

Report No. 730

INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF A SAFEGUARD MEASURE AGAINST THE INCREASED IMPORTS OF CERTAIN FLAT-ROLLED PRODUCTS OF IRON, NON-ALLOY STEEL, OR OTHER ALLOY STEEL (NOT INCLUDING STAINLESS STEEL), WHETHER OR NOT IN COILS (INCLUDING PRODUCTS CUT-TO-LENGTH AND 'NARROW STRIP'), NOT FURTHER WORKED THAN HOT-ROLLED (HOT-ROLLED FLAT), NOT CLAD, PLATED OR COATED, EXCLUDING GRAIN-ORIENTED SILICON ELECTRICAL STEEL (HOT-ROLLED STEEL PRODUCTS): PRELIMINARY REPORT

The International Trade Administration Commission of South Africa herewith presents its **Report No. 730: INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF A SAFEGUARD MEASURE AGAINST THE INCREASED IMPORTS OF CERTAIN FLAT-ROLLED PRODUCTS OF IRON, NON-ALLOY STEEL OR OTHER ALLOY STEEL (NOT INCLUDING STAINLESS STEEL), WHETHER OR NOT IN COILS (INCLUDING PRODUCTS CUT-TO-LENGTH AND 'NARROW STRIP'), NOT FURTHER WORKED THAN HOT-ROLLED (HOT-ROLLED FLAT), NOT CLAD, PLATED OR COATED, EXCLUDING GRAIN-ORIENTED SILICON ELECTRICAL STEEL (HOT-ROLLED STEEL PRODUCTS): PRELIMINARY REPORT**



**AYABONGA CAWE
CHIEF COMMISSIONER**

PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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SYNOPSIS

On 23 February 2024, the Commission initiated an investigation for remedial action in the form of a safeguard against the increased imports of hot-rolled steel products through Notice No. 2333 of *Government Gazette* No. 50164.

The application was lodged by the South African Iron & Steel Institute (“SAISI” or “the Applicant”), an industry association, which applied on behalf of ArcelorMittal South Africa Limited (“AMSA”), being the major producer of the subject product in the Southern African Customs Union (“SACU”).

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

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

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

The Commission made a preliminary determination that there were unforeseen developments which resulted in the increased imports. The Commission further made a preliminary determination that there was a surge in imports of the subject product, causing serious injury to the SACU industry. The Commission considered that there are critical circumstances where a delay in imposition of provisional measures, would cause damage that would be difficult to repair and that these critical circumstances justify the imposition of provisional measures.

The Commission, therefore, made a preliminary determination to request the Commissioner for South African Revenue Service (“SARS”) to impose a provisional measure of 9 percent ad valorem on imports of hot-rolled steel products for a period of 200 days pending the finalization of the investigation.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

The South African Iron & Steel Institute (“SAISI”), an industry association, lodged the application on behalf of ArcelorMittal South Africa (“AMSA”), the major producer of hot-rolled steel products (the subject product), representing the SACU industry.

1.3 ALLEGATIONS BY THE APPLICANT

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

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

- Studies show that China did not become a fully-fledged market economy as it assured WTO members it would during negotiations;
- The unprecedented steep rate of increase in crude steel and hot rolled steel production capacity after the Uruguay Round of negotiations. This mainly took place to support growing construction, automotive, and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies. This growth in global capacity was mainly fueled by the growth of the Chinese and Asian steel markets;
- Chinese economic activity has consistently declined since 1994 and large steel producers follow aggressive export strategies, fuelled by an

oversupply of steel products; China's extraordinary economic growth is slowing down dramatically, and the Chinese domestic market for steel is retracting;

- The significant downturn of the steel market as a result of the slowdown of economic growth in China contributed to the imbalance between capacity and demand, that is, the global oversupply of steel. This led to a significant increase in export volumes by countries with excess capacity;
- As a result of all of these factors, Chinese producers have to increase their exports further, at reduced prices, to rid themselves of excess stocks;
- Worldwide, countries are taking urgent action to raise tariffs and impose trade remedies to protect their domestic steel industries; and it is expected that the surge in imports that the SACU has been experiencing will be augmented by the recent economic slowdown in China and by the fact that China's export markets are contracting rapidly; and
- An increase in trade remedy actions is being taken on steel products, including hot rolled steel, by several countries, notably the European Union, the United Kingdom, the United States of America, and Vietnam, which are significant export markets for these products. Given the fact that hot-rolled steel is a commodity product, excess capacity in one region can, with relative ease, displace production in other regions, thus harming producers in those regions.

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

1.4 INVESTIGATION PERIOD

The data evaluation for the purposes of determining increased imports and serious injury covered the period 01 July 2020 to 30 June 2023.

Comments by the Japanese Mills

The Japanese Mills stated that the injury information provided only goes up until June 2023, which is around nine months old and, therefore, outdated.

Regarding US-Wheat Gluten, they pointed out that any determination of serious injury must pertain to the recent past. Hence, the Applicant requesting a safeguard duty must provide the most up-to-date information. They believe that the information provided by the Applicant nine months ago is stale, and therefore, the Applicant should be asked to update it.

The Japanese Mills also mentioned that the Applicant has not provided injury information for each tariff subheading comprising the subject products. They believe that the Applicant should be requested to provide this information so that they can respond to the injury submissions in a meaningful way.

Comments by the Group

The Group stated that the period of investigation ("POI") runs from July 2020 to June 2023 in relation to "serious injury". Therefore, at the time of the Commission's investigation initiation, the information was over 6 months old and considered stale. The Commission responded on March 5th, 2024, stating that there is no restriction on the injury information being within six months from the initiation of the investigation. The Commission also determined that the Applicant provided prima facie evidence indicating that the period from July 2022 to June 2023 (cited as a period for a surge in imports) is recent enough to meet the conditions of the Safeguard Agreement.

However, the Group disagreed with the Commission's response. They claimed that according to Article 11 1(a) of the WTO Safeguard Agreement, a safeguard is an "emergency action on imports of particular products as set forth in Article

XIX of GATT 1994". The Commission's guide to Trade Remedies specifies that "Safeguard measures are temporary measures with timelines to allow a domestic industry to adjust and improve its competitiveness". The Commission also states on its website that safeguards are "short-term measures". The stipulated restriction on the material injury information being within six months from the initiation of the investigation is set out in Regulation 1 of the AD Regulations. However, nowhere in the AD Regulations is it required that any information must be "recent", only that the investigation period for dumping may not be more than 6 months before the initiation of the investigation, and that the Commission can apply its discretion in this regard. Therefore, being a trade remedy of the WTO, it is clear that the principle of "recent" is actually less than 6 months. Otherwise, the same provision would have been presented in the Safeguard Agreement as in the Anti-Dumping Agreement.

The Group pointed out that the Commission's decision that the period July 2022 to June 2023 is recent enough for the surge in imports does not qualify the Applicant to submit stale injury information to substantiate serious injury going back further than 6 months. The Group highlighted that the Panel in the US – Wheat Gluten considered that serious injury should exist within the recent past, as the investigation of increased imports should focus on recent imports. The Group further stated that it seems logical that if the increase in imports that the investigating authorities must examine must be recent, so also must be any basis for a determination by the authorities as to the situation of the domestic industry. Given that a safeguard measure will necessarily be based upon a determination of serious injury concerning a previous period, they stated that they consider it essential that current serious injury be found to exist, up to and including the very end of the period of investigation.

The Group indicated that in the Appellate Body in Argentina – Footwear case, it was indicated that the most recent were clearly the most relevant. In particular, the Appellate Body stated that "the relevant investigation period should not only end in the very recent past, but the investigation period should also be the recent past." The Group submitted that it is evident that the Commission erred in accepting the application of the Applicant based on stale

alleged injury information. The Commission was requested to instruct the Applicant to update the injury information to allow for a fair investigation.

Response by the Applicant

The Applicant stated that the argument made by the interested parties regarding the information being "stale" is baseless. Such a requirement is not mentioned in the Safeguard Regulations nor in the WTO Agreement on Safeguards. The Applicant believed that the interested parties are referring to Section 1 of the Anti-Dumping Regulations, which defines the "Investigation period for dumping." However, the Applicant stated that this cannot be used as a justification for any arguments referenced during a Safeguard investigation.

The Applicant reviewed the WTO jurisprudence provided by the interested parties and found that it refers to 'recentness'. The WTO Panel decision of US-Wheat Gluten prescribes that any finding of serious injury must be related to the 'recent past'. However, the decision does not provide a specific time frame for what constitutes the 'recent past'. In the above-mentioned decision, a period of five years was used to assess whether the domestic industry suffered a serious injury resulting in a 'significant overall impairment.' The Panel confirmed that an evaluation of serious injury needs to be conducted over the entire POI and is not limited to the final year.

The Applicant highlighted that attention should be drawn to the Appellate Body and Panel decisions in US-Line Pipe. It was established that the interpretation of 'recent' does not imply an analysis of the present. The inquiry does not require that the increase in imports should be up to and including the final year of the POI. The Appellate Body observed that an increase in imports before the date of a determination but not sustained at the date of the determination could still cause actual serious injury at the time of the determination. The investigating authority needs to examine the trends throughout the POI. The Applicant submitted that the surge in imports occurred during the POI and, therefore, the Commission is well placed to decide on the information, especially when considering the above cases. The recentness of the information submitted is thus confirmed.

Commission's consideration

The Commission considered that the SGR do not limit injury information to a specific time frame, and there is no legal requirement for the initiation of a safeguard investigation within a specific period of the data being provided. The criterion of being within six months from the initiation of the investigation applies only to anti-dumping investigations. Additionally, the Commission determined that the Applicant provided sufficient evidence indicating that the period from July 2022 to June 2023, which is cited as the period for a surge in imports, is recent enough to meet the conditions of the Safeguard Agreement.

The Commission further considered that in the US-Line Pipe case¹, the Panel found that there is no need to determine that imports are still increasing. Instead, imports could have increased in the recent past but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination:

“There is a question as to whether the finding of increased imports can be maintained given the decline in absolute imports from the first semester of 1998 to the first semester of 1999. To answer this question, we recall our discussion regarding the meaning of 'recent' and our finding that 'recent' does not imply an analysis of the present. We are also of the view that the fact that the increase in imports must be 'recent' does not mean that it must continue up to the period immediately preceding the investigating authority's determination, nor up to the very end of the period of investigation. We find support in Article 2.1 for our view, which provides that "such product is being imported in such increased quantities." The use of the word 'increased' indicates that there is no need for a determination that imports are presently still increasing. Rather, imports could have increased in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination. Provided that the investigated product 'is being imported' at such increased quantities at the end of the period of investigation, the requirements of Article 2.1

¹ United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea.

are met.”

Moreover, the panel observed that an increase in imports before the date of a determination but not sustained at the date of the determination could still cause actual serious injury at the time of the determination.

In this investigation, the total imports of "hot-rolled steel products" increased by 105% during the period of the surge.

The Commission is also of the view that considering the urgency of the matter, requesting the Applicant to update its injury information would have been burdensome.

1.5 INVESTIGATION PROCESS

1.5.1 The information submitted by the Applicant was verified on 17 and 19 January 2024.

1.5.2 The application was accepted as being properly documented on 30 January 2024.

1.5.3 The investigation was initiated on 23 February 2024.

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

- Safal Steel Group (Pty) Ltd
- Duferco Steel Processing
- Aveng Trident Steel
- Genesis Steel
- Transcape Steels (Pty) Ltd
- NJR Steel
- Macsteel Group
- Allied Steelrode (Pty) Ltd
- Em-Lee's Trading
- Argent Steel

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

- The Japanese Mills (Nippon Steel Corporation, Kobe Steel, Ltd and JFE Steel Corporation);
- The Government of Japan;
- Ministry of Trade Turkey;
- Arab Republic of Egypt Ministry of Trade & Industry;
- Allied Steelrode (Pty) Ltd;
- China Iron and Steel Association (“CISA”);
- Steelbank Merchants (Pty) Ltd;
- Safal Steel Pty) Ltd;
- Solidarity Strategy Institute;
- Erdvark Engineering (Pty) Ltd (“Erdvark”);
- New Concept Mining (“NCM”);
- Botswana Trade Commission;
- Government of Mexico;
- Trident Steel Africa (Pty) Ltd;
- Tata Steel Netherland (“TSN”);
- Select Steel;
- Augusta Steel (Pty) Ltd and August Manufacturing (Pty) Ltd;
- NJR Steel Holdings (Pty) Ltd;
- Steel Import International (Pty) Ltd;
- SS Profiling (Pty) Ltd;
- Duferco Steel Processing (Pty) Ltd;
- Bell Equipment Company SA (Pty) Ltd;
- The Government of the United Kingdom;
- Voestalpine Stahl GmbH;
- Naamsa;
- Naacam; and
- The European Commission

1.6 COMMENTS FROM INTERESTED PARTIES

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

Notification to the WTO on initiation of investigation

Comments by the Government of Japan

The Government of Japan stated that the notice regarding an investigation is dated 23 February 2024. However, South Africa has not yet notified the WTO of the initiation of the investigation until 1 March. According to Article 12.1 of the Agreement on Safeguards, WTO members are required to "immediately notify the Committee on Safeguards upon initiating an investigatory process". This delay in notification has deprived interested countries of sufficient time to examine and respond.

The notice further stated that interested parties must submit their comments within 20 days from the date of the notice, and no late submissions will be accepted. However, the delay in WTO notification has left interested parties with inadequate time to present evidence and their views, which is a requirement of the safeguard investigation under Article 3.1 of the Agreement on Safeguards.

Commission's consideration

The Commission is of the view that the allegations made by the Government of Japan are incorrect. The Commission considered that the notice was published in the Government Gazette on 23 February 2024, and the WTO was notified on 26 February 2024, not on the 1st of March as claimed. The notification was sent three days after initiation, which was due to the weekend that occurred within

that time frame.

The Commission considered that Regulation 14.4 of the SGR states that “within seven days after initiation, the Commission shall notify the representative of each country of origin and of export that may be significantly affected by a safeguard measure of the initiation of the investigation.” Additionally, the Commission is to supply each country with a copy of the non-confidential version of the application. In this particular case, Japan was a country of interest, and the Commission notified it three days after initiating the investigation and supplied it with a copy of the non-confidential version of the application.

The Government of Japan was given 20 days to submit its comments, and they were received within nine days of the 20 days provided by the Commission.

Due to logistical challenges, it is common to notify the Committee on Safeguards only within 10 days of initiating an investigation.

Confidentiality

Comments by Interested Parties

The interested parties mentioned that according to section 33(1) of the ITA Act, a person can claim the information provided to the Commission as confidential. In such cases, they must either give a written summary of the information in a non-confidential form or a sworn statement explaining why they can't do so. The interested parties also stated that confidentiality criteria are set out in Regulation 3 of the Safeguard Regulations, which apply to how omitted confidential information must be furnished. As per Regulation 3.1(c), the omitted information should be detailed enough to allow other interested parties to have a reasonable understanding of the substance of the information submitted in confidence.

However, the Applicant has not summarised the information that it claims to be confidential in many cases. Instead, they provided an affidavit stating the reasons why it's not possible to do so. The interested parties noted that in many cases, these reasons don't justify the refusal to provide a summary of the

confidential information and are merely a way of concealing the information. They further highlighted the following:

- **Marketing and Distribution Channels**

The information about the Applicant's marketing/distribution channels doesn't reflect the percentage off-take for each channel. The interested parties believe that this information can be summarised, and the Applicant should provide summarised percentage off-take data, such as a range, to allow other interested parties to have a reasonable understanding of the substance of the information submitted in confidence.

- **Sales and Profit contribution**

The Applicant hasn't provided the sales and profit (before tax) contribution analysis, claiming that the nature of the information is such that it can't be summarised. However, the interested parties believed that it's possible for the Applicant to provide the information in index format, such as the information for the three prior financial years and the most recent year-to-date management accounts period, using the first year as the basis.

- **Cost and Price build-up**

The Applicant has claimed confidentiality over the entire cost and price build-up without making any attempt to summarise the information. The interested parties suggested that the Applicant could provide a trend analysis of different cost elements, price and profit, and percentage impact on price in indexed terms. Without such analysis, it's impossible to understand which cost elements contributed to, for example, a 67 index point increase in costs over the investigation period. They also stated that in a safeguard investigation where serious injury needs to be determined and substantiated, cost and price build-up information cannot and should not be limited to only the recent 12-month period of the POI.

The interested parties felt that this puts them in an unfair position where the information submitted doesn't allow them to have a reasonable understanding

of the substance of the information submitted in confidence. This is extremely prejudicial to them, and they believe that the Applicant should provide the necessary information. If the Applicant fails to do so, the Commission should reject the information.

Response by the Applicant

The Applicant stated that some interested parties have sought access to confidential information. They have provided summaries of such information, which is in accordance with the requirements of the ITA Act and the SGR. However, the Applicant also stated that they have not provided summaries for certain confidential information and have given reasons for that. They have argued that the assertion that such information should be disregarded is unfounded, as the Commission has access to all the information in the confidential submission. The Applicant also claimed that interested parties have all the necessary information to comment and engage meaningfully with the application.

Regarding the claim that the Application is not properly documented, the Applicant drew attention to Article 2 of the WTO's Agreement on Safeguards and Regulation 3.4.1 of the SGR, specifically Regulation 3.4.1 (g) and (h). They have argued that the percentage of off-take information is confidential by nature and cannot be summarised, as it could provide their competitors with an unfair advantage. The Applicant stated that the interested parties' rights have not been violated in any way, and they have all the necessary information to provide their views and comments.

Commission's consideration

The Commission considered that section 33(1) of the ITA Act states that anyone who claims that information is confidential must explain why it is confidential and provide a non-confidential summary thereof. Alternatively, they must provide a sworn statement explaining why they cannot comply with the requirement to provide a non-confidential summary. The Applicant provided a sworn statement explaining why they could not summarise certain information. The ITA Act and SGR provide specific guidance on how to

provide non-confidential information, and the application questionnaire also reiterates these requirements. Thus, the Commission further considered that the Applicant met the confidentiality criteria set out in the ITA Act and the SGR.

Furthermore, the interested parties suggested that cost and price build-up information for a safeguard investigation should not be limited to only the recent 12-month period of the POI. However, the Commission's safeguard questionnaire requires that the cost and price build-ups should refer to the average costs for the most recent 12-month period of the POI. In this regard, the Applicant was correct in limiting the cost build-up information to only a recent 12-month period as per the questionnaire.

SACU Downstream Steel Industry Comments

Comments by Duferco

Duferco indicated that it is one of the two independent classified re-rollers for flat products in SACU that historically did and still has the capacity to manufacture value-added products such as hot dipped galvanized (“HDG”), cold-rolled annealed & tempered (“CFIN”) and pickled and oiled steel coils from the hot-rolled coil (“HRC”). These value-added products were sold to downstream manufacturers in both the SACU and international markets. Duferco further indicated that, at present, it is more focused on the international market but continues to develop products that also benefit the domestic market, such as automotive-graded steel for the automotive industry, as well as specialized structural steel for the solar industry.

Duferco stated that in 2012, the Applicant started communicating with them that it would no longer be supplying them with HRC raw material, and from 2013, Duferco had to resort to the importation of HRC. On 09 June 2016, HRC was imported free of the general customs duties. However, on 10 June 2016, the ordinary (MFN) customs duty increased from free to 10 percent ad valorem as proposed in the Commission’s Report No. 524, following an AMSA application. In the report, it is stated on page 15, under the topic

“Recommendation”, that the increase in duty was subject to certain conditions, some of which were the following:

- “The Commission will conduct a review of the duty structure to determine its impact on the value chain, three years from the date of implementation”;*
- “The pricing model offered by the Applicant to the domestic re-rollers must be adhered to”;*
- “AMSA will continue with its rebate schemes on value-added exports for the re-rollers”;*
- “AMSA has committed to preserving jobs and not to close any of its plants”;*
and
- “AMSA will invest an additional R1.6 billion in the next three years from 2016 to 2018 in new plant, machinery, research and development, skills development and training and upgrading of machinery for the manufacturing of hot-rolled steel”.*

Duferco further stated that the Commission is aware that no review was conducted after three years as stipulated, and AMSA defaulted in adhering to obligatory provisions that were conditional for the duty increase (and maintenance thereof) as set out in the report.

Duferco stated that it should be recognized that a unique situation exists with the Applicant as the sole SACU HRC supplier and also the direct competitor in the same downstream market with the SACU re-rollers. In this regard, the application confirmed that 50 percent of the Applicant’s HR product is used by the Applicant downstream. Thus, there is no incentive for the Applicant to accommodate Duferco, which is competing with the Applicant with regard to coated steel products. Duferco indicated that it initiated discussions with the Applicant at the end of 2018, with the objective of reaching an agreement well before the expiry of the previous agreement in May 2020. However, Duferco was not able to conclude a new supply agreement on similar terms with the Applicant, due to its protracted approach. The terms proposed by the Applicant were neither realistic, nor feasible considerations for Duferco, which terms would have resulted in Duferco operating at a loss.

Duferco further stated that during the first quarter of 2020, the Applicant closed down the Saldanha Steelworks, which was a significant event resulting in a major disruption of the original HRC supply synergy between Saldanha Steelworks and Duferco. This resulted in having access to only a single supplier of HRC, namely the AMSA Vanderbijlpark facility based in Gauteng, which led to Duferco becoming reliant on sole raw material supplies from the AMSA Vanderbijlpark facility situated more than 1,500 kilometres away, which posed major supply challenges and increased costs. Duferco's recent and current state of affairs are challenging as a result of local market share loss, a direct consequence of the over-protection by the Government to the Applicant without taking the important role the SACU re-rollers pay in the SACU market:

- Non-operational days in 2023 were 180, and for the period January to February 2024, the non-operational days were 9 days.*
- All Duferco's employees took a 15 percent salary cut from June to September 2023.*
- From September 2022 to December 2023, there were 28 resignations from permanent employees.*
- The current 2024 budget projects a marginal loss based on optimistic local sales.*

Duferco indicated that they strongly object to the proposed imposition of a safeguard duty, at any level as the 10 percent ad valorem duty and the distance from the suppliers abroad gives the Applicant the necessary and even over protection, although the Applicant should not be entitled to this protection due its being obligatory default of the requirements. Having additional duties imposed will just act as an additional hurdle to remove any hope for Duferco as an independent re-roller to again become an effective role player in the SACU market unless the Government ensures that provision is made that the full general customs duty and possibly safeguard duties are rebated for the independent SACU re-roller industry.

