ineffective, there would be no meaningful difference between the import volumes found for the 'remain' scenario and those found for the 'lapse' scenario.

The Applicant stated that ultimately, the decision whether to extend the safeguard duty depends on the likelihood of a recurrence of harm following the lapse of the safeguard duty. Whether imports increased or decreased during the time the safeguard duty was in place, does not inform this decision as there was a total change in trading patterns as a result of the imposition of the safeguard duty, the ultimate aim of which was to improve the ability of the domestic industry to compete with international suppliers in the SACU market. At the heart of any determination of a recurrence of serious injury to the industry is the likelihood of a resurgence of import volume if the safeguard duty lapses.

The Applicant stated that the initial dampening of import growth was countered by the surge in imports that originating from exempted countries and the situation will be exacerbated by import growth from China as these imports become competitive in SACU because of the removal of the safeguard duty. The Applicant expects import volumes to increase should duties lapse (the "lapse scenario").

The Applicant stated that there is no real correlation between the recent surge in imports from exempted developing countries and overcapacity that might exist in those markets to support a claim that imports from exempted developing countries will be sustained should the safeguard duty lapse. Prices of the subject product from the exempted developing countries declined from R38 per kg prior to the imposition of the safeguard duties, to almost half that number as importers tried to match the low-price level established by Chinese imports on the local market prior to the imposition of the safeguards. An industry application was submitted to ITAC for the exclusion of these exempted developing countries in January 2020.

Comments made by FDA on the essential facts letter

FDA's comments on ITAC's essential facts letter are summarised below.

FDA stated that the Applicant did not provide injury information for the period before the imposition of the safeguard duty making it impossible to determine the recurrence of serious injury. According to FDA, there is no link between the original investigation and the information for the review period. The question to be answered, in FDA's view, is whether the injury information for the original period, when compared to the current period, shows that the injury is still occurring or is likely to continue or recur, should the safeguard measure not be extended. FDA submitted its original comments as it is of the opinion that ITAC did not take its comment into consideration.

Commission's consideration

The Commission decided that there is sufficient information provided by the Applicant to find that the expiry of the safeguard duty will lead to the continuation and/or recurrence of serious injury to the SACU industry.

1.5 INVESTIGATION PROCESS

The information submitted by the Applicant was verified on 29 March 2021 and 06 April 2021 respectively.

The application was accepted as being properly documented on 9 April 2021 and the investigation was initiated on 21 May 2021.

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

- Fastenright;
- Ministry of Investment, Trade and Industry, Botswana;
- European Commission;
- Solidarity;
- NSS Fasteners (Pty) Ltd (NSS Fasteners);
- NAAMSA;
- The Embassy of Mexico;
- SAFMA; and
- FDA.

The Ministry of Investment, Trade and Industry in Botswana responded to the initiation of the investigation by stating that they are in agreement with the extension of the safeguard. Solidarity stated that it has no objection to the application.

The Embassy of Mexico stated that due to the fact that Mexico is a developing country, ITAC should exclude imports of the Mexican subject product from the application of any safeguard measures derived from this investigation.

NAAMSA and Fastenright were requested to provide a non-confidential version of their comments. No response was received from NAAMSA.

Comments from Fastenright

Fastenright stated that due to the fact that it is also purchasing from the local factories and have to rely on their support, it is unable to provide a non-confidential response. Fastenright stated that they do not support the the extension of safeguard duty on the subject product.

Commission's consideration

Regulation 3.6 of the SGR states as follows:

"The Commission may disregard any information indicated to be confidential that is not accompanied by a proper non-confidential and may return such information to the party submitting same".

The Commission made a final determination not to take the confidential responses submitted by Fastenright and NAAMSA, into account as they failed to submit non-confidential version as required.

1.6 COMMENTS FROM INTERESTED PARTIES

The Commission considered all comments received from interested parties, except the confidential responses submitted by Fastenright and NAAMSA, prior to making its final determination. All submissions made by interested parties are contained in the Commission's public file for this investigation and are available by arrangement, 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 included in this report.

1.7 On 15 July 2021 essential facts letters were sent to all interested parties informing them of the "essential facts" which were being considered by the Commission and inviting comments from interested parties on these "essential facts" being considered.

1.10 Comments on the essential facts letters were received from the following interested parties by 22 July 2021:

- SAFMA;
- FDA;
- NSS Fasteners; and
- The European Commission.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

Other screws fully threaded with hexagon heads made of steel (the subject product).

2.1.2 Tariff classification

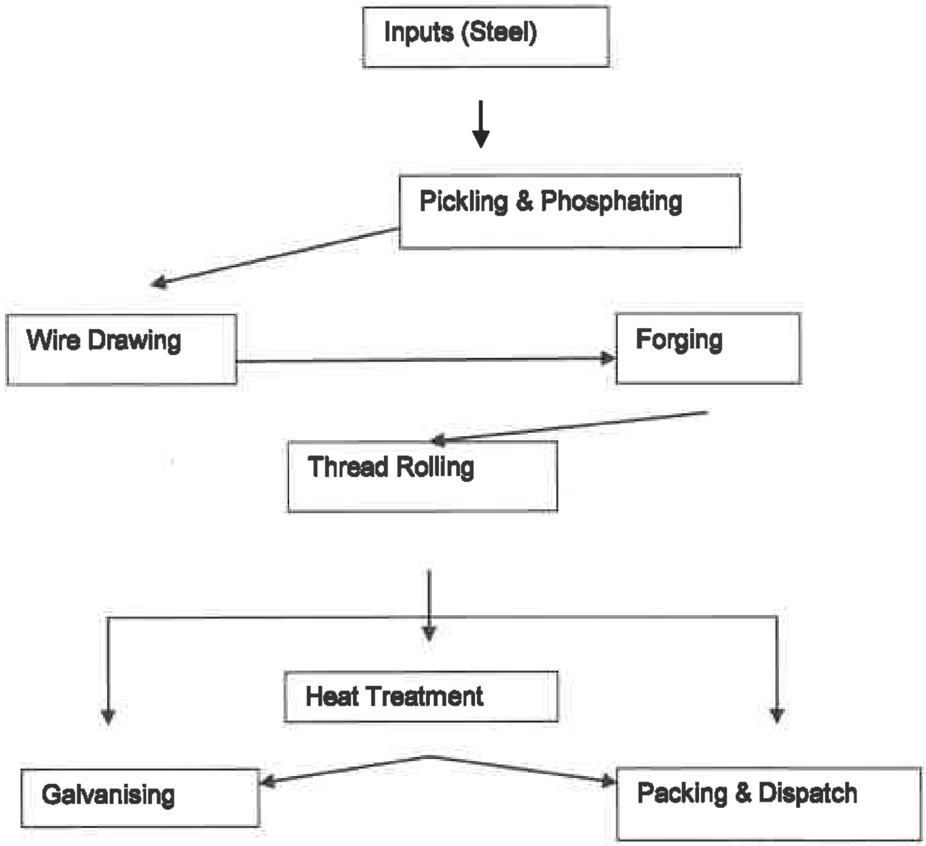
The subject product is imported under the following tariff subheading:

Table 2.1.2 (a): Tariff classification for the subject product

Tariff heading	Tariff subheading	Description	Stats unit	Rate of duty					
				General	EU	EFTA	SADC	Mercosur	AfCFTA
7318		Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel:							
7318.1		Threaded articles:							
7318.15		Other screws and bolts, whether or not with their nuts or washers:							
	7318.15.39	Other screws, fully threaded with hexagon heads (excluding those of stainless steel)	Kg	30%	Free	Free	Free	30%	24%

2.1.3 Production process

Figure 1: Diagram of the production process



As depicted in the above diagram the production of other screws fully threaded with hexagon heads made of steel goes through various processes. Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging. Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine. The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines.

If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc.

The Applicant indicated that the technical specifications of the imported product and the domestically produced SACU product are almost identical, except perhaps for the manufacturers identification mark.

2.2 SACU PRODUCT

2.2.1 Description

Other screws fully threaded with hexagon heads made of steel.

2.2.2 Production process

The production process is the same as the imported product (See paragraph 2.1.3).

2.2.3 Application or end use

The Applicant indicated that the subject product is in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself market.

2.2.4 Categories of users

The following categories of users use the subject product in the domestic (SACU) market, namely suppliers, distributors and end-users. These users in turn supply different market sectors such as agricultural, automotive, communication, mining, construction and general engineering.

2.3 LIKE OR DIRECTLY COMPETITVE PRODUCTS ANALYSIS

In terms of SGR 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 whether the imported product is a like product to, or directly competitive with the SACU product, the Commission uses the following criteria:

Table 2.3: Like or directly competitive products analysis

	Imported product	SACU product
Tariff Headings	7318.15.39	7318.15.39
Raw materials	Hot rolled steel in irregularly wound coils and hot rolled bars and rods.	Hot rolled steel in irregularly wound coils and hot rolled bars and rods.
Production process	Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging. Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine. The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines. If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc. The technical specifications of the imported product and the domestically produced product are almost identical, except perhaps for the manufacturers identification mark. The imported product is therefore like product to the domestically produced product.	Raw steel coils are received from the supplier. These coils go through the steel preparation process which includes an acid clean and the addition of a phosphate coating to allow for easier forging. Once cleaned, the forging of the steel into a set screw takes place on a forging machine. The cut off coil pieces move through a few stages of continuous forging, or shaping, into the set screw on the same machine. The heads are then cut into a hexagonal shape and threads are rolled on the set screw in line on the same forging machines. If required by the product specification, the set screw will then move through a heat treatment furnace, and thereafter, if required, the product is plated for corrosion protection by electro galvanising or by dipping in molten zinc. The technical specifications of the imported product and the domestically produced product are almost identical, except perhaps for the manufacturers identification mark. The imported product is therefore like product to the domestically produced product.
Application or end use	The subject products are in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself market.	The subject products are in almost all industries used in joining materials, i.e. mining, construction, agriculture, utilities, process industries, automotive industry, general engineering and the do-it-yourself market.

Comments from FDA

FDA stated that at least 200 varieties of set screws cannot be manufactured locally. A list of products that cannot be supplied by the local manufacturers was presented to the Commission. Rebates should be created to accommodate these products and should cover both the normal duties as well as any safeguard duties which are imposed. These can be temporary duties if the domestic industry intends producing them, but if they are not readily available, they should not attract a duty.

Commission's consideration

As was the case with regard to the safeguard duty on hot rolled steel, FDA is at liberty to apply for the creation of a rebate provision should it be able to provide support for its allegations.

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

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

SAFMA lodged the application on behalf of its members. SAFMA is supported in this application by its members CBC Fasteners (Pty) Ltd ("CBC"), Transvaal Pressed Nuts Bolts and Rivets (Pty) Ltd ("TPN"), SA Bolt Manufacturers Company (Pty) Ltd ("SA Bolt"), Impala Bolt, Nut (Pty) Ltd ("Impala") and Tel-Screw Products (Pty) Ltd ("Telscrew"). CBC and TPN have provided financial information in support of this application. CBC and TPN are major producers of other screws fully threaded with hexagon heads made of steel.

Comments from Fastener Distribution Association

Fastener Distribution Association stated that there are significant differences between the performances of CBC and TPN. This makes it imperative for ITAC to consider the information of the rest of the industry to determine the economic state of the industry, rather of only two players in the industry.

Fastener Distribution Association further stated that in EC - Fasteners (China), the Appellate body specially ruled that the industry cannot simply be those parties that applied for measure, as those would typically be worst performing parties in the industry, but that the investigating authorities also had to request other producers to submit information. FDA stated that there is no letter of support from SA Bolt attached to the Application.

Response from the Applicant

The Applicant referred to the application, where it is clearly stated that CBC and TBN represent at least 60% of the domestic industry and as such, the question on industry standing is moot.

Letters of support from other domestic manufacturers, namely Impala and SA Bolts indicating the volume produced were submitted to the Commission.

Commission's consideration

The Commission considered that the production volumes for TPN and CBC were verified and its industry standing were found to be correct. It also considered that letters of support were received from other domestic manufacturers, namely Impala and SA Bolts, indicating the volume produced were submitted to the Commission. According to the Applicant CBC and TPN enjoy the majority share of more than 60 per cent of production volumes of the subject product in the SACU.

In terms of SGR 7.2 "*An application shall be regarded as brought by or on behalf of the SACU industry if:*

(a) at least 25 per cent of the SACU producers by domestic production volume support the application; and

(b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application."

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

4. CONTINUATION AND/OR RECURRENCE OF SERIOUS INJURY

4.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following serious injury analysis relates to the consolidated information of CBC and TPN representing more than 60 per cent of the SACU industry by production volume.

The Commission made a final determination that this constitutes "a major proportion" of the total SACU domestic production, in accordance with the SGR.

