

## **Report No. 740**

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

The International Trade Administration Commission of South Africa herewith presents its **Report No. 740: INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF A SAFEGUARD MEASURE AGAINST THE INCREASED IMPORTS OF CERTAIN FLAT-ROLLED PRODUCTS OF IRON, NON-ALLOY STEEL OR OTHER ALLOY STEEL (NOT INCLUDING STAINLESS STEEL), WHETHER OR NOT IN COILS (INCLUDING PRODUCTS CUT-TO-LENGTH AND 'NARROW STRIP'), NOT FURTHER WORKED THAN HOT-ROLLED (HOT-ROLLED FLAT), NOT CLAD, PLATED OR COATED, EXCLUDING GRAIN-ORIENTED SILICON ELECTRICAL STEEL (HOT-ROLLED STEEL PRODUCTS): FINAL DETERMINATION**



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**AYABONGA CAWE**  
**CHIEF COMMISSIONER**

**PRETORIA**

**07 FEBRUARY 2025**

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

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

#### **SYNOPSIS**

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

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

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

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

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

The Commission made a preliminary determination that:

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

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

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

The Commission’s preliminary determination was published in Notice No. 5026 of

2024 in *Government Gazette* No 50904 dated 05 July 2024, with details of the findings contained in the Commission's Report No. 730

On 12 July 2024, the Commission, through Notice No. 2622 of 2024 of *Government Gazette* No. 50929, invited interested parties to attend and address the Commission on whether or not it would be in the public interest to impose definitive safeguard measures on the subject product, in accordance with Regulation 20.2 of the Amended Safeguard Regulations.

Based on the details as contained in the Commission's preliminary report, the comments received and public interest submissions, the Commission made a final determination before "essential facts" that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of hot-rolled steel products is causing serious injury to the SACU industry.

The Commission indicated that it was considering making a final determination to recommend to the Minister of Trade, Industry and Competition ("the Minister") that the following safeguard measures be imposed on imports of hot-rolled steel products:

Period	Rate of safeguard measure
Year 1	13%
Year 2	11%
Year 3	9 %

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 those "essential facts" for the Commission's consideration prior to making a final determination.

Taking all the information available to it into account, including all comments received

during the investigation, the Commission made a final determination that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of hot-rolled steel products is causing serious injury to the SACU industry.

The Commission therefore made a final determination to recommend to the Minister that the following safeguard measures be imposed on imports of hot-rolled steel products classifiable under tariff subheadings: 7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.

Period	Rate of safeguard measure
Year 1	13%
Year 2	11%
Year 3	9 %

The Commission also made a final determination to recommend to the Minister that the measures should be imposed against imports from all countries, excluding imports from developing countries where the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports.

## **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 Safeguard Agreement).

### **1.2 APPLICANT**

South African Iron & Steel Institute ("SAISI" or "the Applicant"), an industry association, applied on behalf of ArcelorMittal South Africa Limited ("AMSA"), being the major producer of the subject product in the Southern African Customs Union ("SACU").

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

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

The Applicant stated that during the Uruguay Round of negotiations, South Africa and other SACU states did not foresee the following events:

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

imbalance between capacity and demand, that is, the global oversupply of steel (including hot-rolled 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 hot-rolled steel) has led to deterioration in the financial situation of steelmakers globally and also in the SACU. The excess capacity is considered as one of the main challenges facing the global steel sector currently; and
- Despite slowing demand and the existing excess capacity, there are several new investment projects underway and planned (especially in current net-importing countries) in the steel industry that will result in global steelmaking capacity to continue to expand and causing the SACU to experience further increases in imports of hot-rolled steel (the subject product).

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

#### **1.4 INVESTIGATION PERIOD**

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

***Comments by Interested Parties on the Commission's Preliminary Report***



*The interested parties stated that although the Safeguard Regulations do not limit injury information to a specific time frame, the Commission is again referred to the Panel in the US – Wheat Gluten and its consideration that clearly stipulates that serious injury should exist within the recent past, as the investigation of increased imports should focus on recent imports. In order to accurately assess the existence of serious injury, a conservative interpretation of ‘recent’ must be applied.*

