

Report No. 656

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

The International Trade Administration Commission of South Africa herewith presents its **Report No. 656: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF SAFEGUARD MEASURES AGAINST INCREASED IMPORTS OF U, I, H, L AND T SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED, OF A HEIGHT OF 80 MM OR MORE AND OTHER ANGLES, SHAPES AND SECTIONS OF IRON OR NON-ALLOY STEEL, NOT FURTHER WORKED THAN HOT-ROLLED, HOT-DRAWN OR EXTRUDED STEEL PRODUCTS: FINAL DETERMINATION**



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PRETORIA
1 April 2021

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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

SYNOPSIS

On 19 June 2020, the International Trade Administration Commission of South Africa (the Commission or ITAC) initiated an investigation for remedial action in the form of a safeguard measure against the increased volume of imports of U, I, H, L and T sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more and other angles, shapes and sections of iron or non-alloy steel, not further worked than hot-rolled, hot-drawn or extruded steel products (structural steel or subject product) through Notice No. 335 published in *Government Gazette* No. 43447 of 19 June 2020.

The application was lodged by Evraz Highveld Steel and Vanadium Corporation Limited (Highveld), Highveld Structural Mill (Pty) Ltd (Highveld Structural Mill) and ArcelorMittal South Africa Ltd (AMSA) (The three companies, namely, Highveld, Highveld Structural Steel and AMSA are hereafter collectively referred to as the “Applicant”). The Applicant is the only producer of structural steel in the Southern African Custom Union (SACU).

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

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

Interested parties 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 the events cited by the Applicant can be regarded as unforeseen developments. The Commission made a preliminary determination that a reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years. The requirements set out by the WTO and the Amended Safeguard Regulations (SGR) with regard to a surge in imports, are therefore not met.

The Commission further made a preliminary determination that although the SACU industry experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors other than the increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry. The Commission issued Report No. 639 containing its preliminary determination and invited interested parties to comment on its preliminary determination.

On 02 December 2020, a public interest hearing was held where interested parties addressed the Commission on whether the imposition of a safeguard measure would be in the public interest.

Based on the details as contained in the Commission's preliminary report and the comments received, the Commission made a final determination before "essential facts" that it was considering making a final determination that the events cited by the Applicant can be regarded as unforeseen developments; that a reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years and that the requirements set out by the WTO and the SGR with regard to a surge in imports, are therefore not met; that although the SACU industry

experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors other than an increase in imports and these factors sufficiently detracted from the causal link between the imports and the injury experienced by the industry.

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

Taking all the information available to it into account, including all comments received during the investigation, the Commission made a final determination that the events cited by the Applicant can be regarded as unforeseen developments; that a reversal in the trend of import volumes has taken place, with the volume of imports decreasing significantly in recent years and that the requirements set out by the WTO and the SGR with regard to a surge in imports, are therefore not met; that although the SACU industry experienced serious injury during the period of investigation, the injury experienced by the Applicant can be attributed to factors other than an increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry.

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

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the International Trade Administration Commission's Amended Safeguard Regulations (SGR) and giving due regard to the World Trade Organisation Agreement on Safeguards (the Safeguards Agreement) read in conjunction with Article XIX of the General Agreement on Tariffs and Trade (GATT 1994)

1.2 APPLICANT

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

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

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

Since the commencement of the business rescue proceedings, Highveld was able to refurbish the milling plants but could not source ore and could not produce iron and steel in order to produce blooms and billets for the milling

process. It therefore had to find a source for such blooms and billets, either by importing it or by sourcing it locally.

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

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

1.3 ALLEGATIONS BY THE APPLICANT

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

The Applicant stated that during the Uruguay Round of the WTO negotiations which took place between 1986 and 1994 (the Uruguay Round), South Africa and other SACU states did not foresee the following events:

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

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

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

1.4 INVESTIGATION PERIOD

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

1.5 INVESTIGATION PROCESS

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

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

1.5.3 The investigation was initiated on 19 June 2020.

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

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

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

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

SA (Pty) Ltd and NJR Steel Services

- Anglo-American
- Scaw Metals Group
- Government of Indonesia

Comments by Southern African Institute of Steel Construction(SAISC)

SAISC indicated that the structural steel and the products under consideration make up a significant part of its industry. Most structural steel construction projects will require beams and columns manufactured from I and H sections and these will then be combined with other sections in various parts of a structure, the example of a typical warehouse is instructive as I and H sections will be used for columns and rafters (beams) and other smaller sections for the bracing. Transmission line tower structure would be another example where the main legs of these towers are manufactured from the sections under consideration. The application therefore has a significant impact on all our fabricated steel structures as they cannot be manufactured without them.

SAISC also indicated that industry competitiveness has been highlighted as a major concern across the manufacturing sector and it is unclear how concentrating the producers and reducing competition with very old facilities can compete with modern plants around the world. The price of universal beams, columns, IPE's and large angles would likely increase significantly (60% of their fabrication cost are steel related). This increase will make SAISC vulnerable to competing products like concrete and fibre reinforced composites, they have already seen this with the substitution of steel for concrete columns in the warehouse market.

SAISC also indicated that their exports would be less competitive (fabricators are often not the exporter of record and can't claim rebates on material if they are offered) in the African market the fabricators are competing with finished goods from Europe and Asia, the current import duty on finished fabricated structural steel is 15% and a duty on input material with subsequent price increase will result in importation of finished goods. SAISC further indicated that beams and channel sizes which are not rolled would fall under this safeguard

and significant funds would have to be spent to get exemptions.

SAISC further indicated that it is important that a much broader approach is considered across the steel sector as opposed to a number of safeguards application which essentially only benefit the upstream steel industry and one company in particular. This can potential harm the midstream and downstream sector.

Comments by STRUCTA technology

Structa stated that they are a supplier of essential steel products to key strategic sectors in the South African economy being large steel water storage tanks on elevated structures, electrical pylons for power lines and substation steelwork, communication masts and towers, building structures and as well as mineral and petrochemical process plant and support structure. Structa further stated that all the above utilize long steel products as core elements, the products are also exported widely to SADC and other African countries.

Structa stated that their opposition of the safeguard duty requested is based on the following:

- They regularly find the Applicant being unable to supply key long steel products, forcing them to use imported products in order to serve the key industries. The very high-proposed duties will cause their product to become uneconomical and uncompetitive.*
- The extremely high duties requested will allow the Applicant to largely operate without competition, thus allowing for excessive South African pricing. This in turn will make their (Structa's) products uneconomical and uncompetitive (vs. for instance concrete) and will severely damage their export potential. Due to that they will be forced to close some manufacturing plants with consequential severe job losses. There will be severe impact on key strategic economic sectors in South Africa.*

Stucta urges the Commission to reject the application by the Applicant.

Comments by National Employer Association of South Africa (NEASA)

NEASA stated that they command a substantial presence in all sectors and industries in South Africa and represent a large membership base within the South African steel industry; NEASA and its membership oppose this safeguard application.

Comments by Unique Ventilation and Support System

The UVSS indicated that they object the safeguards duties on U Beams and Columns. They stated that the above steel is predominantly used in the construction sector in South Africa and Sub Saharan Africa. The construction sector has experienced its most dismal performance over the past 10 years resulting in almost 50-70% of construction companies closing their doors. Construction is widely known statistically for consuming and contributing around 40% to steel consumption in South Africa.

The UVSS stated that the SA Government has recently announced a R100Bn injection into infrastructure projects to accelerate the economy and trying to create much needed jobs and limiting unemployment, a sudden increase in price for mentioned products, will not only counter Government initiatives but also encourage project engineers to consider alternative products such as concrete columns or concrete as a replacement of steel. The granting of safeguards duties will be counterproductive and will only serve the interest of the applicant, against a host of other negative issues in the wider economy.

Comments by Steelkon Projects

Steelkon stated that their business and hence the welfare of their employees, is directly linked to their ability to remain competitive within the local and international steel construction markets. They also stated that should the safeguard Application be granted the price of their raw material would increase significantly which would in effect render them uncompetitive as a business and an industry. They indicated they strongly oppose the granting of any Safeguard duty over and above the 15% import duty on finished fabricated steel which is already in place.

Comments by Minerals Council of South Africa (MCSA)

MCSA stated that they represent more than 90% of South African mining sector production by value. The country is a world leader in the production of several key minerals (Platinum group metals, gold, coal, iron ore, diamonds, manganese, chrome titanium, etc.). The mining sector accounts for more than 27% of the country's merchandise exports. In some years, the mining sector on its own earns the equivalent of half the entire foreign exchange reserves of the country, annually (\$25 billion).

MCSA also stated that almost one fifth of South Africa's economy is dependent on the mining sector. Directly the industry contributed 8.1 % to gross domestic product (GDP) in 2019, but this would. more than double when the mining supplier industries, plus the downstream industries that use mining outputs are included.

The mining sector exports 70% of its production to international clients where the prices of those various products are determined by international market forces, with the sector itself having virtually no control. The Rand Dollar exchange rate is a further source of uncertainty and beyond the mining companies' control. On the other hand, the mining sector is heavily dependent on state owned enterprises and Government for the supply of goods and services. Mining depends directly and indirectly on all Government supplied infrastructure; R100 billion, 45% of intermediary input cost & R35 billion of Wage bill. The result is that it has very little control over a large portion of its input costs.

MCSA further stated that the structural steel products under investigation are primarily inputs into new capital projects and mine extensions. A considerable amount of structural steel is needed when new developments take place with the need decreasing once the mine is established and in operation. The steel is important for supporting underground structures, in the erection of headgear

infrastructure, ladders, and staircases for accessing different sections of the mine. Structural steel is paramount in maintaining the infrastructural integrity of the mining operations, thereby assigning it important safety considerations, and ranking the steel a priority input item into the mining sector. As indicated above, structural steel accounts for a considerable contribution of cost of new capital projects. It ranges between 6% - 8% of project cost. Therefore, the cost of the steel has a material implication on the financial metrics and viability of new projects.

In addition to the above-mentioned points, MCSA's opposition to the safeguard tariff is underpinned by the following counterarguments to some of the aspects raised by the applicant:

- Objection to the 'unforeseen Developments' rationale informing the application.*
- The outright monopoly held by the applicant(s) in the production of the structural steel products under investigation.*
- The 'entitled' 10% EBITDA margin.*
- The lack of investment in plant and machinery.*

Comments by China Iron and Steel Association and National Employers Association of South Africa (Interested parties) to the Commission's essential facts letter

The interested parties stated that they wish to confirm that they are in agreement with the Commission that the investigation must be terminated based on the facts available to the Commission. The interested parties also requested the Commission to ensure that the termination of the case is expedited as the investigation impacts extremely negatively on the trading environment.

Commission's consideration

The Commission made a holistic consideration of the entire steel value chain taking into account the midstream and the downstream industry and taking the comments received from interested parties during the public interest hearing into consideration on whether the imposition of a safeguard measure will be in

the public interest. The Commission made a final determination within the guidelines of the SGR.

1.6 COMMENTS FROM INTERESTED PARTIES

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

1.7 Development plan

Regulation 21.2 of the SGR provides that:

"[t]he SACU industry shall be required to submit a plan indicating how it will adjust to increase its competitiveness. Such adjustment plan should reach the Commission no later than 60 days after initiation of the investigation in the Government Gazette."