4.2 IMPORT VOLUMES

In its analysis of the import statistics, the Commission deducted the imports made by the Applicant, but due to confidentiality this could not be reflected in the tables below.

For purposes of the final determination, the Commission considered the following information on imports for determining an increase in import volumes.

The table below indicates the import volumes of the subject product in the original investigation, as sourced from South African Revenue Service ("SARS") for the period 1 July 2014 to 30 June 2017:

Tons	July 2014 - June 2015	July 2015 - June 2016	July 2016 - June 2017
Total imports	6 826	5 915	7 883

The table below indicates the import volumes of the subject product during the period of investigation, as sourced from SARS for the period 1 January 2018 to 31 December 2020 and estimates should the duties lapse for the periods 1 January 2021 to 31 December 2022.

	During Safeguard - All Countries			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022

Volume(ton)	6 349	1 692	3 075	4 834	5 875
Value Rand	128 407 213	43 479 555	70 461 134	87 012 000	102 812 500
Average unit price R/Tonne	20 224	25 700	22 869	18 000	17 500

The information in the table above indicates that the total imports, when the safeguard duty was in place, decreased from 6 349 in 2018 tons to 1 692 tons in 2019, which is a decrease of 73 percent, and increased from 2019 to 3 075 tons in 2020 which showed an increase of 45 percent. There is an overall decrease of imports volume of 52 percent while the safeguards were in place. It is estimated that imports will increase to 5 875 tons, which is an increase of 48 percent should an extension not be granted and the duties lapse.

The information in the table below indicates the total imports when the duty is in place for the exempted countries. Import volumes from 2018 to 2019 showed an increase of 83 percent and from 2019 to 2020 an increase of 50 percent which shows that even imports from exempted countries will increase if an extension of the duties is not granted.

	During Safeguard – Exempted Countries			Post safeguard If Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Volume(ton)	261	1 508	2 994	1 934	0
Value Rand	9 972 179	29 441 703	54 688 237	34 804 800	0
Average unit price R/tonne	38 151	19 519	18 266	18 000	0

The Applicant provided the following information:

Despite the decrease in imports in the immediate aftermath of the imposition of the safeguard duties, local producers have not experienced the full impact of effective safeguard protection. This is due to excessive stockpiling in the final year of the POI being maintained through the first year of the safeguard duties being in effect. This allowed them to effectively bypass the safeguard protection altogether.

During 2019, it became evident that exporters were channelling exports of screws through exempt countries such as Thailand, India and Vietnam. Imports started to increase again.

In terms of Regulation 21.20 of the SGR, a developing country exempted from the safeguard measure may become subject to such measure without a new investigation being conducted if, subsequent to the imposition of the safeguard measure, its share of imports increases to a level that exceeds 3% of the total import volume in the original safeguard investigation.

Two applications have been lodged with ITAC to remove Thailand individually, as well as all developing, excluded countries, collectively. Although approved by the Commission in September 2019 and February 2020 respectively, Thailand was only removed in December 2020, with the removal of all exempted countries not having been approved by the Minister, allowing importers to effectively maintain their share of the market, setting back the effect of the safeguard measures by at least 2 years.

The information provides a clear picture of what to expect once the safeguard duties lapse, when importers will be able to import the subject product without paying the safeguard duty. An increase in imports is expected and could lead to a resurgence of the imported subject product, causing a recurrence of the serious injury which the Fastener Industry in SACU experienced prior to the imposition of the original safeguard protection.

It is also expected that once safeguard duties are removed, imports will again revert to China, which has significant capacity to export to the SACU market at very low prices, thereby gaining market share back to pre-safeguard levels.
The expected imports when the safeguard duty lapse can be calculated on the basis of a before-and-after analysis. In particular, this analysis studies the effect of the introduction of safeguard duties on import volumes using a before-and-after analysis. In this analysis, import volumes prior to the introduction of safeguard duties and specifically the original surge (in 2013) is compared to

import volumes following the introduction of the duties (2018 and beyond). The estimated volume effect can then be interpreted as an estimate of the likely impact of removing the same duties. That is, the import-dampening effects of the introduction of safeguard duties can be seen as equivalent to the import-boosting effects of removing these duties.

Given that the safeguard duties averaged 48% over 2018 to 2021 (i.e. reducing from 50.54% to 45.61%), it can be argued that the 48% increase in import prices brought about an approximate 77% decline in import volumes, - all other things being equal. While certainly simplified, such an understanding underlines the volume impact of the safeguard duties and as shown next, the volume impact of removing such duties.

Based on the declines calculated above, one can apply this proportion to actual 2020 volumes, in order to estimate the 2021 volumes. This would then indicate the volume effect of the removal of the safeguard duties.

Neither the SGR nor the WTO Safeguards Agreement prescribe methodologies for the determination of the likelihood of recurrence of serious injury. Investigating authorities enjoy discretion in determining the factors that are relevant to the analysis of likelihood of recurrence.

Safeguard investigations are largely concerned with an analysis of import volumes, and are concerned with addressing the impact of a surge in imports on the on domestic industry of the importing country. Consequently, the starting point of any assessment of the likelihood of recurrence of serious injury is the likelihood of substantially increased imports once the duty lapses, as indicated above.

The economic slowdown as well as the devastating impact of Covid-19 in 2020 almost halved SACU demand from the final year of the period of investigation as will be shown in the market share analysis below.

In 2020 imports as a percentage of local production represented 95 basis points as measured against a 2018 base year. This just shows the impact of importing through exempted developing countries as in the year immediately after the introduction of safeguard duties imports as a percentage of local production represented a mere 19 basis points against the 2018 base year. To calculate the estimate for 2021, it was assumed that imports as a percentage of local production will return to pre-safeguard levels. Using Total Apparent steel consumption forecasts as a basis (3,7m tonnes in 2020, 4,2m tonnes in 2021 and 4,7m tonnes in 2022), it was calculated that the lapsing of the safeguard duties will lead to an increase in imports for 2022 to 5,875 tonnes, which clearly indicates the impact of Covid-19 and the weak economy.

Consequently, if the safeguard duty is allowed to lapse, the industry will return to pre-safeguard import levels (on a relative basis to account for the decrease in total consumption), which in turn, as showed below, will lead to a recurrence of serious injury.

This clearly establishes a link between the expected outlook for 2020 and beyond, and market conditions that existed in 2017, prior to the imposition of the safeguard duties. Prior to the imposition of the safeguard duties, imports of the subject product amounted to 7,883 tonnes, with China exporting more than 80% of this volume.

During the original safeguard investigation, imports of the subject product increased from 2,989 tonnes in June 2013 to 7,351 tonnes in June 2014. This increase of 246% led ITAC to make the decision that there was a surge in the import volume of the product concerned. These import levels were maintained until the imposition of safeguard duties in August 2018 when import volumes decreased to 3768 tonnes in June 2019.

This decrease in import levels was largely due to decreasing import volumes from China, from peak levels prior to August 2018 of 7000 tonnes to 41.84 tonnes in 2019. This decrease was largely caused by the 54% safeguard duties imposed as well as an increase in the Chinese selling price for the product concerned when it increased from fob R13,465 per tonne in 2015 to fob R18,117 per tonne in 2019.

Despite this brief respite in imports for the first 12 months' post safeguard duties in 2018, the industry has seen a resurgence of imports in the second half of 2019, until year to date in 2020 when imports again increased to significant levels. In the period of January to March 2020, imports have soared to 1190 tonnes for this 3-month period, representing levels similar to that prior to the imposition of the safeguard duties.

The increase is mostly due to importers importing through exempt developing countries such as Thailand (only removed in December 2020), India and Vietnam, to bypass safeguard measures to import the products safeguard duty-free. An application has been lodged with ITAC for the removal of all developing countries' exempt status, however the existence of this exemption has already resulted in harm and continues to be prejudicial.

An accelerated influx of imports is expected to take place once the current duties lapse in August 2021.

This increase should mainly be caused by China re-entering the SACU market as it aggressively explores export markets for its steel products, including the product under consideration. In preparation, China recently announced that it is increasing its export rebate to 13% from the previous 10%, effectively removing all value-added taxes from steel exports. This should reduce Chinese export FOB prices by $45-60/tonne. In a similar vein, Port charges in China have also been reduced making the actual costs associated with exporting steel cheaper. Beyond these changes, the extremely low oil price should reduce freight costs significantly allowing imports to arrive cheaply in Africa.

An added danger facing global steel trade flows is as a result of the Covid-19 spread, specifically with regards to the steel inventory build-up in China and the probable impact on SACU.

With China's current soaring steel inventories, another significant industry decline is feared if China's stockpiles lead to increased exports by the steelmakers, including fasteners, further absorbing demand globally from manufacturers and construction companies.

When steel products in inventory begin to flow, those that cannot be consumed domestically will exert downward pressure on the market if they are exported.[1]

The expected increase in import levels relative to production starkly indicates the resurgence of imports and the recurrence of serious injury to the Applicant.

The following analyses the impact of imports relative to production:

	During Safeguard			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Import as a % of the Applicants total production volume	100	19	95	209	285

The information above indicates that total imports relative to production for 2018 If the safeguard duty remains, as well as removal of exempted countries maintained, it is expected that import levels can be limited to that of the period July 2018 to June 2019.

CBC imported specialty screws in 2018 and 2019 for a domestic solar power project. TPN does not import the product concerned.

The Applicant stated that if the safeguard duty is removed, both TPN and CBC will be forced to import the subject product in order to maintain market share, which will lead to the end of the SACU manufacturing industry with basically only special fasteners being manufactured. This will inevitably lead to substantial disinvestment in machinery and loss of employment.

[1] https://asia.nikkei.com/Business/Markets/Commodities/Record-stashes-of-steel-fill-China-s-mills-as-factories-stall

Own Imports

	During Safeguard			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Volume(ton)	100	1 117	0	105 800	148 120
Value Rand	100	1 099	0	81 329	110 698
Average unit price Rand/tonne	100	98	0	77	75

Comments from FDA

FDA stated that any injury suffered would have been caused by CBC choosing to import, making it difficult to determine the actual injury suffered at the hands of imports which are not imported by the Applicants. Since the industry's actual adjustment is one of the prerequisites for the extension of a safeguard measure, the application has to fail.

Response from the Applicant

The Applicant further stated that there is no contradiction as stated by FDA in its letter and facts are clear and as such it is evident that imports have started to increase after the importers to source from developing countries exempted as a loophole. Imports almost double from 2019-2020 for all countries and increased almost 30-fold between 2018 and 2020 for countries exempt from paying the safeguards duties.

Commission's consideration

The imports volumes were verified using South African Revenue Service's imports statistics. Imports from all countries and exempted countries increased during the period 2018 to 2020. The Applicant submitted an application to remove all exempted countries based on their development status as result of them exceeding 9% import quota as per the South African Safeguard Regulations in Sections 21.18 to 21.20, as well as the WTO Agreement on Safeguards that provides as follows:

"A safeguard measure shall not be applied to low volume imports from developing country Members, that is, where a single developing country Member's products account for no more than 3 percent of the total subject imports, as long as products originating in those low- import-share developing country Members collectively do not exceed 9 percent of imports."

Based on the increase of imports the Applicant submitted an application to exclude Thailand a developing country as their imports move above the 3% threshold after the imposition of the safeguard duty, they were removed from the list of excluded countries.

Comments from NSS Fasteners

NSS Fasteners stated that is one of the largest importers of fasteners in South Africa and as a master importer, its primary market is the other fastener resellers and end users. Its large inventory holding allows them to sell stock directly to our resellers.

NSS Fasteners stated that in the application, when discussing the possibility of keeping strategic stock, the Applicant stated that they "have evaluated the option of rolling some items into stock, but [their] findings were that looking at the volumes and product mix it was not feasible for AMSA to implement this plan due to affordability and economies of scale. The number of products that the industry manufacture requires large variety of specifications and sizes, and it is something not within anyone's control." NSS Fasteners stated that this is an admission by local manufactures that they cannot manufacture and hold large stock to distribute to their customers, which in many cases are the same customers as themselves.

NSS Fasteners stated that the ability to keep extensive ready stock is the key differentiating factor between NSS compared to local manufactures. NSS has 98% of customer orders ready for pickup within 4 hours of receiving a sales order confirmation.

NSS Fasteners stated that although the Applicant state they cannot manufacture and keep strategic stock levels, the Applicant refuses to acknowledge NSS' position in the market for this. As a result, the local manufactures charges NSS the same prices as they charge to its own customers. This prevents NSS from buying local manufacturing as it cannot mark-up the product when selling to its customers. NSS stated that fundamentally, the local manufactures do not want to sell to NSS at all because they deem NSS as competition. Because local manufactures refuse to sell to NSS at market prices, NSS imports as its only source of supply.