Comments by NJR, Steel Import International, SS Profiling, Bell Equipment Company, Augusta Steel (Pty) Ltd, and August Manufacturing

The importers stated that should the Commission decide to again impose a safeguard duty on top of the existing general 10 percent ad valorem ordinary customs duty rate on the subject products, the landed price of hot-rolled steel products will increase to a level that will make those downstream business that use the subject products as an input material in the manufacture process completely uncompetitive against the equivalent imported finished goods. They stated that it must be noted that the higher the protection (tariffs) on the primary industry's products, the more uncompetitive the downstream industry is becoming. Therefore, by subsidizing the Applicant, the Government is, in fact, killing off the very customers that the Applicant is relying on to grow. Therefore, the downstream steel industry, which adds value and creates the most jobs, is dwindling at the hands of the Government. In addition to the limited domestic availability of the HR steel that is required, local steel products' prices will rise, which will result in an increase in inflation, which will have a detrimental effect on the sustainability of the downstream industry. Clearly, such actions cannot amount to being in the public interest.

The importers stated that they strongly object to the proposed imposition of a Safeguard duty on HR products at any level, as the current general ordinary 10 percent ad valorem duty rate and the distance from the suppliers abroad to SACU gives the Applicant the necessary and even over protection.

Comments by Trident Steel Africa

Trident Steel Africa mentioned that they mostly import steel for automotive use, as these products are not typically produced by the local mill (AMSA). They added that within the last two years, one of the local OEMs introduced a new vehicle platform in South Africa that required steel to comply with their global standards. At the time of the introduction of this new vehicle platform,

the local mill had not yet been certified by OEM. As a result, the steel that was previously sourced locally had to be imported.

Trident Steel Africa estimated that around 70kt of automotive hot-rolled coil imports would come mainly from Europe in 2023. The changeover to local steel sourcing would take about 18 months, including product testing, in-house trials, and production interruptions. The process could take longer due to adjustments. The Applicant might not offer all hot-rolled grades, and minimum order placements might not be conducive to local supply.

Comments by NAAMSA

According to NAAMSA, the automotive industry mainly uses hot-rolled steel sheets for chassis, body panels, and underbody components, which together make up around 34% of a car body's total weight. On average, a vehicle utilizes approximately 600 kilograms of hot-rolled steel and 300 kilograms of cold-rolled steel.

NAAMSA highlighted that the automotive industry requires steel that meets strict engineering requirements worldwide. Hot-rolled steel is crucial in the automotive industry, as it provides strength, durability, formability, cost-effectiveness, weldability, and impact resistance. Its versatile properties make it the preferred choice for manufacturing various automotive components, which contribute to a vehicle's overall performance, safety, and longevity. Local vehicle manufacturers need to comply with strict safety and engineering standards, so they prioritize sourcing high-quality hot-roll steel rather than focusing solely on cost. Manufacturers and component suppliers work hard to procure local raw materials, such as from the Applicant, who is the major producer of the subject products and holds the monopoly in the country.

NAAMSA further highlighted that localisation of hot-rolled steel sourcing is not always feasible. The Applicant's quality of hot-rolled steel is not at the required level for some of the components. The local mills do not have the technical capability to produce all the technical grades required in the automotive industry. The local steel industry cannot meet the volumes

required by the automotive industry. The Applicant's prices are also elevated due to their archaic technology. If a safeguard duty of 15% is implemented, the costs on the chassis alone would increase by 9% on average, and this cost would have to be passed onto the consumers.

Response by the Applicant

The Applicant claimed to provide products with a quality level equivalent to world-class standards. Over the last five years, the Applicant's customer quality complaints as a percentage of the total dispatches for entire flat products have been below 1%. The Applicant further asserted that the quality of their steel products meets the quality standards defined by customers, which in this case, are international automotive manufacturers. The Applicant is a certified supplier of steel to various components used in the manufacturing of automotive vehicles, not just in South Africa, but also around the world. Practically all members of NAAMSA procure part of their flat steel requirements from the Applicant, and the Applicant is planning to invest in cold rolling mills and furnaces, as well as a new coating line specifically to meet the automotive industry's requirements of steel required for exposed body parts. These plans have been presented and shared with NAAMSA. This investment can only be viable if local steel manufacturing in South Africa is preserved and enabled.

The Applicant also claimed to perform ultra-sonic testing to identify any imperfections in the plate. These tests are required for safety-critical components, such as boilers. The Applicant has the capability to produce and perform this test for plate quality requirements from S1 up to 100mm to S4 up to 60mm, depending on the level of detail required. This ensures the quality of the products they produce. The Applicant's steel quality is on par with all domestic and international standards.

Comments by China Iron and Steel Association

The China Iron and Steel Association has stated that their members have become aware that the South African primary steel industry, consisting mainly of the Applicant and Columbus Stainless (Pty) Ltd, is unable to supply

certain hot-rolled ("HR") steel products to the downstream industry. This is due to various reasons such as dimension, other specifications, production limitations, or commercial viability (including short supply and delays). As a result, the required HR products had to be sourced from abroad to allow the downstream industry to compete with competitively priced imports of their final products in the SACU market.

The China Iron and Steel Association also pointed out that over the last 15 years, the Applicant has consistently failed to supply the local South African market with the required HR products. They have limited capacity availability, which falls short of the volumes required by the local South African steel processors. As a result, they often adopt an "allocation" approach, limiting customers with regard to the volume of HR tonnage that they can order. Even if orders are accepted, deliveries are extremely late, which hinders the ability of parties to supply their downstream customers effectively. This impacts the viability of the downstream industry, and the Applicant's customers are forced to import the products.

The China Iron and Steel Association raised concerns regarding the closure of a modern plant in Saldanha Bay by the Applicant after a safeguard duty was imposed on HRC. The Association questioned whether the closure strategy was included in the Applicant's "adjustment plan" provided to the Commission. If it was included, they question why the Commission decided that the closure of the plant would make the Applicant more competitive with imports. This is especially concerning since the Applicant now relies on only one old and outdated HRC facility in Vanderbijlpark to serve the entire South African market.

Comments by Erdvark Engineering

Erdvark stated that hot-rolled steel plate, which accounts for nearly 50% of their input costs, is the subject of an ongoing investigation. Any increase in its price due to additional duties or Applicant's price hikes will impact Erdvark's competitiveness. The farming implements and components subsector, including Erdvark, finds it challenging to compete with low-priced

imported components, affecting their sustainability. Increased duty protection will have a detrimental impact on the agricultural sector and food security. Erdvark, relying on traders, faces increased costs, and Applicant's monopoly-style pricing strategy creates uncertainty and makes it difficult to tender for export projects or enter into supply agreements.

The Applicant employs a pricing methodology that combines import parity pricing with selective pricing. They refuse to confirm pricing when an order is placed, creating significant uncertainty. Increased duty protection allows Applicant to increase domestic prices to artificially high levels, impacting the SACU manufacturing sector's competitiveness. This pricing strategy has a negative outcome, leading to deindustrialization in the downstream steel sector.

Comments by New Concept Mining (NCM)

NCM stated that it is known for its diverse product range, including the Hydrabolt, a vital ground support product used in underground mining, designed to enhance worker safety and stability. NCM's global presence enables it to serve a diverse clientele and contribute to South Africa's exports.

NCM highlighted that it uses hot-rolled coil in the manufacture of its products, with 89% locally sourced from the Applicant via Macsteel, and 11% imported. The Applicant's safeguard application may result in a duty ranging between 10-15% being levied, seriously impacting NCM's competitiveness and sustainability.

Furthermore, the Applicant's monopoly as the sole producer of hot-rolled coil in South Africa poses significant risks, including supply shortages directly affecting industries reliant on steel. Monopolies can reduce incentives for efficiency, innovation, and customer service, leading to complacency and stagnation within the industry. Pricing power is significantly controlled by the Applicant, with little competition to constrain pricing decisions. Other risks include supply safety being affected, price manipulation, and global & local

industry competitiveness.

NCM procures steel under tariff code 7208.27.00, the same code under which imported products are cleared, which is essential to its business.

Comments by Steelbank

Steelbank stated that it supplies steel to the automotive and general industries. They supply most of their steel to tier 1 component manufacturers, who in turn supply car manufacturers such as BMW, Ford, Isuzu, Nissan, Toyota, and Volkswagen. Steelbank prefers to source steel from local steel mills such as Duferco and Safal.

Steelbank has warned that if the Commission imposes a safeguard duty on top of the existing general ordinary customs duty (10 percent ad valorem) on the subject products, the landed price of HR steel products will increase to a level that will make downstream businesses using the subject products as input materials in the manufacturing process completely uncompetitive against equivalent imported finished goods. Steelbank also notes that the higher the protection (tariffs) on primary industry products, the more uncompetitive the downstream industry becomes. By subsidizing the Applicant, the government is effectively killing off the very customers that Steelbank relies on to grow. This means that the downstream steel industry that adds value and creates the most jobs is dwindling at the hands of the government.

Furthermore, due to the limited domestic availability of HR steel required, local steel product prices will rise, leading to an increase in inflation. This will have a detrimental effect on the sustainability of the downstream industry. Such actions cannot be considered to be in the public interest.

Comments by Safal Steel

Safal Steel strongly objects to the SAISI application and the Commission's investigation. They believe that any safeguard duty measure to protect the Applicant will harm the downstream steel industry and lead to restructuring

and downsizing. Safal Steel's downsizing will negatively impact South Africa's economy and lead to significant losses. The company has been involved in enhancing skills, employment, and local community development in the region. If the safeguard duty is imposed, Safal Steel's direct employment of people will cease, and the company's downstream value-adding customer base in South Africa will no longer exist. Safal Steel urges the Commission to assist the re-rollers in SACU by way of tariff relief if the destructive safeguard duty is imposed.

Comments by Voestalpine Stahl GmbH

Voestalpine Stahl GmbH mentioned that they are an enterprise that specializes in producing high-quality steel and technology products. They also mentioned that their exports to South Africa mainly consist of products that cannot be sourced locally due to customer-specific requirements, such as limited tolerances. This is one of the reasons why their exports to South Africa are not dumped and remain profitable.

Furthermore, Voestalpine Stahl GmbH does not compete on prices, so any safeguards imposed against Austria or the European Union would not benefit the Applicant but would harm their customers. This is because these customers would be forced to pay higher prices due to the transportation costs from Europe to South Africa, on top of the already higher prices.

The exporter suggested that if South Africa wishes to install safeguards, they should consider a sufficiently high quota for Austria and the EU. This will prevent damage to their customers and keep South Africa's cost base competitive despite fierce competition around the world.

Comments by Select Steel

Select Steel indicated that it sources products both locally and from imports to ensure continuous supply for its business. They have invested millions to be competitive but feel the proposed safeguard duty would have a negative impact on their company and downstream customers. They requested the Commission not to impose the duty as it would cause substantial harm to the

downstream industry and nullify progress made in creating sustainable jobs and investment. The Applicant has confirmed their inability to honor orders on thin HRC due to backlogs.

Comments by Tata Steel Netherland (TSN)

TSN pointed out that the safeguard measures seem to be specifically directed towards China, as China is mentioned 87 times in the safeguard application letter, while the Netherlands is not mentioned at all. TSN believed that other trade remedy measures would be more appropriate in this case.

TSN also clarified that they have not increased their volume and have been a steady supplier to local customers. They referred to Diagram 1 on page 65 of the application, which shows that the Netherlands is not in the top 5 exporters. Furthermore, the products they supply are either not produced locally or are only available in a very limited range. TSN is confident that their supplies from the Netherlands cannot harm the Applicant, as their product offering is complementary, and transaction prices are above the local market prices.

Comments by the Botswana Trade Commission

The Botswana Trade Commission has expressed its support for the initiation of an investigation to take remedial action against the increased imports of certain flat-rolled products of iron, non-alloy steel, or other alloy steel (excluding stainless steel), whether in coils or not (including products cut-to-length and 'narrow strip'), not further worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel (hot-rolled steel products).

Comments by Allied Steelrode

Allied Steelrode indicated that they do not object to the safeguard measures. However, they would like to point out that the Applicant's pricing should not be higher than that of the imports and that the Applicant must include China in their pricing basket. Additionally, Allied Steelrode has mentioned that if the Applicant, for any reason, is unable to produce these products locally, the

safeguard duty must be waived for imports.

Response by the Applicant

The Applicant claimed that although it doesn't manufacture all the products required by the South African industry, it produces most of them. However, if demand increases, the Applicant is willing to consider manufacturing additional grades of steel. The products that are not manufactured by the Applicant represent only a small proportion of the subject product, and the imposition of rebate provisions is considered sufficient to deal with them.

The Applicant indicated that a separate workstream was established to review the pricing mechanism in South Africa with the inception of the Steel Master Plan in 2021. Participants from across the primary and downstream steel industry, as well as industry associations, reviewed and discussed various pricing mechanisms, including cost-plus and continuation of international basket prices. The industry concluded that an open market pricing method would be the most viable option based on the market dynamics of multiple suppliers of all steel products in South Africa. The Applicant confirmed that its prices are internationally acceptable.

The Applicant denied that the use of scrap in the steelmaking process artificially elevates its prices. The Applicant claimed that the inclusion of scrap in its production process is a global phenomenon. Regarding specific comments on import parity prices and the utilization of a selective pricing basket of countries, the Applicant highlighted that it followed the regulated price mechanism for five years. Thereafter, and as agreed upon, an open market pricing method was employed. This means that pricing is primarily determined by supply and demand, which is locally and internationally acceptable.

The Applicant claimed that the implementation of fair-trade remedies will not impact downstream and downstream jobs. The Applicant referred to a strongly rooted local manufacturing industry that thrives on a local ecosystem. There are very few downstream players who rely on imports to

drive profits. Moreover, importing substandard products and overcharging the end consumer in South African markets appears to be the norm. The Applicant is committed to ensuring that downstream manufacturing is maintained and grows and that the competitive advantages scale of operations benefits the downstream as well. The Applicant stated that it would ensure that its prices are market-related and in line with its pricing policies, as explained above.

The Applicant submitted that the "price advantages" of imported HRC products, as referred to by some of the interested parties, create a false sense of security as the position is neither reliable nor sustainable and is subject to the vagaries of the market. As soon as prices increase, this temporary benefit will be lost, and at that stage, there will be few options to fall back on. In this scenario, job losses will become inevitable without the assistance of a local steel industry to mitigate this.

The Applicant denied the allegations made by interested parties that the Applicant is anti-competitive, a monopoly, and the only supplier of hot-rolled products. Columbus is also a supplier of the subject product, and a new hot rolling mill from Scaw is also expected to add to the supply of the subject product. The goal of safeguard protection is, in fact, to enhance competition by enabling the domestic industry to have a time period of suitable relief to allow itself to adjust to allow it to compete internationally.

The Applicant denied the allegations made by interested parties that the Applicant suffers from capacity constraints due to the state and the age of the plant, as well as the closure of the Saldana plant. The Applicant submitted that a large part of the Saldanha production was in addition to the SACU market demand and was used to supply into export markets. The Applicant indicated that it is committed to continuing investment to maintain its current operations as well as further enhance and improve production. Despite the challenging market conditions, the Applicant has continued to invest.

The Applicant acknowledges that it has, on occasion, adopted an allocation approach for certain products. This strategy is particularly employed when there is a perceived increase in market demand conditions or when it becomes evident that prices are likely to rise in the coming months due to specific drivers. These circumstances often lead most customers to over-order compared to their normal offtake or true market demand, a situation the Applicant strives to manage effectively.

Commission's consideration

The Commission noted that there are existing safeguard rebate provisions that were created during the previous investigation for certain products that are not manufactured by the Applicant and are considered highly specialized. These rebate provisions are subjected to a permit issued by the Commission in consultation with the Applicant. The Commission made a preliminary determination to impose provisional measures based on the fact that the downstream sector can make use of these rebate provisions.

The Commission also considered that if it decides to impose final safeguard measures, it is suggested that the Minister should request the Competition Commission to monitor the prices of hot-rolled steel. This monitoring will help to identify if the Applicant has implemented any price increases that are unjustified, in light of safeguard measures.

Furthermore, to minimize the impact of the safeguard measure, the Commission needs to take a holistic approach and consider the entire steel value chain, including the midstream and downstream. This will be done in the next phase of the investigation, where the Commission will evaluate public interest considerations. All interested parties will have the opportunity to submit comments on whether imposing a safeguard measure would be in the public interest.

At this stage of the investigation, the Commission made a preliminary determination within the guidelines of the SGR.

1.7 PRELIMINARY DETERMINATION

The Commission made a preliminary determination at its meeting on 30 May 2024 that:

- The events cited are regarded as unforeseen developments that led to the increased volume of imports;
- The surge in volume of imports is recent enough, sudden enough, sharp enough and significant enough;
- The SACU industry is suffering serious injury; and
- Although there are factors other than the imports that contributed to the injury, such as reduced demand in the steel market demand and lack of infrastructure investment, labor unrest, inputs costs, and energy supply and logistics constraints, these factors did not sufficiently detract from the causal link between the serious injury suffered by the Applicant and the surge in volumes of imports resulting from the unforeseen developments.

Having found that increased imports have caused serious injury and that a delay would cause damage that would be difficult to repair, the Commission considered that there are critical circumstances which justify the imposition of provisional measures. The Commission therefore made a preliminary determination to request the Commissioner for South African Revenue Service (“SARS”) to impose a provisional measure of 9 percent *ad valorem* on imports of hot-rolled steel products for a period of 200 days pending the finalization of the investigation.

The provisional measures should be imposed against all countries, except the developing countries listed at the end of the report, as the imports from each of these countries do not exceed 3 percent of the total volume of imports or collectively account for more than 9 percent of total imports.

A developing country exempted from the application of a safeguard measure may become subject to such safeguard measures without a new investigation being conducted if, subsequently to the imposition of the safeguard measure, its share of imports increases to a level that exceeds 3 percent of the total import volumes in the original investigation period.

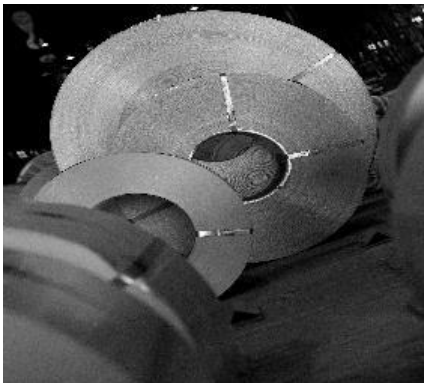
2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

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

Hot-rolled coil



Hot-rolled Coil is derived from steel rolling at high temperatures where recrystallisation occurs. Pickled and oiled products are descaled of oxide film by mechanical and chemical methods and then oiled to prevent corrosion during storage

Typical end-use:

- Automotive;
- Tube and pipe industry including Water, Oil and Gas, and others;
- Manufacturing of general engineering products such as containers, drawing and forming applications like wheel rims, agricultural implements, mining

equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking, and shelving;

- Solar tracker equipment; and
- South African Mint and Coins.

Hot-rolled plates



Hot-rolled plates are manufactured in a wide range of sizes for applications in several industries varying from construction to pressure vessels and wear-resistant chemistries.

Typical end-use:

- Manufacturing of heavy engineering equipment used in construction, mining, oil and gas, water and chemical storage;
- General fabrication;
- Energy: wind towers, coal, nuclear and gas power; and
- Railway rolling stock, yellow goods, mining equipment.

2.1.2 Tariff classification and WTO obligations

The subject product is imported under the following tariff headings:

Table 2.1.2

HS Tariff subheading	Description	Statistical unit	Rate of duty					
			General	EU/UK1	EFTA2	SADC3	MERCOSUR	AfCFTA4
72.08	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:							
7208.10	In coils, not further worked than hot-rolled, with patterns in relief	kg	10%	free	free	free	10%	6%
7208.2	Other, in coils, not further worked than hot-rolled, pickled:	kg						
7208.25	Of a thickness of 4,75 mm or more	kg	10%	free	free	free	10%	6%
7208.26	Of a thickness of 3 mm or more but less than 4,75 mm	kg	10%	free	free	free	10%	6%
7208.27	Of a thickness of less than 3 mm	kg	10%	free	free	free	10%	6%
7208.3	Other, in coils, not further worked than hot-rolled:							
7208.36	Of a thickness exceeding 10 mm	kg	10%	free	free	free	10%	6%
7208.37	Of a thickness of 4,75 mm or more but not exceeding 10 mm	kg	10%	free	free	free	10%	6%
7208.38	Of a thickness of 3 mm or more but less than 4,75 mm	kg	10%	free	free	free	10%	6%
7208.39	Of a thickness of less than 3 mm	kg	10%	free	free	free	10%	6%
7208.40	Not in coils, not further worked than hot-rolled, with patterns in relief	kg	10%	free	free	free	10%	6%
7208.5	Other, not in coils, not further worked than hot-rolled:							
7208.51	Of a thickness exceeding 10 mm	kg	10%	free	free	free	10%	6%
7208.52	Of a thickness of 4,75 mm or more but not exceeding 10 mm	kg	10%	free	free	free	10%	6%
7208.53	Of a thickness of 3 mm or more but less than 4,75 mm	kg	10%	free	free	free	10%	6%
7208.54	Of a thickness of less than 3 mm	kg	10%	free	free	free	10%	6%
7208.90	Other	kg	10%	free	free	free	10%	6%
7211	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated:							
7211.1	Not further worked than hot-rolled:							
7211.14	Other, of a thickness of 4,75 mm or more	kg	10%	free	free	free	10%	6%
72.25	Flat-rolled products of other alloy steel, of a width of 600 mm or more:							
7225.1	Of Silicon electrical steel:							
7225.30	Other, not further worked than hot-rolled, in coils	kg	10%	free	free	free	10%	6%
7225.40	Other, not further worked than hot-rolled, not in coils	kg	10%	free	free	free	10%	6%
7225.9	Other:							
7225.99	Other	kg	10%	free	free	free	10%	6%
7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm:							
7226.9	Other							
7226.99	Other	kg	10%	free	free	free	10%	6%

1 European Union/United Kingdom

2 European Free Trade Association

3 Southern Africa Development Community

4 African Continental Free Trade Area

The Applicant indicated that the obligations incurred under the GATT 1994, refer to the binding of duty rates to 10% on the subject products. Prior to the new obligations incurred under the GATT 1994, the following formula duty applied: 5% ad valorem duty, or 95% of the difference between the accepted benchmark price and lower import price, whichever was higher. With South Africa's ascension to the GATT 1994, the formula duty fell away, leaving only a 5% ad valorem duty. This duty was then reduced to 0% in 2005 and ultimately increased to 10% in 2016.