*The interested parties referred to Mexico – Rice, which relates to an anti-dumping investigation (which is not as urgent as a safeguard investigation), wherein the Appellate body found that an investigation period ending 15 months before initiation was in violation of the anti-dumping agreement as it did not provide for an objective assessment of injury. The same would apply in safeguards, but since safeguards are an emergence action, for an injury analysis to be regarded as objective, the gap between the start of the investigation period and initiation would have to be significantly shorter than in the case for anti-dumping. Interested parties further referred to the Appellate Body decision in Argentina – Footwear Safeguard that the phrase “is being imported” requires the consideration of recent data: [T]he use of the present tense of the verb phrase 'is being imported' in both Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994 indicates that it is necessary for the competent authorities to examine recent imports, and not simply trends in imports during the past five years - or, for that matter, during any other period of several years. In their view, the phrase 'is being imported' implies that the increase in imports must have been sudden and recent. The Appellate Body further recalled that “the relevant investigation period should not only end in the very recent past, but the investigation period should also be the very recent past.”*

*The interested parties highlighted that they disagree with the Commission's preliminary determination that "the Applicant provided sufficient evidence indicating that the period from July 2022 to June 2023, which is cited as the period for a surge in imports, is recent enough to meet the conditions of the Safeguard Agreement" and that "considering the urgency of the matter, requesting the Applicant to update its injury information would have been*

*burdensome". The interested parties further highlighted that they still maintain that the information provided by the Applicant for a period ending almost 8 months before the investigation was initiated and 12 months before the imposition of provisional measures is stale and the Applicant should be required to update its information.*

### **Response by the Applicant**

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

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

*The Applicant highlighted that attention should be drawn to the Appellate Body and Panel decisions in US-Line Pipe. It was established that the interpretation of 'recent' does not imply an analysis of the present. The inquiry does not require that the increase in imports should be up to and including the final year of the period of investigation (POI). The Appellate Body observed that an increase in imports before the date of a determination but not sustained at the date of the determination could still cause actual serious injury at the time of the determination. The investigating authority needs to examine the trends*

*throughout the POI. The Applicant submitted that the surge in imports occurred during the POI and, therefore, the Commission is well placed to decide on the information, especially when considering the above cases. The recentness of the information submitted is thus confirmed.*

### **Commission's consideration**

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

*In the US-Line Pipe case<sup>1</sup>, the Panel found that there is no need to determine that imports are still increasing. Instead, imports could have increased in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination:*

*“There is a question as to whether the finding of increased imports can be maintained given the decline in absolute imports from the first semester of 1998 to the first semester of 1999. To answer this question, we recall our discussion regarding the meaning of 'recent' and our finding that 'recent' does not imply an analysis of the present. We are also of the view that the fact that the increase in imports must be 'recent' does not mean that it must continue up to the period immediately preceding the investigating authority's determination, nor up to the very end of the period of investigation. We find support in Article 2.1 for our view, which provides that "such product is being imported in such increased*

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<sup>1</sup> United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea

*quantities." The use of the word 'increased' indicates that there is no need for a determination that imports are presently still increasing. Rather, imports could have increased in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination. Provided that the investigated product 'is being imported' at such increased quantities at the end of the period of investigation, the requirements of Article 2.1 are met."*

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

*The Commission further considered that the period after the POI was analysed to determine whether the imports decreased as claimed by the interested parties. It was found that imports declined slightly, but are still coming in at high levels, as shown in the table 5.1.1 of the Report. Therefore, even if the Commission was to extend the POI, the situation regarding the imports would remain the same.*

## **1.5 INVESTIGATION PROCESS**

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

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

1.5.3 The investigation was initiated on 23 February 2024.

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

- Safal Steel Group (Pty) Ltd
- Duferco Steel Processing
- Aveng Trident Steel
- Genesis Steel
- Transcape Steels (Pty) Ltd

- NJR Steel
- Macsteel Group
- Allied Steelrode (Pty) Ltd
- Em-Lee's Trading
- Argent Steel

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

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

- Voestalpine Stahl GmbH
- Naamsa;
- Naacam;
- The European Commission

## **1.6 COMMENTS FROM INTERESTED PARTIES**

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

## **1.7 PRELIMINARY DETERMINATION**

In its meeting of 30 May 2024, the Commission made a preliminary determination that:

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

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

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

The Commission’s preliminary determination was published in Notice No. 5026 of 2024 in *Government Gazette* No. 50904 dated 05 July 2024, with details of the findings contained in the Commission’s Report No. 730.

- 1.8** In accordance with Article 12.4 of the Safeguard Agreement and SGR 2, “the Commission shall provide for consultations with the representatives of countries that have a substantial interest in a general safeguard investigation within 14 days after the imposition of a provisional payment.”

In line with this provision, virtual consultations were held with the Government of UK, on 16 July 2024, and the Government of Japan on 25 July 2024, as per their request to review the Commission’s preliminary findings and exchange views. Both consultations went well, and both governments were satisfied with the Commission's clarifications on the issues they raised.