NSS Fasteners stated that SAFMA maintains that the importers circumvented the safeguard duties by importing from exempted countries. After the implementation of the safeguards duties, none of the local manufactures were prepared to supply is at competitive prices, to enable them to resell their products to their distribution channel in South Africa. Therefore, it had no option but to import from exempted countries.

NSS Fasteners further stated that NSS's role is that of a master importer that keeps ready stock available. If stock is not readily available to its customers, downstream manufacturing would come to a halt if there were delays or shortages in supply.

NSS Fasteners stated that the correct analysis to compare the imports during the initial period of investigation to the imports after the implementation of the safeguard duty. Using a June period end, which coincides with the period of investigation, it clearly indicates a decrease in the import volumes as a direct result of the safeguard duty. The surge in the 2017 imports was caused by the stockpiling of fasteners ahead of SAFMA's application to increase the Schedule 1 duty to 30% in quarter 1 of 2017. If the periods are correctly analysed, it will clearly indicate imports are decreasing and the price per kilogram is increasing, thereby giving SAFMA the opportunity to increase their market share as well as their selling price per kilogram. In view of the significant increases in the international price of steel over the past 6 months, there has been an escalation of approximately 35%, which needs to be taken into account in determining the correct FOB value for safeguard duty purposes. It is apparent that CBC imported during the period of investigation and have continued to do so by increasing the imports.

Responses from the Applicant

The Applicant stated that it is difficult to understand how the fact that NSS is one of the largest importers of fasteners in South Africa and that NSS' primary market is other fastener resellers and end users is in any way substantive or will detract from the merits of the application. The policy aim of the safeguard duty is to improve the ability of the domestic fastener industry to compete with international suppliers and importers like NSS in the SACU market.

The Applicant stated that the safeguard duty does not block imports and, by implication, does not seek to establish the local industry as the only supplier to meet domestic demand. However, it is essential to restore the imbalance caused by the surge in imports which virtually decimated local market share in the period of investigation of the initial application.

The Applicant further stated that however, in stating this, the way any importer can maintain or even increase its market share is by continually undercutting the prices offered in the local market, thereby maintaining its dominance which it will be reluctant to relinquish. This is clear as the rise in imports from exempted developing countries is analysed even though they are not part of the traditional supply chain.

The Applicant further stated that initially the average import price from these countries were in the region of R38 per kg. However, as import volumes increased prices almost halved. According to the Applicant, what is further disconcerting is that even though international steel prices increased to unprecedented levels in 2021, the average import price from these exempted developing countries decreased to just above R16 per kg.

The Applicant further stated that this no doubt cast a bright spotlight on the principal challenge for the domestic industry in that the cost of production is often higher than the price of imports. This is because import prices reflect low international prices, which is a long-term structural feature driven by substantial capacity in the international market. In such circumstances, as explained in the

Application, the safeguard duty is critical to push the import price sufficiently above the cost of domestic production, so that the domestic primary steel industry can profitably sell products that are less expensive, and hence more attractive, than imports.

NSS Fasteners Comments

NSS Fasteners stated that the volume increases from the exempted countries which SA fastener importers are now purchasing from, bares absolutely no relation to the injury SAFMA is currently experiencing and that there is no causal link between importing from exempt countries such as Taiwan, Vietnam, Thailand, and the unforeseen development of excess capacity in China that occurred during the initial period of investigation.

Reponses from Applicant

The Applicant stated that the safeguard duty has been effective in reducing imports from target countries.

The Applicant stated that it is the continued imports from exempted developing countries which are not part of the traditional supply chain which ensure that imports are substantially higher under the "lapse scenario". Only a scenario which extends the existing safeguard duty (the "remain scenario") renders imports less attractive. According to the Applicant, once China re-enters the SACU supply chain, there can be no doubt that imports will again surge, causing serious injury to the SACU industry.

The Applicant further stated that implicit in the focus on the likelihood of a recurrence of harm is a consideration of whether the safeguard duty reaches its goal of restraining import growth: if the safeguard duty was ineffective, there would be no meaningful difference between the import volumes found for the 'remain' scenario and those found for the 'lapse' scenario.

Commission's consideration

After the implementation of the safeguard measures, imports were channelled from developing and exempted countries which affected the SACU industry negatively and contributed to the lessening of the effect of the safeguard duty.

NSS Fasteners Comments

NSS Fasteners stated that the Applicant has provided incorrect and misleading comments regarding the above changes in costing. In the application, the Applicants stated: "This increase will mainly be caused by China re-entering the market as it aggressively explores export market for its steel products, including the product under consideration. China recently announced that it is increasing its export rebate to 13% from the previous 10% effectively removing all value-added taxes from steel exports. This will reduce Chinese export FOB prices by $45-60/tonne. In a similar vein, port charges in China have also been reduced making the actual costs associated with exporting steel cheaper. Beyond these changes, the extremely low oil price will reduce freight costs significantly allowing imports to arrive cheaply in Africa."

NSS Fasteners stated that the statement by the Applicant is not true and intentionally misleading. China has been identified as the primary driver of low-cost imports. During 2021 Q1, the 13% China export table has been cancelled. This can be even observed in the Arcelor Mittal 2021 Q1 presentation. The cancellation of this export rebate will further increase the cost of imports from China by 13% and this will increase the cost of importing.

NSS Fasteners stated that there is also a global shortage in ocean vessels and containers, as such freight companies have increased the costs significantly. "Maersk is the largest container shipping company in the world, as the Maersk Q1 2021 interim results, "freight and charter rates were nevertheless persistently high, largely reflecting bottlenecks in domestic logistics and scarce container equipment. Freight rates out of China, as measured by the China Composite freight index (CCFI), increased by 111% in Q1 compared to the same quarter last year.

NSS Fasteners further stated that freight is historically approximately 10% of merchandise value. An increase of 111% of this value would increase costs by 11.1% by (10% x 111%). As a result of the above, the cost of importing from China has increased by 24.1% (13% increase from the expiry of the China export rebate certificate and 11.1% increase because of shipping cost increases from China) during Q1 2021. The significant increase in importing will allow manufacturers to be more competitive because of the above going forward, even without the safeguard duty.

Reponses from Applicant

The Applicant stated that international supply conditions favour increased imports of fasteners, which, combined with weak domestic demand, limit sales by the domestic industry. Safeguard duties play an important role in containing import volumes, as discussed below. The lapse of safeguard duties will therefore result in a substantial increase in import volumes in the near future, harming domestic supply.

The Applicant stated that the international supply competes with domestic supply and domestic prices follow international (i.e. import) prices. The changes in international supply – including significant excess capacity at Chinese and other manufacturers – favour increased imports and will push down local prices.

The Applicant further stated that the above implies that harm to domestic supply remains, even with the current safeguard duties in place. Nevertheless, the safeguard duties still provide protection: while safeguard duties may cover only a portion of international supply to SACU, this partial coverage ensures higher import prices, which discourage imports from the target country (China). It also provides policymakers the opportunity to properly formulate effective safeguard duties that would cover all relevant countries.

The Applicant further stated that it clear that import volumes are significantly down, but the price is also higher than at any point in the original investigation period. The safeguard duties imposed in 2018 suppressed import volumes. In other words, the safeguard duty achieved the required drop in import volumes. The decline in imports is particularly striking for China which was the target country in the original investigation. Currently, Chinese imports are almost non-existent.

Comments from FDA

FDA stated that it clear that import volumes are significantly down, but the price is also higher than at any point in the original investigation period. The safeguard duties imposed in 2018 suppressed import volumes. In other words, the safeguard duty achieved the required drop in import volumes. The decline in imports is particularly striking for China which was the target country in the original investigation. Now, Chinese imports are almost non-existent. It was stated that China will find it difficult to regain market access since imports from exempted countries dominates the market.

FDA stated that the Applicant negates any need for the extension of the safeguard measure even before it has supplied any injury information. The Applicant categorically concedes that virtually no imports were covered by the safeguard at the time the application was brought. Thus, if the safeguard duties were not extended, imports would simply remain at the same level they are currently for two reasons: first, 97% of all imports are made from exempted countries. Thus, if the safeguard lapses, imports would remain at the same level, although the distribution might change to some extent. Second, imports from exempted countries are priced lower than imports from non-exempted countries. The Applicant itself indicates that the average price from countries subject to the safeguard is 25.2% higher than from exempted countries. This means that it would be difficult for countries subject to the safeguard duty to regain market share from the exempted countries.

Comments from the Applicant

The Applicant stated that it is not clear what substance the arguments made by the FDA have on the merits of the Application the essential elements the Commission needs to consider.

The Applicant further stated that in the application the Applicant clearly established the impact of import volumes in the remain and lapse scenarios. Under the lapse scenario import volumes, especially from China, will again increase substantially in a market, severely constrained by domestic demand contraction. This will again give importers the dominance they had before the imposition of the safeguard duties, which clearly establishes causal link.

Comments from the European Commission on the essential facts letter:
In US –Steel Safeguards, the Panel, in a finding upheld by the Appellate Body, concluded that "a finding that imports have increased pursuant to Article 2.1 can be made when an increase evidences a certain degree of recentness, suddenness, sharpness and significance.[2]"

As indicated in the submission at initiation, the data presented in the application shows that after the safeguard measure was imposed in 2018, imports decreased dramatically.

Imports decreased by more than 50% in absolute terms during the period of investigation. Furthermore, the fact that at the end of the period imports increased as compared to 2019 (but remained 50% below the level of 2018), indicates that there is a demand for imports. In any event, any imports have been under measures and are thus not injurious. Extending the safeguard measures is thus not justified and would also not solve any difficulties the domestic industry may be experiencing.

Comments from FDA on the essential facts letter:
FDA stated that the average unit prices provided are too low and that they are not in agreement with these figures. It was stated that the Applicant indicated that the import volumes are expected to increase by 57% in 2021 and that the unit price is expected to decrease by 21%, but that there is no evidence to support these claims. It was stated that import prices are expected to increase owing to the following reasons:

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[2] Panel Reports, *US – Steel Safeguards*, para. 10.167.

a. Imports from China

Import prices from China is expected to increase by over 500%. The steel price in China is currently the highest it has ever been in the past 5 years at 5 458 CNY/ton. This means that China has higher inputs costs resulting in its exports to SACU being more expensive.

b. Imports from exempted countries

It should be noted that although imports from exempted countries now exceeds 3%, they are still lower than the volumes imported from China in the original investigation period which was the target country. Imports volumes are lower in the current investigation period as compared to the original investigation period and import prices are higher than the original investigation period. Following this, the assumption that import prices will fall in 2021 and 2022 is flawed and not backed by verifiable data.

c. Rising shipping costs

The cost of importing has increased significantly over the past few months owing to rising freight cost. Freight costs have increased over 500% due to increased demand. This is coupled with increases in the costs of pallets from $65 to over $180 per cube. It should be noted that that freight costs account for about 15% of the FOB value. Any small change in the shipping costs will have a direct impact on the import volumes. The rising shipping costs will make it more expensive to import.

Commission's consideration

It is clear, that should the safeguard duty not be extended, there will be an increase in the imports, which will lead to the continuation and/or recurrence of serious injury to the SACU industry.

4.3 ACTUAL AND POTENTIAL DECLINE IN SALES

The following table shows the SACU industry's sales:

	During Safeguard			Post safeguard if Extension not granted	
Sales Volume (tonnes)	**Jan 2018-Dec 2018**	**Jan 2019-Dec 2019**	**Jan 2020-Dec 2020**	**Jan 2021-Dec 2021**	**Jan 2022-Dec 2022**
CBC	100	121	56	40	36
TPN	100	130	84	60	53
Total CBC and TPN	100	126	71	50	45
Other SACU producers	100	126	71	50	45
Total SACU sales volume (tonnes)	**100**	**126**	**71**	**50**	**45**

The Applicant stated that although local sales volumes increased from 2018 to 2019, the significant expected increase in imports when the safeguard duty lapses, accompanied by a decrease in expected sales will cause a significant shift in market share to the imported product. This is indicative of recurring serious injury if the safeguard duty lapses and a clear indication that the extension of the safeguard duty is required. Furthermore, the devastating impact of the Covid-19 pandemic and the depressed economy for 2020 is clearly evident if the decrease in total consumption is taken into consideration. The increase in imports from its low in 2019 to 2020 is therefore even more devastating to local production.

Comments from NSS Fasteners

NSS Fasteners stated that the decreasing fastener demand in South Africa is a long term trend and that the South African demand for fasteners is not significant enough to justify a number of small local producers that cannot meet the economies of scale.