2.1.4 Possible tariff loopholes

The tariff subheading identified by the Applicant as a possible tariff loophole is as follows:

Tariff subheading	Description	Statistical unit	Rate of duty					
			General	EU/UK	EFTA	SADC	MERCOSUR	AfCFTA
7211	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated:							
7211.1	Not further worked than hot-rolled:							
7211.13	Rolled on four faces or in a closed box pass, of a width exceeding 150 mm and a thickness of not less than 4 mm, not in coils and without patterns in relief	kg	10%	free	free	free	10%	6%
7211.19	Other	kg	10%	free	free	free	10%	6%
7226	Flat-rolled products of other alloy steel, of a width of less than 600 mm:							
7226.9	Other:							
7226.91	Not further worked than hot-rolled	kg	10%	free	free	free	10%	6%

The Applicant stated that the table above covers the imported coils down to 600mm wide. The Applicant also stated that importers might now move to selling slit coils for the tubing industry.

The Applicant further stated that an analysis of the import statistics and the tariff subheadings used to import the subject product indicates that importers are also using the tariff subheadings listed above as loopholes to import hot-rolled products into the SACU. The Applicant stated that it should be noted that, to be

fair, these tariff headings were not included in the import statistics of this application. The Applicant requested the Commission to include these tariff subheadings when imposing the safeguard measures.

The South African Revenue Service (SARS) indicated that it does not foresee any problems in administering remedial action against the above tariff subheadings, and if loopholes have been detected, it would make sense to include those as well.

Comments by the Group

The Group stated that in the initiation notice of 23 February 2024, the Commission recorded that “The Applicant stated that an analysis of the import statistics and the tariff subheadings used to import the subject product indicates that importers are also using the tariff subheadings 7211.13, 7211.19 and 7226.91 as loopholes to import hot-rolled products into the SACU.” The Commission then states that the “Applicant, therefore, request the Commission to include these tariff subheadings when imposing the safeguard measures”. The Group stated that it was also indicated in the initiation notice that “Then Commission decided that should the safeguard measures be imposed on hot-rolled steel products they will also be imposed on hot-rolled steel products classifiable under tariff subheadings 7211.13, 7211.19 and 7226.91, to prevent any potential loopholes.”

The Group presented tables on pages 6 and 7 of their submission, which clearly shows that the import volumes of the alleged “loophole” tariff codes have been decreasing over the POI, while the average Free on Board (“FOB”) prices over the POI have been increasing.

The Group further stated that the Applicant’s claimed lacked substantiation, which was neither given nor requested by the Commission. The data presented by the Group suggested that the Applicant was not truthful with their allegations. The Applicant should have included these tariff subheadings in their application if they cater for “like or directly competitive product”. The Commission cannot address the Applicant’s oversight of not including these codes. Alleging that

these tariff subheadings might be used as loopholes does not justify imposing the safeguard duty on them.

The Group stated that the WTO Safeguard Agreement and SGR make it clear that safeguard duty can only be imposed on “like or directly competitive product”, if there was a recent sudden surge in imports that was unforeseen and that is causing serious injury to the SACU industry. However, none of these factors were submitted or substantiated by the Applicant regarding the alleged “loophole” codes. Therefore, the Commission would be violating the Safeguard Agreement if it randomly imposed safeguard duties on all trading partners just because the Applicant did not include these tariff subheadings in their initial application. The Safeguard Regulations do not provide for addressing alleged circumvention, only the South African International Trade Administration Commission Anti-Dumping Regulations 4 (“AD Regulations”) does.”

Commission’s consideration

The Commission considered that there could be circumvention when the safeguard measures are imposed on the subject products. To prevent any potential loopholes, the Commission made a preliminary determination also to impose provisional measures on hot-rolled steel products classifiable under tariff subheadings 7211.13, 7211.19, and 7226.91.

Moreover, SARS was contacted regarding this matter. SARS indicated that it does not anticipate any issues in administering remedial action against the above tariff subheadings. Additionally, it suggested that if any loopholes are identified, it would be prudent to include these tariff subheadings in the remedial action as well.

2.1.4 Production process

The Applicant indicated that the production process is as follows:

- Normal Hot-rolled product:

The manufacturing process for hot-rolled consists of several stages: (1) melting and refining to set the steel’s chemical and metallurgical

properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling.

- Chequered plate (Hot-rolled material with a pattern on the surface):
The same manufacturing process as normal hot-rolled. The only difference is that the work rolls in the last stand of the hot-rolled process are replaced by work rolls with a pattern to ensure the imprint on the coil surface in the hot condition. The chequered plate is normally only produced once a month for a short period depending on the ordered volumes. It is patterned to render a non-slip surface. The geometry of the layout facilitates cleaning and draining of the working surfaces while retaining the required non-slip characteristics.
- Pickled and oiled:
The manufacturing process for pickled and oiled products consists of several stages: (1) melting and refining to set the steel's chemical and metallurgical properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling (4) pickling and oiling in a continuous mill after removing the scale in a pickling plant.

2.2 SACU PRODUCT

2.2.1 Description

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

2.2.2 Production process

The production process is as follows;

- Normal Hot-rolled product:
The manufacturing process for hot-rolled consists of several stages: (1) melting and refining to set the steel's chemical and metallurgical properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling.
- Chequered plate (Hot-rolled material with a pattern on the surface):
The same manufacturing process as normal hot-rolled. The only difference is that the work rolls in the last stand of the hot-rolled process are replaced by work rolls with a pattern to ensure the imprint on the coil surface in the hot condition. The chequered plate is normally only produced once a month for a short period depending on the ordered volumes. It is patterned to render a non-slip surface. The geometry of the layout facilitates cleaning and draining of the working surfaces while retaining the required non-slip characteristics.
- Pickled and oiled:
The manufacturing process for pickled and oiled products consists of several stages: (1) melting and refining to set the steel's chemical and metallurgical properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling (4) pickling and oiling in a continuous mill after removing the scale in a pickling plant.

2.2.3 Application or end use

Normal hot-rolled and hot-rolled pickled and oiled products are used for manufacturing general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small- and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking & shelving, etc.

2.2.4 Categories of users

The Applicant stated that it does not distinguish merchant or service centers from end-user fabricators. Fabricators convert material into pipes and tubes that are mainly used in building and construction projects. Some of the smaller tubing is used in school furniture. Hot-rolled slit material is used for lip channels. Drawing and forming applications are the most common in automotive applications. Hot-rolled material is widely used in general engineering and fabrication purposes and structures in the solar industry. Other end uses include shovels, shelves, containers, tanks, pressure vessels, trailers, etc.

2.3 LIKE OR DIRECTLY COMPETITIVE 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 the likeness or directly competitiveness of the product, the Commission uses the following criteria:

	Imported product	SACU product
Tariff Headings	7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.	7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.
Raw materials	<p>Normal Hot-rolled products:</p> <p>The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p> <p>Pickled and oiled products:</p> <p>The same inputs are used for pickled and oiled as for normal hot-rolled products, pickled and oiled is only an additional process after hot rolling. The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p>	<p>Normal Hot-rolled products:</p> <p>The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p> <p>Pickled and oiled products:</p> <p>The same inputs are used for pickled and oiled as for normal hot-rolled products, pickled and oiled is only an additional process after hot rolling. The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p>
Production process	The production process of the imported product is outlined in detail above.	The SACU product production process is outlined in detail above.
Application or end-use	<p>The imported product is used in the following industries:</p> <p>Normal hot-rolled and hot-rolled pickled and oiled products are used for manufacturing general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small-and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking & shelving, etc.</p>	<p>The SACU product is used in the following industries:</p> <p>Normal hot-rolled and hot-rolled pickled and oiled products are used for manufacturing general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small-and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking & shelving, etc.</p>

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

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

SAISI, an industry association, lodged the application on behalf of AMSA, being the major producer of the subject product in the Southern African Customs Union. Columbus Stainless (Pty) Ltd indicated its support for the application.

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

4. UNFORESEEN DEVELOPMENTS

4.1 Requirements of Article XIX of GATT – Effect of WTO Obligations

Article XIX of the GATT provides as follows:

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

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

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

4.2 Information submitted by the Applicant

The Applicant provided certain information in support of its claim regarding unforeseen developments. According to the Applicant, the GATT 1994 imposes an obligation to bind duty rates to 10% on the relevant product. Prior to this new obligation, a formula duty was applicable, which involved a 5% ad valorem duty or 95% of the difference between the accepted benchmark price and the lower import price, whichever was higher. However, with the GATT 1994 coming into effect, the formula duty was no longer applicable, and only a 5% ad valorem duty was imposed, which was later reduced to 0% in 2005 and ultimately increased to 10% in 2016.

The Applicant has also referred to Report Number 551 of the Commission, which analysed the impact of the GATT 1994 obligations. The Commission found that the South African government had agreed to bind the ordinary customs duty on imported flat hot-rolled steel products at 10% ad valorem. This led to the restructuring of the industry, with the state-owned entity being unbundled and privatized, and the government facilitating the end or review of an old pricing model to enhance the industry's competitiveness.

The Applicant has cited the Appellate Body's decision in *Argentina - Footwear (EC)* to explain what constitutes an unforeseen development. The Appellate Body held that Article XIX provides an emergency remedy and should only be invoked in situations where, as a result of obligations incurred under the GATT 1994, a member finds itself confronted with developments it had not foreseen or expected when it incurred that obligation.

The Applicant also pointed out that in a previous safeguard measure on hot-rolled products, the Commission made a positive finding on unforeseen developments and cited some of the highlights from that report.

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

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

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

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

The Applicant further indicated that the Commission analysed the information submitted in the Applicant's original application and confirmed that the significant growth in Chinese steel manufacturing capacity was unforeseen. The Applicant believes that the Commission's previous finding on unforeseen developments is still valid, as the overcapacity and propensity to export to unprotected markets have become even more apparent, and international trade remedies have increased significantly since the initial analysis.

The Applicant provided additional information regarding the production and capacities of Chinese manufacturers of the subject product, including a publication by Jing Zhang for S&P Global Commodity Insights, which states that China has commissioned five hot strip mills with a combined production capacity of 10.9 million mt/year in 2023 alone, with another 10 expected to be finished by the end of 2023, adding another 31 million mt/year.

Furthermore, a publication by The Arab and Steel Union indicates that China produced 172.696 million mt of hot-rolled steel from January to October 2023, an increase of 13.2% year on year. The Applicant also cited Steel Statistical, which reported that crude steel production in China for 2022 was 1,017,959 tonnes, of which hot-rolled flat steel represented 515,000 tonnes, meaning

that hot-rolled flat products accounted for 51% of all crude steel production in 2022.

The Applicant argued that the unforeseen development supporting this application is the considerable oversupply of steel, particularly the subject product, in the world today, which is causing a surge in imports into the SACU.

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

1) Studies show that China did not become a fully-fledged market economy as it assured WTO Members it would during negotiations

The Applicant indicated that in 1995, during the Uruguay Round of Multilateral Trade Negotiations, China was not yet a member of the WTO. However, on 4 March 1987, a Working Party was formed to review China's request for the resumption of its status as a GATT contracting party. China applied for accession to the Marrakesh Agreement Establishing the WTO Agreement in December 1995, which led to the existing Working Party on China's status as a GATT 1947 Contracting Party being transformed into a WTO Accession Working Party. After 15 years of negotiation and numerous meetings, China finally became a WTO Member on 11 December 2001.

China's statements to the GATT 1947 Working Party and subsequently to the Working Party on the accession of China were recorded in the report of the Working Party on the accession of China. In the report, it was mentioned that China's representative stated that since 1979, China had been progressively reforming its economic system to establish and improve the socialist market economy. The reform package introduced in 1994, including the banking, finance, taxation, investment, foreign exchange, and foreign trade sectors, had brought about significant changes in China's socialist market economy. The state-owned enterprises had been reformed by clearly defining property rights and responsibilities, separating government from enterprise, and implementing scientific management. As a result, a

modern enterprise system had been created for the state-owned sector, and it was gradually getting on the track of growth through independent operation, being responsible for its profits and losses.

The Applicant stated that during negotiations, China's representative confirmed the development of a nationwide unified and open market system. They also ensured that an improved macroeconomic regulatory system was in place, which used market forces and indirect means to manage the economy and allocate resources. Furthermore, a new tax and financial system was functioning effectively. The central bank's commercial operations were separated from financial policy, and it now focused solely on financial regulation and supervision. There had also been further liberalization of pricing policy, resulting in most consumer and producer products being subject to market prices. All of these developments meant that the market played a much more significant role in boosting supply and meeting demand at that time.

The Applicant also stated that given these assurances and commitments made by China, WTO members, including South Africa, welcomed China's accession to the WTO Agreement. They believed that it would bring mutual benefits to China and the other members of the WTO.

Comments by the Japanese Mills

According to the Japanese Mills, the unforeseen developments alleged by the Applicant are almost identical to the ones they had claimed during the 2016 safeguards investigation. Both the Commission and the Applicant have been aware of these developments since 2016.

Regarding China Market Economy Status, the Japanese Mills stated that the Applicant's contention that China did not become a market economy was incorrect. China's market economy status is recognized by other WTO members, including countries in Latin America, Africa, Australia, and Asia. Some WTO members determine China's market economy status on a case-by-case basis. This was foreseen and addressed in the WTO covered

agreements.

Comments by the Group

The Group has observed that the Applicant is attempting to emphasize China's accession to the WTO to support their claim of an unforeseen scenario. However, this claim can be dismissed as it is related to the alleged "oversupply" in the world, which South Africa was already aware of during the negotiations with the WTO prior to China's accession.

Response by the Applicant

The Applicant reiterated that the Commission should consider the confluence of factors provided in its submissions regarding unforeseen developments at the time of tariff negotiations. The Applicant also mentioned that interested parties have alleged that it was foreseeable that China would not become a market economy. In response, the Applicant referred to the WTO Panel decisions of Korea - Dairy and Argentina Footwear, wherein it is noted that "unforeseen developments" should be interpreted as developments occurring after the negotiation of the relevant tariff concession which the negotiators of the country making the concession could not have foreseen at the time of the negotiation.

The Applicant argued that it has dealt extensively with the events that were not foreseeable at the time of negotiation of the GATT 1994. The Applicant also stated that reference was made to the Protocol on the Succession of the People's Republic of China in 2001 and the SA-China MOU in 2004, but it argued that these agreements do not prove that China was expected to have transitioned to a market economy at the time. The Applicant believed that Article 15 of the Protocol is irrelevant to the discussion at hand, as it pertains to "price comparability in determining subsidies and dumping". The Applicant noted that the article was written with the assumption that China would transition to a fully-fledged market economy within 15 years of signature, which did not happen.

Commission's consideration

The Commission noted the assertion by the Japanese Mills that the unforeseen developments alleged by the Applicant are almost identical to the ones they had claimed during the 2016 safeguards investigation. Both the Commission and the Applicant have been aware of these developments since 2016. The Commission considered that the situation of steel excess capacity persists. The Applicant has provided the latest information to support this claim. Even other authorities, namely the EU and the UK, are considering extending their safeguard measures mainly because of persistent oversupply.

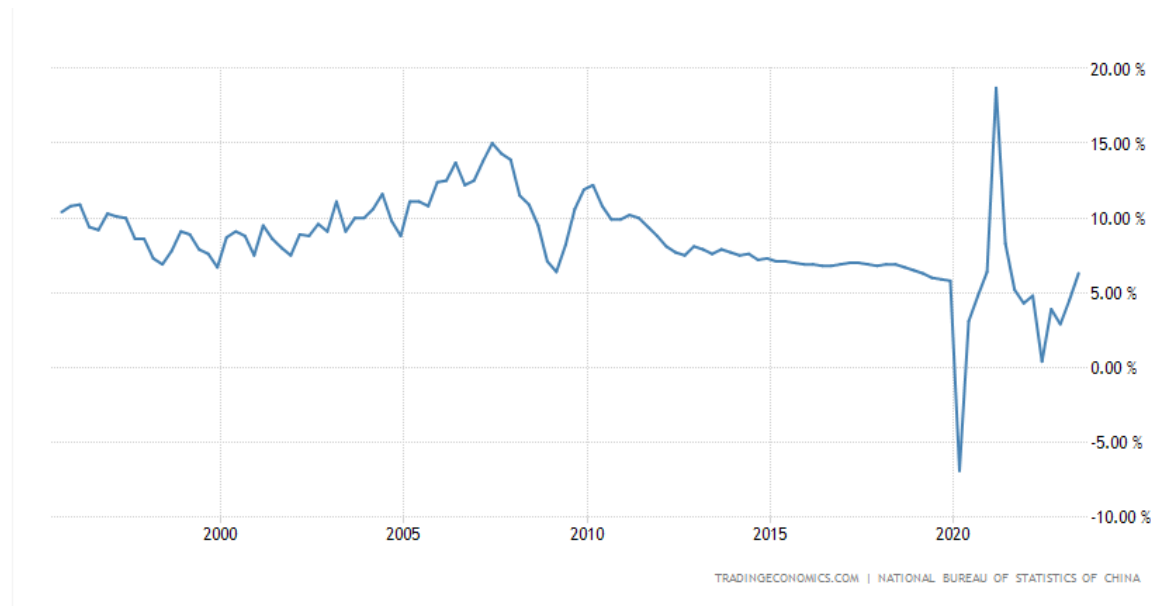
The Commission further considered that China's status as a market economy within the WTO has been a contentious issue since its accession to the organization in 2001. As a result, China's status as a market economy is still not universally recognized by all WTO members. The issue remains a subject of debate and negotiation within the WTO.

2) Chinese economic activity has consistently declined since 1994

The Applicant mentioned that China has made significant investments in its economic growth since 1979, resulting in an industrial boom. However, this growth may not be sustainable in the long term, as the country has transitioned from a developing to a developed economy, with significant government intervention and oversight.

The Applicant also shared a graph that illustrates how China's annual growth rate has been steadily declining since 2006/2007, with the exception of 2021, which experienced a surge due to the easing of COVID-19 restrictions. As economic growth slows down, the demand for certain commodities used in

infrastructure development, particularly in the domestic market, will decrease.



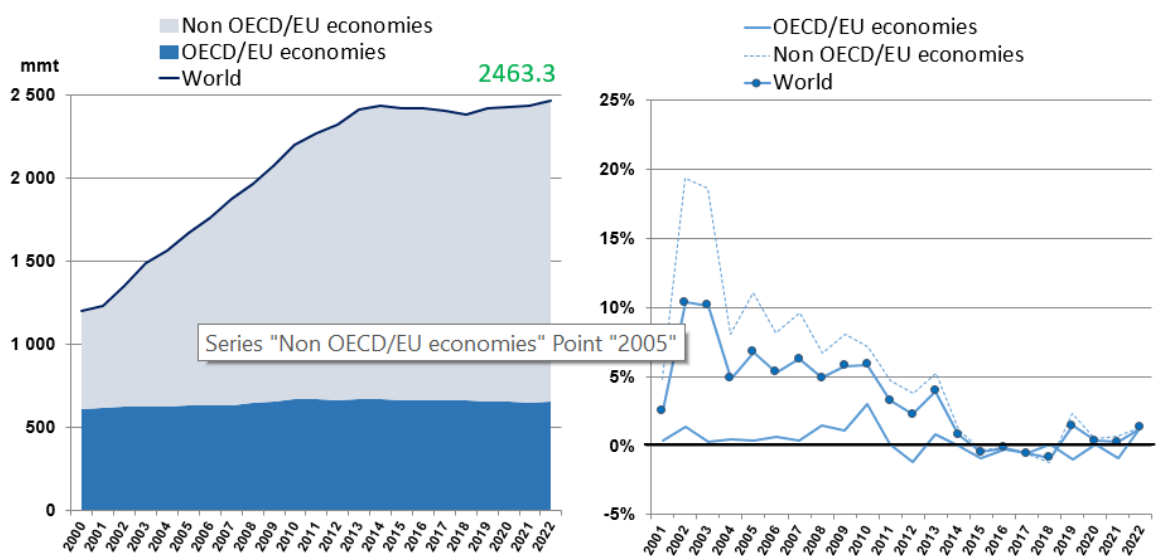
**Source: Tradeeconomics.com / National Bureau of Statistics China*

The Applicant cited an article by Zhang, stating that China's property sector has been experiencing a long-term downward trend, which has prompted the country to promote its manufacturing sector as a new economic growth engine. According to market sources, China's manufacturing sectors, particularly cars, ships, and new energy facilities, have played a more significant role in offsetting most of the adverse impact on steel demand for 2023 caused by the property sector. This improvement in manufacturing has been supported by the quick rise in hot-rolled coil capacity, which has provided ample and cheap steel supply. However, this rapid increase in hot-rolled capacity has also undermined steel profit margins for steel mills.