Paragraph (b) of section J to the Application states that "*Should the Commission initiate an investigation, the industry will be required to submit a plan not later than 60 days after initiation of the investigation, indicating how it will adjust to increase its competitiveness.*"

The deadline for submission of the development plan was 18 August 2020. On 24 August 2020, a letter was sent to the Applicant reminding it to submit an adjustment plan as it had failed to do so up to that point, and to provide reasons why the deadline of 18 August 2020 was not adhered to.

The Applicant provided the Commission with the adjustment plan on 07 September 2020.

The Applicant indicated that it provided the Commission with a business rescue plan when it made the Application. It also stated that the business rescue plan

summarises the successful turnaround plan implemented by Highveld's management before it went into business rescue. The Applicant further stated that the purpose of the business rescue plan is to provide for the development and implementation of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of Highveld to continue manufacturing and results in a better return for the company's creditors and/or shareholders than would result from immediate liquidation of the company.

The Applicant stated that in addition to the extensive restructuring mentioned above the Commission requested the Applicant to submit a plan indicating how it plans to adjust to meet import competition. The Applicant stated that at the time of the initiation of the investigation on 19 June 2020 and the request for the adjustment plan on 24 August 2020, South Africa was experiencing a sharp increase in positive COVID-19 cases under lockdown alert level three, where the Applicant personnel was required to work from home.

The Applicant also stated that in the absence of proof of restructuring required by Regulation 1.2(c)(ii) an adjustment plan is required in terms of Regulation 1.2(c)(i) before a definitive safeguard measure can be imposed. Since the SGR do not provide for a timeframe within which a safeguard investigation must be completed, the Commission can make a preliminary determination any time after 27 days from the date of initiation of the investigation. The Commission can then make a final determination any time after 41 days from the date of initiation of the investigation, allowing for the above 27 days and a further 14 days for responses on the preliminary report. The 60 day period allowed for the submission of the adjustment plan, in cases where it is required, therefore allows for the final determination to be made as soon as possible after the initiation of the investigation.

The Applicant further stated that the only party prejudiced by the time it takes to submit the adjustment plan in instances where it is required, is the Applicant, since definitive measures cannot be imposed before the Commission has considered it in its final determination.

Comments by China Iron and Steel Association (CISA)

CISA after accessing the investigation public file stated that there is no record on the public file where the Applicant requested for an extension for the submission of the required adjustment plan, which extension may only have been granted on the basis of Regulation 21.3 of the Safeguard Regulations. In this regard it must be noted that "*good cause*" is defined as relating "... *to an occurrence outside the control of the participating interested party or the Commission and does not include merely citing insufficient time to submit information to the Commission*".

CISA also stated that the Applicant had failed to comply with the requirements of the SGR; the Commission should dismiss this safeguard Application and called on the Commission to terminate its investigation with immediate effect.

Commission's consideration

The Commission noted that the Applicant missed the deadline for the submission of the adjustment plan even though the SGR are clear in terms of time frames when the adjustment plan should be submitted to the Commission and even reminded the Applicant twice that the adjustment plan was outstanding.

The Applicant stating that it submitted a business rescue plan that is not adequate as the plan does not outline how the Applicant will adjust in order for it to be in a position to compete with imports. It should also be borne in mind that the SGR are there for a purpose and the time frames stipulated in the SGR should be adhered to.

Comments by China Iron and Steel Association and National Employers Association of South Africa (Interested parties) on the Commission's preliminary report

The interested parties stated that the Commission made no mention of the fact that there was a late submission of the required adjustment plan, or what the

reason therefore was and that only one party to the Application submitted an adjustment plan. The interested parties stated that this is a crucial issue that needs to be addressed by the Commission indicating that two of the three parties have no inclination to adjust.

The interested parties further stated that they believe and request that notwithstanding the issues raised above that the Commission make a final determination to terminate this investigation and not impose a safeguard duty on structural steel products.

Comments by Embassy of Indonesia to the Commission's essential facts letter

The Embassy of Indonesia stated that they have noted that the domestic industry failed to submit the development plan within the stipulated time frame. According to Safeguard Regulations 21.2, the domestic industry shall be required to submit a plan indicating how it will adjust to increase the competitiveness no later than 60 days after the initiation. Given this safeguard investigation was initiated on the 19 June 2020, the submission of the domestic industry development plan on 7 September 2020 was clearly overdue. The Authority should reject the development plan.

Comments by the Spanish Embassy to the Commission's essential facts letter

The Spanish Embassy stated that they agree with the Commission on its concerns in relation to the industry's failure to present an adjustment plan and therefore to adhere to the provisions of the Safeguard Regulations "it signals either that the industry has no adjustment plan or does not intend to adjust".

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

The Applicant stated that it reiterates its submissions on the development plan and Regulation 1.2 (c): the industry must submit an adjustment / development plan; or submit proof of the restructuring that is undertaken. That sufficient information was provided on the restructuring of the industry, all the processes

undertaken by Highveld were set out and submitted and in the Commission's possession. A development plan was submitted in addition to this. By the time the Commission made its preliminary determination the Commission was in possession of the plan and proof of restructuring. The Commission would also be in possession thereof by the time it makes its final determination.

The Applicant further stated that it concurs with the Commission's finding that the application was properly documented and that, having regard to the above, the alleged late submission of a development plan, should not be required where proof of the restructuring undertaken has been provided, should not in itself be grounds for terminating the investigation. Having regard to the above, the Applicant submitted that the Commission has sufficient grounds upon which to impose the safeguard measures applied for.

Commission's consideration

The Commission considered that the failure of the industry to submit the adjustment plan in the stipulated time frames, signals either that the industry has no adjustment plan or does not intend to adjust should a safeguard measure be imposed. The Commission therefore expressed its concern regarding the industry's failure to adhere to the provisions of the SGR.

The Commission also considered that the absence of a development/adjustment plan does not render an application as being not properly documented thus being ineligible for initiation. The Commission therefore decided that the late submission of the development/adjustment plan is not, on its own, sufficient to warrant termination of this investigation.

1.8 PRELIMINARY DETERMINATION

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

- Events cited can be regarded as unforeseen developments;

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

1.9 Public interest hearing

A public interest hearing was held on 02 December 2020, where interested parties raised public interest issues that the Commission considered prior to making a final determination. The following interested parties made submissions:

- Korea Iron and Steel Association (KOSA);
- FC Dubbelman and Associates on behalf of CISA and NEASA;
- International Steel Fabricators of South Africa;
- XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA (Pty) Ltd and NJR Steel Services;
- Southern African Institute of Steel Construction.

1.10 On 28 January 2021, essential facts letters were sent to all interested parties informing them of the “essential facts” which were being considered by the Commission and inviting comments from interested parties on these “essential facts” being considered.

1.11 Comments on the Commission’s essential facts letters were received from the following interested parties by 11 February 2021:

- FC Dubbelman and Associates on behalf of CISA and NEASA;
- XA on behalf of Allied Steelrode, BSI Steel, Macsteel Services Centres SA (Pty) Ltd and NJR Steel Services;
- Government of Indonesia;
- Embassy of Spain; and

- The Applicant.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

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

2.1.2 Tariff classification

The subject product is imported under the following tariff headings:

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

Comments by China Iron and Steel Association (CISA)

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

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

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

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

to Minister and therefore the duty was only imposed on 4 August 2017, following the commencement of manufacturing by Highveld Steel in April 2017.

Comments by National Employers Association of South Africa (NEASA)

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

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

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

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

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

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

Comments by Korea Iron and Steel Association (KOSA)

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

KOSA further stated that based on the current available information, the present investigation does not satisfy the legal requirements of the Agreement on safeguard, if the Commission nevertheless determines that the continuation of the present investigation is inevitable, KOSA respectfully requests that the scope of the products under investigation be narrowed down in light of the following considerations:

The scope of the present investigation is overly wide, the product under investigation from Korea are of a quality that the domestic industry in South Africa is unable to produce. Certain sizes of H section cannot be produced locally.

Comments by (Siam Yamato Steel) SYS

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

SYS also stated that it had only supplied the material to South Africa from then, which they also had monitored their trade to balance demand and supply not to affect negatively the local industry in South Africa until the import tariff of 10%

imposed since August 2017 which constituted a threat to their competitiveness.

Applicant's response

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

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

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

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

2.1.3 Possible tariff loopholes

The Applicant indicated that an analysis of the import statistics and the tariff sub-headings used to import the subject product indicate that importers are also

using other tariff subheadings as a loophole to import cold-rolled steel products into the SACU. The tariff subheadings are as follows:

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

2.1.4 Production process

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

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

2.2 SACU PRODUCT

2.2.1 Description

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

2.2.2 Production process

Blooms are manufactured by AMSA and transferred to Highveld's structural mill where the subject product is milled and shipped to customers.

a) Melting stage

- There are two primary process routes by which blooms are manufactured:
 - the integrated process, which employs blast furnaces and basic oxygen furnaces (BOFs) as for AMSA, and
 - the non-integrated (or “mini mill”) production processes which utilize an electric arc furnace (EAF) to produce raw steel.
- In both processes, pig iron, ferrous scrap, and/or direct reduced iron (DRI) are charged into BOFs or EAFs.
- In South Africa, nearly all steel for bloom production is refined from ferrous scrap in a BOF, along with other raw materials that may also be added as part of the BOF charge.
- Alloy agents are added to the liquid steel to impart specific properties to finished steel products. The molten steel is poured or tapped from the furnace to a ladle, which is an open-topped, refractory-lined vessel that has an off-centre opening in its bottom is equipped with a nozzle. Meanwhile, the primary steelmaking vessel (either EAF or BOF) may be charged with new materials to begin another refining.
- Molten steel typically is further treated in a ladle metallurgy station, where its chemistry is refined to give the steel those properties required for specific applications.
- At the ladle metallurgy, or secondary steel making, station the chemical content (particularly that of carbon and sulphur) is adjusted and alloying agents may be added.
- The steel may be degassed (eliminating oxygen and hydrogen) at low pressures.
- Ladle metallurgy stations are equipped with electric arc power to adjust the temperature of the molten steel for optimum casting and to allow it to serve as a holding reservoir for the tundish.

b) Casting stage

- Once molten steel with the requisite properties has been produced, it is cast into a form that can enter the rolling process.

- Continuous (strand) casting is the method primarily used in South Africa.
- In strand casting, the ladle containing molten steel is transferred from the ladle metallurgy station to the caster and the molten steel is poured at a controlled rate into a refractory-lined tundish (reservoir dam), which in turn controls the rate of flow of the molten steel into the moulds at the top of the caster.
- The tundish may have a special design or employ electromagnetic stirring to ensure homogeneity of the steel.
- The strand caster is designed to produce blooms/billets in the desired cross-sectional dimensions, based on the dimensions of the sections and the design of the rolling mill.
- Blooms/Billets may be sent directly (“hot-charged”) into the rolling mill or, depending upon the rolling mill's schedule, sent to a storage yard. While in storage, blooms/billets may be inspected and subjected to one or more conditioning operations (e.g. grinding or turning) to prepare them for hot rolling.

2.2.3 Application or end use

The subject product is intermediary product in the fabrication, construction and mining industries.

2.2.4 Categories of users

- Fabrication industries
- Construction industries
- Mining industries

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, other than a like product, that competes directly with the product under investigation.