4.4 PROFIT AND LOSS

The following table shows the SACU industry's profit:

During Safeguard			
CBC	**Jan 2018-Dec 2018**	**Jan 2019-Dec 2019**	**Jan 2020-Dec 2020**
Gross profit R / 1 000	100	70	63
Net profit per unit (Rand)	100	-125	-35

During Safeguard			
TPN	**Jan 2018-Dec 2018**	**Jan 2019-Dec 2019**	**Jan 2020-Dec 2020**
Gross profit R / 1 000	Negative	Negative	Negative
Net profit per unit (Rand / ton)	Negative	Negative	Negative

The Applicant stated that the importance of an increase in production and sales volume, largely through import replacement as a direct result of effective safeguard protection can be clearly seen in the increase in both gross and net profit margins reported by CBC and TPN. Any reversal of the effectiveness of the duties, as is indicated in forecasted sales and production volume in the absence of the safeguard duty, will again lead to a significant decrease in profitability to losses experienced before the imposition of the trade remedy. In fact, this is a position that the industry will not recover from as economic activity and subsequent demand is at an all-time low. If allowed to continue without the implementation of the extension of safeguard duties, the industry will find itself in a position of complete unprofitability to the extent that it will no longer be viable to produce the subject product. This will provide importers with the necessary foothold to overrun the market and push the domestic industry out. Consequently, it is imperative for the industry to survive that the safeguard measures on screws be extended for at least six years. This is how long it is envisioned for the demand to recover in the aftermath of the Covid-19 lockdown and restrictions.

Comments from FDA

The profit and loss information indicates that CBC's gross margin percentage and price per unit decreased in 2019 when imports decreased, and increased in 2020, when imports increased. This shows that possible further increased imports are not a threat to at least CBC.

Commission's consideration

The Commission took note of the fact that the industry started recovering once the safeguard duty was imposed, it also noted that the if the safeguard duty is not extended, profits will be affected negatively.

4.5 OUTPUT

The following table shows the SACU industry's output:

	During Safeguard			Post safeguard if Extension not granted	
Tonnes	**Jan 2018-Dec 2018**	**Jan 2019-Dec 2019**	**Jan 2020-Dec 2020**	**Jan 2021-Dec 2021**	**Jan 2022-Dec 2022**
CBC Production	100	114	48	34	31
TPN Production	100	161	54	38	34
Other SACU producers	100	138	51	36	32
Total SACU production (tonnes)	**100**	**138**	**51**	**36**	**32**

The Applicant stated that although CBC and TPN have shown an increase in production in line with commitments made in terms of the relevant adjustment plan, this cannot be maintained and expanded upon without the necessary safeguard protection measures in place for a sufficient period to ensure full adjustment. The loss of production in 2020 reflects the expected increase in imports for 2021, mainly from exempted countries and China again becoming more prominent as well as the devastating impact of Covid-19 in 2020. This is indicative of recurring serious injury if the safeguard duty lapses and a clear indication that the extension of the safeguard duty is required.

This would represent and recurrence of serious injury on par with what the industry experienced when it applied for the original safeguard protection measures. The domestic industry will not be able to recover from this a second time.

The Applicant stated that the industry has proven that it will fully commit to the commitments made in its adjustment plan by discontinuing any and all import programs, increasing its labour force and ultimately increasing its throughput in its factories. However, it requires sufficient time to do so. If the safeguard duty is retained, indications are that production will keep increasing post the extended duties as the domestic industry becomes fully self-reliant.

Comments from NSS Fasteners

NSS Fasteners stated that per the Applicant's own admission, the collapse in demand was the driving factor for poor performance in 2020. The Applicant has acknowledged that viability of the business depends on volume.

NSS Fasteners further stated that the South African demand for fasteners is not significant enough to justify a number of small local producers that cannot meet the economics of scale. They have also further indicated that the low demand is likely to remain until 2024. Therefore, we cannot expect local manufactures to be able to achieve critical economies of scale even with safeguard duties in a small shrinking market for their products.

Responses from the Applicant

The Applicant stated that it is disingenuous for NSS to use a global pandemic and its economic fallout to build a case around critical demand and the achievement of economies of scale. This while being at the same time the company involved in circumventing safeguard duties and use the slowness of a bureaucracy to stop these loopholes, further exacerbating the woes of the fastener manufacturing sector in South Africa.

The Applicant stated that steel mills worldwide are experiencing backlog surges as buyers place their orders further in advance and with even more mills. The situation worsened from where it started in 2019 Q4. In many cases, order intake now is only expected to be delivered in September 2021. Internationally, the situation regarding the supply and demand balance remains extremely fragile.

The Applicant further stated that this supports the claim that the current imbalance is short-lived and that a correction is imminent, putting China back on the top of the world supply-chain as so eloquently alluded to by NSS stating the reasons why South Africa will not be able to grow market share in Africa. The industry will have to compete with the Chinese.

Comments from NSS Fasteners

NSS Fasteners stated that any disruption in the supply should have been accounted for in the 30% schedule 1 duty and has little relevance, if any, in applying for an extension to a safeguard duty beyond the initial period.

NSS Fasteners noted in the ITAC final determination published on 24 January 2019 that "Whilst electricity supply at one stage a constraint in terms of current demand, Eskom desperately needs to get back the huge loss of supply to maintain its viability and sustainability." Since this final determination, power production has continued to decrease and power outages have continued to increase. The power shortages in South Africa have been well documented.

NSS Fasteners stated further that this is significant constraint for manufacturing. This would further put pressure on the ability to produce volumes. This also indicates a long-term trend of decreasing power supply that is not improving.

Comments from FDA

FDA stated that one cannot ignore the impact of power cuts due to load shedding, amongst other causes, on the economy. The Applicants are known heavy users of electricity. Rising electricity costs have affected electricity-intensive sub-sectors in the metals and engineering sector. Any small increase in the cost of electricity would have an impact on the cost and price structure of the Applicant. This has nothing to do with imports and should be thoroughly investigated. Failure to do so will result in the Applicant attributing injury to imports instead of the real problem.

Responses from the Applicant

The Applicant stated that this is a general problem facing South Africa's manufacturing sector as a whole. Should everyone just throw in the towel in the face of these challenges and start to import.

Comments from FDA

FDA stated that the inability to meet domestic demand dates back to 2018. In the original investigation we made extensive representations regarding supply. Our comments were simply ignored, yet nothing has changed since the original investigation. The shortage of certain sizes of set screws not only persists but has in fact worsened. Lead times have also increased from an average of 4 months in 2018, to about 8 months in 2021.

FDA stated that the safeguard duty is intended to protect local producers and provide them with an opportunity to adjust to import competition and satisfy the local demand first, before allowing imports to do so. However, where the local industry cannot supply what is being demanded, the safeguard duty does more harm than good. The fact that local manufacturers cannot supply the products being protected by the safeguard duty is in itself enough evidence to argue for dismissal of the application by ITAC. The product range in stock is actually shrinking and there is very little the downstream sector can do about it, other than importing in order to stay in business.

4.6 MARKET SHARE

The following table shows the market share for the subject product:

During Safeguard				Post safeguard if Extension not granted	
Tonnes	**Jan 2018-Dec 2018**	**Jan 2019-Dec 2019**	**Jan 2020-Dec 2020**	**Jan 2021-Dec 2021**	**Jan 2022-Dec 2022**
Total SACU market (ton)	100	67	58	66	73
CBC and TPN market share	100	126	71	50	45

(ton)					
Other SACU producers	100	126	71	50	45
Total imports (ton)	6 349	1 692	3 075	4 834	5 875

The Applicant stated that although local sales volumes increased from 2018 to 2019, the significant expected increase in imports when the safeguard duty lapses, accompanied by a decrease in expected sales will cause a significant shift in market share to the imported product. This is indicative of recurring serious injury if the safeguard duty lapses and a clear indication that the extension of the safeguard duty is required.

The Applicant further stated that the devastating impact of the Covid-19 pandemic and the depressed economy for 2020 is clearly evident if the decrease in total consumption is taken into consideration. The increase in imports from its low in 2019 to 2020 is therefore even more devastating to local production.

Comments from FDA

FDA stated that the local manufacturers are creating increased competition for themselves. During the period January 2019 to December 2019, the following is clear:

- Local manufacturers increased their market share by 88% from 2018 to 2019 while the SACU consumption simultaneously declined by 33%, indicating the remarkable success of increased volume as a result of the safeguard.
- Based on the above, local manufacturers dominated the market and were in a position to increase pricing. TPN increased its production by 61% while CBC increased its production by 14%. Total SACU producers increased its production by 38% on average.
- Price competition between local manufacturers can easily be identified based on their profit margins. CBC's profit margin declined while TPN's profit margin remained at a negative.
- During the period in 2019, the cost of imports increased to an average of R25.70 per kilogram. This was a 27% increase from the 2018 average of

R20.22 per kilogram. As importing cost had increased, there was no downward pressure on selling prices from imports during this period.

FDA further stated that the fact that local manufacturers dominated the market in this period is indicative that downward pressure on selling prices are driven by competition between local manufacturers and not by importers.

Responses from the Applicant

The Applicant stated that it is true that competition between local manufacturers is robust. However, importers are in there, importing from non-traditional suppliers in developing nations at very low prices. If fact, the increase in steel price experienced since Q4 2020, did not affect these importers at all. Import prices are getting lower and lower, forcing the local industry again lose the gains initially made in terms of market share and growth.

The Applicant further stated that this will only get worse in a lapse scenario where traditional supply routes are restored local manufacturers have always been and are still having to meet import prices. Import prices did not increase to the extent indicated by FDA.

Comments from NSS Fasteners

NSS Fasteners stated that this has been the real structural issue which is pertinent in the South African market place and has continued for the past 20 years, despite numerous anti-dumping, safeguard duties and now extended safeguard duties. Any extension to the safeguard duty period will not result in any result any changes to the behaver between SAFMA members.

NSS Fasteners stated that the local manufactures are creating increased competition for themselves and that the competition is not coming from importers, but rather other local manufactures. NSS Fasteners further stated that as the local manufacturers had a significant control of the market share in this period, they should have used this opportunity to increase selling prices. However, the fact that gross margins decreased and even remained negative demonstrates that the download pressure on selling prices were driven by competition between local manufacture and not by importers. If the safeguard duties continued, the local manufactures would continue in price wars and continue to operate at a loss.

Responses from the Applicant

The Applicant stated that it is true that competition between local manufacturers is robust. However, importers are importing from non-traditional suppliers in developing nations at very low prices. The Applicant further stated that in fact, the increase in steel price experienced since Q4 2020, did not affect these importers at all. Import prices are getting lower and lower, forcing the local industry again lose the gains initially made in terms of market share and growth. This will only get worse in a lapse scenario where traditional supply routes are restored.

Commission's consideration

The table above indicates that the SACU market decreased from 2018 to 2019, while the Applicant's share of market increased (with the safeguard measures in place). From 2019 to 2020 the SACU market declined, while the Applicant's share of market also decreased.

4.7 PRODUCTIVITY

The following table shows the productivity of the subject product for SACU industry:

Table 4.2.5: Productivity

	During Safeguard			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Applicants' production (ton)	100	138	51	49	41
Number of employees (manufacturing only)	100	98	77	56	40
Units per employee	100	140	66	88	104
Output ratio (R/ton)	100	77	156	149	178

The Applicant stated that both CBC and TPN have committed to increase domestic production as part of their adjustment plans, with CBC going so far as to fully close down its import department in favour of domestic production. This has however come at great cost to them as the imports coming in from countries excluded from the safeguard duties, along with the slow economic conditions has forced them to sell at lower profits, with current sales creating nett losses for the companies.

CBC and TPN stated that it remains comitted to their adjustment, by keeping employment- and production levels high, even during this turmultulous times. An extension of the the duties, coupled with the closing down of the exclusion loophole, will assist these countries in reaching their goals and truly becoming self-sufficient.

Comments from NSS Fasteners

In comparing the employment figures in the original application, it seems as if there is a net reduction of 2 employees. This is clearly indicative of SAFMA's inability to increase employment as a result of the implementation of the safeguard duties. The primary focus of the safeguard duties is to protect local jobs, even with the protection from safeguard duties, both the local manufacturers and the primary steel producers have continued to reduce their labour force. Local manufacturers have reduced their employment by 23 percent over the safeguard period. In addition to this, AMSA has continued to reduce its workforce, hired labour, contractors, and training spend despite its promises to increase across these areas.

4.8 UTILIZATION OF PRODUCTION CAPACITY

The following table provides capacity utilization of the subject product for the SACU industry:

	During Safeguard			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Applicants' capacity	100	100	100	100	100
Applicants' total production volumes (ton)	100	117	58	53	51

Applicants' capacity utilization%	100	117	58	53	51
Rest of SACU capacity	100	100	100	100	100
Rest of SACU capacity utilization %	100	117	58	53	51

The Applicant stated that as production throughput decreases, capacity utilisation decreases in relationship to it. It is not possible to maintain high production efficiency and capacity utilisation if product throughput does not remain high, and especially if this throughput decreases as a result of imports.