As domestic demand in China slowed down, manufacturers kept increasing their capacities and overall production to reduce the cost of steel commodities, leading to an inherent need to find alternative markets for this oversupply of steel. South Africa, which has one of the lowest barriers to entry and is considered a developed country, became a lucrative avenue for imports from China that could no longer be sold domestically, as there was not enough demand for them.

3) Overcapacity and Demand

The Applicant provided two reports from the Organisation for Economic Co-operation and Development (“OECD”) titled "Latest Developments in Steelmaking Capacity 2023" and "Steel Market Developments - Q2 2023". According to these OECD reports, excess capacity is a major challenge faced by the global steel industry. They also highlight that the industry's capacity to produce steel has more than doubled since the early 2000s and investment projects are increasing in various economies, while steel consumption is declining. The diagrams provided in the reports demonstrate the increase in steel capacity and the decline in consumption.



The Applicant mentioned that The Southeast Asia Iron and Steel Institute (“SEAISI”) recently reported that the steel industries of the Southeast Asian region are experiencing a significant influx of inward investment. The report states that the region's capacity will increase to 162.6 mmt by 2030, with the addition of 90.8 mmt of new capacity.

The Applicant also noted that SEAISI highlights the rapid expansion of capacity in Indonesia, Vietnam, and Malaysia as the primary cause of overcapacity in the region. This, coupled with China's aggressive approach to increasing steel exports as the Yuan devalues against the Dollar, makes it evident that unprotected markets are becoming a focus point for this overcapacity.

The Applicant submitted two publications in support of their argument. The first publication by GMK Centre states that China's export of steel could reach 90 million tonnes in 2023, which is a 30% increase from the previous year. The second publication by Yahoo! Finance mentions that 11 out of the top 20 steel companies in the world are from China, demonstrating China's significant market share in the industry.

According to the Applicant, there is a surplus of steel production worldwide, with most of it concentrated in the Chinese market. The 2023 OECD publications predict that the global steelmaking capacity will continue to increase, but there will be a slowdown in steel demand, resulting in over-supply, lower prices, weak profitability, bankruptcies, and job losses in certain areas. Outside of China, global apparent steel consumption has declined by 3.2% during the first half of 2022, and it is estimated to contract by 4% in 2022 and remain stagnant in 2023.

The following information was provided by the Applicant:

In an article by Zhang, it was stated that China's hot-rolled coil capacity has been rapidly expanding since 2019, following the country's steel capacity swap campaign launched in 2018. As per S&P Global data, this has led to a crude steel capacity growth of close to 70 million mt/year by mid-2023. Over the time frame of 2019-2022, China had brought about 85 million mt/year of brand-new hot strip mills on stream.

The Applicant also mentioned that mill sources have stated that some steelmakers (including long steel producers) are building hot strip mills with the aim of expanding business in flat steel markets. Additionally, some others who are already producing narrow strip or flat steel are looking to upgrade products or produce wider and higher-end products to become more competitive in the market. Most of the steelmakers who are commissioning or planning new hot strip mills have also built new iron and crude steel-making facilities, with capacity quotas purchased from other mills through China's capacity swap mechanism.

The Applicant quoted Zhang who reported that in spite of a 4.8% drop of China's crude steel production in August, the production of medium-width hot-rolled coil - a significant product and an indicator for the flat steel market - increased by 3.4% on the month and 33.2% on the year to 18.01 million metric tonnes. This data is confirmed by the National Bureau of Statistics.

Furthermore, Chinese hot-rolled coil sales profit margins have been reported to be around Yuan 50-100/mt (\$6.9-\$13.7/mt) in mid-September, according to mill and trading sources in Eastern China. This is better than rebar, which is currently at a slight loss or breakeven level. However, shrinking overseas demand, global supply chain restructures, and stalled domestic household income mean that there is still a long way to go before China's manufacturing sector can achieve substantial improvement and push China's economy into a faster lane. As a result, the hot-rolled coil steel margins are expected to continue to come under pressure in the foreseeable future due to increasing capacity, according to industry sources.

The Applicant argued that although there is a decrease in demand for hot-rolled steel in China, the country is still engaged in an ever-increasing capacity generation war regarding the manufacturing of hot-rolled steel, and this growth shows no signs of slowing down. This has led to an oversupply of the product, which needs to be exported to reduce high stock levels. In an article by the South East Asian Iron and Steel Institute, it was reported that in Shanghai, hot-rolled coil inventories were almost 80% higher than the same time last year, while in Hangzhou, rebar inventories were about 35% higher on the year, according to market sources. This has resulted in decreased selling prices and imports of hot-rolled steel into the SACU at ever-lower prices to compensate for the Chinese oversupply.

Comments by the Japanese Mills

The Japanese Mills stated that China is the primary target of the Applicant's complaint. This was evident from both the initiation notice and the application. The initiation notice mentions China in all but one bullet point, which addresses the alleged unforeseen developments. The Japanese Mills

referred to the OECD report attached to the application as Annexure E(i)(a), which stated that China is the major global producer of crude steel, and its exports have increased by 3.1% in 2022, with estimated figures reaching 68 million metric tons. Although exports increased rapidly in the first semester of the year, they decreased sharply in the period of August-October. The report also shows that the slowdown of the Chinese economy is reflected in a sharp contraction in imports, which are expected to decline by 34% in 2022. Japan, on the other hand, has seen its outbound shipments of steel decrease by 6.2% in 2022, despite a moderate recovery in steel demand due to the growth of the non-residential construction, machinery, and construction sectors.

The Japanese Mills made it clear that China is the major producer of crude steel and has experienced a 3.1% increase in its exports in 2022, while Japanese exports declined by 6.2% in the same year. In 2023, China experienced a 17.95% increase in its exports, while Japanese exports continued to decline, albeit by a reduced 0.01%. During the investigation period, the proportion of China's imports into SACU increased from approximately 17% in 2021 to approximately 43% in 2023, while the proportion of Japanese imports was substantially smaller at approximately 4% in 2021 and 17% in 2023. The proportion of imports from the rest of the world decreased from approximately 80% in 2021 to approximately 40% in 2023. It was evident that China's dominance is continuing and growing.

Comments by the Group

The Group stated that the Applicant presented a scenario of 'Overcapacity and demand' of Global apparent steel consumption outside China has declined about 3.2% during the first half of 2022 and is expected to contract by 4% in 2022 and to stay stagnant in 2023". However, upon studying the Steel Market Overviews for 2023 to 2027, the opposite is true:

- *The Global steel market Overview 2023– 2027, market Size and Growth, it is stated that "The Global Steel market is expected to experience a 3% Compound Annual Growth Rate (GAGR) between 2023 and 2027. This*

growth is expected to be driven by increased demand from various end-use industries such as construction, automotive, and infrastructure. The construction industry is expected to be the largest end use segment for steel, accounting for a significant share of the market.”

- *The Steel in Australia Market Overview for 2023 – 2027 further supports this growth trend. It stated that: “The Australian steel market is poised for significant expansion over the next five years, driven by a combination of factors including strong demand from the construction, automotive, and manufacturing industries. This growth is further supported by government initiatives promoting infrastructure development and the adaptation of advanced steel production technologies.”*
- *The Steel in Asia Market Overview 2023 – 2027 also confirms that “The Asian steel market is poised for robust expansion, with a Compound Annual Growth rate (GAGR) of 2.8% forecasted from 2023 onwards. This upward trajectory is set to culminate in reaching a significant value of US\$ 1,077 Billion by 2028.”*
- *Moreover, the Steel in China Market Overview, market size and forecast for 2023 – 2027 stated that “The steel market in China is expected to witness significant growth during the forecast period. China’s steel consumption is projected to increase by 2.8% in 2023, driven by government policies to boost infrastructure investment and stimulate the economy.”*

Thus, it is clear from the above that the Applicant’s gloomy picture to suit its narrative is far from the truth.

Response by the Applicant

The Applicant stated there has been a decrease in demand for steel products, while the global capacity for crude steel production is on the rise. As of 2023, steelmaking capacity has reached an estimated 2,439 million tonnes, which exceeds production by 547 million tonnes. In particular, China’s steel exports have surged to record highs, reaching up to 40% in absolute terms, as observed in 2023. These levels are similar to those seen during the steel capacity crisis of 2015/2016. This significant increase in

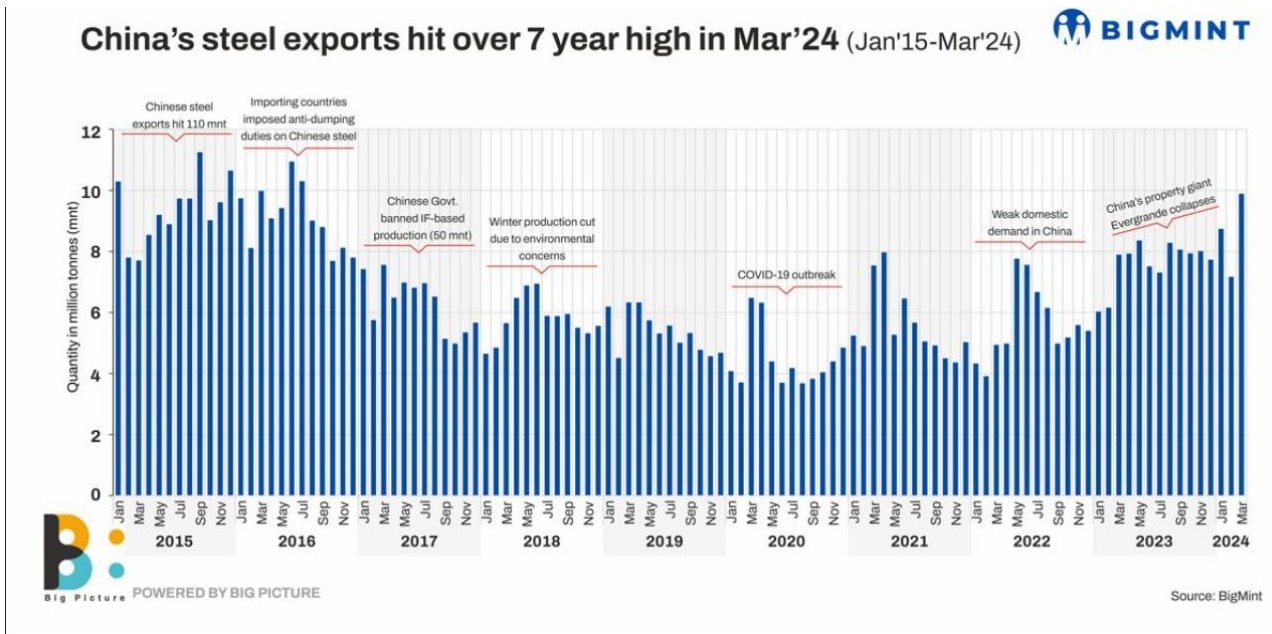
global steel exports and the rise in China's steel industry and exports contribute to excess steelmaking capacity, which exerts significant pressure on the steel industry worldwide. It led to surges in steel exports from countries with excess capacity, depressed prices, and losses in market shares for domestic producers in destination countries. Steel producers face the challenge of absorbing increased costs amidst these challenging conditions. These circumstances are unlikely to change over the next year, with China's steel demand predicted to continue to decline in 2025.

The Applicant further stated that recent years have seen a concerning decline in South Africa's steel production, with a stark 21% decrease in output in 2023 to 4.8 million tonnes compared to 2019. This decline is unsettling considering the steel industry's strategic importance and its central role in re-industrialization, and the impact this decline has on both direct and indirect jobs. The South African steel sector is responsible for roughly 3% of South Africa's GDP. At present, the country's reliance on imports has risen from 13% of domestic consumption in 2010 to 28% in 2023. Notably, this exceeds the initial peak of 26% in 2015. This has resulted in a domestic 'steel crisis', which was aptly acknowledged in the Steel Master Plan wherein localization was central to the solutions proposed. The Applicant provided further information and sources on the global steel crisis and the impact this is and will have on the domestic steel industry. In essence, the unprecedented expansion of China's steel capacity over the past two decades has resulted in a profound imbalance in global steel markets. Those repercussions were first deeply felt during the steel crisis of 2015 -2016, when Chinese domestic steel demand stagnated, leading to massive export surges totalling around 100 million tonnes. Today, data point to a potential repetition of the same scenario, as China's steel exports in 2023 nearly matched these historical highs, reaching 94 million tonnes.

The Applicant pointed out that this has also manifested in the surge in imports that has occurred in the SACU and that the domestic industry is suffering serious injury as a result thereof. This confirms that safeguard protection is an appropriate remedy in these circumstances, and this is

confirmed in the merits of their application. The Applicant confirmed that the requirements for a safeguard are duly met and in particular that: There has been a surge in imports: imports of the subject product into the SACU have increased significantly between the second and third year of the period of investigation (surge) by 105% in absolute terms, as well as by 33% if considered from the start to the end of the period of the investigation. Such a surge was because of unforeseen developments. Such surge has directly led to the serious injury being experienced by the domestic industry, which manufactures the like and/or directly competitive products, in the form of losses in market share, decreases in profits, decreases in employment, as well as lower capacity utilisation as production decreased, as a direct consequence of such imports.

The Applicant provided a graph titled ‘China steel exports hit over 7-year high in March 2024,’ which aptly illustrates the aforementioned surge in exports by China in particular.



Source: BigMint

The Applicant stated that contrary to the interest parties' submissions, China's present property crisis has directly resulted in a significant decrease in domestic demand and coincides with the increase in exports. These circumstances are unlikely to change over the next year, with China's steel demand predicted to continue to decline in 2025. The present situation has

seen an immediate reaction from many countries and has resulted in protective measures being implemented across the board.

Commission's consideration

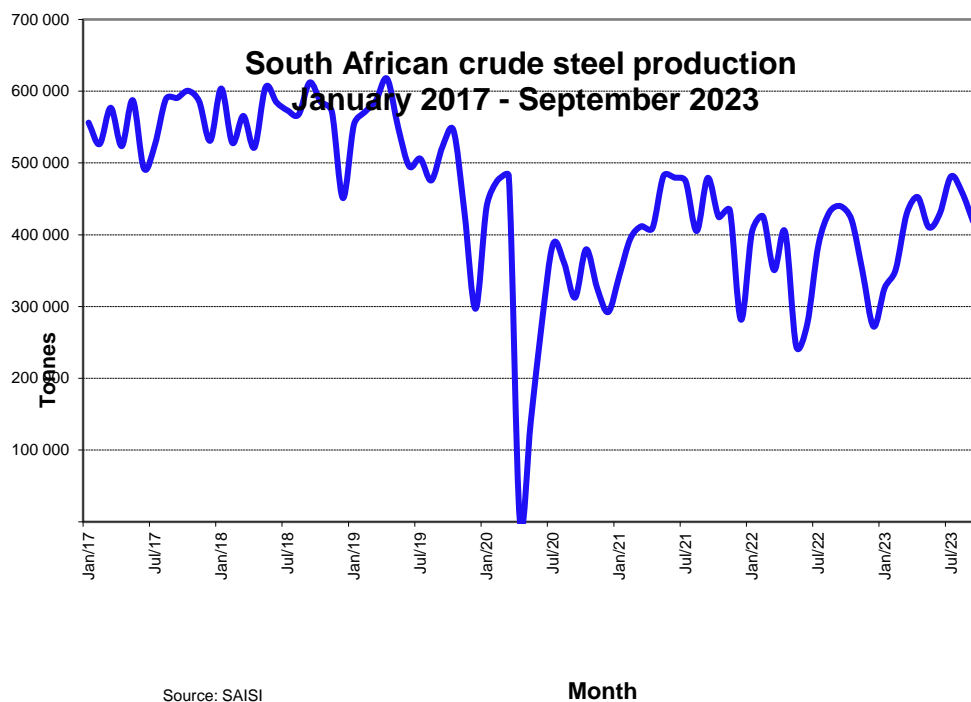
The Commission considered that the Applicant provided a report from the OECD, which reveals that the gap between steel production capacity and demand has increased significantly in 2022. The report indicated that global steel production capacity has risen for the fourth consecutive year to reach 2,463.4 million metric tons, but the utilization of this capacity has decreased from 78.7% in 2021 to 74.3% in 2022. China, which is the largest producer of crude steel globally, has seen a 3.1% increase in its steel exports, with estimated figures reaching 68 million metric tons. Additionally, the Commission also considered that China's hot-rolled coil capacity has been expanding rapidly since 2019, with crude steel capacity growth expected to reach close to 70 million metric tons per year by mid-2023. Over the past three years, China has commissioned new hot strip mills with a total capacity of 85 million metric tons per year. Therefore, it is evident that the current global steel oversupply was unforeseeable by the negotiators.

4) Trade Remedies on Hot-Rolled Products

The Applicant pointed out that due to an excess of steel tonnage, many countries have started imposing barriers such as increasing normal tariff duties, anti-dumping, countervailing, and safeguard duties on these steel imports. This will force the excess steel to be exported elsewhere, particularly to countries where there is no protection in place. Currently, there are 25 anti-dumping measures in place for hot-rolled products, and 5 countervailing duties for the same products. This is not taking into account other trade remedies, actions, and barriers, such as the United States' Section 232 restrictions on steel and aluminum imports, which have led to the closure of one of the world's largest markets for crude steel. Additionally, the United Kingdom has extended its existing safeguard measures on certain steel products, including hot-rolled products.

since 2021 to protect these markets. However, the SACU currently lacks sufficient protection against these imports, leaving it defenseless. Morocco, another African country, has also extended its existing safeguard measures on hot-rolled steel until June 2026.

According to the Applicant, these actions have resulted in a shift in export patterns, as China needs to move its excess production to other less restrictive countries such as South Africa, where the only protection is a 10% ad valorem duty. However, this is not enough to protect the domestic industry from the surge in imports. China is not showing any indication of decreasing its output of crude steel, with production reaching 2.15 million tonnes every day. To put this in context, this is the entire SACU demand for crude steel produced in less than three days and the entire SACU available capacity in less than four days. The graph below illustrates South African crude steel production from January 2017 to September 2023.



The Applicant put forth a strong argument that highlights the fact that there exists a global surplus of the product in question. It is evident that the SACU presents itself as an appealing market for these imports.

Comments by The Japanese Mills

The Japanese mills pointed out that the Applicant's application mentions the use of anti-dumping and countervailing remedies against China in other countries. These remedies are targeted instruments being utilized by those jurisdictions. The use of safeguard measures in other countries is much lower compared to the other remedies. Since the main focus of the application is China, ITAC should have opted for a targeted instrument such as anti-dumping or countervailing measures. It is more appropriate to apply for targeted measures instead of using a broad instrument such as safeguard measures.

Comments by the Group

According to the Group, South Africa has a general ordinary customs duty rate of 10 percent ad valorem duty on most of the steel products, which makes it hard to classify the country as unprotected, especially when shipping costs are taken into account. The Applicant also attempted to create a perception that the global apparent steel consumption has declined outside China, by stating that it declined in 2022 and is expected to remain stagnant in 2023. However, the Applicant failed to mention that China needs to get rid of its high stock levels, and South Africa is seen as the only country that can help by taking up the excess steel capacity. The Applicant further alleged that the three largest markets for Chinese steel imposed trade remedies, but it overlooks the fact that the two biggest markets may not have trade remedy measures in place as of 01 July 2024. Additionally, there are over 120 other WTO members that import HR steel from China, such as Turkey, South Korea, Thailand, and Malaysia, which the Applicant remains silent about.

Response by the Applicant

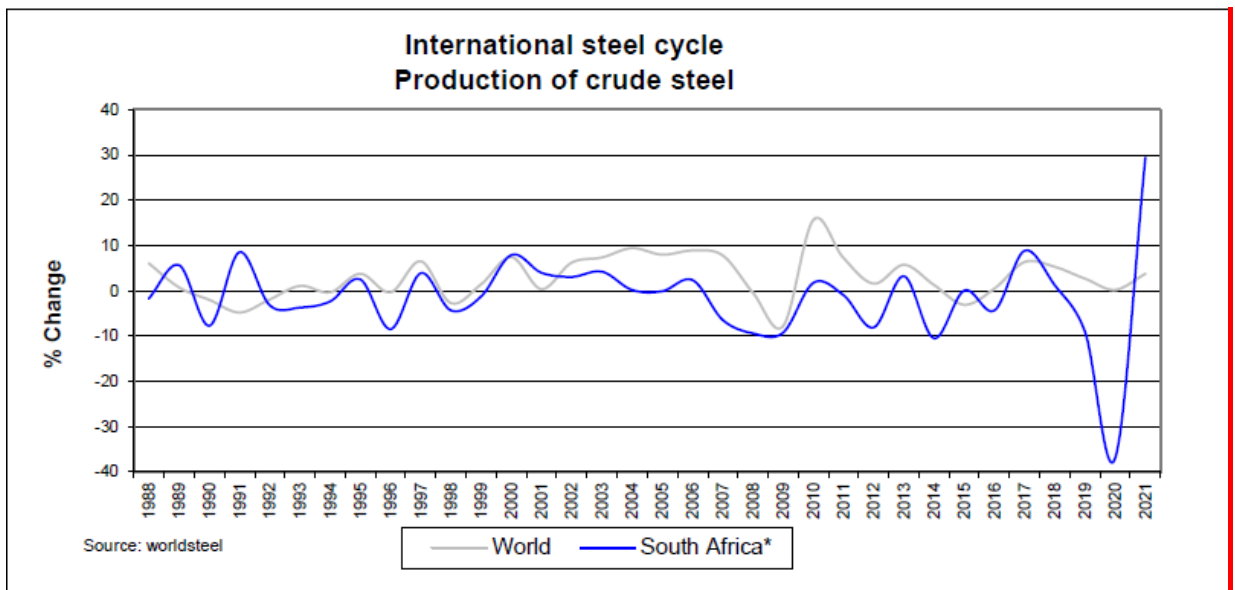
The Applicant stated that members of the WTO are taking action to protect their domestic industries from the sudden increase in exports. To do so, they are implementing safeguards and other tariff protection measures. For instance, the United States has proposed to triple its key tariff rates on Chinese steel to 25%, in addition to the existing tariff protection. Moreover, countries like Brazil, Vietnam, India, the UK, the Philippines, and Turkey are currently carrying out trade remedy investigations with regard to steel.