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

	Imported product	SACU product
Tariff Headings	7216.31, 7216.32, 7216.33, 7216.40, 7216.50 and 7228.70	7216.31, 7216.32, 7216.33, 7216.40, 7216.50 and 7228.70
Raw materials	<ul style="list-style-type: none"> • Oxygen • Ferro alloys • Iron ore • Dolomitic Lime • Coal • Anthracite • Electricity 	The inputs used by AMSA to produce the blooms and billets are: <ul style="list-style-type: none"> • Oxygen • Ferro alloys • Iron ore • Dolomitic Lime • Coal • Anthracite • Electricity
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	The imported product is used in the following industries: <ul style="list-style-type: none"> • Fabrication industries • Construction industries • Mining industries 	The SACU product is used in the following industries: <ul style="list-style-type: none"> • Fabrication industries • Construction industries • Mining industries

Comments by the China Iron and Steel Association (CISA)

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

CISA also stated that it is given that unlike anti-dumping and anti-subsidy investigations, the assessment in a safeguard investigation is not limited to “like products” (a product which is identical, meaning- alike in all aspects, to the imported product or which has characteristics closely resembling those of the

imported product), but covers also directly competing products. In this regard, it must be recorded that directly competing products are seen as products that can essentially be substituted – one for the other, meaning products which are suitable for the same purpose and accordingly are basically interchangeable.

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

Comments by Korea Iron and Steel Association (KOSA)

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

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

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

specifically for the like and directly competitive products only.

Applicant's response

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

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

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

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

Commission's consideration

The Commission found that the SACU manufactured products and the imported products are like products for the purpose of this investigation. The inclusion of products falling under 7228.70 is in order to prevent circumvention from taking

place, since it will be impossible for the South African Revenue Service (SARS) to identify the difference in the products at the ports of entry.

Comments by China Iron and Steel Association and National Employers Association of South Africa on the Commission's preliminary report

The interested parties stated that they wish to reiterate that the five (5) different tariff subheadings that are provided under HS 7216, and represent the unique products that are not directly competing products as they cannot be substituted for the other, as these five product types are not suitable for the same purpose and accordingly not interchangeable. The interested parties also stated that the Applicants should have made clear differentiated presentations and arguments to the effect for each of the five product types with regard to serious injury as well as imports. The Applicants' grouping of these products as a collective "product" and the Commission accepting it as such, prevents a rational injury assessment, as required by the Safeguard Regulations per tariff subheading for each product type.

The interested parties further stated that they have accepted that even though the Commission can, for the purpose of comparison regard the import products as like products to the SACU produced products, this should be done on the basis of qualification per each tariff subheading classifiable under HS 7216 and any grouped presentation or assessment is contested as being not in compliance with the Safeguard Regulations.

According to the goods classifiable under tariff subheading HS 7228.70 (Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel) were not identified as either like or substitute products by the Applicants. This accordingly refutes the Applicants' suggestion that goods classifiable under tariff subheading HS 7228.70, should be considered as like or substitute products.

Comments by the Applicant on the Commission's preliminary report

The Applicant stated that comments by NEASA and XA on the report address tariff subheading 7228.70 that were addressed by the Applicant and

summarised on the report under Applicants' response. To the extent that any products are not produced in South Africa, the importers can apply to the Commission for the introduction of rebate items.

The Applicant stated that it has addressed the impact of the surge in imports in 2014 and 2015 that led to Highveld ceasing production and the effect of imports since it commenced the sale of the products in 2017 above. Safeguard measures apply to all imports, the level of imports from South Korea is irrelevant according to the Applicant. The Applicant stated that KOSA submits no reasons why the investigation does not comply with the Safeguards Agreement and how the scope of the products should be narrowed down.

The Applicant stated that the subject products are structural steel products classified under tariff heading 72.16. The Applicant stated that it can produce all the products classified under tariff heading 72.16 and competes against all imported products under this tariff heading. According to the Applicant the application is not brought on the basis that the products imported under the different tariff subheadings are directly competing products with one another.

The Applicant stated that the comments by KOSA on the report are denied. Any imported product classified in the tariff subheadings of tariff heading 72.16 are like products to those it produces and directly competes with the like products it produces. The Applicant also stated that greater efficiency of the imported product, even if it was the case, that is denied, is not a criterion for considering like products. The Applicant stated that "structural steel products" is the narrowest group of products in which structural steel products fall and are classified within the tariff subheading 72.16.

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

3. INDUSTRY STANDING

3.1 DOMESTIC INDUSTRY

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

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

4. UNFORESEEN DEVELOPMENTS

4.1 Requirements of Article XIX of GATT 1994

Article XIX of the GATT 1994 provides as follows:

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

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

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

4.2 Information submitted by the Applicant

The Applicant stated that in the safeguard investigations on “certain flat hot rolled” and “cold rolled” steel products the Commission found the following to be sufficient unforeseen developments contemplated in Article XIX of GATT 1994, which led to increased imports of the subject product:

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

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

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

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

The Applicant indicated that before turning to each circumstance, it should be noted at

the outset that although much of the data below relates to crude steel produced in furnaces, crude steel is the feeding stock of mills to produce various steel products such as long or flat products and, for the Applicant's purposes, structural steel.

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

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

Commission's consideration

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

Comments by National Employers Association of South Africa (NEASA)

NEASA stated that the Applicant pointed out that in the Commission Reports 511 and 555, much of the data relates to crude steel, and the Applicant's comments concerning events which were unforeseen during the Uruguay Round rely on crude steel produced at furnaces, which is the feeding stock for mills to produce various steel products.

NEASA also stated that a blanket approach that applies the investigation rationale of Commission Reports 551 and 555, which focused on "certain flat hot rolled and cold

rolled steel products,” to the current investigation is flawed and opportunistic. Hot rolled and cold rolled steel are classified as primary input product or raw material that are positioned at the beginning of the steel production process. The downstream manufacturing process and products concerned that use these raw materials are separate from the primary production and diverse in nature, with structural steel production being one of the downstream categories.

NEASA stated that in reliance on the World Steel Association publication “World Steel figures 2018” as per Annexure E.1 of the application, a narrative is set of a gradual increase in crude steel production from 1950 to 1980. According to NEASA, the Applicant incorrectly states that 1980 to 2000, was the period when the Uruguay Round was held and during which no significant increase in the production of crude steel was experienced. NEASA indicated that this is not correct, and referred to data from Annexure E.1 which they interpret as follows: The production of crude steel rose from 1950 to 1980 with 279.37 percent, for the period 1950 to 1995 with 298.41 percent and for the period of 1980 to 2000 with 18.55 percent. The growth from 1950 to 2000 was 349.74 percent. Over the period 2000 to 2017 of the crude steel production increased by 103.53 percent.

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

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

XA stated that in Argentina - Footwear, the WTO Appellate Body Article XIX of GATT and the Safeguards Agreement must be read as representing an inseparable package of rights and disciplines which have to be considered in conjunction. According to XA In US – Lamb, the Appellate Body then held that Article XIX:1 (a) of the GATT 1994 requires that unforeseen developments must be demonstrated as a matter of fact for

a safeguard measure to be applied and the existence of unforeseen developments is in our view (the Appellate body) a pertinent issue of fact and law under article 3.1.

XA also stated that in US - Steel Safeguards, the Appellate Body held as follows: “it is evident, therefore that not just any development that is “unforeseen” will do, to trigger the right to apply a safeguard measure, the development must be as to result in increased imports of the product “such product: that is subject to the safeguard. Moreover, any product, as Article XIX:1(a) provides, may, potentially, be subject to that safeguard measure, provided that the alleged unforeseen development results in increased imports of that specific product (such product). XA stated that they agree with the Panel that, with respect to the specific products subject to the respective determinations, the competent authorities are required by Article XIX:1(a) of the GATT to demonstrate that the unforeseen development “identified have resulted in increased imports of the specific products subject to each safeguard measure at issue.

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

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

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

Barnes stated that unforeseen development is defined as an event or chain of events that was unforeseen at the time the WTO Member negotiated its concessions. Barnes

submitted that none of the developments mentioned in the application can be said to have been unforeseen.

Barnes stated that none of the events described in ITAC's publication notice can be described as unforeseen. Barnes commented that the production of crude steel production rose from 1950 to 2005 by more than 500 percent to put this in a better perspective, crude steel production increased from 1950 to 1995 with 298% and from 1995 to 2014 only with 121%. In their view, the increase in crude steel production was already known and foreseeable between 1950 and 1995 and hence, was apparent during the Uruguay Round negotiations in 1986-1994.

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

Comments by China Iron and Steel Association and National Employers Association of South Africa on the Commission preliminary report

The interested parties indicated that the significant increase in crude steel production, which occurred during the period whilst the Uruguay Round was held, does not qualify as an unforeseen development. The Commission has been presented with evidence by NEASA that there has been an ongoing increase in the production of crude steel from 1950 to 1980 (279.37 percent), 1950 to 1995 (298.41 percent) and 1980 to 2000 (18.55 percent). The crude steel production growth from 1950 to 2000 was 349.74 percent and for 2000 to 2017, the increase was 103.53 percent.

Therefore, according to the interested parties, the negotiators at the WTO would have been aware of the magnitude of the growth of the steel production capacity, and thus the increase capacity and production should have been, and was foreseen. The average increase per year over the period 1950 to 1980 was 9.31 percent, for 1950 to 2000 it was 6.99 percent and for 2000 to 2017, it was 6.09 percent.

Comments by the Applicant on the Commission's preliminary report

The Applicant stated that Crude steel is the feedstock of all steel products. Whether the crude steel ends up in flat rolled products, profiles or structural steel products, is

irrelevant since the production capacity and actual production of crude steel has a direct impact on the production, sales and prices of steel products. Furnaces must run at maximum capacity to be efficient and an offset must be found for the crude steel through the production of flat rolled products, profiles or structural steel products.

The Applicant indicated that the Uruguay Round was launched in September 1986. Two years later, in December 1988, a meeting was held to assess the progress at the round's half-way point. The round was supposed to end when Ministers met in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The draft "Final Act" was put on the table in Geneva in December 1991. The negotiations continued over the next 2 years and on 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The Uruguay Round of negotiations therefore did take place in the period 1980 to 2000. In the 30 years between 1950 and 1980 crude steel production increased by 279%. Towards the end of the 20-year period between 1980 and 2000, the period in which the Uruguay Round of negotiations took place, crude steel production increased by less than 19%. The Uruguay Round of negotiators could therefore not have foreseen in 1994 that crude steel production would increase by 104% in less than 20 years from 2000 to 2017. This is also the period over which imports of structural steel into South Africa surged twice, by 101% from Q2 (2014) to Q3 (2014), and 155% from Q4 (2014) to Q1 (2015).

The Applicant further stated that it is therefore evident that the increase in crude steel production by 104% between 2000 to 2017 resulted in an increase of imports of structural steel into South Africa of 101% from Q2 (2014) to Q3 (2014), and 155% from Q4 (2014) to Q1 (2015). Over the period 2010 to 2015, imports of structural steel was customs duty free because of a decision by the South African Government not to offer any protection to its steel industry. Highveld therefore had to meet import prices in order to secure sales. Highveld's prices therefore followed international pricing trends, selling at a loss. This is also the reason why Highveld experienced significant losses.