As a result of low / negative economic growth, compounded by the Covid-19 and associated lockdown, apparent steel consumption is expected to decline by 10% from 2019 to 2020 with a slight recovery of 2% anticipated towards 2021. This combined with an increasing import trend, will lead to a decrease in capacity utilisation, as importers start to take over the increasing smaller market of screws, until domestic manufacturers can no longer compete and are forced to close shop, even as the market starts to inevitably increase again once the pandemic and slow economic conditions subside.

The erosion of capacity utilisation as an indication of recurring serious injury is also evident as production volumes decrease in parallel with imports increasing their share of the domestic market.

Commission's consideration

Utilization of capacity for the Applicant decreased from the period January to December 2019 to January to December 2020 and will decrease further if the safeguard duties are not extended.

4.9 EMPLOYMENT

The following tables provides total employment figures:

Table 4.2.7: Employment

	During Safeguard			Post safeguard if Extension not granted	
	Jan 2018-Dec 2018	Jan 2019-Dec 2019	Jan 2020-Dec 2020	Jan 2021-Dec 2021	Jan 2022-Dec 2022
Applicants' total production volumes	100	138	51	49	41
Number of employees (manufacturing only)	100	98	77	56	40

The Applicant stated that both CBC and TPN have committed to increase of domestic production as part of their adjustment plans, with CBC closing down its import department in favour of domestic production.

This has however come at a cost to them as the imports coming in from countries excluded from the safeguard duties, along with the slow economic conditions, has forced them to sell at lower profits levels, with current sales creating net losses for the companies. Despite this, both CBC and TPN remain comitted to their adjustment, by keeping employment- and production levels high, even under the current economic conditions.

An extension of the the duties, coupled with the closing down of the exclusion loophole, will assist these countries in reaching their goals and truly becoming self-sufficient.

Commission's consideration

Total employment decreased during the period of investigation, and will decrease further if the safeguard duty is not extended.

Other comments received on the continuation and/or recurrence of serious injury:

Comments from the European Commission

The European Commission stated that it has observed that after the safeguard measure was imposed in 2018, the imports from the subject countries have been decreasing dramatically and replaced by imports from other sources after the first year of validity of measure (such Thailand or Vietnam). Imports decreased by more than 50% in absolute terms during the period of investigation, and the situation of the domestic industry has improved.

The European Commission stated that according to the information provided, the main economic indicators show the following development:

a) market share for the participating companies increased by 23 index points; domestic consumption decreased between 2018 and 2020 by 42%; and SACU steel consumption decreased by 30,4% between 2013 and 2020;

b) production decreased by around 50% between 2018 and 2020, in light of the decreasing demand, while investments increased and the number of employees decreased; and that this does not indicate an impairment of the industry, but rather an ongoing modernisation process;

c) domestic sales decreased by around 30% for CBC in light of the decreasing demand, but for TPN they actually increased;

d) capacity remained stable for both CBC and TPN;

e) capacity utilisation rate decreased in line with a decrease in production due to the decrease of domestic demand;

f) productivity has grown for both companies;

g) regarding profits, they seem rather stable for CBC and negative for TPN without any further information being provided.

The European Commission stated that the SACU industry was also in a position massively increase its investments. Overall the domestic industry appears to be in a rather to be in a rather good situation. In any event, the imports from the subject countries clearly cannot be cause of any injury, since they decrease significantly, and they are under measure and thus are not injurious. It was further stated that the industry nevertheless claims that it is still in a difficult situation and the continuation of measures is necessary in order to ensure its viability. However, the situation described above clearly shows that a further prolongation of safeguards would not be warranted.

The European Commission further stated any difficulties the domestic industry may be experiencing must be due to others factors, such as the important decrease in demand. However, any injury caused by such other factors may not be attributed to imports and may not be used to justify a prolongation of the safeguards measures.

The European Commission concluded by stating that the Commission trusts that the SACU authorities will take the arguments raised above appropriately into account, in particular:

- The safeguards measures have been effective and imports have decrease significantly;
- The industry is in a rather good situation, it has invested, expanded and innovated;
- The industry seems to have adjusted to the new competitive situation. Under these circumstances, the prolongation of measures would not be warranted.

European Commission further stated that the Commission trusts that the SACU authorities will terminate this investigation without prolongation of measures in full compliance with its WTO obligations.

Comments from NSS Fasteners

NSS Fasteners stated that the Commission found that the unforeseen development in the present case constitutes the following:

"the increase in the production capacity of fasteners and the subject product at the level stated could not have been foreseen prior to 1994. This increased production therefore filtered through all fastener production markets in the world, especially led by increase in production from China at both a higher producer and consumer fasteners, including the subject product". The final report also stated that "it could not have been foreseen that the world that the world-wide production of steel would have increased to levels as high as these after 1994.This increase led to an oversupply of steel throughout the world and consequently an increase in the global wire rod and fastener production. This over supply coincided with the contracting demand of wire rod, fasteners and the subject product globally, thus resulting in excess supply of the subject product." The Commission found that these unforeseen developments caused injury to South African Fasteners Manufactures Association (SAFMA) and as a result of these findings, the safeguards duty of 48.01% was implemented.

NSS Fasteners stated that the international steel market and circumstances which caused the Applicant's injury, have significantly changed since the initial period of investigation for the following reasons:

- Unexpected increase in the steel demand in 2020;
- Steel shortage supply;
- Iron ore prices at 9 year high;
- Aggressive increases in scrap and other raw material prices;
- Strong international steel prices expected to remain in near term;
- Global steel demand is improving and is expected to grow 4.5% - 5.5% in 2021;
- China is no longer a net exporter of steel, but a net importer;
- There is no longer any excess capacity of material used to manufacture fasteners anywhere in the world, including China. This is evident by the all-time high prices of material used to manufacture fasteners within the last 2 months.
- China has stated in its policy to reduce its steel export rebate from 13%.
- Lead times from all fastener manufacturers in the world, including China have significantly been pushed out to 150 days.
- Significant delays in the availability of shipping containers;
- The surge in imports which occurred in 2018 has not repeated itself and there has been a continued decrease in imports because of a change in market conditions.

NSS Fasteners further stated that the final report states that "the Applicant's information on unforeseen developments will focus largely on the development and overcapacity of the Chinese fastener market". The market conditions of the Chinese fasteners market have a significantly changed:

- Net exports of finished steel products have decreased significantly.
- China cancelled the 13% export rebate.
- Cost of freight from China has increased by 111%.

NSS Fasteners further stated that China's net exports of finished steel products have also decreased significantly during the safeguard period and as net trade has decreased significantly over the period, China will not be able to export as much as they previously did.

Responses from Applicant

The Applicant stated that the introduction of the customs duties was however not sufficient to curb the rise in imports, as is evidenced from the initial safeguard application. Consequently, a safeguard measure may be imposed (on top of a customs duty) if, as a result of unforeseen developments, any product is being imported in such increased quantities and under such conditions, as to cause or threaten serious injury to domestic producers in that territory.

Commission's consideration

It was noted that SACU Industry had an unforeseen surge of imports from excluded developing and exempted countries such as Thailand, India and Vietnam.

Comments from NSS Fasteners

NSS Fasteners stated that South African structural problems pertinent to the product in question, have persisted for over 20 years despite numerous anti-dumping duties and more recently, Safeguard duties. A further extension in the safeguard duties will have no effect on the overall structural problems as more fully detailed below and will simply result in higher selling prices being paid by the downstream steel industry.

NSS Fasteners stated that the structural problems that relate to South African production are more adequately covered by standard customs duty. Currently, the standard customs duty rate on steel hexagon head set screws is 30% and is one of the highest in the entire world. The Applicant continues blaming the inefficiencies of the South African market of steel supply, electricity, and labour supply, however, such inefficiencies, which are pertinent to South Africa, are adequately covered by the 30% schedule 1 Customs duty.

NSS Fasteners further stated that prolongation of the safeguards duties cannot change the situation of poor performance by local manufactures for the past 20 years. Even with safeguard duty protection, the local manufactures have not been able to operate with sustainable business. NSS Fasteners stated that there are several structural problems within the fastener market in South Africa:

- South Africa's shrinking demand;
- Local manufactures cannot sell to export countries in an internationally competitive market;
- South Africa's steel supply shortages for local manufactures;
- South African's electricity shortages for manufactures;
- Continued competition between local manufactures; and
- Inability to hold stock.

NSS Fasteners further stated that these structural problems all impede the ability of local manufactures of scale. These structural problems and the decreased economies of scale lead to increased output costs, creating a loop of increasing costs and lowering output.

Responses from the Applicant

The Applicant stated that there is no merit or substance to this argument and totally ignores the economic reality of what a safeguard duty is supposed to achieve. In addition, these structural issues are being faced by every steel maker and downstream steel company in South Africa.

The Applicant stated that economic principle tells us that the main challenge for the domestic industry is that the cost of production is often higher than the price of imports. This is because import prices reflect low international prices, which is a long-term structural feature driven by substantial capacity in the international market. It is important for any safeguard duty to close the gap between these two prices, import and domestic, in order for the local industry to compete and achieve some semblance of hope of retained market share, and with this the benefits of economies of scale that will enable the industry to reduce cost and increase profitability. As happened in the direct aftermath of the imposition of the provisional payment on screws.

The Applicant further stated that the local industry continues to be price takers and following or reacting to these low-priced imports which the industry believes and have evidence which can be submitted that the safeguard duty is not being collected by SARS. ITAC is within its own right to conduct this investigation and report its findings in the Report. There is no merit in the arguments that the structural challenges facing the industry is any way detracting from our case. In fact, it adds to the argument of extending the safeguard duties.

Comments made by NSS Fasteners

NSS summarized its comments as follows:

- The cost of importing from China has increased significantly with the expiry of the 13% export rebate and the 111% increase in freight costs;
- The cause of injury was not driven by importers, but rather because of significant decreases in demand, inability of AMSA to provide raw materials for production and electricity supply challenges;
- The Applicants have not made significant progress in any developments they previously committed to. Their commitments remain intentionally ambiguous with no hard commitments to avoid accountability;
- Employment at local manufacturers and steel producers have continued to decline even during the safeguard duty period;
- The Applicants have admitted that they cannot serve the export market because they lack international competitiveness; and

- Importers and downstream manufacturers have already sustained significant job losses because of safeguard duties.

Comments from FDA

FDA stated that the Applicant claims confidentiality as regards a significant part of its overall submission, whereas the Applicant in most instances provided either a non- confidential summary, typically making use of indices, or indicated that the information was not susceptible to summarisation, this is not true for all claims of confidentiality.

FDA further stated in some instances, no summary is provided, and in others it is merely indicated that a figure is "negative" or "positive", without indicating the trend. This does not conform to the requirements of either the SGR or the WTO Agreement on Safeguards, which both require that other interested parties should be given a reasonable understanding of the information submitted in confidence.

FDA further stated ITAC request the Applicant to update the non-confidential version, at least as far as the issues highlighted in the rest of this section are concerned, and it be provided with a reasonable opportunity to comment thereon once received.

Comments from the Applicant

The Applicant stated that the all matters relating to confidential have been reviewed and accepted by ITAC as sufficiently evidenced to be considered for the purpose of this application. The Applicant has endeavoured to provide summation where possible, but where it could not do so, it provided enough context in order for the respondents to respond.

AMSA Deliveries: The Applicant further stated that although this information has been redacted, it has been provided that deliveries from AMSA decreased year on year, providing context to the arguments submitted in the application. Specific information is obviously confidential as such it could not be summarised.

Applicant financial tables: The Applicant notes the question raised on the use of the descriptions of "Positive" and "Negative" in the tables provided. This was done where figures could not be reliably (sensibly) indexed, or where it was not mathematically feasible to do so. The descriptors were added to provide the respondents with the context on the trends, without removing the tables completely.

Comments from FDA

FDA stated that it is impossible to determine serious injury or a recurrence thereof based on the information supplied in the application. There is no nexus between this information and the industry's performance which led to the imposition of the safeguard duty. There is no overlap between the information from the original investigation and the information in this application. Thus, there is nothing to indicate the current volume of imports in relation to prior imports, the industry's sales in relation to pre-safeguard sales, the industry's profits in relation to pre-safeguard profits, accordingly, there is no basis on which to make any determination of a recurrence of injury should the safeguard duty lapse.

FDA stated that Article XIX:1(a) of GATT 1994, Article 4.2(b) of the Agreement on Safeguards, and SGR 10 all require there to be a link between the increased imports and the injury experienced by the domestic industry. However, not only must a link be established between increased imports, but all injury caused by other factors must not be attributed to the increased imports (the non-attribution principle). In addition, any finding in this regard must be based on objective evidence, which must subsequently be fully discussed in an investigating authority's report. It is important for 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.