- 1.9** A public interest hearing was held on 20 August 2024, where interested parties raised public interest issues that the Commission considered prior to making a final determination. The following interested parties made submissions:

- The Government of the United Kingdom;

- Tata Steel UK and Tata Steel Netherlands;
- Duferco Steel Processing (Pty) Ltd;
- F C Dubbelman and Associates CC on behalf of the Group Members (Augusta Manufacturing (Pty) Ltd; Augusta Steel (Pty) Ltd; Bell Equipment company SA (Pty) Ltd; Safal Steel (Pty) Ltd ; SS Profiling (Pty) Ltd; Steel Import International (Pty) Ltd; Steelbank Merchants (Pty) Ltd. NJR; and China Iron and Steel Association;
- Webber Wentzel on behalf of Nippon Steel Corporation, Kobe Steel, Ltd and JFE Steel Corporation;
- XA International Trade Advisors on behalf Erdvark Engineering (Pty) Ltd and New Concept Mining;
- Trident Steel Africa;
- Traxys Africa Trading;
- Leong Jin Africa Special Steel;
- NAACAM;
- Commodity Trade Observer (Pty) Ltd on behalf of ArcelorMittal South Africa

**1.10** On 15 October 2024 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 were received from the following interested parties:

- XA International Trade Advisors on behalf New Concept Mining;
- Webber Wentzel on behalf of Nippon Steel Corporation, Kobe Steel, Ltd and JFE Steel Corporation;
- The Government of the United Kingdom;
- Afrit;
- Solidarity;
- The European Commission
- F C Dubbelman and Associates CC on behalf of the Group Members (Augusta Manufacturing (Pty) Ltd; Augusta Steel (Pty) Ltd; Bell Equipment company SA (Pty) Ltd; Safal Steel (Pty) Ltd ; SS Profiling



(Pty) Ltd; Steel Import International (Pty) Ltd; Steelbank Merchants (Pty) Ltd. NJR; and China Iron and Steel Association;

- Botswana Trade Commission;
- Leong Jin Africa Special Steel;
- Tata Steel UK and Tata Steel Netherlands;
- Commodity Trade Observer (Pty) Ltd on behalf of ArcelorMittal South Africa

## **1.12 Comments by Interested Parties**

### **Notification to the WTO on initiation of investigation**

#### ***Comments by the Government of Japan on the Commission's initiation***

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

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

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

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

*The Commission considered that Regulation 14.4 of the SGR states that "within seven days after initiation, the Commission shall notify the representative of*

*each country of origin and of export that may be significantly affected by a safeguard measure of the initiation of the investigation.” Additionally, the Commission is to supply each country with a copy of the non-confidential version of the application. In this particular case, Japan was a country of interest, and the Commission notified it three days after initiating the investigation and supplied it with a copy of the non-confidential version of the application.*

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

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

### **Confidentiality**

#### ***Comments by Interested Parties on the Commission’s Preliminary Report***

*The interested parties disagreed with the Commission's preliminary determination that the Applicant met the confidentiality criteria set out in the ITA Act and SGR 34. They believed the Applicant should be required to provide proper non-confidential summaries of the information submitted in confidence. Regarding marketing and distribution channels, half of AMSA's product in question is utilized for its own operations and is not directly sold to end users. It is crucial for interested parties to have a reasonable understanding of the marketing and distribution channels, which includes summarized percentage off-take data.*

*The interested parties further pointed out that the Commission standard requires that sales and profit contribution information over the POI be indexed to allow a reasonable understanding of what has been submitted in confidence. However, now the Commission has turned a blind eye to the Applicant's essential omission.*

*They indicated that regarding the "Cost and Price build-up," the Commission, although previously advised that it cannot in a Safeguard investigation, only*

*look at the last 12 months' costing information (which in this case was anyway stale) stated that the Commission's safeguard questionnaire requires that the cost and price build-ups only need to be supplied for the "most recent 12-month period". For the Commission not requesting and evaluating the "Cost and Price build-up" information for the whole period of investigation ("POI"), the Commission is violating the WTO Safeguard Agreement. This is confirmed by the statement of the Applicant in the Report stating that "The Panel confirmed that an evaluation of serious injury needs to be conducted over the entire POI and not limited to the final year" (own emphasis).*

### **Commission's consideration**

*The issue of confidentiality was addressed in the preliminary determination. The Commission considered Section 33(1) of the ITA Act which states that anyone claiming information to be confidential must explain why it is confidential and provide a non-confidential summary thereof. Alternatively, they must provide a sworn statement explaining why they cannot comply with the requirement to provide a non-confidential summary. The Applicant provided a sworn statement explaining why they could not summarize certain information. The ITA Act and SGR provide specific guidance on providing non-confidential information, and the Application questionnaire also reiterates these requirements. The Commission is of the opinion the Applicant met the confidentiality criteria set out in the ITA Act and the SGR.*