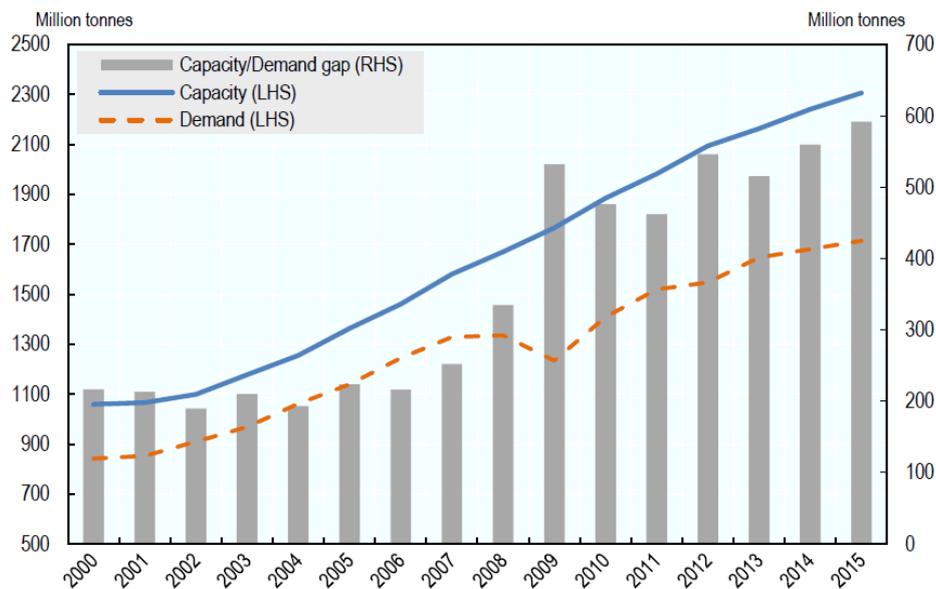
The fact that the Chinese Government took steps to reduce capacity of crude steel production supports the fact that crude steel production has a direct impact on the production, sales and prices of all steel products. This was evidently not foreseen at the time of the Uruguay Round. The Chinese Government had the insight to realise that the trend will result in an oversupply of steel products for which alternative markets at much lower prices would have to be found.

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

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

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

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



- **Government interventions are contributing to global excess capacity.** Specific concerns related to government steel policies include continued government subsidies (notably subsidies for the creation of new capacity or the maintenance of inefficient capacities) and continued approvals for new steel facilities. Governments have also noted that trade related measures, constraints on foreign investment, and the activities of government financial agencies are contributing to global excess capacity and creating difficulties for the industry in addition to weak market conditions.

 - Canada found imports of structural steel products from China, Korea and Spain caused injury to its industry in 2017.

- **Excess capacity is hurting the global steel industry.** Excessive levels of steelmaking capacity have important implications for the steel industry, resulting in over-supply, low prices, weak profitability, bankruptcies and localised job losses. Given the global nature of the industry, excess capacity in one region can displace production in other regions, thus harming producers in those markets and creating risks for trade actions and government interventions to protect domestic industries. It can also lead to wasteful energy use and thus have negative environmental impacts.

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

- **Record steel exports**

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

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

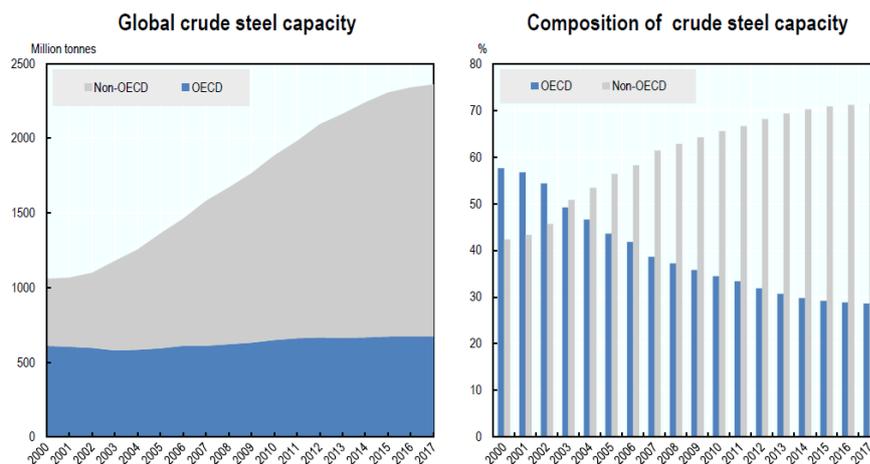
The Applicant stated that the OECD paper referred to above examine the link between excess capacity and profitability. The financial performance of the industry is worse now than it was during the global steel crises of the late 1990s, in large part due to the significant excess capacity that exists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

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

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

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

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



Source: OECD Secretariat.

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

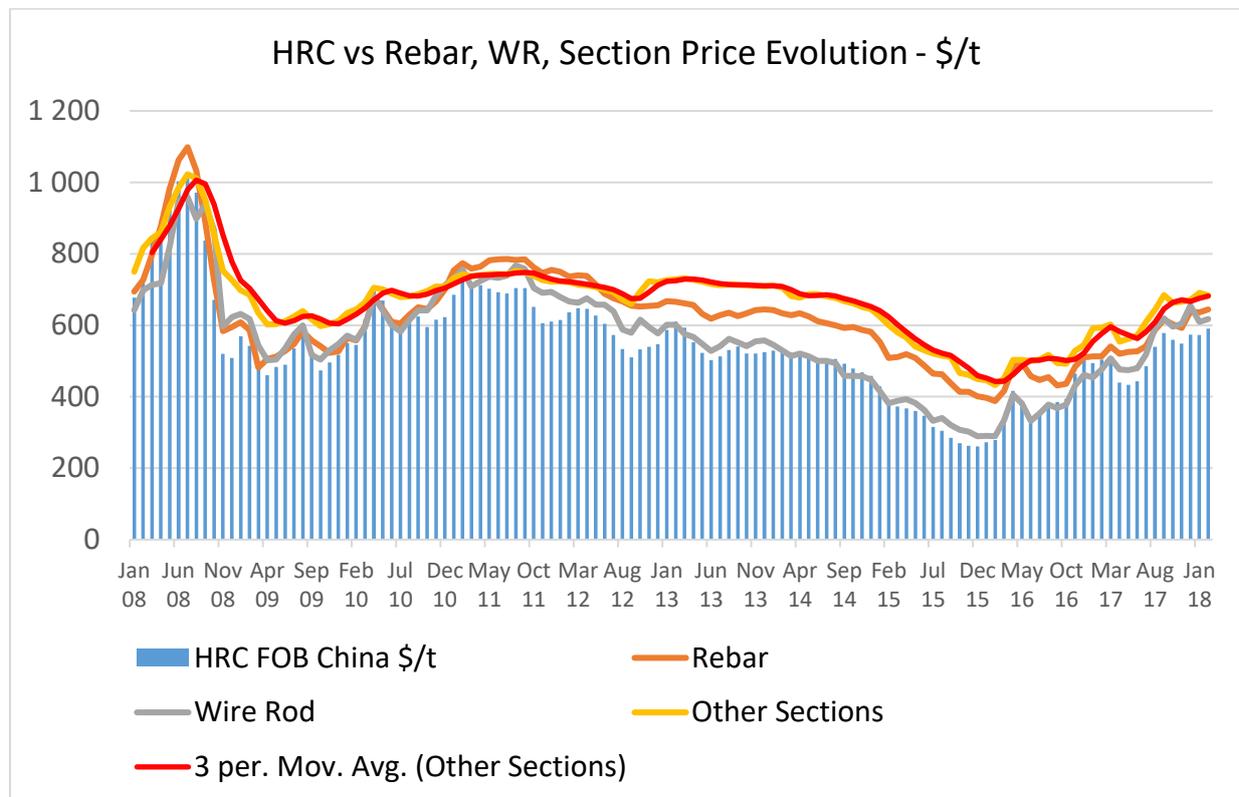
- **Contracting markets for the oversupply of steel**

The Applicant stated that eight steel associations from Asia, the United States of America and Europe said in a joint statement in June 2015 that all regions were

“suffering from a dramatic increase in unfair steel imports that is fueled by massive global overcapacity.” As a result, Europe, the United States of America and Asia are progressively taking trade remedy actions and increasing general customs duties, so much so that it is expected that the increase in imports already experienced in the SACU over the last years will increase dramatically as other markets for these products are being closed or severely restricted.

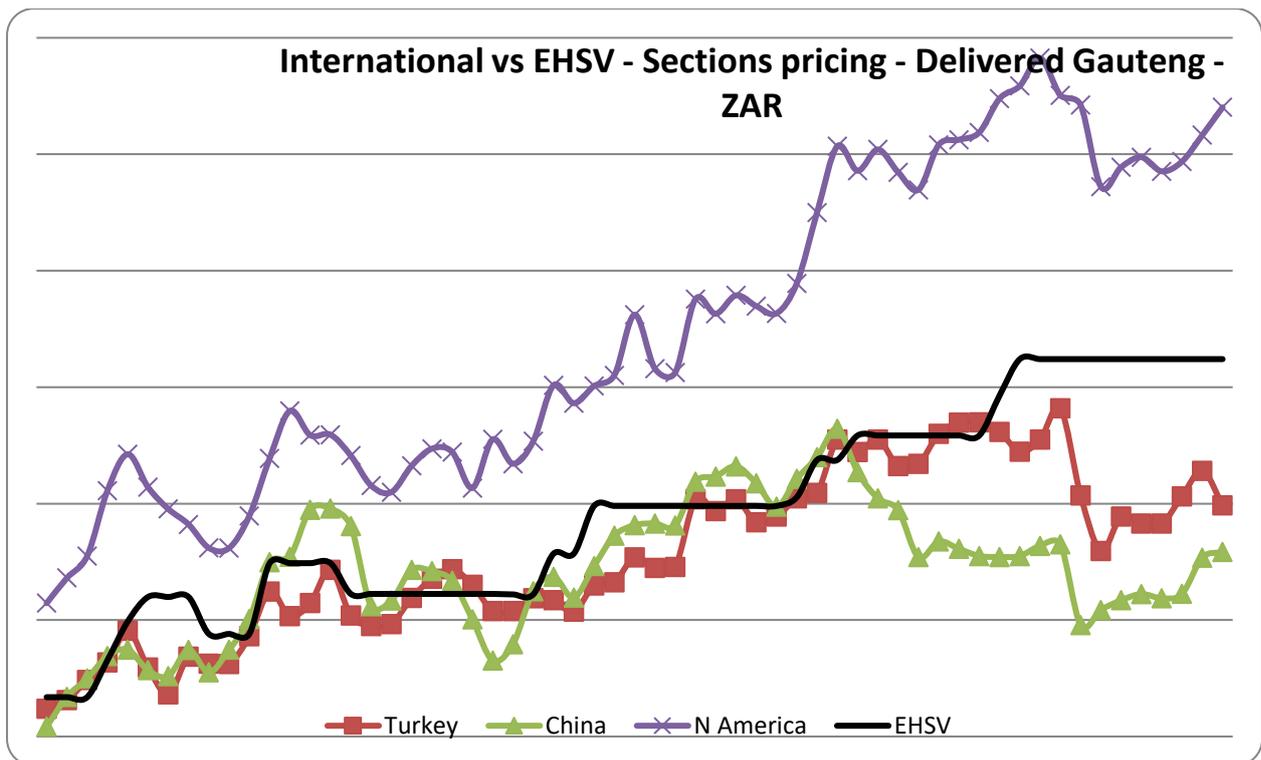
The Applicant also stated that on 12 February 2016 the European Union Trade Commissioner Cecilia Malmström announced in a press release, that: "The steel sector currently faces a range of challenges. EU trade defence instruments cannot on their own solve all those problems, but the European Commission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

Structural Steel prices



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

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



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

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

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

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

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

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

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

Applicant's conclusion

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

Comments by International Steel Fabricators (ISF)

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

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

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

XA stated that it has been shown that in order to find unforeseen development, it is incumbent on the applicant to submit information as to which unforeseen development were foreseen, how the actual developments differed from the foreseen developments, that these developments were unforeseen, that is, that they could and should not reasonably have been foreseen, that the information must be objective and relate to the specific product under investigation. It has been further shown that the applicant has failed to show that the developments it complains of were unforeseen, for instance as growth in the industry between 1995 and 2017 was in line with the level

of growth in the 24-year period to 1994, that allegations of additional investments are countered by its own information showing active step undertaken by the Chinese government to reduce capacity and that there is no objective information relating to the subject product at all.