Commission's consideration

The Commission considered that it is evident that several WTO member states are implementing trade remedies and tariff protection measures to protect their domestic industries; this might result in trade diversion, and imports that were destined for these markets might come to the SACU.

Comments by the Group regarding the cyclical nature of the hot-rolled steel industry

The Group believed that the Commission's disregard of the cyclical nature of the steel industry is a crucial oversight. They argued that the oversupply of steel in the global market was not unforeseen, given the cyclical nature of the industry. The Applicant was aware of this fact, as evidenced in a publication from 2023. A cyclical industry is sensitive to the business cycle, with revenues generally higher in periods of economic prosperity and lower during downturns. It's important for the Commission to consider this when evaluating unforeseen developments.



The Group stressed that the cyclical nature of the steel industry was widely understood by all parties involved in the negotiations at the WTO General Agreement on Tariffs and Trade, Uruguay Round from September 1986 to April 1994, including the South African Government representatives. The Applicant provided misleading information in their application by claiming that the oversupply of steel was unforeseen. However, it was already known that the steel

industry had been plagued by overcapacity and oversupply for decades, which could cause problems when global steel demand fails to keep pace with capacity increases. South Africa was well-supported by experienced parties during the negotiations, who relied on local research and knowledge to make informed decisions.

Commission's consideration

The Commission considered that in the India Iron and Steel Products case², the panel reviewed India's conclusion that there was a significant increase in steel excess capacity, decreased demand for steel in important markets, currency depreciation in Russia and Ukraine, and increased demand and prices in India, all of which were unforeseen developments. The panel reasoned that while "changes in production capacity or demand are not necessarily extraordinary circumstances, and can occur as part of normal business cycles, the extent and timing of such changes, as well as the degree of their impact on the competitive situation in the market, can be unforeseen." The panel found that India had reasonably concluded that the developments constituted unforeseen developments, given that they were occurring simultaneously. Therefore, the assertion made by the Group that the Commission overlooked the cyclical nature of the steel industry and that the significant changes in the steel marketplace is not a relevant consideration is unfounded.

Comments by Erdvark Engineering, New Concept Mining

The interested parties stressed that for South Africa to impose a safeguard measure, the need for the relaxation of tariff commitments must be unforeseen. They emphasized that the Applicant's claim of unforeseen developments in the global steel import industry must be critically examined based on established legal principles and factual evidence. However, the Applicant's application fails to demonstrate a clear and logical connection between unforeseen developments and an increase in imports of hot-rolled steel. The interested parties further clarify that the Applicant's assertions do not meet the criteria for unforeseen developments.

² India – Certain Measures on Imports of Iron and Steel Products. Panel Report. WT/DS518.

Comments by the European Commission

The EU Commission stated that Article XIX of the General Agreement allows a GATT member to take a “safeguard” action to protect a specific domestic industry from an unforeseen increase of imports of any product that is causing, or which is likely to cause, serious injury to the industry. The Appellate Body has consistently held that Article XIX of the GATT 1994 and the Agreement on safeguards must be applied cumulatively. In this context, Article XIX of GATT requires a demonstration that the increased imports are the result of “unforeseen developments.” It should be noted that the application lacks any evidence of the existence of any “unforeseen developments.” Even if the Applicant referred to the existence of some “unforeseen developments,” the effect of these did not result in increased quantities of imports in total, but mainly from China.

Comments by the Government of Japan

The Government of Japan stated that as a prerequisite for imposing safeguard measures, the imports must be increased “as a result of unforeseen developments” (Article XIX: 1(a) of the GATT 1994). Such “unforeseen developments” are interpreted as developments that result in the increase of imports and then serious injury to the domestic producers by creating a change in the competitive relationship between domestic and imported products (e.g. Panel/AB Reports in DS 98 and DS 252). However, the Applicant referred to the factors found in the previous safeguard investigation on hot-rolled steel plates and the extension review thereof, both a few years ago- e.g., the overcapacity in China and trade remedies by third countries – and the ITC directly absorbed them. It makes no sense that such factors observed a few years ago led to the recent surge of imports since the latter half of 2022.

Response by the Applicant

The Applicant stated that the interested parties alleged that the oversupply of steel was foreseen since the industry is ‘known’ to be cyclical, and this was foreseen when binding rates were negotiated. However, the level of duty applied was thought to best promote the development of the industry. This has clearly not come to fruition. Interested parties also alleged that trade diversion has not occurred as global import trends do not lead to this conclusion. The Applicant

reiterated that global capacities have significantly increased, akin to a global steel overcapacity crisis. It follows South Africa can only import parallel to demand (what it is able to consume) and if China's inventories and capacities have increased, where South Africa's demand has decreased or remained stagnant, then imports as a percentage of world exports will decrease. The Applicant submitted that an analysis of imports as a percentage of worldwide exports is not decisive in a determination of trade diversion as it does not consider factors such as oversupply, increased capacities and increased inventories. Without this added context, the interested parties are trying to facilitate a tunnel-vision approach to understanding global steel trade and its effects on the SA market. Furthermore, it has been published by News outlets such as the Wall Street Journal that the closure of major markets like the US has seen Chinese Steel pouring into countries including Brazil, Vietnam, India, the UK, the Philippines, and Turkey. The surge in imports witnessed in South Africa also attests to this fact.

The Applicant indicated that it provided several different factors that were unforeseen during the 1994 negotiations, each of which is sufficient individually to meet the requirements of unforeseen developments. Despite the allegations having no merit, the argument only deals with one aspect of unforeseen developments and not all of the aspects raised by the Applicant in this regard. These additional aspects remain relevant and are not opposed. Similarly, it must be noted that the test to be conducted in this regard is an objective one. Should the above development have been foreseen or, at the very least, have been foreseeable at the round of negotiations in 1994? The simple answer is no. The Applicant made reference to a case of US - Steel, where the appellate body agreed that the growth of the Asian market was indeed unforeseeable, as no reasonable person could have expected such a sharp growth in the output of steel and steel products. This, coupled with the stark decrease in the demand for the above products in Asian countries is enough to prove that this requirement has been met. Therefore, the requirement that the surge in imports must be unforeseen was met.

The Applicant stated there is a decrease in demand for steel products while global crude steelmaking capacity is increasing. In 2023, steelmaking capacity reached an estimated 2,439 million tonnes, surpassing production by 547 million tonnes. In particular, China's steel exports are surging to record highs by as much as 40% in absolute terms, as seen in 2023. These levels are akin to those seen during the 2015/2016 steel capacity crisis and this significant increase in global steel exports, steel industry, and increasing exports from China. Excess steelmaking capacity exerts significant pressure on the steel industry worldwide. It led to surges in steel exports from countries with excess capacity, depressed prices, and losses in market shares for domestic producers in the destination countries. Steel producers are increasingly faced with the task of absorbing increased costs amidst challenging conditions. These circumstances are unlikely to change over the next year, with China's steel demand predicted to continue to decline in 2025.

The Applicant stated that the WTO member states are investigating and implementing Safeguard and other tariff protection measures to shield their respective domestic industries against these surges in exports. For instance, the United States has called for a tripling of its key tariff rates on Chinese steel to 25%; this is over and above the tariff protection already in place. Furthermore, countries such as Brazil, Vietnam, India, the UK, the Philippines and Turkey have trade remedy investigations on steel underway.

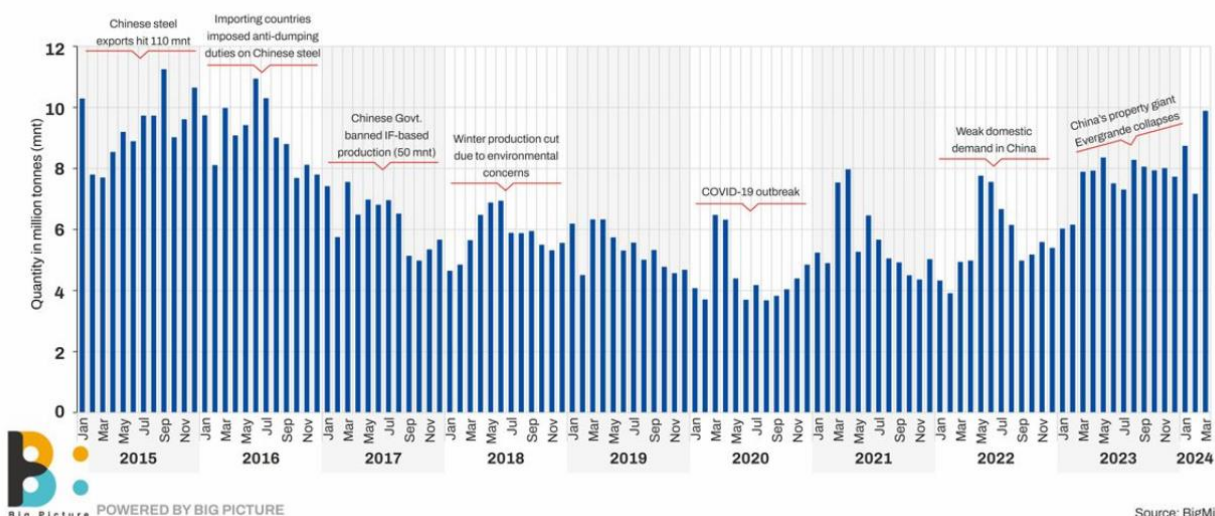
The Applicant further stated that recent output had seen a concerning decline in South Africa's steel production, with a stark 21% decrease in output had seen a concerning decline in South Africa's steel production, with a stark 21% decrease in output in 2023 to 4.8 million tonnes compared to 2019. This decline is unsettling considering the steel industry's strategic importance and its central role in re-industrialisation and the impact this , the country's reliance on imports has risen from 13% of domestic consumption in 2010 to 28% in 2023. Notably, this exceeds the initial peak; the country's reliance on imports has risen from 13% of domestic consumption in 2010 to 28% in 2023. Notably, this exceeds the initial peak of 26% in 2015. This has resulted in a domestic 'steel crisis', which was aptly acknowledged in the Steel Master Plan and wherein localisation was central

to the solutions proposed. The Applicant provided further information and sources on the global steel crisis and the impact this is and will have on the domestic steel industry. In essence, the unprecedented expansion of China's steel capacity over the past two decades has resulted in a profound imbalance in global steel markets. Those repercussions were firstly deeply felt during the steel crisis of 2015 -2016, when Chinese domestic steel demand stagnated, leading to massive export surges totalling around 100 million tonnes. Today, data point to a potential repetition of the same scenario, as China's steel exports in 2023 nearly matched these historical highs, reaching 94 million tonnes.

The Applicant pointed out that this has also manifested in the surge in imports that occurred in the SACU and that the domestic industry is suffering serious injury as a result thereof. This confirms that Safeguard protection is an appropriate remedy in these circumstances, and this is confirmed in the merits of our application, which we will deal with in more detail below. However, the Applicant confirms that the requirements for a Safeguard are duly met and in particular that: There has been a surge in imports: imports of the subject product into the SACU have increased significantly between the second and third year of the period of investigation (surge) by 105% in absolute terms, as well as by 33% if considered from the start to the end of the period of the investigation. Such a surge was because of unforeseen developments. Such surge has directly led to the serious injury being experienced by the domestic industry, which manufactures the like and/or directly competitive products, in the form of losses in market share, decreases in profits, decreases in employment, as well as lower capacity utilization as production decreased, as a direct consequence of such imports.

The Applicant provided a graph titled 'China steel exports hit over 7 years high in March 2024,' which aptly illustrates the aforementioned surge in exports by China in particular.

China's steel exports hit over 7 year high in Mar'24 (Jan'15-Mar'24)



Source: BigMint

The Applicant stated that contrary to the interest parties' submissions, China's present property crisis has directly resulted in a significant decrease in domestic demand and coincides with the increase in exports. These circumstances are unlikely to change over the next year, with China's steel demand predicted to continue to decline in 2025. The present situation has seen an immediate reaction from many countries and has resulted in protective measures being implemented across the board.

Commission's consideration

The Commission considered that the South African government committed to binding the ordinary customs duty on the imported products of flat hot-rolled steel at 10% ad valorem.

From the information provided by the Applicant, it was evident that the steelmaking production capacity gap increased significantly in 2022. Global steelmaking capacity increased for the fourth year in a row, reaching 2 463.4 mnt in 2022, while capacity utilisation decreased from 78.7% in 2021 to 74.3% in 2022. China, the major global producer of crude steel, has seen its exports increase by 3.1% in 2022, with estimated figures reaching 68 mnt. Furthermore, China's hot-rolled coil capacity has been expanding rapidly since 2019, the crude

steel capacity growth of close to 70 million mt/year by mid-2023; over 2019-2022, China had brought about 85 million mt/year of brand-new hot strip mills in stream. Therefore, it is clear that the negotiators could not have foreseen the current global steel oversupply.

The Commission further considered that global excess capacity is one of the main challenges facing the global steel sector. The global steel capacity has more than doubled since the early 2000s and investment projects continue to increase in several economies, while steel consumption has declined. From the information submitted by the Applicant, it was also evident that this growth shows no indication of slowing down, despite a clear decrease in demand for the product in China, leading to an over-production of the product, which needs to be exported to get rid of the high stock levels. The information as analysed showed a logical connection how the cited unforeseen events still led to such increased imports. The injury indicators showing a downturn can logically be connected with the surge in imports. Furthermore, the allegation that unforeseen development is not product related was unfounded. The Applicant used the subject product and also used an estimate on the composition of the subject product from the total global steel production.

The Commission is of the view that unforeseen developments under Article XIX of GATT 1994 are the following:

The increase in the production capacity of liquid steel at the levels stated could not have been foreseen before 1994. This increased production, therefore, filtered through all steel-producing markets in the world, especially led by the increase in production from China as both a high producer and consumer of steel, including the subject product.

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

This is seen by the massive exports of steel by China, with other steel-producing economies imposing and considering trade remedies measures to deal with this global increase in steel production that led to an oversupply of steel in the world markets, which has filtered through their markets.

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

Conclusion

The Applicant stated that it submits in conclusion that the unforeseen developments are as follows:

The unprecedented steep rate of increase in crude steel and hot-rolled steel production capacity after the Uruguay Round of negotiations. This mainly took place to support growing construction, automotive, and manufacturing activity, as well as to help build infrastructure, particularly in emerging economies. This growth in global capacity was mainly fueled by the growth of the Chinese and Asian steel markets;

The significant downturn of the steel market as a result of the slowdown of economic growth in China contributed to the imbalance between capacity and demand, that is, the global oversupply of steel. This led to a significant increase in export volumes by countries with excess capacity.

The Applicant further stated that this, in turn, led to an increase in trade remedy actions being taken on steel products, including hot-rolled steel, by several countries, notably the EU, the UK, the US, and Vietnam, which are significant export markets for these products. Given the fact that hot-rolled steel is a commodity product, excess capacity in one region can, with relative ease, displace production in other regions, thus harming producers in those regions.

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

5. SURGE OF IMPORTS

5.1 Import volumes

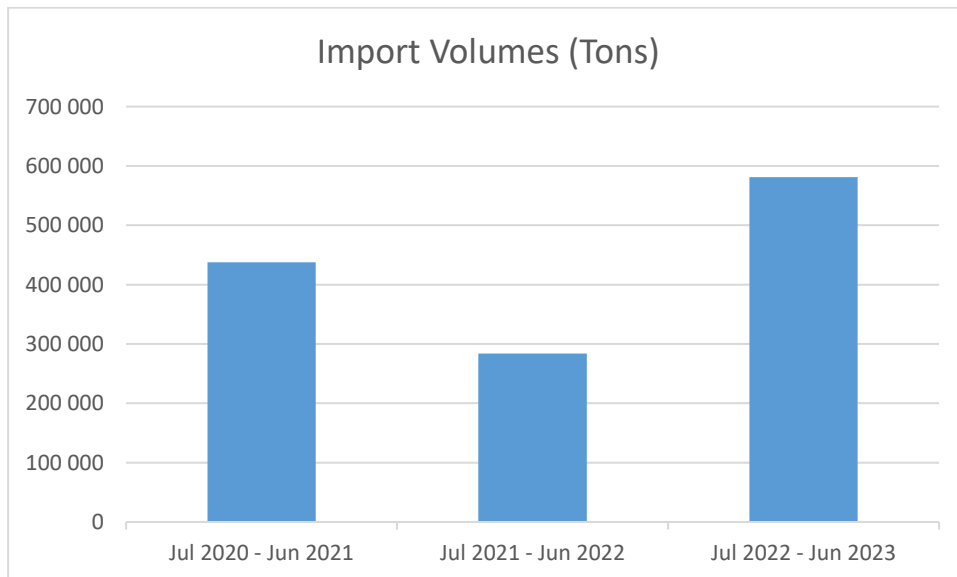
The information considered for the increased imports covered the period 01 July 2020 to 30 June 2023.

The following table shows import volumes as sourced from SARS for the period 01 July 2020 to 30 June 2023.

Table 5.1: Import volumes (tons)

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023 (Period of surge)
All countries import volumes	437 108	283 891	580 778
Change from 2021			105%

*All country's imports volumes represent the rest of the world excluding SACU imports.



The information in the table and graph above indicates that there was a surge in imports, in absolute terms, of the subject products from 283 891 tonnes for the year ending July 2021 to 580 778 tonnes for the year ending June 2023. This represents an increase of 105% in absolute terms.

The Applicant stated that even considering the increase in an end-to-end analysis, this represents an increase of 33% between July 2020 to June 2023. It is clear that there is a surge in imports that is significant and recent. The Applicant further stated that the impact of the surge in imports, relative to local production, further alluded to in the above table, supports the Applicant's view that the surge in the volume of imports of the subject product was recent enough, sudden enough, and significant enough to have caused serious injury to the local industry.

Comments by interested parties regarding rebated imports

Interested parties suggested that imports of products not produced locally should not significantly harm the SACU domestic industry. Therefore, before considering the impact of these import volumes on the SACU domestic industry, all imports of products that are not produced locally should be excluded from the import volumes. According to the SARS data, the general rebate imports that occurred during the POI amounted to 16 percent of the total import volume during the POI, and these imports should be excluded from the Commission's investigation. The parties have requested that the Commission instruct the Applicant to update its application by removing the data of imports that occurred under rebate. Furthermore, they suggested amending existing rebate provisions to cover products not currently covered or creating new rebate facilities.

Response by the Applicant

The Applicant submitted that some interested parties have claimed that imports under rebate are artificially inflating the supposed 'surge in imports'. The Applicant argues that there is no requirement to exclude imports under rebate from import data. Instead, a proper analysis should include all imports. Despite this, the interested parties have admitted that rebated items only make up a small 16% of total imports. The Applicant has presented tables to show that imports under rebate actually decreased during the period of investigation, especially during the final period when the surge was observed. If imports under rebate are excluded, the surge is not exaggerated, and it has no impact on the

requirement for a properly documented submission or the serious injury being suffered by the Applicant.

The Applicant argued that excluding rebated imports from the analysis of a surge of imports is directly in contravention of the SRG. They contend that the Regulation specifically requires an analysis that includes 'like or directly competitive products'. Therefore, the interested parties' reliance on this argument is unfounded. The Applicant references the WTO Appellate decision of Argentina - Footwear to support their argument.

The Panel in the Dominican Republic - Safeguard Measures rejected the argument that an investigating authority is required to make separate findings regarding the increase in imports caused by each product making up the "product under investigation." It follows that the removal of rebated imports would result in a splitting of the subject product, which is unacceptable.

The Applicant referenced the Commission's Final Report No. 596, which evaluated the "total import volumes" to arrive at a decision on whether there was a surge in imports. The Commission did not first deduct the rebated amounts to make the determination. Furthermore, the Commission confirmed that Article 4 of the Safeguard Agreement requires the evaluation on the increase in imports to be conducted in absolute and relative terms. Therefore, quantifying imports in absolute terms does not require an exclusion of 'some of the imports' based on the arbitrary basis that they have been imported under a rebate.

The Applicant also referenced the Commission's Final Report No. 722, which relates to the Anti-Dumping investigation concluded on Windscreens for vehicles classifiable under tariff heading 7007.21.20 originating in or imported from the People's Republic of China. The Commission did not consider it necessary to remove products imported under rebate. The Applicant was not required to supply information for imports excluding those under rebate. There is plenty of jurisprudence and past practice to conclude that excluding imports under rebate is neither a requirement nor a practice.

Commission's consideration

The Commission agreed with the Applicant that excluding rebated imports would contravene the SRG, which requires analysing all imports. In the Argentina - Footwear (EC) case⁴, the Appellate Body examined whether there is an implied “parallelism” between the scope of a safeguard investigation and the scope of applying safeguard measures. The Appellate Body concluded that Argentina's investigation, which evaluated whether serious injury or the threat thereof was caused by imports from all sources, could only lead to the imposition of safeguard measures on imports from all sources. Therefore, “Argentina's investigation in this case cannot serve as a basis for excluding imports from other MERCOSUR member states from the application of the safeguard measures”. In other words, if all importing countries are targeted under a safeguard investigation, then the import volumes for all countries should be taken into account.

Comments by the Group

The Group approached the SARS for statistical trade data to confirm the import data. This data reflects an increase in the period of July 2022 to June 2023 when compared to the period of July 2021 to June 2022. However, this increase is amplified by the decrease that occurred in the period of July 2021 to June 2022 when compared to the period of July 2020 to June 2021. The import data for the period of July 2020 to June 2021 is very close to the import data for the period of July 2022 to June 2023, during which no serious injury was claimed.