*Furthermore, the interested parties emphasised that cost and price build-up information for a safeguard investigation should be more comprehensive than just the recent 12-month period of the POI. However, the Commission's safeguard questionnaire requires that the cost and price build-ups refer to the average costs for the most recent 12-month period of the POI. In this regard, the Applicant was correct in limiting the cost build-up information to only a recent 12-month period as per the questionnaire.*

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

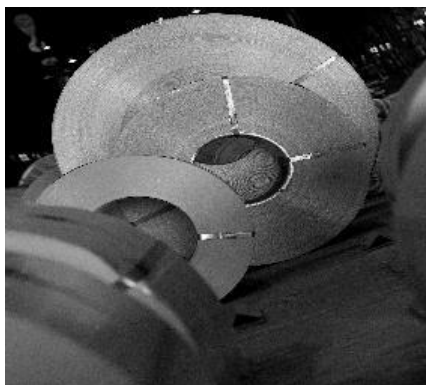
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### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

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

#### Hot-rolled coil



**Hot-rolled Coil** is derived from steel rolling at high temperatures where recrystallisation occurs. Pickled and oiled products are descaled of oxide film by

mechanical and chemical methods and then oiled to prevent corrosion during storage

**Typical end-use:**

- Automotive;
- Tube and pipe industry including Water, Oil and Gas, and others;
- Manufacturing of general engineering products such as containers, drawing and forming applications like wheel rims, agricultural implements, mining equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking, and shelving;
- Solar tracker equipment; and
- South African Mint and Coins.

**Hot-rolled plates**



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

**Typical end-use:**

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

## 2.1.2 Tariff classification and WTO obligations

The subject product is imported under the following tariff headings:

Table 2.1.2

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

7225.40	Other, not further worked than hot-rolled, not in coils	kg	10%	free	free	free	10%	6%
<b>7225.9</b>	<b>Other:</b>							
7225.99	Other	kg	10%	free	free	free	10%	6%
<b>7226</b>	<b>Flat-rolled products of other alloy steel, of a width of less than 600 mm:</b>							
<b>7226.9</b>	<b>Other</b>							
7226.99	Other	kg	10%	free	free	free	10%	6%

- 1 European Union/United Kingdom  
2 European Free Trade Association  
3 Southern Africa Development Community  
4 African Continental Free Trade Area

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

### 2.1.3 Possible tariff loopholes

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

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

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

The Applicant further stated that an analysis of the import statistics and the tariff subheadings used to import the subject product indicates that importers are also using the tariff subheadings listed above as loopholes to import hot-rolled products into the SACU. The Applicant stated that it should be noted that, to be fair, these tariff headings were not included in the import statistics of this application. The Applicant requested the Commission to include these tariff subheadings when imposing the safeguard measures.

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

#### ***Comments by the Group to the Commission's Preliminary Report***

*The Group comments contended that the classification of tariff subheadings as loopholes lacked evidential support. Subheadings 7211.13, 7211.19 and 7226.91 were identified as alleged loopholes without presenting substantiated data. The Group provided detailed import volume data and average Free on Board ("FOB") prices, demonstrating a decreasing trend in import volumes and increasing FOB prices for these subheadings, which contradicts the claim of misuse.*

*The Group highlighted that the report included these subheadings in the safeguard measures without addressing the critical evidence presented in the Group comments. The omission of this data suggests a failure to conduct a thorough analysis required under the WTO Safeguard Agreement. Specifically, Article 2 of the Agreement mandates that safeguard measures should only be applied to products where a surge in imports has caused or threatens to cause serious injury. The lack of evidence-based justification for including these subheadings just because they might be used to circumvent the safeguard duty, indicates non-compliance with international trade law and the principles of due*



process.

*The Group further stated that the report's failure to consider the economic evidence provided, such as the declining import volumes and rising FOB prices, suggests a lack of thorough investigation as mandated by Article 3.1 of the WTO Safeguard Agreement. This article requires a detailed and transparent examination of the facts, including an objective analysis of the pertinent data. The Group submitted that such oversight in the report undermines the credibility and legality of the preliminary measures and any additional safeguard measures that might be proposed. The Commission is aware that there are provisions to address circumvention. The Commission's policy has always been that if circumvention takes place as a result of the imposition of a trade remedy mechanism a circumvention application can be submitted. However, in this instance the Commission violated its own policy.*