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

XA stated that the Applicant has failed to:

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

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

Comments by Minerals Council of South Africa (MCSA)

MCSA acknowledged that during the Uruguay Round the negotiators did not foresee the:

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

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

While MCSA acknowledged the accuracy and factual nature of these developments, it contends that these developments did not occur as sudden events, but rather over an extended period.

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

XA stated that the graph shows that there has been a virtually constant increase in capacity since at least 2003, and no sudden surge in capacity, which points to the lack of unforeseen developments. According to XA, Annexure E1 to the application (World Steel Brochure, Pages 14-15) contradicts the information in the graph as it indicates that between 2007 and 2017 the oversupply decreased by 19%. Thus XA contends that the Applicant submitted contradicting information on which no reliance can be placed. XA also stated that there is no objective evidence in the application to show that there was an “unprecedented steep rate increase in steel production capacity ([which] more than doubled since 1994) to support growing construction and manufacturing activity as well as build infrastructure particularly in emerging economies.”

Comments by China Iron and Steel Association and National Employers Association of South Africa on the Commission’s preliminary report

The interested parties stated that the Applicant’s allegations of a global oversupply of steel and of the defensive trade actions taken by major steel markets in response thereto are not relevant to the current investigation which concerns structural steel. They state further that there is no support for the Applicant’s allegation that the trade measures imposed by the various countries are as a result of unforeseen developments, and that the said measures had the effect of contracting the global demand for steel, which exacerbated the problem of increased imports into SACU.

Commission's consideration

Obligations incurred under the GATT 1994:

When South Africa became a member of the WTO, it made certain commitments with regard to its tariff structure. South Africa committed to binding the ordinary customs duty on the imported products of cold-rolled steel products at 10% ad valorem. The effect of these obligations was that the industry underwent a restructuring which saw the state-owned entity, Iscor Ltd, (now AMSA) unbundled and privatised and the old pricing model reviewed to improve the competitiveness of the steel industry. As such various measures have been taken to encourage competitiveness and sustainability of the steel industry.

Unforeseen developments:

In the Commission's view, the unforeseen developments contemplated in Article XIX of GATT 1994 are the following:

The increase in the production capacity of liquid steel and the subject product at the levels stated could not have been foreseen prior to 1994. This led to increased production which filtered through the steel producing markets around the world. The increase in production is especially pronounced in China, which is both a large 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 worldwide phenomenon, as producers and consumers of the subject product reduced their consumption of the subject product, while production continued. This led to steel and the subject product filtering throughout the world market as exports from producing countries, such as China, increased. This is evident from the massive exports of the steel and subject product by China. In response, steel producing economies are imposing or considering trade remedies measures to deal with this global oversupply of steel which is affecting their markets.

Therefore, the unforeseen development considered by the Commission is that it could not have been foreseen back in 1994 that world steel production (including the subject

product) would have increased to levels reported. This increase led to an oversupply of steel throughout the world. The oversupply is compounded by contracting demand in steel (including the subject product) all over the world, thus resulting in steel producing economies looking for other markets or exports for their steel (including the subject product).

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

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

5. SURGE OF IMPORTS

5.1 Import volumes

A surge in imports exists when the alleged increase in imports is recent enough, sudden enough, sharp enough and significant enough.

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

Table 5.1: Import volumes (Kg)

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

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

Comments by European Commission

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

“Such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten

to cause serious injury to the domestic industry that produces like or directly competitive products. In addition, the European Commission goes on to state that WTO jurisprudence “requires that the increase in imports must have been recent enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury”.

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

The European Commission indicated that the WTO jurisprudence has established that a determination of whether there is an increase of imports cannot be made merely by comparing the end points of the period of investigation - in cases where an examination does not demonstrate, for instance, a clear and uninterrupted upward trend in imports volumes, a simple end –point –to -end-point analysis could easily be manipulated to lead to different results, depending on the choice of end point. The European Commission further indicated that a demonstration of any increase in imports between two points in time is not sufficient to demonstrate increased imports for purposes of Articles XIX and 2.1 - rather competent authorities are required to examine the trends in imports over the entire period of investigation.

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

Comments by Korea Iron and Steel Association (KOSA)

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

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

KOSA further indicated that safeguards can only be imposed when there are grounds to determine the following: (1) increase of imports, (2) serious injury, (3) causal link between the increased imports and serious injury. KOSA notes that the imports of the subject product show a rapid decrease during the recent three years of the period of investigation - therefore the application does not meet the first requirements of the WTO Agreement on Safeguard, which is increased imports.

KOSA stated that: in 2017, AMSA took over a Highveld Structural Mill in South Africa and operations resumed; at the same time a tariff of 10% was imposed on imported steel sections and imports declined sharply for three consecutive years; production in South Africa has increased significantly while imports have dropped dramatically.

Comments by Barnes Group of Companies

Barnes noted that the Applicant refers to increased quantities of imports and serious injury for the period of 01 January 2014 to 31 December 2019.

Barnes indicated that the application measures only the increase in imports relative to 2014 despite the very high variation year-on-year - for example, 2018 saw a 41% total decrease in the value of imports relative to 2017. Barnes points out that the 101% increase referred to on page 38 of the application relates to volume increase between 2014/15, but ignores the 33% decrease between 2017/16 or the 57% decrease between 2017/18.

Barnes concludes, based on the above, that the application does not meet the requirements set out in the ADR for the imposition of a safeguard measure, in particular, the requirement regarding a rapid increase in imports.

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

XA stated that a “safeguard measure may only be imposed in response to a rapid and significant increase in imports of a product as a result of an unforeseen development”.

XA went on to state that since the imports of the subject product increased in 2015 and 2016 as a result of the closure of the domestic industry (self-inflicted injury), there has been no surge of imports and no safeguard measures should be imposed. XA contends that the 2015 and 2016 information should be disregarded, and that any safeguard measure should consider information from 2017 when there was domestic production.

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

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

XA disagreed with the Applicant and stated that imports increased because the domestic industry could not supply. According to XA, the information submitted by the Applicant shows that there was a wide variety of causes for Highveld’s injury and virtually nowhere is any reference made to imports; Highveld financial statements for 2014 indicate a variety of reasons for its poor performance but does not mention imports, while the business rescue plan only refers to imports in passing. XA points out that the Applicant itself concedes that the SACU industry experienced significant losses in 2014, which is a year before imports increased. XA states that the losses

increased in the first half of 2015, which forced Highveld into business rescue - when Highveld stopped production, there was no option but to import the structural steel, which is why 2015 shows a significant increase in imports of the subject product. In 2016, there was no domestic production, which, according to XA, meant that all local requirements had to be imported. XA states that in 2017, when AMSA restarted the domestic industry the second quarter, imports immediately started to decrease again; In 2018, imports decreased further and AMSA gained significant market share, despite the established links converters had with their oversea suppliers; and in 2019, imports decreased even further, showing that imports had decreased for 3 years in a row.

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

Comments by China Iron and Steel Association and National Employers Association of South Africa on the Commission’s preliminary report

The interested parties stated that there was no surge in imports as alleged by the Applicants. They referred to Article 4(1) (a) of the Safeguards Agreement which stipulates that “serious injury” shall be understood to mean a significant overall impairment in the position of a domestic industry” which does not apply to the Commission’s investigation at hand.

Comments by Korea Iron and Steel Association on the Commission’s preliminary report

KOSA referred to its statement regarding the initiation of safeguard measures on 08 July 2020 that the safeguard measures can be applied only when the following three requirements are met; (1) increased imports, (2) serious injury, and (3) causal link between the increased imports and the serious injury. KOSA stated that these safeguard requirements were not fully satisfied, and requested the Commission to terminate the safeguard investigation accordingly.

Comments by European Commission on the Commission’s preliminary report

The European Commission stated that imports increased during the investigation

period (2014-2019) but in fact, the “sharp” increase in imports took place in 2015 and 2016, which cannot be considered as “recent enough”, as required by WTO jurisprudence. It states that according to the data disclosed in the industry complaint and the Commission’s preliminary determination, imports fell in 2017, 2018 and 2019, i.e. the most recent period. Consequently, the import pattern does not, according to the European Commission, meet the WTO requirements for the imposition of safeguard measures.

The European Commission continues and makes the following points:

- *The increase in the volume of imports in 2015 and 2016 was the consequence of a complete shut-down of domestic production and therefore it could not harm the domestic industry. Since local production resumed, imports decreased significantly and continuously while the domestic industry sales increased over the period analysed. Therefore, it is not possible to establish a causal link between increased imports and injury to the domestic industry and the causes of injury should be attributed to other factors.*

- *In view of the above elements, the only possible conclusion is the termination of the investigation. Indeed, the Preliminary Determination included the following considerations made by the investigating authorities:*
 - *“The requirements set out by the World Trade Organization (WTO) and the Amended Safeguard Regulations (SGR) with regard to a surge in imports, are therefore not met”*
 - *“(…) the injury experienced by the Applicant can be attributed to factors other than the increase in imports and these factors sufficiently detract from the causal link between the imports and the injury experienced by the industry.”*

Based on the above considerations, and in compliance with the WTO rules and jurisprudence, the imposition of safeguard measures would, according to the European Commission, not be warranted. The European Commission called for the termination of the investigation without imposition of measures, which in its view would be in full compliance with the SACU authorities’ WTO obligations.