FDA stated that one cannot ignore the impact of power cuts due to load shedding, amongst other causes, on the economy. The Applicants are known heavy users of electricity. Rising electricity costs have affected electricity-intensive sub-sectors in the metals and engineering sector. Any small increase in the cost of electricity would have an impact on the cost and price structure of the Applicant. This has nothing to do with imports and should be thoroughly investigated. Failure to do so will result in the Applicant attributing injury to imports instead of the real problem.

CSIR published their "Statistics of utility-scale power generation in South Africa in 2020" Report in February 2021, which stated that in 2020, load shedding occurred for 859 hours of the year (9.8%) of the year. This is a shocking statistic which no doubt had a severe impact on the South African economy.

FDA further stated that the steel is used in the production of wire rod, and wire rod is used in the production of fully threaded hexagon screws and any disruption in the supply of steel would have a direct impact on the availability of set screws. Arcelor Mittal South Africa (AMSA), the only SACU producer of steel, has been battling to supply owing to varying reasons including but not limited to plant failures.

FDA further stated that the inability to meet domestic demand dates back to 2018. In the original investigation it made extensive representations regarding supply, but that it feels that their comments were ignored, yet nothing has changed since the original investigation. The shortage of certain sizes of set screws not only persists but has in fact worsened. Lead times have also increased from an average of 4 months in 2018, to about 8 months in 2021.

A fundamental concern remains that the Applicant cannot supply the full range of set screws required by the industry. More than 4 companies reported requesting quotes from either TPN or CBC or in some cases both, and receiving responses that the products in question were not in stock.

FDA further stated that extending the safeguard duty will result in job losses and the downstream sector employs far more people than the upstream. Each employee supports an average of 3-4 dependents. If the safeguard duty is extended not only are the jobs of direct employees at risk but also the well-being of their dependents. South Africa cannot afford any more job losses considering the dangerously high unemployment. We are in consultations with the downstream sector to provide the approximate number of people that will be retrenched if the safeguard duty is extended. This information will be provided in due course.

Commission's consideration

The Commission observed that during the period of safeguards measures SACU industry did not adjust fully as the imports were channeled from developing and exempted countries such as Thailand. Based on the information submitted the SACU industry is experiencing serious injury given its sales volume, market share, output, capacity utilisation and employment figures, and if extension not granted the serious injury will increase. Letters of support has been added to the response from FDA, indicating that there will be job losses, but no non-confidential letters were provided, and as such interested parties could not comment on the letters of support. The Commission decided not take the letters of support into account for the purposes of this determination. It should be noted that the Commission took all comments submitted during the original investigation into consideration.

Comments made by the European Commission on the essential facts letter

SITUATION OF THE DOMESTIC INDUSTRY

The European Commission stated that the data provided in the non-confidential application does not allow parties to draw proper conclusions about whether the domestic industry continues to suffer serious injury in terms of Article 4 of the WTO Safeguard Agreement.

However, according to the information provided in the application the situation of the domestic industry has improved, indicating that the measures initially imposed in 2018 were effective and the national industry has become viable again.

Production decreased by around 50% between 2018 and 2020, in light of the decreasing consumption during the same period. Furthermore, capacity and profits remained stable, despite the decreasing demand, and productivity has grown.

Moreover, the SACU industry has massively increased its investments while decreasing the number of employees, which indicates an ongoing modernisation process rather than any injury caused by imports (which decreased significantly, and are under measures and thus are not injurious).
Furthermore, an important element that has not been examined is a price analysis, including the development of domestic prices of the product concerned in relation to import prices. The Panel in Argentina – Footwear (EC) observed that a juxtaposition of statistics on imports and injury factors did not constitute an analysis of the conditions of competition between the imports and the domestic product[3]; that, in the absence of price comparisons between imported and domestic products, there was no factual basis for the statements that imports were cheaper than domestic products; and that there was no evidence that lower-priced imports had any injurious effects on the domestic industry[4].

Nevertheless, none of the economic indicators have been addressed in the EFL, and therefore it has not been demonstrated that the domestic industry is still suffering serious injury caused by imports.

In this context, it is recalled that according to the WTO Safeguard Agreement "serious injury" shall be understood to mean a significant overall impairment in

[3] Panel Report, *Argentina–Footwear (EC)*, para. 8.254.
[4] Panel Report, *Argentina –Footwear (EC)*, para. 8.261

the position of a domestic industry [...]". Thus, serious injury is a more demanding injury standard than material injury, in anti-dumping or anti-subsidy investigations and the EFL does not illustrate a significant overall impairment of a domestic industry.

The Appellate Body in US –Lamb described "serious injury" as a "very high standard of injury", namely;

"The standard of 'serious injury' set forth in Article 4.1(a) is, on its face, very high. Indeed, in United States –Wheat Gluten Safeguard, we referred to this standard as 'exacting'. Further, in this respect, we note that the word 'injury' is qualified by the adjective 'serious', which, in our view, underscores the extent and degree of 'significant overall impairment' that the domestic industry must be suffering, or must be about to suffer, for the standard to be met.

In making a determination on ... the existence of 'serious injury' ... panels must always be mindful of the very high standard of injury implied by these terms.[5]"

Serious injury, if any, and difficulties the domestic industry may be experiencing are most likely due to other factors, e.g. an important decrease in demand and an increase of costs of production. However, any injury caused by such other factors e.g. Covid-19, may not be attributed to imports, and may not be used to justify a prolongation of the SFG measures. By requiring that injury caused by other factors is not attributed to increased imports, the WTO provision seeks to ensure that safeguard measures are only applied in appropriate circumstances, that is when increased imports are causing or threatening to cause serious injury[6].

There are other factors contributing to the domestic industry's poor performance. FDA stated that it requested ITAC to investigate other factors that might be causing injury to the local industry and this was ignored. The problems at Arcelor Mittal South Africa (AMSA) were not acknowledged as an essential fact although this had a severe impact on the ability of the domestic industry's ability to supply. AMSA, the only SACU producer of steel, has been battling to

[5] Appellate Body Report, *US –Lamb*, paras. 124 and 126.

[6] Panel Report, *Korea –Dairy*, paras. 7.89-7.90., Appellate Body Report, *Argentina –Footwear (EC)*, para. 145.

supply owing to varying reasons including, but not limited to, plant failures. Letters by AMSA send to various stakeholders since July 2020 has been provided to ITAC, each indicating the status of their supply capacity. These letters made it clear that they are having difficulty with their plants which was shut down multiple times for various reasons. These shutdowns had an impact on the industry. It is worth noting that the impact of the steel shortages already manifests itself in the fasteners industry in the form of product availability, long delivery times and no stock of certain models, Customers are expected to wait until the local producers can manufacture a particular size. This is a problem as distributors are expected to carry a complete range of sizes to be competitive. Delivery dates are constantly pushed out. The local producers will quote a 16-week delivery date which keeps getting pushed out every two weeks for a period of 8 months, and real examples of this was submitted. This makes it extremely difficult to do business and will likely lead to the collapse of several distributors.

It was requested that rebates be considered as part of the investigation, if ITAC does not terminate the investigation. It was stated that this is crucial because applying for the creation of a rebate would take too long to benefit the downstream sector who has projects to complete.

FDA stated that the increase in imports cannot be said to be the sole or main cause of the serious injury and that this was conceded by the Applicant.

Comments from NSS Fasteners on the essential facts letter:

NSS stated that multiple factors have changed since the initial investigation. Such factors include, but is not limited to:

- Shortages of raw material supply;
- Disruption in electricity supply; and
- Covid-19.

It was stated that clearly these factors are causing injury to the local industry, however such factors cannot be attributable to increased imports.

In comparing the import figures before the implementation of the safeguard duty, and after the implementation of the safeguard duty, the following should be considered by the Commission:

- Import volumes have decreased from 2018 to 2020 by 60%;
- Import prices have increased from 2018 to 2020 by 29%.

Given these facts, the imports have significantly decrease and the objectives of the safeguard duty have certainly been achieved, SAFMA should have been able to implement the adjustments required in the development plan.

Given these facts, the imports have significantly decreased, and the objectives of the safeguard duty have certainly been achieved, SAFMA should have been able to implement adjustments required in the development plan.

In the one-year period immediately preceding the imposition of the safeguard duty from August 2017 to July 2018, 6 431 tons were imported. In the duty lapse scenario, the 2021 and 2022 volumes expect imports of 4 834 tons and 5 875 tons, respectively. Therefore, in the duty lapse scenario, imports are expected to be 25% less than pre-safeguard duty levels in 2021, and 22% less than pre-safeguard duty in 2022. This demonstrates that import volumes will be significantly less than pre-safeguard duty periods, even if the safeguard duty lapses, and that therefore there is no need to extend the safeguard duty.

By analysing the import data for the period before the imposition of the safeguard duty, namely August 2017 to July 2018 with the same period in the next two years, it indicates that the safeguard duty was immediately effective and that there were not a significantly difference in the following period. The safeguard duty remained effective in curtailing the imports over the duration of the safeguard duty period. There was not a resurgence of imports to cause a recurrence of serious injury to the Applicant. Any increase in 2020 would have been caused by supply issues.

The continuation and recurrence of serious injury has not been caused by imports. There has been no injury information provided that supports that the

SACU industry is experiencing serious injury. The fact that imports have decreased significantly and the fact that market share has increased significantly do not support the claims of injury.

Commission's consideration

The Commission decided that the Applicant provided enough information to indicate that the expiring of the safeguard measures will likely lead to a continuation and/or recurrence of serious injury.

4.10 SUMMARY – CONTINUATION AND/OR RECURRENCE OF SERIOUS INJURY

Based on the above information, the evaluation of the injury information of the Applicant for the period January 2018 to December 2020 is shown in the below.

Serious Injury Indicators (Jan 2018–Dec 2020)

Imports in absolute terms	Decreased
Imports in relative terms	Decreased
Sales volumes (Tonnes)	Decreased
Net Profit (R)	Increased
Output (Tonnes)	Decreased
Market share (Applicant)	Decreased
Total production volume (Tonnes)	Decreased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

Having assessed each injury factor and noting that there is a decline in the industry's performance as listed above, the Commission made a final determination that the expiring of the safeguard measures will likely lead to a continuation and/or recurrence of serious injury.

5. APPLICANT'S DEVELOPMENT PLAN

Commitments made in the original investigation

In accordance with the SGR, the Applicant provided a development plan that it indicated it will implement to be competitive and efficient. The plan is meant to allow the Applicant time to adjust, while the safeguard measures are in place, and therefore be able to compete with imports when safeguards measures expire.

5.1 Commitments made in the original investigation

The development plan that was submitted by the domestic industry highlighted the following measures it will put in place to improve the competitiveness of the industry:

- Investment in new equipment and technology;
- Product development to rationalize the input material range to assist ArcelorMittal Newcastle with the consolidation of their production volumes and to optimise the product offering to the domestic market;
- Support the introduction of a prior import surveillance system, similar to that of Europe and the USA to deal with the influx of final products;
- Continuous training of SARS to improve customs control;
- Establishment of an industry forum; and
- Support higher level designation/localization.

The Applicant stated that the development plan submitted, highlighted the need to focus and implement actions which are instrumental for bringing immediate relief to the industry and restoring a level playing field. But a joint effort is needed to go further. Short-term measures alone will not suffice to guarantee the long-term competitiveness and sustainability of the fastener industry. Its future depends on its ability to embrace modernisation and implement innovations. Past efforts have largely been thwarted by the inability of these interventions to be effective.

The importance of the effective imposition of the safeguard protection on screws cannot be overstated.

Always central to the to the achievement of the adjustment goals of the fastener industry was to achieve volume growth through import replacement as importers virtually in one year increased its import volumes from 3000 tonnes in 2013 to almost 7400 tonnes in 2014. This level was maintained and almost 7 800 tonnes were imported in 2017, achieving a market share of close to 80% of the total market for screws.

Also key to achieving its adjustment goals was a stable economic environment. As was stated in the development plan, most of the challenges facing the steel industry as a whole are also found in the fastener industry and there is an inter reliance of the different industries in the SACU economy, including construction, mining, automotive and energy. The fastener industry has experienced extreme difficulties to maintain manufacturing and export levels, competitiveness and ultimately profitability. This was largely due to a slack global and domestic economic environment, as well as apparent structural issues evolving, such as global manufacturing overcapacity and final product imports.

It was imperative that the current reality in which the SACU fastener industry finds itself is well understood, while both government and industry worked together to identify initiatives to stimulate further domestic and export growth potential for the industry. The ultimate goal was to raise aggregate domestic demand.

This was to be achieved mainly through public procurement and efforts to persuade the private sector to support localisation and local supplier development across all sectors of the economy. Localisation should become the default position of all of government and the private sector. Strengthening policy coherence and programme alignment with respect to public procurement is critical. The national Buy Back SA campaign must be energetically implemented, with the full support of the public sector, led by Proudly SA and the private sector. The DTIC initiated the pilot cluster development programme (CDP) to enhance efficiencies and competitiveness of local firms in various economic sectors and to achieve deeper localisation, diversification and industrial transformation and this is exactly what the SACU Fasteners Industry needs to gain growth momentum.