***Comments by TATA Steel Netherland, TATA Steel UK and Salzgitter AG on the Commission's Preliminary Report***

*The interested parties stated that the Commission included tariff subheadings 7211.13, 7211.19 and 7226.91 in the scope of the investigation to prevent them from being used as "possible tariff loopholes." They pointed out that "these tariff headings were not included in the import statistics of this application." However, the Commission did not conduct a review to determine whether these products were similar or if they had a competitive relationship.*

*They also mentioned that if certain hot-rolled steel products are imported under incorrect tariff subheadings, the South African customs authorities can require that the imports be made under the correct subheadings. It was emphasized that a safeguard measure cannot be extended to products that differ from those manufactured domestically to address classification issues.*

***Comments by Japanese Mills on the Commission's Preliminary Report***

*The Japanese Mill stated that safeguard measures can only lawfully be applied against a directly competitive product. Neither the Regulations nor the WTO Safeguard Agreement allow for safeguard measures to be imposed on products*

*that are not directly competitive products. The submissions on circumvention are purely speculative, there is no reason for importers to use different tariff subheadings as a 'loophole' when the tariff headings attract an identical duty as no advantage can be obtained by the importers. It is also unclear how import statistics could show that importers were importing products under the incorrect tariff subheadings to take advantage of the alleged 'loophole' since the import statistics only contain the declared description of the products.*

*The Japanese noted the submissions by the Group that "import volumes of the alleged 'loophole' tariff codes have been decreasing over the POI, while the average FOB prices over the POI have been increasing." This casts further doubt on the use of these tariff subheadings as a 'loophole'. The statement by the Applicant is baseless and unsubstantiated and cannot, therefore, be the basis of a reasonable and rational finding by the Commission.*

*The Japanese Mill pointed out that when consider the possibility that certain tariff subheadings may be used as a 'loophole', the Commission should also consider that such tariff subheadings may also be used for legitimate imports and that a blanket inclusion of these tariff subheadings would unfairly prejudice the importers of these legitimate imports. Additionally, they submitted that the more effective and fair solution to any alleged abuse of 'loopholes' would be proper monitoring and enforcement by SARS and not the imposition of safeguard measures on products that are not the subject of the investigation.*

### **Comments by The Government of UK on the Commission's Preliminary Report**

*The Government of UK stated that it is a fundamental principle of a safeguard measure that there is evidence of a product being imported into a territory in such increased quantities and under such conditions as to cause or threaten to cause serious injury. The Government of UK is firmly of the view that a safeguard can only be applied to a product that has met these conditions.*

*Applying a measure to products that do not meet these conditions to avoid possible circumvention is not permitted under the Agreement on Safeguards. At this stage, any consideration of product codes to achieve such an end is*

*premature. The Government of UK noted that the Commission's argument that these product codes are relevant because of their description; however, in that case they should be included in the injury assessment. The Government of UK urged the Commission to remove these products from the scope of the provisional safeguard measure and any future definitive measure.*

### **Responses by the Applicant**

*The Applicant stated that it noted with concern the very significant increase in imports under the loophole HS Codes, especially HS code 7211.19, where imports in the first 5 months of 2024 already exceed total imports in 2023 and the volume declared during the first 5 months of 2024 (1,569,346) being more than 300% of the volume declared during the same period in 2023 (505,732 kg). For HS code 7226.91, imports have increased from 92,252 kg in the first 5 months of 2023 to 180,449 kg in the same period in 2024, an increase of 95.6%. This shows the importance of including these HS codes in the scope of the safeguard measure.*

*The Applicant submitted that there is no economic rationale for the declarations under these HS codes other than to circumvent any safeguard action that may be taken on the HS codes that form the scope of this investigation. Despite being included under 'loopholes', some of the products identified are in fact directly competitive to the subject product. Referring to Regulation 2 of the SGR, a "directly competitive product" is defined as a product, other than a like product, that competes directly with the product under investigation. Therefore, directly competitive products share similar characteristics and intended market applications with the subject product.*

*The Applicant highlighted that one notable similarity between the subject product and the loophole products is the consistent use of raw materials which are uniform, namely, virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity. The loophole products, particularly HS code 7211.19 and 7211.13 have very similar end-uses to the subject product, namely, manufacturing*

*general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small- and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking & shelving etc.*

*The Applicant further highlighted that regarding HS code 7211.19 and 7211.13 the only difference is the size of the product in that products under this code are used in smaller component application or where narrow strips are suitable. HS code 7226.91 is an electrical steel product. AMSA does not produce this product, but it is practically indistinguishable physically from the subject product and the possibility of circumvention is inevitable due to its physical appearance.*