Comments by the Applicant on the Commission's preliminary report

The Applicant commented as follows:

- *the surge occurred from Q4(2014) to Q1(2015) when imports surged by 155% whilst Highveld's sales decreased by 26%. In 2018 and 2019 AMSA had full years of production yet its performance was still below that of Highveld's in 2014. In both 2018 and 2019, imports were still higher than the levels of 2014.*
- *the Commission found that the Applicant suffered serious injury over the period January 2014 to December 2019. This rebuts the comments by XA and by the European Commission on the report that seems to suggest that the Applicant's market share is indicative that they suffered no material injury over the period 2017 to 2018.*
- *that the year 2017 cannot be used as a base year to assess AMSA's performance since it commenced production in 2017, which does not represent a full year's production. AMSA's sales in 2018 and 2019 are less than those of Highveld in 2014, and 2017 sales are equal to those of Highveld in 2015 when Highveld ceased production in July that year.*
- *they disagree with the European Commission's contention that the decrease in imports after the surge indicates that the Applicant did not suffer injury and that the surge was not the cause of the injury. The SGR require an assessment of a surge in imports and whether such surge has caused injury. This is the case with Highveld - it entered into business rescue and ceased production as a result of the surge in imports. AMSA is in no better position than what Highveld was in in 2014 whilst imports were still at higher levels in 2018 and 2019 than in 2014, before the surge that led to Highveld's demise.*

Comments by the Government of Indonesia to the Commission's essential facts letter

The Government of Indonesia commented as follows:

- *Article 2.1 of the Safeguards Agreement indicates that the surge of imports constitutes one of the major requirements for the application of safeguard measures.*
- *In light of the statement that the import trend showed no indication of surge of imports of the product under consideration into South Africa, the Government of Indonesia is of the view that a very substantial condition has not been met.*
- *Consequently, any alleged injury to the SACU industry cannot be attributed to imports of the product under consideration.*

Commission's consideration

According to the information provided by the Applicant, the surge of imports took place in the years 2014– 2015. Highveld ceased production in July 2015. Highveld resumed production in March 2017 and sales in April 2017 under its manufacturing agreement with AMSA. The increase in imports in 2015 and 2016 was as a result of unavailability of domestically produced structural steel. After resuming sales in April 2017 the total imports decreased as follows: i) 33 percent by December 2017; ii) 57 percent by December 2018; and 11% in 2019.

The Commission noted therefore that the volume of imports has declined continuously and significantly during each of the most recent years of the period, although the level of imports continued to be at a level just higher than that of 2014.

Comments received with regard to Article 9.1 of the Safeguards Agreement

Article 9.1 of the Safeguards Agreement stipulates, "Safeguard measures shall not be applied against a product originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed 3 per cent". Various interested parties made representations on their share of imports into SACU as more fully set out below.

Comments by China Iron and Steel Association

The China Iron and Steel Association (CISA) commented as follows:

- *Highveld ceased manufacturing the subject product between July 2015 and April 2017. As a result, the customers of Highveld that required the subject product, had to import all their needs over this period. It is for this reason that the Commission did not increase customs duties as had been applied for by the SACU industry, but deferred the imposition as the duties would “have had an unnecessary cost-raising effect”.*
- *Imports naturally increased during this period when no domestic industry existed.*
- *Article 9.1 of the Safeguards Agreement stipulates that: “Safeguard measures shall not be applied against a product originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed 3 per cent”. China, as a developing country, must be assessed on the basis that its share of imports of the subject product does not exceed 3 percent and should be exempted from the proposed safeguard duty.*
- *The Panel in the Dominican Republic – Safeguards Measures on the imports of Polypropylene Bags and Tubular Fabric – Final report of the Panel WT/DS415/R WT/DS416/R, WT/DS417/R, WT/DS418/R - held that “Members which apply safeguards measures are obliged to adopt all reasonable measures available to them to exclude all developing countries that meet the requirements in article 9.1 of the Agreement on Safeguards.*
- *Based on the SARS import data, Chinese share of imports for 2019 was 3 percent. Accordingly, China submits that consistent with Article 9.1 of the safeguards Agreement it qualifies for exemption, should duties be imposed.*

Comments by the Government of Chinese Taipei

Chinese Taipei Commented as follows:

- *imports of the iron or non-alloy steel products under the investigation between 2014 to 2019 from Chinese Taipei to South Africa were consistently less than three percent. Pursuant to Article 9.1 of the Safeguards Agreement, safeguards measures shall not be applied against products originating in a developing country member as long as its share of imports of the subject product in the importing member does not exceed the three percent (de minimis).*

- *thus, should final safeguard measures be imposed on the products concerned in this case, Chinese Taipei should be exempted.*

Comments by the Government of Indonesia

The Government of Indonesia commented as follows:

- *There were no exports of the subject product from Indonesia to South Africa.*
- *Therefore, on the basis of Article 9.1 of the WTO Safeguards Agreement the Commission should exempt Indonesia from any safeguard measures it may recommend.*

Commission's consideration

Article 9.1 of the Safeguards Agreement provides that safeguards measures shall not be applied against products originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed the three percent (de minimis), provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 percent of total imports of the product concerned. The Commission noted the comments by developing countries and agreed that a safeguard measure, if any, shall not be applied to imports from those countries that meet the requirements of Article 9.1 of the Safeguards Agreement.

5.2 Increased imports

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

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

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

December 2019.

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

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

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

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

Comments by Applicant on the Commission's preliminary report

The Applicant stated that Regulation 1.2 of the SGR provides that a definitive safeguard measure may be applied where the Commission finds that the product under investigation is being imported into the SACU in such increased quantities, absolute and relative to SACU production, and under such conditions as to cause or threaten to cause serious injury to the SACU industry. Regulation 8.3 further provides that in determining serious injury or a threat thereof to the SACU industry the Commission shall consider the rate and volume of the increase in imports of the product concerned in absolute terms; or relative to the production and demand in SACU.

The Applicant stated that the above regulations require the Commission to assess the increased imports in absolute terms and / or relative to the production and demand in SACU. It states that the determinations made on the report only relate to an analysis of the imports in absolute terms. According to the Applicant, the Commission is required to also consider the imports relative

to production and demand. The Applicant argued that a decision that imports have not increased in absolute terms in an “end-period-to-end-period” does not necessarily relate to a negative finding on a surge in imports.

According to the Applicant the Commission still has to consider the surge in imports relative to production and demand. If the Commission finds that there was no surge in imports in absolute terms but that there was a surge relative to production and demand, the Commission must make a finding that there was a surge in imports and may still impose safeguard measures.

Commission’s consideration

The Commission did in fact consider imports relative to production for purposes of its preliminary determination. Further, the Commission’s analysis is not made on a quarterly basis as the Commission seeks to ensure a fair, objective analysis consistent with the SGR as read with the Safeguards Agreement.

Although the Applicant is correct in stating that the surge took place in 2014 - 2015 when analyzing the information for the period of investigation from 2014 to 2015, at the end of 2017, the imports as a percentage of output was 151%. The imports decreased significantly after the Applicant resumed production in March 2017 and the information above indicates that, as a percentage of the Applicant’s output, imports represented 37% in 2018 and 49% in 2019. The increase in 2019 was despite a further decrease in imports and a result of a reduction in production by the Applicant.

An end-period-to-end-period comparison shows that import levels have almost returned to their 2014 level, being 13 percent higher than the 2014 levels. The trend of imports in the post-surge period shows a continuous and significant decline. The decrease post 2016 has been ongoing and this intervening decrease is nearly equal to the initial increase. This type of trend led the Panel in Argentina - Footwear (EC) to hold that, “[w]here ... the volume of imports has declined continuously and significantly during each of the most recent years of the period, more than a ‘temporary’ reversal of an increase has taken place”.

Comments by Applicant on the Commission's essential facts letter

The Applicant stated that Regulation 1.2(a) of the SGR provide that a definitive general safeguard measure may be applied only where:

- as a result of unforeseen developments; and*
- as a result of the effect of the obligations incurred by the Republic (or SACU) under the WTO;*
- the product under investigation is being imported into the Common Customs Area of SACU in such increased quantities, absolute or relative to SACU production;*
- under such conditions as to cause or threaten to cause;*
- serious injury to the SACU industry.*

Regulation 1.2(a) therefore has five parts, set out in the five bullet points above, that the Commission must consider before it applies definitive safeguard measures.

The Applicant stated that the Commission found that four of the above requirements are present, i.e.:

- the product under investigation is being imported into the Common Customs Area of SACU in such increased quantities, and*
- the SACU industry experienced serious injury, and*
- as a result of unforeseen developments, and*
- the effect of the obligations incurred by the Republic under the World Trade Organization.*

The Applicant went on to state as follows:

- the Commission determined that the increased quantities of the imported product did not cause the injury.*
- Regulation 1.2(a) provides that in its finding on whether or not the imports increased, the Commission must consider it in absolute terms and relative to SACU production.*

- *the factors that the Commission must consider in determining whether the Applicant suffered serious injury are set out in Regulation 8.3, and include the rate and volume of the increase in imports in absolute terms or relative to the production and demand in SACU.*
- *an analysis of the imports in absolute and relative terms is therefore a requirement when considering the increase in imports, and the serious injury suffered by the Applicant.*
- *it did not confuse the requirements of a finding on “surge in imports” with the requirements for a finding of serious injury.*
- *its interpretation is supported by WTO jurisprudence. In this regard, the Applicant referred to the WTO case of US – Line Pipe WT/DS202/AB/R. In this case, the Panel faced the question whether the finding of increased imports can be maintained in light of a decline in absolute imports during part of the investigation period. The Panel found that a decline in absolute imports at the end of period of investigation should not be considered in isolation, and does not preclude a finding of imports “in such increased quantities” for the purpose of Article 2.1: The Panel stated the following:*
 - *“In a safeguard investigation, the period of investigation for examination of the increased imports tends to be the same as that for the examination of the serious injury to the domestic industry. This contrasts with the situation in an anti-dumping or countervailing duty investigation where the period for evaluating the existence of dumping or subsidization is usually shorter than the period of investigation for a finding of material injury. The Applicant is of the view that one of the reasons behind this difference is that, as found by the Appellate Body in Argentina – Footwear Safeguard WT/DS121/AB/R, ‘the determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. The Appellate Body noted that when it comes to a determination of increased imports ‘the competent authorities are required to consider the trends in imports over the period of investigation’.”*

- *The evaluation of trends in imports, as with the evaluation of trends in the factors relevant for determination of serious injury to the domestic industry, can only be carried out over a period of time. Therefore, the Applicant concludes that the considerations that the Appellate Body has expressed with respect to the period relevant to an injury determination also apply to an increased imports determination.*
- *In view of the considerations expressed above the analysis of data for the first semester of 1999 should not be considered in isolation. We find the analysis of whether imports had increased on a yearly basis from 1994 to 1998 very relevant to the question of whether there were increased imports. Although we are aware that imports decreased for the first semester of 1999 when compared to the first semester of 1998, we note that regardless of the decrease for the first half of 1999, the ITC in their report found that imports of line pipe 'remained at a very high level in interim 1999'. This high level of imports for 1999 supports a finding that imports were still entering the United States 'in such increased quantities' as prescribed in Article 2.1.*
- *In other words, although Korea may be correct in arguing that absolute imports declined, this does not preclude a finding of imports 'in such increased quantities' for the purpose of Article 2.1. Based on the above considerations we conclude that the ITC was correct in its finding of an absolute increase in imports of line pipe."*

Percentage change from year to year			
	2017	2018	2019
<i>Imports</i>	99,015,421	42,463,125	37,748,847
<i>Applicant's sales</i>	1.00	1.98	1.44
<i>Imports</i>		-57%	-11%
<i>Applicant's sales</i>		-98%	-27%
<i>Imports Market Share</i>	1.00	0.46	0.52

- *although the imports decreased since it commenced production in 2017, the imports' market share increased from an indexed 0.46 in 2018 to an indexed 0.52 in 2019, exhibiting a reversal of the decrease from 2017 to 2018.*
- *it provided sufficient information that although imports declined since 2017, the decline occurred relative to the Applicants' sales and relative to the market demand:*
 - The market share of imports surged from an indexed 0.46 to an indexed 0.52, an increase of 37%, in the 15 months between Q1 2014 and Q2 2015.
 - The most significant quarter on quarter increase occurred between Q4 2014 and Q1 2015 when imports grew by 155%; a clear surge which contributed directly to the closure of Highveld.
 - While imports decreased in absolute terms from 2018 to 2019, this was not a reduction in the surge but rather was driven by a reduction in the local market demand. In relative terms the market share of imports increased.
 - In 2019 imports had an indexed 0.46 market share, up by 17% from their market share in 2014. Consequently, domestic share has reduced by 17% of market demand.
- *the trend in import volumes in the post-surge period does not show a continuous and significant decline. Imports' market share increased in 2017, 2018 and in 2019. This by no means indicates a downward trend. Imports have not declined continuously and significantly since 2014 relative to the market. In fact, the figures for 2018 and 2019 indicate an upward trend.*

Commission's consideration

The Commission noted that the Applicant reiterated the comments it made on the Commission's preliminary report and that these comments were addressed by the Commission in its essential facts letter. The Commission is of the view

that the jurisprudence that the Applicant's argument relies on supports the analysis that the Commission made in making a determination that a reversal of the increase in imports has taken place. The Applicant quoted the Appellate Body in Argentina – Footwear Safeguard, 'the determination of whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination. The Appellate Body noted that when it comes to a determination of increased imports 'the competent authorities are required to consider the trends in imports over the period of investigation'.