The Group mentioned that the Applicant alleged that the increase in import volume that occurred in the period of July 2022 to June 2023, when compared to the period of July 2021 to June 2022, presents a trend that is showing no sign of slowing down. However, this statement is highly speculative and factually incorrect as the last 18-month period from July 2022 to December 2023 shows a decreasing trend. There was a volume decreasing trend from July 2022 to June 2023, which decreased from 54,577 tons to 37,284 tons, presenting a 32% decrease. Moreover, while the import volume declined for this 12-month period, the import prices increased in South African Rand (ZAR) from ZAR14,884 in July 2022 to ZAR18,879 in June 2023, presenting a 27% increase.

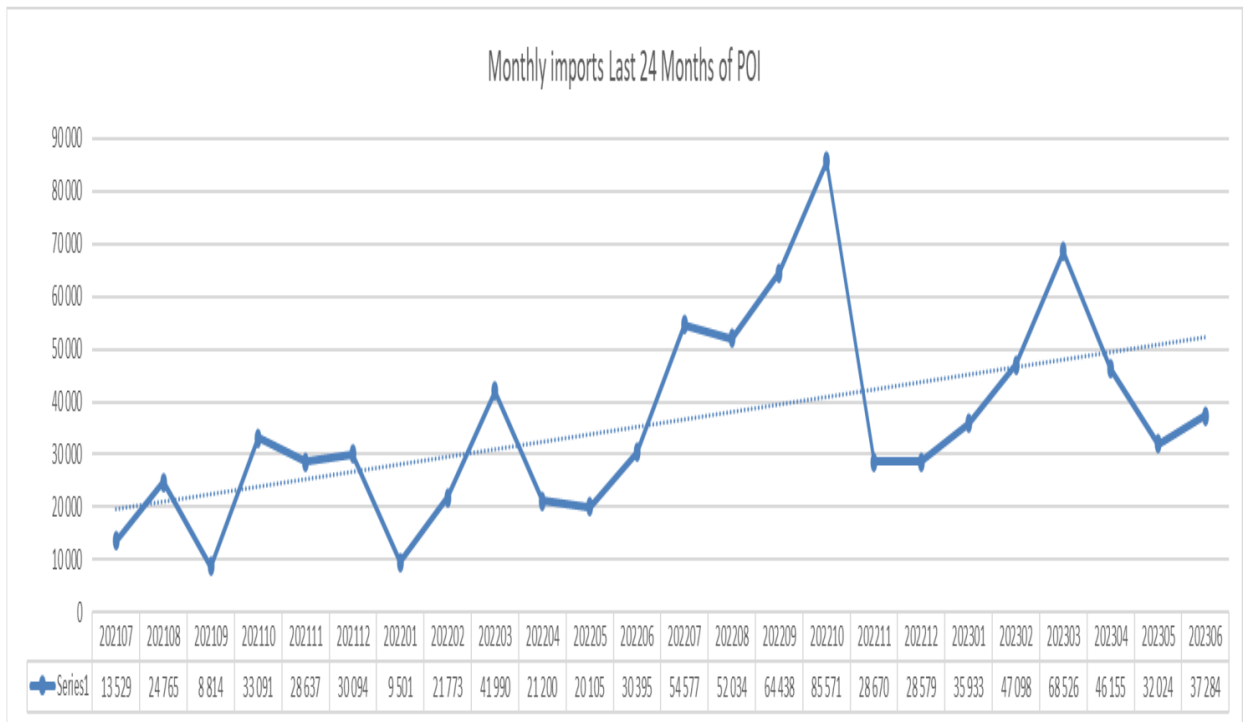
The Group requested the Commission to take into account the import information over the whole POI of 2022 to 2023 while making the determination regarding the increase in imports. This is based on the US-Steel Safeguards case, where the panel, in their findings upheld by the Appellate Body, identified certain factors that should be taken into account in assessing whether a decrease in imports at the end of the period of investigation, in the individual case, prevents a finding of increased imports in the sense of Article 2.1. The panel observed that this would depend on whether, despite the later decrease, a previous increase nevertheless results in the product still being imported in such increased quantities. In this evaluation, factors that must be taken into account are the duration and the degree of the decrease at the end of the relevant period of investigation, as well as the nature, for instance, the sharpness and the extent of the increase that intervened beforehand.

The Group explained that a small and recent decrease in imports should not affect an overall increase if the imports have increased substantially over the past few years. On the other hand, if import numbers have decreased to zero or below any past point during the period of investigation, then it cannot be considered as an increased quantity. The panel believes that the competent authorities should examine the trend in imports over the investigation period as per Article 4.2(a) of the Safeguard Agreement to determine whether the recent increase in imports is causing serious injury to domestic producers of similar or directly competitive domestic products.

Response by the Applicant

The Applicant stated that it has already provided in its application a thorough and detailed analysis of imports of the subject product into the SACU, as well as their effect on the domestic industry. It is evident that there was a surge in imports in absolute terms of the imports of the subject products from 283 891 tonnes for the year ending July 2021 to 580 778 tonnes for the year ending June 2023. This represents an increase of 105% in absolute terms. In considering the increase on an end-to-end analysis, an increase of 33% is observed between the period of July 2020 to June 2023. There is a surge in imports that is significant and recent. The Applicant further stated that on an analysis at a

monthly level, imports are still increasing, as can be seen from the last 24 months of the POI, where the increasing trend remains apparent.



The Applicant indicated that at no point is there an indication that import trends are reversing as alleged by the interested parties, despite their best attempts to narrow the “viewing window” to draw inferences and create correlations that just do not exist. It is undeniable that imports are on the rise and that they will continue this rising trend unless safeguard protection is implemented.

The Applicant stated that the WTO Panel decision of US- Line Pipe read with the Appellate decision confirms the following principles when choosing a period of investigation: “... first, the Agreement contains no specific rules as to the length of the period of investigation; second, the period selected by the ITC allows it to focus on the recent imports; and third, the period selected by the ITC is sufficiently long to allow conclusions to be drawn regarding the existence of increased imports...” [at para 7.201] In considering the trends presented during the POI the Panel concluded that competent authorities should not consider ‘recent’ data in isolation from the data pertaining to the entire period of investigation. This was further qualified by the WTO Panel in the case of US – Steel Safeguards, wherein it was acknowledged that an ‘... analysis could easily

be manipulated to lead to different results, depending on the choice of endpoints. A comparison could support either a finding of an increase or a decrease in import volumes simply by choosing different starting and ending points.’ [para 334 of Panel]

The Applicant submitted that interested parties have attempted to manipulate the data by choosing a start and end point that best serves their arguments. In submitting an analysis of only the most recent 12-month period of imports in isolation or in adding more weight to this analysis than the trends present during the rest of the entire POI, interested parties are attempting to influence the data and conclude that there is a ‘decrease’ of imports. The Applicant further submitted that this is not an accurate representation of the information and requests that an evaluation of the trends be done on the entire POI as is required by the WTO and as indicated above and in the Application.

The Applicant indicated that as it was stipulated by the WTO Appellate Body decision in Argentina – footwear and confirmed in United States – steel, the relevant requirement is that investigating authorities should consider the trends of imports over the entire period of investigation rather than just comparing the end points. Furthermore, the use of the present tense in Art. 2.1 of the WTO Safeguard Agreement (is being imported) indicates that it is necessary for the competent authorities to also examine recent imports during the period of investigations and not simply trends in imports during the past 5 years. Consequently, to make a positive finding it is important for investigating authorities to acknowledge all prominent facts regarding trends in the import data to demonstrate that they have been “considered” in order to gain a holistic view of the surge in imports. Without delving too deep into details. Within these deliberations by investigating authorities, there is a myriad of permutations when assessing import trends over an investigation period, hence the significant volume of the favourable panel as well as appellate body findings and suggestions on the matter, where similar import trends have been found. The information presented by the Applicant in this application clearly complies with the requirements stipulated in both the SG Agreement, as well as the Commission’s SGR. Imports of the products concerned have increased sharply,

showing that there is sufficient evidence that these trends in imports call for safeguard measures.

Commission's consideration

The Commission considered that in US — Line Pipe⁵, the Panel found that “there is no need for a determination that imports are presently still increasing. Rather, imports could have ‘increased’ in the recent past but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination.

“There remains the question of whether the finding of increased imports can be maintained in light of the decline in absolute imports from the first semester of 1998 to the first semester of 1999. In order to answer this question, we recall our discussion regarding the meaning of ‘recent’, and our finding that ‘recent’ does not imply an analysis of the present. We are also of the view that the fact that the increase in imports must be ‘recent’ does not mean that it must continue up to the period immediately preceding the investigating authority’s determination, nor up to the very end of the period of investigation. We find support for our view in Article 2.1, which provides ‘that such product is being imported in such increased quantities’. The Agreement uses the adjective ‘increased’, as opposed to ‘increasing’. The use of the word ‘increased’ indicates to us that there is no need for a determination that imports are presently still increasing. Rather, imports could have ‘increased’ in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination, provided that the investigated product ‘is being imported’ at such increased quantities at the end of the period of investigation, the requirements of Article 2.1 are met.”

Furthermore, the panel observed that an increase in imports before the date of a determination but not sustained at the date of the determination could still cause actual serious injury at the time of the determination.

In this investigation, it was found that there was a surge in imports during two periods - July 2021 to June 2022 and July 2022 to June 2023. Specifically, imports of the product in question increased by 105% during these periods. Furthermore, the analysis indicated that over the period of the investigation, imports increased by 33%.

The following table shows imports from countries with substantial interest as exporters of the subject product to SACU as well as total imports:

Table 5.1.2: Imports volumes of countries with substantial interest

Tons	Jul 2020 - Jun 2021	%	Jul 2021 - Jun 2022	%	Jul 2022 - Jun 2023	%
China	73 817	16,89	89 069	31,37	247 770	42,66
India	20 126	4,60	36 673	12,92	31 142	5,36
Germany	21 746	4,97	16 645	5,86	31 506	5,42
United Kingdom	49 787	11,39	379	0,13	7 093	1,22
Turkey	128 816	29,47	975	0,34	4	0
Japan	17 828	4,08	31 142	10,97	97 543	16,80
Total	312 120		174 884		415 057	
Other countries	124 988	28,59	109 007	38,40	165 721	28,53
Total imports	437 108	100%	283 891	100%	580 778	100%

The following table shows the import volumes relative to the Applicant's production:

Table 5.1.3: Imports as a percentage of Applicant's production

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
All countries' imports	437 108	283 891	580 778
Applicant total production	100	97	92
Imports as a % of the Applicant's output	100	67	144

Commission's consideration

The information in the table above indicated that total imports as a percentage of the Applicant's output increased significantly from 67 to 144 index points from July 2021 to June 2023, or by 77 index points at the time of the surge, and also increased by 44

index points over the period of investigation.

The Applicant stated that it is clear that the surge in imports is of such a magnitude, that if emergency protection is not implemented, this will lead to the overall impairment of the domestic manufacturing industry, which is supported by the evidence of serious injury experienced by the domestic industry, specifically as a result of this increase in imports.

The Applicant further stated that this is exacerbated by the increase in available export capacity, especially from China. This overcapacity will always flow to the least protected markets, like SACU, especially since the imposition of trade remedies on the subject product by a variety of countries, including the EU, the UK, the USA, and Vietnam, historically the largest importers of the subject product worldwide.

The Commission made a preliminary determination that the surge of imports occurred in (July 2021- June 2022 to July 2022 – June 2023)

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

- Sudden enough – the rate and amount of imports of July 2022 – June 2023 is deemed as unexpected or abrupt enough to meet the conditions of the Safeguard Agreement. The surge in absolute terms began in July 2022 – June 2023, although looking at the half-year period, there was a decline in July 2021- June 2022. The rate and amount of increase from July 2021–June 2022 and July 2022-June 2023, can be seen as abrupt, and this abrupt disturbance of the SACU market by imports was maintained throughout the period of investigation both in relative terms and absolute terms,
- Sharp enough - the rate and amount of the imports' increase in July 2022 – June 2023 was sharp enough or severe enough to meet the conditions of the Safeguard Agreement. The imports increased by 105% from 283 891 tonnes to 580 778 tonnes between July 2022 to June 2023.

- Significant enough - the rate and amount of the imports' increase in July 2022 – June 2023 was significant enough or noteworthy enough to meet the conditions of the Safeguard Agreement. The amount of increase from July 2022 – June 2023 was the highest and is a significant enough increase when looking at the full-year period.
- Recent enough – The period July 2022 – June 2023 is recent enough to meet the conditions of the Safeguard Agreement. This must be considered in line with the fact that this increase was experienced during the period of investigation with slight declines in between.

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

6. SERIOUS INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The injury analysis relates to information submitted by AMSA, representing a significant portion of the domestic industry by production volume.

The Commission made a preliminary determination that this constitutes “a major proportion” of the total domestic production, in accordance with the SGR.

6.2 CONSEQUENT IMPACT OF THE INCREASED IMPORTS ON THE INDUSTRY

SGR 8.1 states that serious injury shall be understood to mean “significant overall impairment” in the position of the domestic industry.

6.2.1 Actual and potential decline in sales

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

Table 6.2.1: Sales volumes

Volumes (Tons)	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant sales volume	100	78	80
*Other SA producers	100	78	80
Total SACU sales volume	100	78	80

These figures were indexed due to confidentiality using July 2020- June 2021 as the base year.

The information in the above table indicates that the Applicant’s sales volume slightly increased from 78 index points to 80 index points, or by 2 index points, during the surge. The information further shows that Applicant experienced a significant decrease of 22 index points from 100 to 78 index points between July 2020 to June 2022, and a decrease of 20 index points over the period of investigation.

6.2.2 Profit

The following table shows the Applicant's profit situation:

Table 6.2.2: Profit

		Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant gross profit margin (%)	%	100	149	29
Applicant gross profit	R/Ton	100	218	41
Applicant's Units sold	Ton	100	78	80
Applicant's total gross profit	Rand	100	169	33
Applicant net profit margin (%)		100	155	21
Applicant net profit	R/Ton	100	228	29
Applicant net profit	Rand	100	177	23

These figures were indexed due to confidentiality using July 2020 - June 2021 as the base year.

The Applicant stated that it is evident from the table above that there is a clear correlation between the decrease in sales and the decrease in profits as a direct result of a surge in imports. This is mainly because overhead expenses remain the same while throughput decreases.

The Applicant further stated it experienced a significant decrease in profit during the period of the surge, July 2021 – June 2022 to July 2022 – June 2023, when gross profits decreased from 169 to 33 index points, which represents a decrease in gross profit margins from 149 to 29 index points and net profits decreased from 177 to 23 index points which represents a decrease in net profit margins of 134 index points from 155 to 21 index points during the same period.

This means that despite an increase in overall demand for the subject product in the period of the surge, Applicant's gross profits decreased by 136 index points, while net profits decreased by 154 index points. This is indicative that the Applicant is currently suffering serious injury as a result of the surge in imports.

The Applicant alleged that a direct decrease in profits is one of the best indicators of serious injury suffered by the Applicant. If the safeguard duties are not implemented, the industry will find itself in a position of 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.

The Applicant indicated that imports would keep increasing significantly on the subject product if the safeguard duty is not imposed and done so as a matter of urgency. The effects are already clear in the information provided. Both gross and net profits are down significantly from 149 and 155 index points, respectively, to 29 and 21 index points over the period of the surge.

This will result in imports increasing its share of the market significantly, whilst at the same time local manufacturers will lose sales volume and market share (almost halve current levels) to levels that cannot be sustained.

Comments by The Japanese Mills

The Japanese Mills indicated that the Applicant alleged that the increase in imports has caused a decrease in sales and profits. However, this contradicts the Applicant's own statement that says that its main risk is operational instability. "There is a clear correlation between the decrease in sales and the decrease in profits as a direct result of a surge in imports. This is mainly because of overhead expenses remaining the same while throughput decreases". "The above statement is in direct contradiction to AMSA's own statement below: "Operational stability risks closely ranked to import risk. "Incidents causing operational instability leading to a loss of production are a risk not only to the profitability of the company but will also impact customers, which may prompt them to seek alternative supply, increasing the risk of imports or loss of local market share." In other words, the true cause of the Applicant's decrease in profits and injury is the operation instability.

Japanese Mills further indicated that the Application table indicates that in "Year 3" (July 2022 – June 2023), the Applicant's costs increased by 67 index points compared to the reference year, which is the period from July 2020 to June 2021 ("Year 1"). This is in addition to a 27 index points increase in the period from July 2021 to June 2022 ("Year 2"). These figures demonstrate that cost increases are a significant factor affecting the Applicant's financial situation. The

Applicant has specifically identified raw material and logistics costs as a concern.

Comments by the Group

The Group mentioned that the Applicant claimed that a direct decrease in profits is a good indicator of serious injury, which applies to this case. About half of its HR steel production is used internally. Therefore, only 50 percent of AMSA sales compete with imported products. It's important to investigate the profit further by requesting the Applicant to supply the information separately regarding the product that competes with imports. The application must be amended to reflect the correct profit/loss situation that applies to the Applicant's competitive position.

Commission's consideration

It is the Commission's opinion that the information provided pertains to the Applicant's profit for domestic downstream market. It is evident from the table above that there is a significant decrease in the Applicant's profit situation at the time of the surge, between 2021 and 2023. Net profit decreased by 154 index points during the surge and by 77 index points over the period of investigation.

6.2.3 Output

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

Table 6.2.3: Output

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant total production	100	97	92
Other SACU producers' production	100	97	97
Total SACU production	100	97	93

These figures were indexed due to confidentiality using July 2020- June 2021 as the base year.

The Applicant stated that the table above shows a significant decline in the total production since the surge in imports between July 2021 – June 2022 and July 2022 – June 2023. As imports increased their share of the market, local production volumes have decreased further. The Applicant further stated that

this decline has had a significant impact on employment, adversely affected the profitability of operations, and is no longer sustainable.

Comments by the Japanese Mills

During the investigation period, the Japanese Mills claimed that the Applicant experienced a significant decline in total product and production for local consumption, which they attributed to the surge in imports. According to them, the increased import volumes led to a decline in local production volumes, which had a detrimental effect on employment and profitability and was no longer sustainable. However, Japanese Mills strongly denies these allegations, claiming that the industry's demise is not due to imports but to fundamental challenges that render it uncompetitive. The Japanese Mills argued that these challenges have nothing to do with imports and have been the primary cause of the industry's decline.

Comments by the Group

The Group highlighted that the application stated a significant decrease in the total production and production for local consumption since the surge in imports between July 2021- June 2022 and July 2022 - June 2023. This decrease indicated that production for exports has also declined. As safeguard measures address a surge of imports that causes serious injury to the SACU industry, the imposition of safeguard duties cannot have a remedial effect on the local industry's declining exports. Therefore, production for exports must be exempt from being analysed in terms of injury. Moreover, the application stated that almost half of AMSA's hot-rolled steel production is used to feed its downstream operations and is not sold to end-users. Thus, the production aimed at the downstream operations of the applicant must also be excluded when evaluating the impact of the alleged surge in imports. Any decline in the downstream operations of the Applicant, such as coated steel, cannot be linked to the alleged surge of imports investigated. Consequently, the alleged injury claimed by the Applicant can only relate to its production/sales to 'end-users' in SACU. This is confirmed in the Argentina - Footwear (EC) case, where the Appellate Body examined whether there is an implied 'parallelism between the scope of a safeguard investigation and the scope of the application of safeguard

measures.' The Appellate Body held that a member of the WTO may apply a safeguard measure after determining that a product is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause serious injury to its domestic industry within its territory. Therefore, all the relevant aspects of a safeguard investigation must be conducted by the member that ultimately applies the safeguard measures based on increased imports entering its territory and causing or threatening to cause serious injury to the domestic industry within its territory.

Response by the Applicant

The Applicant stated that the submission pertaining to splitting the product base of the Applicant's output and differentiating between the Applicant's downstream operations is unfounded. The Panel decision of Argentina- footwear, as cited by interested parties, speaks to the issue of parallelism, which does not relate to the issue raised by the interested parties. Further, it simply states what is already known, that serious injury should be caused to the domestic industry. It does not motivate the splitting of the product base. The information submitted in the application deals with the Applicant's sales of the subject product into downstream market segments that use HRP to manufacture its own products. Serious injury was not analysed at the Applicant's downstream operations but on its hot-rolled products business.

Commission's consideration

The Commission considered that the information provided to it pertained to the Applicant's sales to the domestic downstream market. It was evident that the Applicant's production declined by 4 index points during the surge period and by 8 index points over the period of investigation.

6.2.4 Market share

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

Table 6.2.4: Market share

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant sales volumes	100	78	80
Other SACU producers	100	78	80
Total SACU sales volumes	100	78	80
Imports	437 108	283 891	580 778
Total Market	100	74	96
Applicant market share	100	105	84
Other SACU producers	100	100	86
Total SACU market Share	100	106	84
Import market share	100	87	137

*These figures were indexed due to confidentiality using July 2020- June 2021 as the base year.

The table above shows that the Applicant's market share decreased by index points from 105 index points for the period July 2021 – June 2022 to 84 index points for the period July 2022 – June 2023 as a direct result of the surge in imports. The total SACU market share followed the same trend and decreased by 22 index points from 106 index points for the period July 2021 – June 2022 to 84 index points for the period July 2022 – June 2023. The Applicant experienced a slight increase in sale volumes at the time of the surge. Between July 2020 and June 2023, total SACU sales of the subject product decreased by 20 index points for the domestic industry from 100 index points to 80 index points in absolute terms.

The Applicant stated that the 22 index points decline in the SACU market share as a whole, was captured by the imports. Imports' market share increased by 50 index points during the period of surge, from 88 index points in 2021 to 137 index points in 2023. This trend is showing no sign of slowing down, and the serious injury experienced because of it is significant. The Applicant also stated that the import statistics indicate an acceleration in imports.

The market share held by SACU producers has decreased significantly from 106 to 84 index points as a direct result of the surge in imports from 283 891 tonnes to 580 778 tonnes for the period July 2021 - June 2022 to July 2022 - June 2023. Consequently, this sudden and significant increase in imports has caused serious injury to the local manufacturers of hot-rolled steel. Import

volumes have increased their influence on the domestic market and the local manufacturers of the products concerned are continuing to lose market share.