**Comments by the Interested Parties on the Commission's essential facts letter**

*The interested parties are in support of the Commission's considering making a final determination, to remove the loophole tariffs from the scope of any future definitive measure for the purpose of its final determination.*

**Commission's consideration**

*The Commission noted that the Applicant should have included the possible loophole products in the original scope of the investigation if it believed that they directly compete with the subject products. Including these products because of possible loopholes violates Article 2 of the Agreement, which states that safeguard measures should only be applied to products for which a surge in imports has caused or threatens to cause serious injury. These tariff lines were not considered in the import analysis and as they were only seen as potential tariff loopholes.*

*Therefore, the Commission made a final determination that these products be removed from the scope of any future definitive measure.*

**2.1.4 Production process**

The Applicant indicated that the production process is as follows:

- Normal Hot-rolled product:

The manufacturing process for hot-rolled consists of several stages: (1) melting and refining to set the steel's chemical and metallurgical properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling.

- Chequered plate (Hot-rolled material with a pattern on the surface):

The same manufacturing process as normal hot-rolled. The only difference is that the work rolls in the last stand of the hot-rolled process are replaced by work rolls with a pattern to ensure the imprint on the coil surface in the hot condition. The chequered plate is normally only produced once a month for a short period depending on the ordered volumes. It is patterned to render a non-slip surface. The geometry of the layout facilitates cleaning and draining of the working surfaces while retaining the required non-slip characteristics.

- Pickled and oiled:

The manufacturing process for pickled and oiled products consists of several stages: (1) melting and refining to set the steel's chemical and metallurgical properties; (2) casting the steel into a semi-finished shape (slab); (3) hot-rolling the input material into a coil on a multi-stand, high-speed rolling mill and controlled cooling of the run-out table prior to coiling (4) pickling and oiling in a continuous mill after removing the scale in a pickling plant.

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

The Applicant described the subject product as certain flat-rolled products of iron, non-alloy steel, or other alloy steel (not including stainless steel), whether or not in coils (including products cut-to-length and 'narrow strip'), not further

worked than hot-rolled (hot-rolled flat), not clad, plated or coated, excluding grain-oriented silicon electrical steel.

### 2.2.2 Production process

The production process is as follows;

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

speed rolling mill and controlled cooling of the run-out table prior to coiling (4) pickling and oiling in a continuous mill after removing the scale in a pickling plant.

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

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

### **2.2.4 Categories of users**

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

## **2.3 LIKE OR DIRECTLY COMPETITIVE PRODUCTS ANALYSIS**

In terms of SGR 2, a like product is “a product which is identical, i.e. is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration”,

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

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

	Imported product	SACU product
<b>Tariff Headings</b>	7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.	7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.
<b>Raw materials</b>	<p>Normal Hot-rolled products:</p> <p>The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p> <p>Pickled and oiled products:</p> <p>The same inputs are used for pickled and oiled as for normal hot-rolled products, pickled and oiled is only an additional process after hot rolling. The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p>	<p>Normal Hot-rolled products:</p> <p>The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p> <p>Pickled and oiled products:</p> <p>The same inputs are used for pickled and oiled as for normal hot-rolled products, pickled and oiled is only an additional process after hot rolling. The main inputs are virgin iron ore, carbon or alloy steel slabs, natural gas, and electricity.</p>
<b>Production process</b>	The production process of the imported product is outlined in detail above.	The SACU product production process is outlined in detail above.



<b>Application or end-use</b>	<p>The imported product is used in the following industries:</p> <p>Normal hot-rolled and hot-rolled pickled and oiled products are used for manufacturing general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small-and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking &amp; shelving, etc.</p>	<p>The SACU product is used in the following industries:</p> <p>Normal hot-rolled and hot-rolled pickled and oiled products are used for manufacturing general engineering products such as containers, mining equipment, drawing and forming applications like wheel rims, small-and large bore pipes, agricultural implements, earth moving equipment, gas cylinders, truck trailers, water tanks, railway rolling stock, racking &amp; shelving, etc.</p>
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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 SGR.