The Commission considered the trends in imports over the period of investigation hence the finding that the surge in imports took place in the 2014/2015 financial year. The Applicant ceased production of the subject product in 2015. There was no domestic production of the subject product after the Applicant ceased to manufacture in 2015 until March 2017. Imports increased when there was no domestic production. When the Applicant resumed production and sales of the subject product in April 2017, imports declined significantly. The Applicant argues that 2017 cannot be used to measure its performance. However, in the nine months that the Applicant was in operation, imports declined by 33%, imports declined further in 2018 by 57%.

The Commission considered the findings by the Panel in Argentina – Footwear (EC). The Panel found that the decline in the volume of imports could not be characterized as a temporary reversal of an increase in the volume of imports. It then stated that: "[T]he Agreement requires not just an increase (i.e., any increase) in imports, but an increase in 'such...quantities' as to cause or threaten to cause serious injury. The Agreement provides no numerical guidance as to how this is to be judged, nor in [the Panel's] view could it do so. But this does not mean that this requirement is meaningless. To the contrary, [the Panel] believe[s] that it means that ...the increase in imports must be judged in its full context, in particular with regard to its 'rate and amount' as required by Article 4.2(a). Thus, considering the changes in import levels over the entire period of investigation, as discussed above, seems unavoidable when making a determination of whether there has been an increase in imports 'in such quantities' in the sense of Article 2.1. ... Where ... the volume of imports has declined continuously and significantly during each of the most recent years

of the period, more than a 'temporary' reversal of an increase has taken place (as reflected as well in the sensitivity of the outcome of the comparison to a one-year shift of its start or end year)."

The Commission noted that the above Panel decision supports the Commission's decision to consider changes in imports throughout the period of investigation. The Commission also considered whether the increase in imports is in such quantities as to cause or threaten to cause serious injury to the SACU industry.

Taking into account the information provided by the Applicant and the comments made by the interested parties, the Commission considered that the imports continued to decrease in the last three years of the investigation period i.e. 2017, 2018 and 2019 and that a reversal of the increase has taken place. In view of this, the Commission found that the alleged surge in imports does not meet the requirements set out by the WTO Safeguards Agreement and the SGR.

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

6. SERIOUS INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

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

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

The Commission made a final 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

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

6.2.1 Actual and potential decline in sales

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

Table 6.2.1: Sales volumes

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

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

The information in the above table indicates that the Applicant’s sales volume

decreased by 54 index points from 2014 to 2015. The Applicant ceased sales of the subject product in July 2015. The Applicant resumed sales of the subject product in April 2017. The Applicant sales increased in 2017 and 2018. The sales volumes however declined slightly in 2019.

6.2.2 Profit

The following table shows the Applicant's profit situation:

Table 6.2.2: Profits

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

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

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

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

6.2.3 Output

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

Table 6.2.3: Output

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

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

The table above shows that the Applicant's production volume declined in 2015 in comparison to 2014 and that the Applicant ceased production in July 2015. There was no production in 2016. The Applicant resumed production in March 2017. The Applicant's production volume increased in 2017 and 2018. The production however declined in 2019 by 22 index points when compared to 2018.

6.2.4 Market share

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

Table 6.2.4: Market share

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

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

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

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

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

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

Comments by the Applicant on the Commission's preliminary report

The Applicant indicated that its market share reduced in 2014 to 2019. Imports are therefore not continuing on a downward trend relative to domestic demand from 2018 to 2019 as alleged by XA on the report. The Applicant's market share is further down since 2014.

Commission's consideration

It should be noted that the test is not with regard to domestic "demand", but with regard to domestic "production". The Applicant alleges that its "real" market share has decreased, which was to be expected when the SACU industry resumed production and sales of the subject product. The Applicant's market share actually increased from 40 index points in 2017 to 84 index points in 2018, which is a significant increase, and decreased slightly in 2019 to 79 index points.

6.2.5 Productivity

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

Table 6.2.5: Productivity

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

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

The table above shows that productivity has decreased significantly when comparing 2018 financial year with the 2019 financial year. The output ratio increased from 84 index points in 2017 to 304 index points in 2018 and to 414 index points in 2019.

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

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

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

The Applicant's capacity utilization declined in 2015 and there was no production of the subject product in 2016. The Applicant resumed production

of the subject product in March 2017. Although capacity utilization increased in 2017 and 2018, it decreased slightly in 2019.

6.2.7 Employment

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

Table 6.2.7: Employment

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

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

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

The Applicant provided the following price information:

6.2.8 Price Depression

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

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

Table 6.2.8 Price depression

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

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

2017.

6.2.9 Price undercutting

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

Table 6.2.9 Price undercutting

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

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

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

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

Commission's consideration

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

6.3 Summary - serious injury

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

Table 6.3.1: Serious Injury Indicators

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

Commission's consideration

The Commission decided that the information available indicates that the Applicant experienced serious injury during the period of investigation, given the decline in sales volume, net loss, market share, output, productivity, capacity utilisation and employment figures.

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

Comments by European Commission

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

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

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

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

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

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

Taking the above into consideration, the Commission made a final determination that the SACU industry experienced serious injury during the period of investigation.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

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

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

Table 7.1: Market share

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

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

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

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

XA stated that "regarding the coincidence in the movements, they agree with the panel in US –Steel safeguards that upward movements in imports should

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

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

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

performance and even if some coincidence could be found, any injury would have been caused by other factors.

Comments by European Commission

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

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

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

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

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

profitable and therefore the investigating authorities should examine whether the old causes of injury still prevail.

Comments by International Steel Fabricators (ISF)

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

Comments by the Applicant on the Commission's preliminary report

The Applicant stated that it disagrees with the Commission's finding that "The Applicant's market share increased in 2017 and 2018, whilst the market share held by imports decreased dramatically. The Applicant's market share decreased slightly in 2019 as compared to 2018, as a result of a decrease in production and a decrease in imports in the same year."

Imports' market share increased significantly pre-surge from 2014 to 2017 when the Applicant commenced production and sales again, slightly in 2018 to 2019. Imports' market share is therefore on an upward trend. The Applicant's market share did not decrease in 2019 as compared to 2018, as a result of a decrease in production and a decrease in imports in the same year. Applicant's market share decreased because of the increase in imports, not because of the decrease in production. Production follows sales and sales follow demand. If the demand for the Applicant's products reduces as a result of imports, sales, market share and production will decrease. The Applicant further stated that it is therefore evident that with an increase in market share of imports, the Applicant's sales and production decreased. The finding that imports are not the cause of the injury suffered by the Applicant is contradicted by the Commission's findings in par 7.2 of the report.

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

The Applicant stated that since it commenced production in 2017, imports market share improved from 2018 to 2019 exhibiting a change in the trend of decreasing imports in a market that has reduced.

Percentage change from year to year			
	2017	2018	2019
<i>Imports</i>	99,015,421	42,463,125	37,748,847
<i>Applicant's sales</i>	1.00	1.98	1.44
<i>Imports</i>		-57%	-11%
<i>Applicant's sales</i>		-98%	-27%
<i>Imports Market Share</i>	1.00	0.46	0.52

The Applicant stated that the Commission’s finding that imports increased its market share in 2019 and that the Applicant’s market share decreased in a decreasing market is overwhelming evidence that any increase in imports does cause and has caused the injury suffered by the Applicant. If it was not for the imports there would not have been a break in production between 2015 and 2017.

The Applicant also stated that from Quarter 1 in 2014 to Quarter 2 in 2015 imports increased from 9,009 tons to 17,595 tons. The market share of imports increased significantly. This caused serious injury to Highveld and contributed to its closure. After AMSA commenced full production imports maintained a market share slightly increased from 2018 to 2019 respectively, indicating that imports established a growing market share, which AMSA will not regain. The Applicants reiterated that the imports are the cause of the loss in market share suffered by AMSA from 2018 to 2019 in a declining market.

Commission’s consideration

The Commission noted that since the Applicant resumed production of the subject product in 2017 imports decreased dramatically and the Applicant’s injury indicators showed a significant improvement. In 2019, imports continued to decrease, whilst the Applicant’s performance decreased as well, as can be

seen from the decrease in the Applicant’s production, sales and capacity utilization. The Commission is however, of the view that it would be difficult to suggest that imports are the cause of the serious injury experienced by the Applicant, as there was injury even though imports continued to decrease. The Commission noted that the size of the market decreased in 2019, which could also be contributing to the injury experienced by the Applicant.

7.2 CONSEQUENT IMPACT OF SURGE OF IMPORTS

Table 7.2.1: Serious Injury Indicators (2014 - 2019)

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

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

- **Quality**

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

- **Delivery times**

The Applicant stated that since it is a domestic mill, its delivery times are shorter

than international mills. It also indicated that it has always been recognised in the market place as a producer who delivers well against the constraints of a 24/7 operation and it is recognised for being flexible to customer's needs when required.

- **Service and after sales**

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

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

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

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

Comments by International Steel Fabricators of South Africa (ISF)

ISF disagreed with the statement by the Applicant that "the market impression of the quality of [the Applicant's] products is very high". According to ISF, such statement is not substantiated by any customer survey. ISF alleges that the quality of the Applicant's product has never been very high, but seen as fit for purpose. It states that the Applicant's heavier products were always a problem

due to shape deviations, with recurring folds and cracks occurring at the web / flange seam.

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

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

ISF stated that the Applicant’s reference to its relationship to the South African Institute of Steel Construction (SAISC), the “Red Book”, etc. is totally out of date and refers to pre-2007 cooperation. According to ISF Highveld did not continue with the historic relationship and did not honour its agreed financial commitments to the SAISC which had to write-off substantial amounts as bad debts. ISF also stated that to its knowledge, there is currently no formal relationships between the SAISC and Highveld or Highveld Structural Mill or AMSA or South African Iron and Steel Institute (SAISI) the industry association for steel mills.