Comments by the Japanese Mills

The Japanese Mills noted that the SACU market decreased by 4 index points or around 56,356 tonnes between July 2020 to June 2021 and July 2022 to June 2023. The Applicant acknowledged the loss of sales but denied that it was due to imports. However, the Applicant admitted that the loss of market share was closely linked to operational stability, which could impact customers and risk losing local market share.

Commission’s consideration

The Commission considered that, from the information in the table above, it was evident that the rate of growth in the imports’ market share grew by 50 index points at the time of surge from July 2021 to June 2023, even though there was a decrease from July 2020 to June 2023. The market share held by SACU producers has decreased by 22 index points as a direct result of the surge in imports. The market share held by imported products has grown significantly from 87 to 137 index points in the same period.

6.2.5 Productivity

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

Table 6.2.5: Productivity

	Jul 2020 - Jun 2021	Jul 2021- Jun 2022	Jul 2022 - Jun 2023
Total production (tons)	100	97	92
Number of employees (manufacturing)	100	104	96
Units per employee tons	100	93	96
Total employment	100	103	97
Total investment (Rand)	100	109	124
Output ratio	100	112	134

*These figures were indexed due to confidentiality using July 2020- June 2021 as the base year

The table above shows that productivity slightly increased by 3 index points from 93 to 96 index points during the surge. The output ratio increased from 112 index points in July 2021 – June 2022 to 134 in July 2022- June 2023.

The Applicant stated that the information on the table indicates the impact on production volumes decreased as a direct result of the increase in import volumes over the period of the surge. To remain somewhat competitive, the decrease in employment is directly a result of the increase in imports during the surge period. It is, therefore, imperative that the safeguard duties be implemented to ensure current jobs remain protected. If not, the injury suffered by the industry will be serious, and further job losses will be unavoidable. The Applicant further stated that imports will maintain their foothold and keep increasing significantly if safeguard duties are not implemented. This will result in imports increasing its share of the market significantly and continuously, whilst at the same time local manufacturers will lose sales volume and market share to levels that cannot be sustained.

6.2.6 Utilisation of production capacity

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

Table 6.2.6: Utilisation of production capacity

Tons	Jul 2020 - Jun 2021	Jul 2021- Jun 2022	Jul 2022 - Jun 2023
Capacity	100	100	100
Total production	100	97	92
Capacity utilisation	100	97	92

These figures were indexed due to confidentiality using July 2020- June 2021 as the base year.

The Applicant’s capacity utilisation decreased throughout the period of investigation. The Applicant stated that as production throughput decreased, capacity utilisation decreased in relation to it. It is not possible to maintain high production efficiency and capacity utilisation, if production throughput does not remain high, especially if this throughput decreases because of imports increasing significantly as a result of the surge. The erosion of capacity utilisation as an indication of serious injury is also evident as production volumes decrease in parallel with imports increasing their share of the domestic market.

Comments by The Japanese Mills

According to the Japanese Mills, the Applicant has claimed that their capacity utilization has decreased over the investigation period, which allegedly resulted from a surge in imports. However, it is well-known that the industry has been suffering from underutilization of capacity for some time now. The Applicant has recently attributed their inability to sustainably increase capacity utilization to the lack of access to rail services and frequent power outages. In addition, they mentioned that exchange rates will continue to have an impact on their operations as well.

Commission’s consideration

The Commission is of the view that due to an increase in imports, the Applicant’s production declined, resulting in a decrease in capacity utilisation from 97 to 92 index points during the surge of July 2021 to June 2023.

6.2.7 Employment

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

Table 6.2.7: Employment

	Jul 2020 - Jun 2021	Jul 2021- Jun 2022	Jul 2022 - Jun 2023
Number of employees (manufacturing only)	100	104	96
Total employment	100	103	97

These figures were indexed due to confidentiality using July 2020- June 2021 as the base year.

The above table shows that the total employment decreased from 103 index points in (July 2021- June 2022) to 97 index points in (July 2022- June 2023).

Comments by The Japanese Mills

According to the Japanese Mills, the Applicant has unjustly blamed the increase in imports for the decline in employment during the investigation period. The Japanese Mills strongly denies this accusation and asserts that the actual reason behind the decrease in employment is the Applicant’s operational inefficiency and lack of competitiveness.

Commission's consideration

The Commission considered that the table above indicated that the decrease in employment coincided with the surge in imports.

6.3 Summary - serious injury

Based on the above information, the evaluation of the injury information of the Applicant for the period July 2021 to June 2023 is shown in Table 6.3.1

Table 6.3.1: Serious Injury Indicators

	2021 – 2023	2020 - 2023
Imports in absolute terms	Increased	Increased
Imports in relative terms	Increased	Increased
Sales volumes (kg)	Increased	Decreased
Net Profit (R)	Decreased	Decreased
Output (kg)	Decreased	Decreased
Market share (Applicant)	Decreased	Decreased
Productivity (units per employee)	Increased	Decreased
Utilisation of capacity (%)	Decreased	Decreased
Employment (Number of employees)	Decreased	Decreased

Comments by The United Kingdom

The United Kingdom indicated that serious injury requires a severe overall impairment to domestic injury and reminds the Commission that this is a high threshold to meet. They further indicated that on the basis of the evidence provided, they query why the Commission takes the view that the prima facie case has been met. The United Kingdom suggested that the use of a safeguard should be temporary in order to facilitate adjustment. However, there is no evidence of adjustment plans in the safeguard application.

Commission's consideration

In analysing the injury during the period of surge from July 2021 to June 2023, the Applicant has experienced serious injury in the form of a decline in output, net profit, market share, capacity utilisation, and employment. Furthermore, in analysing the period of investigation from 2020 July to June 2023, the Applicant

has experienced serious injury in the form of a decline in sales, output, net profit, market share, capacity utilization, and employment.

Having assessed each injury factor and noted that there is a substantial decline in the industry's performance as listed above, the Commission made a preliminary determination that the domestic industry is suffering serious injury.

7. CAUSAL LINK

EXISTENCE OF A CAUSAL LINK

The Agreement on Safeguards does not provide any specific methodology as to how the existence of a causal link has to be determined. However, the Commission must provide a reasoned, reasonable, and adequate explanation of its finding that there is a causal link between the increased imports and the serious injury suffered by the domestic industry. Previous panels in assessing whether a Member has fulfilled the causation requirement considered, among other factors (i) whether an upward trend in imports coincides with downward trends in the injury factors, and if not, whether an adequate, reasoned, and reasonable explanation was provided as to why nevertheless the data show causation; and (ii) whether the conditions of competition between the imported and domestic products as analysed demonstrate the existence of a causal link between the imports and any serious injury.

Upward movements in imports should normally occur at the same time as downward movements in injury factors in order for a coincidence to exist. A coincidence in trends by itself cannot prove causation. However, an absence of coincidence would create "serious doubts as to the existence of a causal link and would require a very compelling analysis of why causation still is present". Apart from the coincidence analysis, the competent authority may also use other analytical tools to determine the existence of a causal link, for instance, an analysis of the conditions of competition between imported and domestic products. The relevance of the conditions of competition is confirmed by the text of Article 2.1 of the Agreement on Safeguards, which refers to the increased imports occurring "under such conditions" as to cause or threaten to cause serious injury to the domestic industry.

The second sentence of Article 4.2(b) requires that a competent authority examine factors other than increased imports that are causing injury to the domestic industry simultaneously with the increased imports and ensure that

the injury caused by such other factors not be attributed to the increased imports.

The Appellate Body clarified that in order to comply with this requirement a competent authority must "make an appropriate assessment" of the injury caused to the domestic industry by the other factors and provide a "satisfactory explanation of the nature and extent of the injurious effects of the other factors". Once a competent authority determines that there are other factors causing injury to the domestic industry, it "must separate and distinguish" the injurious effects of the increased imports from the injurious effects of other factors, and "establish explicitly, through a reasoned and adequate explanation, that injury caused by factors other than increased imports is not attributed to increased imports".

In order to demonstrate that increased imports are causing serious injury, a competent authority must find a "sufficiently clear contribution" by those imports and explain its determination in that regard. The Appellate Body has stated, however, that the increased imports do not need to be the sole cause of injury, and that the causal link between increased imports and serious injury may exist even though other factors are also contributing at the same time to the situation of the domestic industry. In addition, when a competent authority considers that there are no other factors causing injury to the domestic industry, this must be clearly indicated and explained in its determination.

7.1 VOLUME OF IMPORTS AND MARKET SHARE

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

The following table compares the market share of the SACU industry with that of imports for the period (July 2020 to June 2023):

Table 7.1 (a): Market share

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant sales volumes	100	78	80
Other SACU producers	100	78	80
Total SACU sales volumes	100	78	80
Imports	437 108	283 891	580 778
Total Market	100	74	96
Applicant market share	100	105	84
Other SACU producers	100	100	86
Total SACU market Share	100	106	84
Import market share	100	87	137

This table was indexed due to confidentiality using July 2020- June 2021 as the base year.

The table above shows that the Applicant's market share decreased from 105 index points for the period July 2021 – June 2022 to 84 index points for the period July 2022 – June 2023, which coincided with the surge in imports. The total SACU market share followed the same trend and decreased by 22 index points from 106 index points for the period July 2021 – June 2022 to 84 index points for the period July 2022 – June 2023.

At the same time that the market share of the Applicant and the total SACU market share declined significantly, the market share of imports increased by 50 index points during the period of surge, from 88 index points in 2021 to 137 index points in 2023. Stated differently, while the market share held by SACU producers decreased significantly from 106 to 84 index points, imports more than doubled, increasing from 283 891 tonnes to 580 778 tonnes for the period July 2021 - June 2022 to July 2022 - June 2023. Notably, this trend is showing no sign of slowing down.

In summary, the sudden and significant increase in imports has coincided with a significant and ongoing loss of market share by the local manufacturers of hot-rolled steel resulting in serious injury to them.

Comments by The Japanese Mills

The Japanese Mills noted that the SACU market decreased by 4 index points or around 56,356 tonnes between July 2020 to June 2021 and July 2022 to June 2023. The Applicant acknowledged the loss of sales but denied that it was due to imports. However, the Applicant admitted that the loss of market share was closely linked to operational stability, which could impact customers and risk losing local market share.

Commission's consideration

The Commission considered that from the information in the table above the growth of imports was evident, whose market share grew by 50 index points at the time of surge from July 2021 to June 2023, even though there was a 13 index point decrease from July 2020 to June 2022. The market share held by SACU producers has decreased by 22 index points, coinciding with the surge in imports. The market share held by imported products has grown significantly from 87 to 137 index points in the same period.

Table 7.1 (b): Market Share (Excluding rebated imports)

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant sales volumes	100	78	80
Other SACU producers	100	78	80
Total SACU sales volumes	100	78	80
Rebated Imports	78 415	79 931	50 689
Competing Imports	358 693	203 961	530 079
Total Imports	437 108	283 891	580 778
Total Market	100	74	96
Applicant market share	100	105	84
Other SACU producers	100	100	86
Total SACU market Share	100	106	84
Rebated Imports	100	140	80
Competing Imports	100	76	152
Import market share	100	87	137

The table above shows that the market share of rebated imports to total imports decreased from 28 percent to 8 percent during the period of surge. Based on this, it can be concluded that rebated imports did not significantly impact the Applicant's injury during the period of surge.

Table 7.1 (c): Market Share (Excluding UK and EU imports)

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Applicant sales volumes	100	78	80
Other SACU producers	100	78	80
Total SACU sales volumes	100	78	80
United Kingdom Imports	49 787	379	7 093
European Union Imports	74 832	76 782	114 242
Total Imports	437 108	283 891	580 778
Total Market	100	74	96
Applicant market share	100	105	84
Other SACU producers	100	100	86
Total SACU market Share	100	106	84
United Kingdom Imports	100	0	33
European Union Imports	100	140	160
Import market share	100	87	137

The table above indicates that both the UK and EU market shares of total imports were insignificant during the surge and investigation period. Therefore, it can be concluded that UK and EU imports did not have a significant impact on the Applicant's injury during the POI.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators

	2021 – 2023
Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (kg)	Increased
Net Profit (R)	Decreased
Output (kg)	Decreased
Market share (Applicant)	Decreased
Productivity (units per employee)	Increased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

The Commission noted that the increased imports not only coincided with a loss of market share but also with the downward trend in injury factors. As shown in the table above, there was a decrease in the Applicant's net profit, output capacity utilisation, and employment.

Finally, although the Applicant experienced a slight increase in sale volumes at the time of the surge, between July 2020 and June 2023, total SACU sales of the subject product decreased by 20 index points from 100 index points to 80 index points in absolute terms.

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

- **Quality**

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

- **Delivery times**

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

- **Service and after sales**

The Applicant indicated that it provides real-time feedback to customers on production progress on any order and interactively with customers' plan delivery times and quantities.

- **Cold-rolled steel products are fully guaranteed to the applicable international specification ordered.**

The Applicant indicated that a small but experienced team of engineers provides technical support to customers with material selection, material properties, and processing parameters like welding drawing, and forming. This team also scans the market for new opportunities and drives new product

development and innovative solutions to challenges customers may encounter.

The Applicant further indicated that the hot-rolled coil is fully guaranteed to the applicable international specification ordered. Prompt resolution of quality claims is ensured by personal attention from a dedicated team. Should any defective material have been delivered, the issue is resolved by a full refund of money paid, replacement of material, or other arrangement acceptable to customers.

Comments by interested parties

The interested parties stated that the Applicant is facing the following challenges:

- *Very poor on-time delivery performance, resulting in delayed delivery of orders to customers;*
- *Unable to supply certain hot-rolled steel products due to various reasons such as dimension, specification, production limitations, or commercial viability;*
- *The surface quality of the hot-rolled plate that is produced by the Applicant is not of the quality of acceptable international standards, making it unsuitable for applications where the visual appearance is important. This has led to quality concerns by the Automotive Industry and other downstream users; and*
- *The Applicant is currently unable to produce the required product grade and there have been instances of end-users not approving of steel produced the Applicant.*

Response by the Applicant

The Applicant denied being unreliable or unable to deliver orders on time. Although the lead times for order confirmation are typically 6-12 weeks, 70% of hot-rolled product orders were dispatched within 8 weeks during the period under investigation. The Applicant confirms orders in the month; it can deliver and accept orders based on its production capacity. No order has ever been declined. The Applicant prioritizes local supply and has helped customers with

urgent requirements regardless of the expense. The Applicant is capable of meeting domestic demand. The Applicant compared its lead times for imports, which typically take 6-12 weeks to produce in international mills and another 4-6 weeks to ship, to its local lead times. The Applicant pointed out that orders of hot-rolled products from China are confirmed in March/April for supply in August, which is a 5-month delay time.

The Applicant denied that buffer stock holdings were at a level where working capital and storage costs didn't make it viable to purchase locally. The Applicant submitted that this is unlikely as importation typically takes longer than local lead times. The actual orders received from interested parties have increased significantly in the last few years.

The Applicant confirmed that deliveries are conducted efficiently and effectively. The domestic market is always considered a priority above export orders, and such orders are only not accepted when the local market is unable to order sufficient quantity to meet the minimum required production volumes. The Applicant acknowledged that there may be delays or supply issues when interested parties import. This includes factors such as delays in production in international mills, weather events, logistics issues, port congestion, and other unknown factors. The Applicant's performance is being compared to mills globally in various countries with their own supply chains. The Applicant is still the local supplier with the shortest delivery lead time versus any international supply source for the products regularly sourced by customers from it. The Applicant confirmed that it has all the certifications required for quality standards, including ISO 9001, 14001, etc. These certifications confirm processes to ensure quality standards can be achieved and consistently maintained.

The Applicant stated it produces the majority of products required by the South African industry. The Applicant will consider producing additional grades of steel should the demand volumes warrant it. Products not manufactured by the Applicant constitute a very small percentage of the subject product, and the imposition of rebate provisions is sufficient to deal with these outliers.

7.4 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY

The Applicant indicated that the labour relations climate continued to be calm, despite the uncertain and volatile climate in the country. Two recognised unions, namely Solidarity and the National Union of Metalworkers of South Africa (NUMSA) are recognised by AMSA. NUMSA and Solidarity enjoy both collective bargaining and organisational rights. NUMSA accounts for 51% of the bargaining unit and Solidarity Union accounts for 25% of the bargaining unit.

The Applicant further indicated that it continues to proactively communicate and consult with unions regularly to promote sound relations and effective communication. Dialogue is taking place at the National level between its management and trade union leadership on finding solutions to lessen the impact of negative steel demand. The Applicant regularly updates unions with business strategy and performance, business objectives, including continuous cost and productivity improvement, the performance targets, dynamic and flexible workforce plans as well as competitive conditions of service.

The Applicant indicated that a three-year wage agreement was concluded with trade unions which will best serve labour peace, stability, and sustainability. The multi-year agreement gives the Applicant a platform to plan for operational stability, penetration in the markets, and nurturing of growth in the Africa Overland (AOL) and domestic market. Percentage wage increases were at 6.5% for the first year and CPI for the next two years. The agreement was concluded without labour unrest.

What follows from the above discussion is that although there are allegations of differences in physical characteristics and other performance-related aspects between the domestic and the imported subject product, in essence, this is a commodity product that competes on price. It is the price-competitiveness of the increased quantities of imports that have caused serious injury or the threat thereof.

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

Table: 7.5

Strikes, go-slows, or lockouts during the past twelve months	The Applicant stated no. As mentioned above, despite the continued economic slump in the Steel Industry, in general, it is in a very favourable position with regard to the relations with organised labour.
Contraction in demand or changes in patterns of consumption	The Applicant stated that the demand has remained relatively stable over the POI despite weak economic activity. This is especially apparent in the mining and construction sectors which are large consumers of hot-rolled products. This was further compounded by electricity shortages which is hampering manufacturing activity. What is notable is the clear shift away from the local product in favour of the imported product. In fact, between the first year of the POI and the last, total demand decreased from 100 basis points to 96 basis points (a 4-basis point decrease), whereas in the same period demand for the local product decreased from 100 basis points to 80 basis points (a 20-basis point decrease).
Productivity of the domestic industry vis-a-vis that of the exporters	The Applicant stated that it is on par.
Development in technology	The Applicant indicated that is not aware of any other relevant factors.

Summary of other causal link issues that were raised by the interested parties.

The interested parties raised significant concerns regarding the ability of safeguard measures to address the harm experienced by the SACU industry. They noted that the Applicant failed to demonstrate that the serious injury to the domestic industry is solely caused by imports, rather than the following factors, which has been a key point of contention:

1. Closure of Saldanha plant

On 11 November 2019, AMSA released a statement through SENS, stating that its hot-rolled steel production facility located in Saldanha, Western Cape, would be closed. Despite benefiting from the first safeguard duties, the plant was closed down. The first safeguard duties were set at 8% in 2020, in addition to the ordinary customs duties, which also set the WTO-bound rate of 10%. According to Applicant's SENS statement, its decision was made based on the following critical factors: "loss of structural cost advantage to compete in the export market due to i) raw material prices and ii) regulated

prices". Raw material prices and regulated prices affect Applicant's cost structure. The first safeguard duties did not help the Applicant, as the company's challenges are related to its own structural costs. The only way to address such challenges is by adjusting the operations, which the Applicant was unable to do at the Saldanha Works, despite the protection provided by the first safeguards duties. The first safeguard duties did not prevent the Applicant from closing the Saldanha Works because the real cause of Applicant's alleged injury was factors other than imports. These factors include raw material prices and regulated prices. If safeguard duties are imposed, this will have the same result, for the same reasons – Applicant's alleged injury is not caused by imports but by other factors.

2. Lower Steel Market demand and lack of infrastructure investment

Reduced demand, in particular as a result of the reduced infrastructure spending since 2010 and reduction in construction projects, and not imports, has been a key and well-recognized factor that has affected the Applicant and the industry in general.

3. Foreign exchange exposure

The impact of the increasing Rand weakness versus the US Dollar has also had a significant impact on the Applicant because of its reliance on international inputs. Applicants' input costs experienced an increase of 51% in their dollar-denominated commodity-indexed consumables.

4. Input costs

The significantly increased cost of input materials, especially electricity, has contributed to any material injury suffered by the Applicant.

5. Many imports are not manufactured in SACU

Many of the imported products are imported because they are not manufactured in South Africa. See, for example, the below quotes from the Steel Industry Masterplan: "South Africa has discontinued or has never made many of the steels required for the auto, mining equipment, and yellow metal

industries. About 50% of the 750 000 tons per year of steel imported are flat steel products not manufactured in South Africa."

6. The industry is not competitive or innovative

The following statement is from the 2022 Annual Report of the Applicant: "In 2022, capacity utilization at both Vanderbijlpark and Newcastle stood at just 47%, which is lower than the 60% in 2021 and significantly less than the more than 80% achieved before 2019 (normalised for 90 days blast furnace N5 interim repair). The poor capacity utilization, especially at Vanderbijlpark, was mainly due to the chronic poor service delivery by Transnet. However, internal factors such as a one-month strike and our own lack of reliability were major contributors to producing only 2.46 million tonnes of steel in the year. We were unable to meet the demand from domestic and export markets due to our own production difficulties." In summary the interested parties stated that the Applicant acknowledged that the rise in imports was due to the industry's structural issues, the Applicant's inability to provide customers with the desired products and quality, and production capacity constraints.

7. Environmental Compliance

Interested parties have stated that in addition to policy certainty and input costs, the industry needs to re-orient itself towards a greener future. This includes addressing challenges related to lower emissions and more efficient use of resources such as water and electricity, while also capitalizing on opportunities for new industries and products. To comply with regulations such as the locally introduced Carbon Tax and the EU's Carbon Border Adjustment Mechanism, the industry has to invest in improving its operations and practices.