### 3. INDUSTRY STANDING

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#### 3.1 DOMESTIC INDUSTRY

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

##### ***Comments by the Group to the Commission's Preliminary Report***

*The Group noted that the SAISI application stated that it was submitted by SAISI on behalf of its members, AMSA and Columbus Steel Pty (Ltd) ("Columbus"), the only two manufacturers of the product in the Southern African Customs Union ("SACU"). They pointed out that the Commission's preliminary report inaccurately stated that the application was submitted "on behalf of AMSA," representing the SACU industry. As a result, the Group requested the Commission to clarify this statement as it now seems that the Commission is only concentrating on AMSA and not the SACU industry as a whole in this Safeguard action.*

##### ***Response by the Applicant***

*The Applicant stated that the application was lodged by SAISI on behalf of the industry. However, in this application, the industry is represented by AMSA since it represents between 85 and 95 percent of all domestic production of the like or directly competitive product. This means that it meets the quantitative thresholds as interpreted by the World Trade Organization ('WTO') Dispute Settlement Body ('DSB'). Since the only other current producer, Columbus Stainless Steel, does not produce significantly different products, and as there is no evidence available to either ArcelorMittal South Africa or the Commission that Columbus' performance is significantly different to that of ArcelorMittal South Africa. Furthermore, this also satisfies the qualitative inquiry as interpreted by the WTO DSB. Accordingly, the investigation is based on "a major proportion of the industry". It follows that since only AMSA supplied all the information, only AMSA's adjustment plan is required. The Applicant submits that it could be more accurate for the Commission to indicate that the*

application was made “by or on behalf of the industry” in its final determination.

**Commission’s consideration**

*The Commission considered that AMSA is the main producer of hot-rolled steel products in the SACU and represents between 85 and 95 percent of the production volumes of the product. AMSA's output is considered a "major proportion." Columbus Stainless (Pty) Ltd ("Columbus") is a supporting entity in this investigation. The Commission has determined that AMSA's application is considered to be "by or on behalf of the SACU industry," as mandated by SGR 7.1 and 7.2.*

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

- (1) at least 25 per cent of the SACU producers by domestic production volume support the application; and
- (2) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.”

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

## **4. UNFORESEEN DEVELOPMENTS**

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

Article XIX of the GATT provides as follows:

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

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

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

The Applicant also referred to Report No. 551 of the Commission, which analysed the impact of the GATT 1994 obligations. The Commission found that the South African government had agreed to bind the ordinary customs duty on imported flat hot-rolled steel products at 10% ad valorem. This led to the restructuring of the industry, with the state-owned entity being unbundled and privatized, and the government facilitating the end or review of an old pricing model to enhance the industry's competitiveness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Comments by the Japanese Mills***

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

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



### **Comments by the Group**

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

### **Response by the Applicant**

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

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

### **Commission's consideration**

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

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

## **2) Chinese economic activity has consistently declined since 1994**

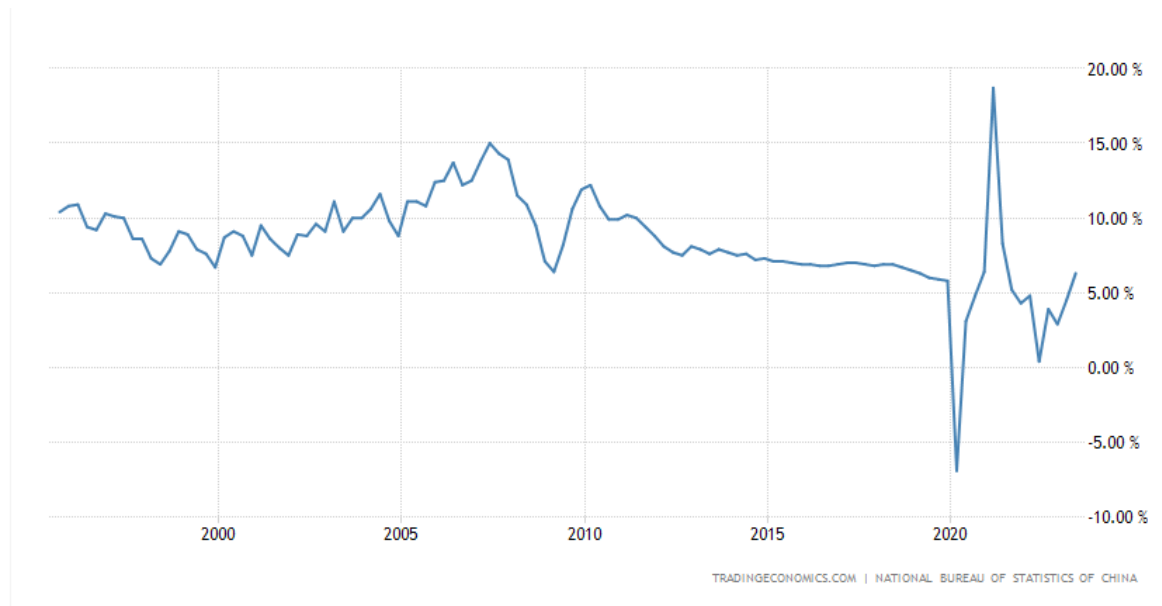
The Applicant mentioned that China has made significant investments in its economic growth since 1979, resulting in an industrial boom. However, this growth may not be sustainable in the long term, as the country has transitioned from a developing to a developed economy, with significant government intervention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

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

market,

will

decrease.