7.4 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY

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

7.5 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

Table: 7.5

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

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

XA stated that as regards market conditions, both Highveld’s financial statements and AMSA’s financial statements indicate difficult market conditions. XA referred to the issues listed below which it said provide some insight into these difficult market conditions:

- *In column 1 of Highveld’s 2014 financial statements it is indicated that it had experienced “lower equipment availability and poor steel plant and structural mill yields”, as well as “operational challenges... on the slab caster and the basic oxygen furnaces”; while “Kiln operational stability was compromised in the first quarter due to unusually wet weather conditions, resulting in higher kilowatt-hour per ton electricity consumption in the plant.”*
- *On page 2 of Highveld’s 2015 operational results it is indicated that: i) “Liquid iron production was reduced as a result of poor domestic demand as well as cash constraints”; ii) The sections mill was negatively impacted by rolling low volumes of different profiles which contributed to low utilization rates and lower output”; iii) “Fines ore production decreased due to temporary mine stoppage”; and iv) “Steel pricing was reduced significantly due to unprecedentedly low domestic demand”.*
- *On page 4 of AMSA’s 2019 financial statements it is indicated that “real gross domestic product (GDP) growth is anticipated to reach only 0.3%. [The] apparent*

steel consumption decreased by 6% to 4.5 million tonnes for the year. Muted or negative growth in key steel-consuming sectors, a limited number of infrastructure projects, electricity supply constraints, and low business confidence [contributed to difficulties experienced in trading conditions]. This situation was compounded by reduced credit availability with some credit line insurers exiting the steel market. [A]n increased number of steel-consuming companies entered business rescue or were merging operations in order to survive.”

- *In Highveld’s letter of 20 July 2015 to its shareholders which is titled “Further renewal of cautionary announcement and plant stoppage”, it is indicated that “It was decided to cease the production of the Ironmaking division of the Company, which was necessitated by, amongst others, delayed debtors’ payments, inadequate cash to procure the required raw materials to continue manufacturing operations; difficulties experienced with access to funding; and continued inability to pay major creditors timeously.”*
- *On page 6 of AMSA’s 2019 financial statements it is indicated that “The company’s raw material basket (iron ore, coking coal and scrap), which represents 51% (2018: 50%) of costs, increased by 12% in Rand terms, driven by sharp increases in iron ore prices. Consumables and auxiliaries, which represented approximately 29% of costs (2018: 29%), increased by 13%”; “Increases in electricity, port and rail tariffs had a detrimental impact on the company’s international competitiveness. These unaffordable increases, off an already inflated base, resulted in R439 million of additional costs against the comparable period”; “Net impairment charges for the year amounted to R1 401 million against R10 million for 2018”; and “Income from equity-accounted investments decreased by R155 million”.*
- *On page 7 of AMSA’s 2019 financial statements it is indicated that “The company has been engaging the Competition Commission regarding the payment of the administrative penalty that was due in November 2019...”*

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

XA also stated that it is incumbent upon the Applicant to show, and ITAC to find, that it was increased imports that caused a deterioration of the domestic industry's performance, to the point of serious injury, and not merely that increased imports were present at the same time as the industry's deteriorating performance. Thus, according to XA, it has to be analysed whether and how these increased imports affected the domestic industry. XA refers to what it terms "a multitude of factors that caused [Highveld's] injury" which it states "Highveld specifically identified". In this regard, XA refers to Highveld's financial statements for the 6-month period ended June 2014 (under point 2 "Key Financials") in respect of which it draws attention to the issues set out below:

- significant losses both for 2013 (full year) and the first half of 2014.*
- "the operating loss for H1 2014 was R271 million, compared to a profit of R49 million for H1 2013, mainly attributed to lower equipment availability and poor steel plant and structural mills yields. The company increased its maintenance costs to R251 million in H1 2014 from R166 million in H1 2013 to improve operational performance. The EBITDA for the period was a negative of R135 million, compared to a R199 million profit for the same period in 2013. During the first half of 2014 sales revenue of R199 million was up by 12% and reflected higher average prices compared to the first half of 2013".*
- "Revenue from sales of goods increased to R3 195 million, compared to R2 864 million for H1 2013. This increase in revenue [was] as a result of favourable steel product pricing".*
- "visible change in market purchasing trends from imports to domestic supply, combined with notable progress towards production improvement and labour stability...".*

In its consideration of these factors, XA stated that despite a move away from imports to domestic supply, and despite "favourable steel product pricing", Highveld still turned

an operating profit of R49 million in H1 2013 into an operating loss of R271 million in H1 2014. Clearly, with the “visible change in market purchasing trends from imports to domestic supply”, imports had nothing to do with Highveld’s injury. XA noted that the operating profit of R49 million in H1 2013 turned into an operating loss of R293 million for the whole of 2013, indicating an H2 2013 operating loss of R342 million. Thus, according to XA, Highveld’s performance in H1 2014 was a significant improvement over H2 2013, yet Highveld was incurring hundreds of millions of Rand in losses – despite “favourable steel product pricing”.

XA had regard to point 7 (Outlook) of Highveld’s financial statements for the 6-month period ended June 2014, from which it quoted the passages set out below:

- “The industrial action in the platinum and more recently engineering and metals industries will negatively affect sales to the domestic market in the short term and revenue will be under pressure in H2 2014 as a result. Given the low GDP growth forecast for the local economy and the slow pace of implementation of the government infrastructure spending programme, the domestic steel industry is not expected to expand significantly in the near future. The industry will be further pressurized by a volatile labour market, notable energy tariff increases and electricity supply concerns”.*
- “Global steel markets will remain under pressure for the remainder of 2014 as the market struggles with overcapacity and supply prices are predicted to remain static and a market recovery in global steel demand is not expected during the remainder of 2014”.*

XA further stated that Highveld pointed to several reasons for other injury which it suffered in the rest of 2014, with no reference to increased imports. As regards imports, XA notes that Highveld merely pointed out that there was ongoing overcapacity, but not that this would lead to additional exports to SACU, and that “supply prices [were] predicted to remain static”, this, after having indicated that there was “favourable steel product pricing” in H1 2014.

XA observed that for the year 2014 (which pre-dates any increased imports, and in which Highveld incurred significant losses), Highveld made no reference to imports as a cause of its problems. XA observed further, that on the contrary, Highveld indicated

that there had been a move away from imports to domestic supply. In light of this, XA argued that there can be no “genuine and substantial relationship of cause and effect” between increased imports and the SACU industry’s performance.

XA furnished the list below which itemises other factors that caused or contributed to the SACU industry’s injury. XA stated that this list is not exhaustive, and request that the Commission also consider. other relevant information

- *Decreased domestic market*
- *Domestic economic conditions*
- *Industry losses prior to increase in imports*
- *No price undercutting in 2018 and 2019*
- *Impairments at AMSA*
- *Over-employment*
- *Equipment availability and plant yields*
- *Unaffordable regulated tariffs*
- *Developmentally priced raw materials*
- *Decreased investment income*
- *Competition Commission finding on collusion*
- *Additional taxes due to SARS*
- *Additional cost incurred in toll production*
- *Decreased export sales*
- *Adverse weather conditions*
- *Funding and access to cash*
- *Decreased prices for other products*
- *Fruitless trade remedies actions*
- *Other issues*

Commission’s consideration

For purposes of initiation of the investigation, the Commission found that the Applicant provided prima facie information that there was a causal link between the surge of imports and the serious injury experienced by the Applicant. However, comments received from various interested parties during the investigation revealed that the

Applicant's serious injury could be attributed to a number of factors other than the increase in imports.

The Applicant in its 2014 financial reports showed that the operating loss for H1 2014 was R271 million, compared to a profit of R49 million for H1 2013, the Applicant mainly attributed the loss to lower equipment availability and poor steel plant and structural mills yields. The EBITDA for the period was a negative of R135 million, compared to a R199 million profit for the same period in 2013.

In Highveld's letter of 16 April 2015 to its stakeholders, creditors, suppliers and customers which is titled "voluntary business rescue, suspension of listing and cautionary announcement", it is indicated that Highveld does not have sufficient funding to meet its financial obligations for the short term. The letter went on to state that this is as a result of historical operational and financial difficulties and extremely difficult steel and vanadium market conditions.

The business rescue plan stated the following as the factors causing injury to the Applicant:

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

Comments by the Applicant on the Commission's preliminary report

The Applicant commented as follows:

- *the points raised by XA on page 63 to 68 of the Commission's preliminary report are all normal operational and market conditions that all steel producers had to deal with in South Africa and globally. Notwithstanding these challenges Highveld still maintained a significant market share in 2014. Together with poor domestic demand in 2015, that placed pressure on production and sales*

volumes, prices and cash flow, Highveld also had to deal with a surge in imports from Q4 (2014) to Q1 (2015). Notwithstanding decreased steel consumption in 2019, imports still managed to increase its market share from 2018 to 2019. Over this period AMSA's market share reduced.

- *the serious injury caused to Highveld in 2015 resulted in it ceasing production. The lingering effects thereof were still evident in 2019. Increased costs faced by AMSA in 2019 do not detract from this. In the Commission's consideration on page 68 of the Commission's preliminary report, it refers to the financial position of Highveld in the half year of 2014 and compares it to the figures in 2013. First, 2014 is the base year of the investigation period. 2013 falls outside the investigation period and the Commission cannot analyse the injury suffered and causality from 2013 to 2014. Second, the figures quoted on page 68 is for the half-year 2014. The total figures for the financial year 2014 were provided to the Commission and the Commission must analyse the subsequent years against these figures, not the figures that represent only half of the year.*
- *the fact that Highveld has been loss making since 2010 is irrelevant. What is relevant is what the effect was of the surge in imports on its profit / loss position. Highveld's loss position improved after it ceased production. Had it continued producing and competing against the surge in imports, this loss could easily have been double. The reluctance by shareholders to invest more capital in steel producers are not unique to Highveld but globally as a result of the weakened global steel market that also affected demand in South Africa. Global factors that are common to all steel producers such as financial pressure and capital constraints in time of weakened markets can only be contributing factors if all other factors remain constant. However, when Highveld had to compete with a surge in imports over the first quarter of 2015, it could no longer sustain production. The surge in imports over the period Q4(2014) to Q1(2015) was unequivocally the final nail in the coffin for Highveld. The effects of the surge were still prevalent in 2019 as exhibited by AMSA's figures.*

Commission's consideration

The Commission emphasized that although the Applicant persisted in making an analysis based on the surge in imports over the period Q4 (2014) to Q1 (2015) in order to strengthen its case, the Commission's analysis is not made on a quarterly basis, in order to ensure for a fair, objective analysis as is required in the Safeguards Agreement.

7.6 Summary - Causal link

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

8. SUMMARY OF FINDINGS

8.1 Unforeseen Developments

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

8.2 Surge of Imports

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

8.3 Serious injury

The conclusion on serious injury indicators is as follows:

Table 8.3.1: Serious injury

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

The Commission made a final determination that the Applicant experienced serious injury during the period of investigation.

8.4 Causal link

The Commission made a final determination that there is sufficient information to indicate that the serious injury experienced by the SACU industry can be attributable to a number of factors other than the alleged surge in the volume of

imports and that these other factors sufficiently detract from the causal link between the increased imports and the injury experienced by the industry.

9. FINAL DETERMINATION

The Commission made a final determination that:

- Events cited can be regarded as unforeseen developments;
- A reversal in the increase in imports has taken place and the surge in volume of imports does not meet the requirements set out by the WTO and the SGR;
- The SACU industry is experiencing serious injury; and
- The injury experienced by the Applicant can be attributed to a number of factors other than the increase in imports and these other factors sufficiently detract from the causal link between the increased imports and the injury experienced by the industry.

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