Comments from FDA

FDA stated that the provisions in section 21.7 of the Amended Safeguard Regulations provide that:

A definitive measure may be extended by a period of up to six years where the Commission finds that

a) the lapse of the safeguard duty is likely to lead to the recurrence of serious injury it was intended to prevent,

b) there is evidence that the SACU industry is adjusting.

This means that the Applicants bear the onus to prove that serious injury will reoccur if the safeguard duty is removed, and that the industry is adjusting. If both these requirements are not met, ITAC cannot allow the safeguard duty to be extended. NSS Fasteners stated that the Applicant failed to prove beyond any reasonable doubt that serious injury will reoccur.

FDA further stated that the legality around safeguard extensions explicitly states that the SACU industry should be adjusting to become more competitive when the duty is gone. In the original investigation SAFMA submitted a development plan to show how they will adjust into becoming more competitive against imports. The local manufacturers haven't made significant progress towards achieving this.
To illustrate that the industry is not adjusting, FDA stated the following:

- In 2018, the average time from order to delivery was 4 months;
- In 2021, the average time from order to delivery is 8 months;
- The list of products that are out of stock has expanded as compared to 2018;
- Prices are increasing.

5.2 PROGRESS REGARDING COMMITMENTS AND THE DEVELOPMENT PLAN

The Applicant provided as follows regarding commitments and the development plan:

5.2.1 Investment in new equipment and technology

As was indicated in its original application, capacity utilization of the industry and particular CBC and TPN was extremely low and as such no new investment in machinery was required. However, considerable investments were made by both CBC and TPN to improve on its technological abilities to increase efficiencies and thereby be able to compete more equally with the imported product.

Comments from NSS Fasteners

The fact that. machines that were "mothballed" were reintroduced into the production line does not constitute significant additional investments.

5.2.2. The fastener industry together with AMSA have rationalised raw material qualities thereby allowing AMSA higher production volumes on a narrower product range

AMSA highlighted the following initiatives launched and interaction and intervention to assist Newcastle with the consolidation of their production facilities.

- **Integration of steel grades and sizes**

  AMSA did evaluate the combination of specifications in detail, there was limited opportunity to combine specifications for the industry however some grades the Applicant integrated. Trials were done on certain specifications and combined when proven successful and this exercise is completed. The combination and reduction of dimensions was also evaluated, for example to combine 20.5 with 20mm. For its mills to roll the different sizes doesn't add any complexity to the plant or affect any efficiencies, therefore this exercise is also completed, no further changes to be implemented.

- **The rolling into stock or keeping strategic stock**

  The Applicant have evaluated the option of rolling some items into stock, but findings were that looking at volumes and product mix it wasn't feasible for AMSA to implement this plan due to affordability and economies of scale. The number of products that the industry manufacture requires large variety of specs and sizes, and it is something not within anyone's control.

- **Import prevention strategies**

  The Applicants are of the view that more focus should be on strengthening its import prevention strategies to mitigate the risk posed by circumvention and to improve monitoring of the existing safeguards duties. It believes that this will assist in total to increase of local manufacturing and capacity utilisation within the fasteners sector. The Applicant is of the opinion that the next opportunity will increase drive for export of final products to improve all industries capacity utilization and efficiencies. More manufacturing = Lower cost base. This will also allow it to shorten our rolling cycle which will assist the industry to better manage their stock levels and increase cash flow. The Applicant is well on its way to achieve reasonable volumes in the immediate aftermath of the safeguard duties, but the slowdown in deliveries has hampered these efforts. Once volumes pick up it will re-evaluate the rolling schedule.

Comments from NSS Fasteners

The Applicant stated that the rolling into stock or keeping strategic stock could not be implemented as this was not feasible for AMSA due to affordability and economies of scale. It was stated that this is an admission by the Applicant that they cannot both manufacture stock and keep stock. This is the role of importers in the market as importers need to have ready stock available. The Applicant admitted that there were well on their way to achieve reasonable volumes in the aftermath of the safeguard duties, but that the slowdown in deliveries has hampered these efforts. This is an admission of the causal link between the supply issues and the manufacturing capacity.

5.2.3. Support the introduction of a prior import surveillance system, similar to that of Europe and the USA to deal with the influx of final products;

Support introduction or a prior surveillance system, similar to that of Europe and USA to deal with the influx of final product. A meeting was held on 14 May 2018 to discuss prior surveillance system implementation. This was followed by correspondence to the Chief Commissioner of ITAC dated 26 June 2018, which deals with the Proposal for the Consideration of a Prior Surveillance system. A letter was written to SAISI on 9 March 2020 providing an outline or the Benefits of Prior Surveillance and where it fits. The Steel Master Plan also makes reference to implementing Prior Surveillance and thus far, two meetings of the Steel Master Plan have taken place. At this latter meeting, Rob Pietersma volunteered to pick up the Prior Surveillance Initiative in conjunction with SAISI. A meeting took place between Charles Dednam (SAISI) and Rob Pietersma on 2nd March to refresh ideas with the conclusion of requesting a meeting with the Inter-Agency Working Group (ITAC, DTI & SARS) who have also been tasked with Prior Surveillance and Reference Pricing. It was stated during one of the steel masterplan meetings that the fastener industry will pilot this initiative.

Comments from NSS Fasteners

NSS Fasteners stated that importers and manufacturers both support this initiative.

5.2.4. Continuous training of SARS to improve customs control

SAFMA has contracted the services of IS Training, and certified customs training consultancy, to assist in this regard.

In addition, SAFMA has attended all Downstream Steel Forums under the umbrella of SARS which deals with circumvention and import monitoring. Through this forum, SAFMA has provided reference pricing targets for the SARS risk engine (software monitoring imports) as well as numerous examples of imports duty circumvention.

Comments from NSS Fasteners

It was stated that importers and manufacturers both support this initiative and that importers have also reached out to SARS to improve customs control.

5.2.5 Establishment of an Industry forum

Whilst this has not officially taken place, the Applicant believes that this will commence in earnest with the kick off of the Steel Master Plan. In the meantime, SAFMA has initiated Association meetings with ArcelorMittal.

Comments from NSS Fasteners

It was stated that this has not been done and that the only way an effective forum can be established is by the inclusion of all interested parties which must include the manufacturers, large importers and large distributors who have the capability to drive the industry forward to the benefit of all concerned. It was stated that NSS Fasteners is not aware of any attempt over the past 3 years to establish any representative industry forum and that the industry is significantly larger than the two local manufacturers who claim to have more than 60% market share. Arcelor Mittal Luxemburg is the second largest steel producer in the world as is the majority shareholder of Arcelor Mittal South Africa and has not committed to increasing investment or employment in South Africa.

5.2.6. Support higher levels of designation and localisation

On the one hand it is very difficult to monitor localisation because the decision of buying takes place at a user buying and installation level. On the other hand, the Applicant believes there is greater buy-in taking place and provided the following examples;

- The Mining Charter Provided for a specific level of local content. That is monitored by the South African Bureau of Standards (SABS). CBC Fasteners has applied to SABS for the audit of local content of product supplied to the mining sector. The matter is in process, all submission having been provided, only waiting for an audit. In terms of its submission, the Applicant is able to confirm 97% local content in its product.
- Eureka is a large importer of fasteners, traditionally buying virtually no local product. Small quantities of fasteners have been historically acquired from CBC Fasteners, however, in February 2021, a large order was obtained from Eureka, all in mild steel hexagon Screws. As of 5th March, a portion has already been

supplied and work hours have been increases to complete the order. A further fill in enquiry is possible.

- It has been advised by Charles Dednam that he and Dr Fanaroff (facilitator of Steel Master Plan) have had meetings with Massmart regarding localisation, the Group that has Builders Warehouse. CBC Fasteners has for some years already been a supplier to Builder Warehouse via a distributor.
- The OEM Automotive Industry is committed to localisation. Unfortunately, the range of fasteners is very wide and would be difficult to service. Tooling cost relative to volume makes manufacture uneconomical as international companies are ahead of the curve. CBC was awarded in November a unit order which is used in the clutch of the Ford Ranger. It is a bolt which fits in well with CBC's existing tooling composition. Steel supply has been a problem in servicing this order, however production will commence mid-March now that CBC have received steel.
- Although not direct business, CBC Fasteners undertakes the Heat Treatment of U bolts for Toyota's Hi Lux, a vehicle that enjoys significant export and local demand volumes. CBC has been doing this process for Ramsay Engineering, a Pietermaritzburg based company that is involved in a number OEM Automotive supplies. CBC boasts a high standard continuous heat treatment facility that has been audited by Toyota Japan. Were it not for CBC's capability, it is likely that this safety critical item would be lost to SCU manufactures.
- Solar Projects. CBC Fasteners was awarded an order in 2018/2019. The requirements set in the awarding of the order were strict levels of local content which were then audited by an independent company specialising in local content monitoring. It is currently in the process in the initial stages of further projects and it has been indicated that local content of 90% is being targeted.
- SOE. Eskom is probably one of the biggest potential users of fasteners. It is evident that cash flow restrictions have limited their offtake of fasteners.
- Transnet have recently expanded their refurbishment programme of rail wagon wheel bearings. Order intake increased substantially in October/November 2020, however servicing orders has been hindered by steel shortages. CBC has made plans to service these orders by utilising other more expensive steels which have had to undergo further processes to make the steel usable.

Comments from NSS Fasteners

It was stated that this drive for more localized content is happening regardless of safeguard duties and that this was put in place prior to the safeguard measures.

NSS Fasteners stated that Eureka and Builders Warehouse themselves are importers who have been negatively affected by the safeguard duties. By purchasing more expensive products from CBC, merely results in increased prices being passed on to retail customers as a direct result of the inefficiencies of the local manufacturers.

5.3 CONCLUSION

Although imports continued in the immediate aftermath of the imposition of the final duty, for the first time in years there was a definite shift in sentiment away from imports toward a more sustainable local manufacturing industry. Furthermore, despite stockpiling from distributors the industry was in a position to achieve and even exceed the commitments made in terms of the tariff application.

- There was an increase in orders placed with local manufacturers;
- This led to an increase in orders placed for the raw material;
- This led to an increase in capacity utilisation as higher volumes are produced;
- There is a direct benefit on employment as more employees were employed to facilitate higher manufacturing levels;
- For the first time in almost a decade, machines that were "mothballed" were reintroduced into the production line;
- New investments are being considered, or have already taken place; and
- The benefits to related industries such as galvanisers, heat treatment etc. have been significant.

What the safeguard duty on screws unequivocally taught the Applicant was that it is vitally important for the survival and long-term sustainability of the fastener industry that lost volume to imports is recovered. It is only then that the industry can re-align itself to face this competition head-on.

Subsequent to the imposition of safeguard duties, imports decreased to 1600 tonnes in 2019, down from previous heights of 7800 tonnes. The success of the duties was apparent and the path for adjustment clear. The Applicant stated that what started off positively in terms of industry adjustment, turned into an uphill battle as importers re-aligned themselves to import from developing countries exempted to pay safeguard duties. This took place despite strong efforts from industry to close this loophole. Importers again increased its imports from 1600 tonnes to 3000 tonnes in 2020, almost 97% originating from exempted developing countries. This might not seem extreme, but this happened in a year where domestic demand was decimated by the Covid-19 pandemic as well as from an economic perspective, the longest continued recession since records were kept.

When safeguard duties were first introduced in August 2018, South African economic growth expectations were moderate. In April 2017, the Bureau for Economic Research (BER) at Stellenbosch University predicted that the real GDP growth rate (year-on-year) would average only 1.7% per annum over the period 2017 to 2022. Figure shows that economic growth, despite these conservative forecasts, has performed well below these expectations. Calculating the average for the realised period (2017-2019), yields only 0.8% average real GDP growth per year. Put differently, while the economic picture foreseen at the start of the safeguard period was far from positive, the unexpected prolonging of the downswing (producing the longest recession since records began) was not expected.

The Applicant stated that Covid-19 changed the situation from dire to catastrophic: At the start of the first quarter of 2020, the Bureau for Economic Research still predicted a weak but positive economic growth rate for 2020 (0.6% real GDP growth). A year later, in their Economic Prospects report for the first quarter of 2021, the BER estimates that real GDP had contracted by 7.2% in 2020.

The real economic growth realised during the initial safeguard period is thus markedly different from what was expected at the start of the period as a result of a prolonging recession and the Covid-19 pandemic.