8. Challenging local environment including availability of energy/load-shedding and poor parastatal performance

As a major consumer of electricity, any shortage of electricity can have a significant impact on the operations of the Applicant. These disruptions can lead to delays in production, reduced output, increased costs, and postponed deliveries, ultimately resulting in lost business. Additionally, the logistical

challenges faced by the Applicant in accessing iron ore and distributing their products have further affected their operational performance and financial results.

9. Increased cost of security

One of the challenges that the Applicant and other companies face is cable theft, which forces them to increase their spending on security measures. The CEO of the Applicant, Kobus Verster, stated that they spend about R200 million annually on security, compared to the previous amount of 50 million. This is because they, like other companies, are constantly dealing with the theft of cables on their premises on a daily basis. They have to take additional measures to secure their facilities and have also invested in drones to support Transnet Rail in protecting their routes from cable theft.

10. Standards and client requirements for the products

The Applicant has a history of failing to meet their customers' requirements and providing poor service. This includes delayed or late deliveries, process inefficiencies and ineffective quality control, and not having enough stock to maintain supply in the market during times of disruption.

11. Labour unrest, including violent strikes, disputes, and issues related to wages and working conditions, disrupted the Applicant's operations and undermined employee morale and productivity.

These disruptions result in production stoppages, which in turn cause delayed shipments, hampering revenue generation. There are also additional costs associated with resolving labour disputes or hiring temporary workers.

Response by the Applicant

The Applicant stated that interested parties have accused them of not adjusting to the previous safeguard protection on their product, which they argue makes them inherently uncompetitive and unlikely to adjust under the proposed safeguard protection. Despite many other countries re-implementing safeguard protection due to the global steel crisis, the Applicant believes that it is entirely possible for the domestic industry to suffer

serious harm even after previously enjoying safeguard protection, as the WTO agreement permits reapplying for protection.

The Applicant has also argued that the key question when applying for new safeguard protection is not whether the industry has already adjusted after a previous safeguard, but rather whether it will be able to adjust in the future with the proposed safeguard in place. They have noted that no interested party has provided any supporting evidence for the claim that the Commission should take into account adjustment under a previous instance of safeguard protection when analysing adjustment.

The Applicant acknowledged that the Commission must consider all relevant factors when determining whether there is a causal link between the surge in imports and the serious injury suffered by the domestic industry. It should be noted that establishing a causal link does not require the increase in imports to be the "principal" or "sole" cause of injury. The Applicant cites US-Lamb to support this point.

The Applicant further stated that while other factors may aggravate the injury, a finding that an increase in imports is causing injury is not prevented. In other words, an increase in imports should have contributed to the serious injury. The Steel Master Plan, which identifies challenges to the domestic industry, acknowledges that the industry is in crisis and that urgent measures are needed to ensure its survival. The Applicant argues that safeguard measures are appropriate emergency measures for this crisis. The Steel Master Plan does not suggest that the cause of the crisis is attributable to other factors to the exclusion of increased imports.

The Applicant also noted that a decrease in steel demand is a global occurrence, but despite this, imports have increased their market share while SACU's market share has decreased. If a decrease in demand were the cause of serious injury, then both imported and domestic products' market shares should have decreased simultaneously.

Regarding challenges such as electricity, transportation, and security costs, the Applicant acknowledged that they have contributed to the injury. However, the Applicant has already developed plans to mitigate these factors through its own initiatives and engagement with the government. The Steel Master Plan itself is evidence of these efforts. Even if these challenges did not exist, the harm suffered through the surge in imports would still remain. The Applicant argued that it has submitted prima facie evidence in its application that the SACU industry has experienced serious injury that can be causally linked to the recent, sudden, significant surge in imports of the subject product.

Commission's consideration

In addition to the foregoing discussion, it is important to highlight in this investigation that:

- The analysis of the competitive conditions shows that the Applicant experienced price depression and suppression during the surge period. The selling prices went down by 7 index points, while production costs increased by 40 index points during the same period. As a result, prices were depressed, leading to a negative impact on gross profits, which declined by 175 index points between July 2021 – June 2022 and July 2022 - June 2023. The cost-to-price ratio increased by 34 index points, further suppressing prices during the same period.*
- This analysis also shows that, based on import prices from China, which was the largest exporter and did not have any price abnormalities, unlike imports from other countries, the SACU industry suffered from a price disadvantage of 9%.*
- There has been a recent, sudden, and significant surge in imports;*
- During the period of surge imports increased by 105% in absolute terms and over the period of investigation, imports increased by 33%;*
- At the time of surge, the growth in import market share increased by 50 index points. As a direct result of a surge in imports, the market share held by SACU producers has decreased by 22 index points. Meanwhile,*

the market share held by imported products has grown significantly, increasing from 26 % to 41% during the same period;

- *During the surge period, the Applicant experienced a serious injury resulting in a decline in output, net profit, market share, capacity utilization, and employment.*

Based on the above, the Commission concluded that although there were factors other than the surge in imports, such as reduced demand in the steel market demand and lack of infrastructure investment, inputs costs, and energy supply and logistics constraints, these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury experienced by the Applicant in particular because some of these factors were temporary and did not persist throughout the period of investigation.

7.6 Summary - Causal link

Taking the above into consideration, the Commission made a preliminary determination that although there are factors other than the imports that contributed to the injury, such as reduced demand in the steel market demand and lack of infrastructure investment, labour unrest, inputs costs, and energy supply and logistics constraints, these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury suffered by the Applicant.

8. CRITICAL CIRCUMSTANCES

8.1 Requirements of Safeguard Agreement

In accordance with Article 6 of the Safeguard Agreement a member may take a provisional safeguard measure pursuant to a preliminary determination in critical circumstances where delay would cause damage, which would be difficult to repair.

The Commission considered that there are critical circumstances which justify the imposition of provisional measures, The Commission therefore made a preliminary determination to request the Commissioner for SARS to impose a provisional measure of 9 percent ad valorem on imports of hot-rolled steel products for a period of 200 days pending the finalization of the investigation.

9. SUMMARY OF FINDINGS

9.1 Unforeseen Developments

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

9.2 Serious injury

The conclusion on injury indicators is as follows:

Table 9.2.1: Serious injury

	2021 – 2023
Imports in absolute terms	Increased
Imports in relative terms	Increased
Sales volumes (kg)	Increased
Net Profit (R)	Decreased
Output (kg)	Decreased
Market share (Applicant)	Decreased
Productivity (units per employee)	Increased
Utilisation of capacity (%)	Decreased
Employment (Number of employees)	Decreased

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

9.3 Surge of Imports

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

9.4 Causal link

The Commission made a preliminary determination that although there are factors other than the imports that contributed to the injury, such reduced demand in the steel market demand and lack of infrastructure investment, labour unrest, inputs costs, and energy supply and logistics constraints; these factors did not sufficiently detract from the causal link between the surge in imports and the serious injury suffered by the Applicant.

10. PROVISIONAL MEASURES

10.1 In terms of the SGR 17.1, “The Commission may request the Commissioner for SARS, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose provisional payments as soon as the Commission has made a preliminary determination that;

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

(b) there is clear evidence that increased imports have caused or are threatening injury.”

10.2 Duration of provisional measures

In accordance with ADR 17.2, the duration of the provisional measures shall not exceed 200 days. The duration of such provisional measures shall be counted as part of the overall time frame of the safeguard measures.

10.3 Unsuppressed selling price

The Applicant stated that it is experiencing price depression as well as price suppression during the period of surge (between July 2021 – June 2022 and July 2022 - June 2023). The selling prices decreased by 7 index points, while production costs increased by 40 index points during the same period. This resulted in depressed prices, negatively impacting gross profits, which declined by 175 index points between July 2021 – June 2022 and July 2022 - June 2023. The cost-to-price ratio increased by 34 index points, resulting in suppressed prices at during the same period.

The Applicant further stated that the current ex-factory selling price of the subject products is not representative of an ex-factory selling price, which would allow the Applicant to make a reasonable profit margin. Furthermore, the earnings before interest, taxes, depreciation, and amortization (“EBITDA”) is not a reasonable profit margin. As such, the Applicant calculated an un-suppressed selling price for the relief sought based on a reasonable profit margin.

Comments by interested parties

The interested parties highlighted that under serious injury, no information was submitted and substantiated that the Applicant suffers serious injury with regard to price. They indicated that this is an opportunistic statement, especially when the Applicant refers to prices and profits. The Applicant's information indicates that it did not suffer price depression, as the price of the Applicant shows an increasing trend. It appears that there might be price suppression. However, this cannot be substantiated, as the Applicant only supplied costing for the last 12-month period and not for the full POI. Based on the above the Commission cannot just rely on hearsay.

The interested parties stated that ex-factory selling prices increased by no less than 40 index points from the reference year (July 2020 – June 2021). The allegation that the Applicant experienced price depression is incorrect. The marginal 7 index points decrease from Year 2 to Year 3 is insignificant when regard is had to the 40 index point increase over the entire investigation period. The increase from Year 1 to Year 2 was a massive 47 index points.

Commission's consideration

The Commission considered that the Applicant experienced price depression as well as price suppression during the period of surge between July 2021 – June 2022 and July 2022 - June 2023. The ex-factory selling price during the surge decreased from 147 to 140 index points. During the same period, the cost-to-price ratio increased from 87 to 121 index points, whereas over the period of investigation, it increased from 100 to 121 index points. Furthermore, at the time of the surge, the production costs increased from 127 to 167 index points, whereas over the period of investigation, they increased from 100 to 167 index points.

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

1. As a starting point, the current year's cost of production from the cost build-up was used.
2. The selling, general, and administrative expense from the cost build-up for the current year was used.
3. The selling, general, and administrative expense was then added to the production cost to calculate the reasonable cost to make and sell for the year.
4. A profit was then calculated based on a reasonable profit percentage. Reasonable profit margin: The 15.22% was calculated from Companies Industries Market (CSIMarket Inc.) data. CSIMarket Inc. is an American independent digital financial media company providing integrated financial information and analytical applications to the global investment community. The 15.22% was based on an average of quarter three of 15,38% and quarter four of 12,14% for the year 2022 as well as quarter one of 15,75% and quarter two of 17,6% for 2023 ([Iron & Steel Industry Profitability by quarter, Gross, Operating and Net Margin from 2 Q 2023 \(csimarket.com\)](#))
5. A reasonable profit was added to the selling, general and administrative expenses, and production costs to calculate the un-suppressed price.

Comments by The Japanese Mills

The Japanese Mills disputed the conditions necessary to impose the safeguard and have requested that the relief sought by the Applicant be rejected. The Applicant proposes to use a methodology that sets the level of new safeguard duties using price disadvantage. The alleged price disadvantage is calculated using an un-suppressed price determined by using EBITDA of 10% or 15.24%.

The Japanese Mills stated that one of the sources upon which the Applicant relies to justify its request to use an EBITDA of 10% or 15% is the CSIMarket Inc. report on the Iron and Steel Industry's profitability. However, the average EBITDA Margin for 2023 was found to be 9.54%, according to the Applicant, reflecting the current realities in the Iron and Steel industry. The Japanese Mills further stated that it would be inappropriate for the Commission to apply a higher EBITDA margin in the present safeguard investigation.

The EBIDTA of 9.54% is closer to what the Commission has used previously, as acknowledged by the Applicant. It is also significant that the Competition Commission determined that a 10% margin was appropriate in the current market situation. Therefore, the Japanese Mills requested the Commission to reject the application, which they deemed to be without merit.

Should the Commission be inclined to recommend the imposition of new safeguards duties, then the EBIDTA in determining price disadvantage should be 9.54% and, in any event, not higher than 10%. Additionally, the Japanese Mills indicated that the cost and price build-up included in the application's confidential version, from which the "Production cost," "Selling, general and admin costs," and "Total cost to make and sell" figures were taken, likely includes interest expenses and amortization. Therefore, by applying an EBITDA margin to a cost figure that includes interest, depreciation, and amortization, the Applicant has likely overstated its unsuppressed selling price.

The Japanese Mills have recalculated the unsuppressed selling price by excluding depreciation and amortization from the total cost figure. The Price Disadvantage was recalculated to be 12.97% at an EBITDA margin of 15.24% and 7.01% at an EBITDA margin of 10%.

Comments by the Group

The Group stated that the reason for the safeguard duty request is that the Applicant alleged that “[t]he surge in imports had a devastating effect on the domestic industry’s selling prices and profits.” and that the Applicant is therefore experiencing price suppression and depression. The Group stated that the Applicant never in this application under “serious” injury submitted and substantiated that it suffers serious injury with regard to price. The information in the application indicates that the Applicant did not suffer price depression, as the price of the Applicant shows an increasing trend, with both Jul 2021 – Jun 2022 and Jul 2022 – Jun 2023 being way above the Jul 2020 – Jun 2021 prices. Based on the information submitted, there appears to be price suppression. However, this cannot be substantiated as the Applicant only supplied costing

for the last 12-month period and not for the full POI. Clearly, the Commission cannot just rely on hearsay.

The Group further stated that it is very clear that the Applicant is trying based on the relief sought by manipulating its selling prices arguing that as a result of price suppression, a reasonable profit must be used to calculate their unsuppressed selling price in the SACU market. The Group indicated that from the McKinsey and Company 2014 study and also referred to the McKinsey website, which states that “Over the last decade, global steel industry EBITDA margins have averaged eight to ten percent, which is below the margin of 15 to 17 percent necessary for long-term sustainability” (own emphasis). They stated that it should be noted that McKinsey and Company is a global management consulting firm that markets its service based, amongst others, on better productivity and returns. Therefore, it is not strange that the projected profit margins would be higher to entice potential clients. As a result, the Applicant proposed, based on the foregoing, “a reasonable profit margin of 15%, less than what the Applicant earned in 2021/22 period, slightly below the long-term sustainability ratio (17%), and in line with what was approved by the Commission in 2019 (Report No. 596) and based on the Competition Commission ruling (even though this ruling is not applicable anymore).”

The Group indicated that the website Finmodelslab.com discusses in an article “How much profit does the average steel plant make?”. The article stated that “The profit margin for steel plants varies depending on many factors such as location, the size of the plant, and market demand. However, on average, a steel [plant can make a profit margin around 10% to 15% of their revenue”. It then continues to point out that a “top steel producer in the United States, Nucor Corporation” in 2020 reported a 4% profit, while ArcelorMittal, “the world largest steel producer” in 2020 realized a profit of 4.3%. It then continues pointing out that various factors affect profit margins, such as the location of the plant, availability of raw materials, market demand, and size of the plant and then concludes that the “profit margin for an average steel plant can vary widely but generally falls in the range of 10% to 15%.” However, in the current economic environment also taking the size of the company and technology into account,

as well as McKinsey and Company comment that over the last 10 years the profits were at “eight to ten percent”, a reasonable profit margin allowed cannot exceed 10%, which is actually already too high. Therefore, a reasonable profit for AMSA would be, at maximum, 9 percent. AMSA's proposal to work on a profit margin of either 10% or 15.24% is not only optimistic but also unrealistic.

Commission's consideration

It was established that the profit margin for hot-rolled products reported by the Applicant for the period covering July 2022 to June 2023 and the profit for the company for the year ended on 31 December 2022 fall below the required 17% rate that is necessary for a steel business to be sustainable in the long term. However, the Commission considered that the Applicant's reported profit of 15.22% is reasonable and has been obtained from a reliable source that reports on iron and steel industry profitability. The Commission further considered utilizing the information provided by the Applicant from this reliable source as it is considered the best information available to calculate the profit.

Landed cost calculation

The landed cost was calculated by using the weighted average FOB price for July 2022 – June 2023 from China and adding freight and handling costs to the FOB price to arrive at the landed cost. The FOB price amounted to R13 943 /ton, plus 10% for duties and freight and handling costs of R1 325 /ton, which resulted in a landed cost of R16 662 /ton.

To determine a reasonable method to determine a safeguard duty, it was found that China is the biggest exporter of the subject product for the period July 2022 – June 2023. Furthermore, it was found that FOB prices per kilogram for the majority of the other countries had many price abnormalities. For example, import volumes from Argentina were found to be 1 kg imported at a price of R1 732/kg, imports from Brazil were found to be 188 kg imported at a price of R143/kg and imports from Angola were found to be 622 kg imported at a price of R6/kg.

It is the Commission's opinion that China's FOB prices are representative of the subject product's prices, as China is the biggest exporter and many other countries had price abnormalities.

Comments by the Group

The Group stated that the Applicant used import prices of the “top” three import countries' FOB prices, China, Taiwan, and Japan, and claimed that the “other countries constituted between 0% and 5%” that “had many price abnormalities” and quoted most probably a sample that was flown in. The Group stated that the application was brought on the allegation that serious injury is caused by all imports and not just the three (3) largest countries of origin that the Applicant has conveniently selected in support of its narrative. The Group submitted that if all imports are used to motivate injury and sudden surge, the average price of ALL the imports must be calculated and used. In the Argentina – Footwear (EC), the Appellate Body report examined “whether ... there is an implied 'parallelism between the scope of a safeguard investigation on and the scope of the application of safeguard measures.” In this connection, the Appellate Body held that “On the basis of this reasoning, and on the facts of this case, we find that Argentina's investigation, which evaluated whether serious injury or the threat thereof was caused by imports from all sources, could only lead to the imposition of safeguard measures on imports from all sources. Therefore, we conclude that Argentina's investigation, in this case, cannot serve as a basis for excluding imports from other MERCOSUR member States from the application of the safeguard measures.” Therefore, the same principle applies to this case if all import countries are targeted, as is the case with a safeguard investigation; it is submitted that all countries' import volumes and values must be included in the price undercutting assessment in determining the average FOB import price during the period July 2022 – June 2023 and not just three (3) countries. The Commission is reminded that its policy is to use the SARS import data in determining the import volumes and values and, eventually, the FOB import price. It is submitted that if the Applicant only wants to use the price of the three countries, it ought to have brought a dumping application.

Commission's consideration

The Commission considered that other countries had numerous price abnormalities, but since China is the largest exporter, the Commission is of the opinion that China's FOB prices accurately reflect the prices of the subject product. Therefore, the FOB value of China was used to calculate the landed cost of the subject product. The price disadvantage using a 15.22 reasonable profit was calculated to be 9%.

Table 10.3.2: Safeguard duty calculation

(R/ton)	July 2022 - June 2023
Price disadvantage as a % of FOB	9%

11. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- Events cited are regarded as unforeseen developments that led to the increased volume of imports;
- Surge in volume of imports is recent enough, sudden enough, sharp enough and significant enough;
- The SACU industry is suffering serious injury; and
- Although there are factors other than the imports that contributed to the injury, such as reduced demand in the steel market demand and lack of infrastructure investment, inputs costs, and energy supply and logistics constraints; these factors did not sufficiently detract from the causal link between the serious injury suffered by the Applicant and the surge in volumes of imports resulting from the unforeseen developments.

The Commission considered that there are critical circumstances which justify the imposition of provisional measures, The Commission therefore made a preliminary determination to request the Commissioner for SARS to impose a provisional measure of 9 percent ad valorem on imports of hot-rolled steel products for a period of 200 days pending the finalization of the investigation.

The provisional measures should be imposed against all countries, except the following developing countries identified as the imports from each of these countries do not exceed 3 percent of the total volume of imports or collectively account for more than 9 percent of total imports.

A developing country exempted from the application of a safeguard measure may become subject to such safeguard measures without a new investigation being conducted if, subsequently to the imposition of the safeguard measure, its share of imports increases to a level that exceeds 3% of the total imports' volumes in the original investigation period.

DEVELOPING COUNTRIES TO BE EXCLUDED FROM THE DUTY

Name	Name	Name	Name
Afghanistan	Madagascar	Dominica	Saint Vincent and the Grenadines
Albania	Malawi	Dominican Republic	Sao Tome & Principe
Algeria	Latvia	Ecuador	Samoa
American Samoa	Lebanon	Egypt, Arab Rep.	Senegal
Angola	Maldives	El Salvador	Seychelles
Antigua and Barbuda	Mali	Eritrea	Sierra Leone
Argentina	Marshall Islands	Eswatini	Singapore
Armenia	Mauritania	Equatorial Guinea	Solomon Islands
Azerbaijan	Mauritius	Ethiopia	Serbia
Bangladesh	Mexico	Fiji	Somalia
Bahrain	Micronesia	Gabon	South Sudan
Belarus	Moldova, Republic of	The Gambia	Sri Lanka
Belize	Mongolia	Georgia	Sudan
Benin	Montenegro	Ghana	Suriname
Bhutan	Morocco	Grenada	Syrian Arab Republic
Brunei Darussalam	Mozambique	Guatemala	Tajikistan
Bolivia	Myanmar	Guinea	Tanzania
Bosnia & Herzegovina	Namibia	Guinea-Bissau	Timor-Leste
Botswana	Nepal	Guyana	Togo
Brazil	Nicaragua	Haiti	Thailand
Bulgaria	Niger	Honduras	Tonga
Burkina Faso	Nigeria	St. Lucia	Trinidad and Tobago
Burundi	North Macedonia	Iran, Islamic Rep. of	Tunisia
Cabo Verde	Oman	Iraq	Indonesia
Cambodia	Pakistan	Jamaica	Turkmenistan
Cameroon	Palestine	Jordan	Tuvalu
Central African Republic	Palau	Kazakhstan	Uganda
Chad	Panama	Kenya	Ukraine
Chile	Papua New Guinea	Kiribati	United Arab Emirates
Colombia	Paraguay	Korea	Uruguay
Comoros	Peru	Kyrgyz Republic	Uzbekistan
Costa Rica	Philippines	Kosovo	Vietnam
Côte d'Ivoire	Qatar	Kuwait, the State of	Vanuatu
Cuba	Romania	Lao People's Dem. Republic	Venezuela
Democratic Republic of the Congo	Russian Federation	Lebanon	West Bank and Gaza
Congo	Rwanda	Lesotho	Yemen
Djibouti	Saudi Arabia	Liberia	Zambia
Lithuania	St. Kitts and Nevis	Libya	Zimbabwe