The impact of Covid-19 on steel demand will be felt well into 2022 and might only return to normal levels in 2024. This depressed demand falls well within the period of the lapse of the safeguard duty on screws and given the importance of demand growth in the development plan as indicated above, necessitates the extension of the safeguard duty in order to achieve the adjustment goals of industry. Consequently, should safeguard protection not be extended or proven unsuccessful (through evasion by importing from exempted countries), all the commitments made by industry as part of the tariff increase or its own adjustment plan will be at risk. Furthermore, all the efforts and steps already taken to ensure the long-term survival of the industry will most likely fail.

The Applicant stated that SAFMA has and stands by its commitments to:

- Increase total production volume.
- Investment in capital equipment and other fixed assets.
- More Research & Development and upscaled production and product offerings.
- Complete factory upgrades where required.
- Skills development and training and fast-tracking promotion at all levels of employment
- Complete support for the Government BBBEE agenda.
- Increasing total employment in all classes of skilled/semi/unskilled workers.

The Applicant summarised its statements as follows:

- Urgent extension of safeguard protection needed;
- Greater volume production in a low margin/high volume demand driven component industry – results in marginal profitability;
- Marginal profitability drives investment in Assets/R&D/marketing/exports/BBBEE;
- Further growth sustains steel supply support;
- Enhanced profitability sees good growth in employment (by far outstripping, any possible growth in the labour complement of importers). Cheap imports sacrifice SA Jobs in favour of Foreign jobs;
- Increase in employee numbers results in Enhanced Social & Community Development as each new job supports an average of 6-8 dependants; and
- Increase profitability drives interest in a resuscitated sector – Promoting Transformation via Empowerment.

Without the safeguard protection as the single most important driver, a further dramatic contraction of the manufacturing base in SA will result, with the demise of the Fastener Manufacturing industry. With a concomitant effect on the entire supply chain, ill-afforded job losses will result across all sectors of the SA economy where the critical supply of fasteners is compromised.

Comments from NSS Fasteners

The adjustment plan was lacking any commercial substance with no key performance indicators. Further, the local manufacturers have not made significant progress for accomplishing their development plan whatsoever.

Response from the Applicant

The Applicant felt it necessary to highlight the plight of the fastener industry and CBC and TPN in particular, that in the first place led to the imposition of safeguard duties and the subsequent extension investigation. The Applicant provided an executive summary outlining the substantive reasons that forms the backbone of the application as well as the substantive elements required that will allow ITAC to extend the duties beyond the initial 3-year period.

To summarise, the Applicant stated:

a. With the implementation of the original duties, the industry was starting to adjust, and with enough time would have done so adequately;

b. Three main factors slowed down this adjustment, leading to the possible recurrence of serious injury once the duties lapse. These three factors were the following:

   i. The slowdown of the economy and constraints on growth led to increase in costs and a decrease in sales;

   ii. In addition, the COVID-19 lockdown resulted in the shutting down of the entire steel supply chain in South Africa, including fastener production. This was completely unprecedented and has never been done since the inception of the fastener manufacturing sector in South Africa. This has resulted in a sudden and abrupt disruption in the whole internal supply chain, the effects of which the industry is still continuing to address; and

   iii. The bypassing of safeguard duties through the use of developing nations exempted from paying the safeguard duties.

c. Through all of this turmoil, the industry has remained committed to achieving the obligations that have been agreed with Government. In instances, and where unavoidable, certain targets have been revised due to current financial and market circumstances. Both government and the industry have recognised that economic growth and market circumstances require different approaches and these departures are in line with the terms of the commitments that have been made.

d. Ultimately, the loss of South Africa's fastener manufacturing production capacity (and becoming an importer of these products will leave South Africa at the mercy of the global steel market over the longer-term, which will preclude South Africa from utilising its comparative resource endowment advantage.

e. Consequently, the extension of the safeguard duties will allow, firstly, for the sustainability of the industry while it adjusts to the very difficult market circumstances both locally and globally, secondly, will assist the industry to continue to deliver in terms of the Development Plan submitted, and finally, allow for an opportunity for the next level of collaboration between business and government in terms of the Steel Master Plan.

Comments from FDA on the essential facts letter

There is no evidence that the local industry is adjusting.

The FDA submitted an evaluation of the development plan submitted in 2018, line by line. Very little has been done to date. A comparison of the development plan line by line was provided.

The applicant had 3 years to adjust and become more competitive and nothing has been done. It cannot be that an industry is adjusting when delivery times have increased to 8 months. The local supplier's delivery times should be significantly shorter than imports. The applicant failed to show that it is adjusting and conveniently blamed imports from exempted countries.

FDA submitted its original comments.

Inability to supply demand

The FDA is unable to procure a wide range of products from the domestic producers, which is the reason the FDA opposed the original investigation. Three companies have closed since the original investigation due to product unavailability. A list of products out of stock was provided.

The applicant simply cannot supply the subject products. This in itself is enough reason to deny the request for extension of the safeguard duties as it serves no purpose in protecting products that are simply not manufactured locally.

The inability to meet domestic demand dates to 2018. The shortage of certain sizes of set screws not only persists but has in fact worsened. Lead times have also increased from an average of 4 months in 2018, to about 8 months in 2021.

FDA stated that it has submitted substantial evidence, with emails from local producers, indicating that they have no stock.

At least 200 varieties of set screws cannot be manufactured locally. A list of products that cannot be supplied by the local manufacturers was provided. Rebates should be created to accommodate these products and should cover both the normal duties as well as any safeguard duties which are imposed. These can be temporary duties if the domestic industry intends producing them, but if they are not readily available, they should not attract a duty.

The safeguard duty is intended to protect local producers and provide them with an opportunity to adjust to import competition and satisfy the local demand first, before allowing imports to do so. However, where the local industry cannot supply what is being demanded, the safeguard duty does more harm than good. The fact that local manufacturers cannot supply the products being protected by the safeguard duty is enough evidence to argue for the dismissal of the application. To make matters worse, the applicant is of the view that the fact that they cannot supply should not be a consideration to whether a safeguard duty should be extended.

Public interest and Job losses

The Commission's decision to extend the safeguard duty is not in the public interest considering the number of jobs at risk. This is an issue that dates to 2018 and led to the closure of 3 companies. Over 80 jobs were lost when these companies closed. These companies could not procure products locally and at the same time could not import due to high safeguard duties. If the safeguard duties are extended, more companies will close, and several jobs will be lost. This is not an unreasonable position given that companies must wait for 8 months to get products locally.

Commission's consideration

The Commission made a final determination that the Applicant submitted sufficient information to indicate that it will adjust to increase its competitiveness.

6. SUMMARY OF FINDINGS

6.1 Serious injury

The conclusion on injury indicators is as follows:

Imports in absolute terms	Decreased
Imports in relative terms	Decreased
Sales volumes (Tonnes)	Decreased
Net Profit (R)	Increased
Output (Tonnes)	Decreased
Market share (Applicant)	Decreased
Total production volume (Tonnes)	Decreased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

The Commission made a final determination that the information analysed indicates that the Applicant is experiencing serious injury and that the expiry of the safeguard duty will lead to the continuation and/or recurrence of serious injury to the SACU industry.

7. RELIEF SOUGHT

7.1 Requirements of Safeguard Regulations

The Amended Safeguard Regulation 21.7 provides that "A definitive measure may be extended by period of up to six years where Commission finds that:

(a) The lapse of the safeguard measure imposed in terms of subsection 6 likely to lead to the recurrence of serious injury; and

(b) There is evidence that the SACU industry is adjusting."

The Applicant requested that the safeguard measure be extended for period of 6 years in line with Amended Safeguard Regulations 21.7. It further provided information of serious injury and likelihood of recurrence of serious injury, and further to that the plans it has embarked on its development plan to prove it is adjusting has been provided.

Comments by the European Union on the essential facts letters:

Proposed extension of measures

ITAC is currently proposing to extend the safeguard measure for three years. Yet, as specified in the non-confidential application, a predominant share of the imports during the investigation period stems from China. The applicant also justifies the extension of the safeguard measures based on imports from one country, stating that: "An accelerated influx of imports is expected to take place once the current duties lapse in August 2021."

This increase will mainly be caused by China re-entering the market as it aggressively explores export markets for its steel products, including the product under consideration. In preparation, China recently announced that it is increasing its export rebate to 13% from the previous 10%, effectively removing all value-added taxes from steel exports. This will reduce Chinese export FOB prices by $45-60/tonne. In a similar vein, port charges in China have also been reduced making the actual costs associated with exporting steel cheaper. Beyond these changes, the extremely low oil price will reduce freight costs significantly allowing imports to arrive cheaply in Africa.

An added danger facing global steel trade flows is as a result of the Covid-19 spread, specifically with regards to the steel inventory build-up in China and the probable impact on SACU. With China's current soaring steel inventories, another significant industry decline is feared if China's stockpiles lead to increased exports by the steelmakers, including fasteners, further absorbing demand globally from manufacturers and construction companies."

This clearly shows that any difficulties are caused or are expected to be caused by imports from one country. However, since safeguard measures apply equally to all origins, the extension of these measures would cause unnecessary collateral damage to other trade partners, who may not have caused any injury to the domestic industry. In any event, and as explained above, the criteria to extend the current measures are not met and the investigation should thus be terminated forthwith.

Any future injury or threat of injury due to imports from one country should be addressed with the anti-dumping instrument, which targets only imports that are causing injury. Further extending safeguard measures whose justification was questionable from the beginning, would be in breach of WTO rules.

The European Union referred to Article 3.1 of the WTO Safeguard agreement, which underlines the importance of ensuring that the public interest is taken into consideration. "An extension of the current measures will unduly penalise importers and downstream users of the product concerned, who will be faced with higher prices and limited choice."

Comments by FDA on the essential facts letters

It was stated that the essential facts letters do not explain how the duties were calculated. The explanation may be based on confidential information, but the explanation cannot be regarded as confidential. The calculation of the duties was based on the duties calculated in the previous investigation and it should be noted that the information submitted by the applicant in 2018 is not the same. It was stated that it is unreasonable to base the safeguard duty for 2022 on information submitted four years prior.

A correct calculation

The FDA stated that without conceding that the duty should be extended , it is of the opinion that the correct calculation is as follows:

FOB per Application	R	22,87
Schedule 1 Duty (30%)	R	6,86
Add freight	R	3,26
Other landside Cost/Insurance 7%	R	1,60
Landed cost	R	34,59
Safeguard duty 35.6% on FOB	R	8,14
Unsuppressed selling price	R	42,73

If one estimates the applicant's raw material cost per kilogram to be approximately R20/kg, this provides them with protectionism of over 100% which is irrational.

Comments by NSS Fasteners on the essential facts letters:

NSS Fasteners estimates the total base price required by the applicant is approximately R42.72.

Through SAFMA's market dominance, it is clear from the above calculations that SAMA is effectively seeking to control the price of the set screw market by having an unrealistic base price, which is applicable to all manufacturing countries in the world including previously exempted countries. This is clearly uncompetitive behaviour which is not in the interest of the downstream consumers of industrial fasteners.

Commission's consideration

In the original investigation the measure was calculated based on the price disadvantage between the Applicant's unsuppressed selling price and the landed cost of the imported product. The duties were determined based on duties calculated in the original investigation and phasing it down over the 3-year period, as this is an extension of the duties currently in place.

8. DEFINITIVE SAFEGUARD MEASURES

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

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

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

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

8.1 Liberalisation of the safeguard measure

Section 21.8 of the SGR provides as follows:

"Where a definitive measure is imposed for a period exceeding one year the Commission shall recommend how the measure should be liberalised at regular intervals over the period that the measure is applied"

The Commission decided to recommend that the measure be liberalised the as follows:

Period	Rate of safeguard measure
2 August 2021 – 1 August 2022	35.6%
2 August 2022 – 1 August 2023	30.6%
2 August 2023 – 1 August 2024	25.61%

Commission's consideration

The Commission is of the opinion that the proposed phase down establishes a fair middle ground considering the depressed state of the domestic industry. The Commission considered that the measure is put in place to temporally allow the domestic industry to adjust and be internationally competitive.

9. FINAL DETERMINATION

The Commission made a final determination to recommend to the Minister of Trade, Industry and Competition that the following safeguard measures on imports of other screws fully threaded with hexagon heads made of steel be extended as follows:

Period	Rate of safeguard measure
2 August 2021 – 1 August 2022	35.6%
2 August 2022 – 1 August 2023	30.6%
2 August 2023 – 1 August 2024	25.61%

The Commission further made a final determination to recommend to the Minister to exempt imports for the motor industry under the APDP from the payment of the safeguard duty. No other rebates should be allowed unless a request is received from ITAC. The rebate items in Schedule No. 3 and 4 that will be excluded from the payment of the safeguard duty are 317.06/00.00/03.00 and 460. 460.17/00.00/03.00, and <u>on condition that</u>, the set screws classifiable under tariff subheading 7318.15.39 <u>are eligible products under the APDP</u>.

The Commission also made a final determination to recommend to the Minister that the measures should be imposed against imports from all countries.