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

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

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

### ***Comments by the Japanese Mills on the Commission's Preliminary Report***

*The Japanese Mills pointed out that the Commission's claim about the decline in Chinese economic activity since 1994 is inaccurate. They argued that the information on page 51 of the preliminary Report shows a positive annual growth rate every year except for 2020. They believe this indicates a significant increase in economic activity over the period and challenges the notion of a decline. The Japanese Mills also argued that even if the rate of increase has slowed, the Chinese economy continues to grow yearly. Therefore, they see no evidence to support the claim that the demand for specific commodities used in infrastructure development, particularly in the domestic market, will decrease.*

### ***Response by the Applicant on the Commission's Preliminary Report***

*The Applicant highlighted that the section clearly states that the annual growth rate has declined since 2006/2007, except in 2021. This is supported by the graph on page 51 of the Preliminary Report, which shows that China's growth rate was around 15% in 2007 and only 5-6% during the investigation period. With the recent property crash in the first two quarters of 2024, the annual growth rate has further decreased to only 4.5%. Therefore, the Applicant agrees with the Commission's findings on pages 50-51 of the Preliminary Report and asserted that it is the correct position.*

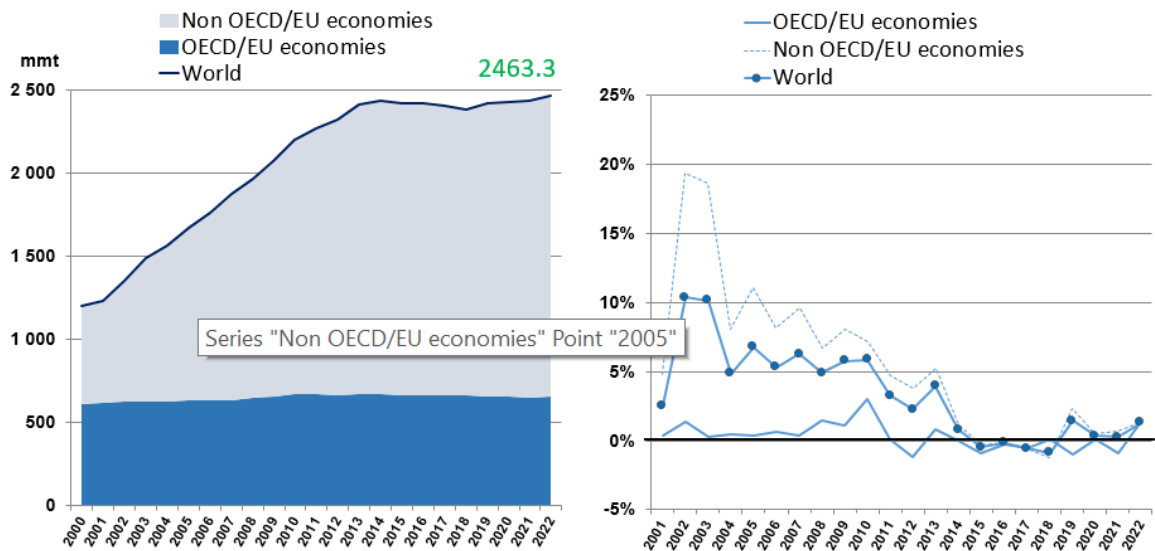
### ***Commission's consideration***

*Upon reviewing the graph, the Commission considered it is evident that China's growth rate was approximately 15% in 2007. Subsequently, there was an increase after 2020 to 19%, followed by a significant decrease to 5-6% during the investigation period.*

## **3) Overcapacity and Demand**

The Applicant provided two reports from the Organisation for Economic Co-operation and Development ("OECD") titled "Latest Developments in Steelmaking Capacity 2023" and "Steel Market Developments - Q2 2023". According to these OECD reports, excess capacity is a major challenge

faced by the global steel industry. They also highlight that the industry's capacity to produce steel has more than doubled since the early 2000s and investment projects are increasing in various economies, while steel consumption is declining. The diagrams provided in the reports demonstrate the increase in steel capacity and the decline in consumption.



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

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

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

top 20 steel companies in the world are from China, demonstrating China's significant market share in the industry.

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

The following information was provided by the Applicant:

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

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

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

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

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

### ***Comments by the Japanese Mills***

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

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

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

### **Comments by the Group**

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

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



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

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

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

### ***Response by the Applicant***

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

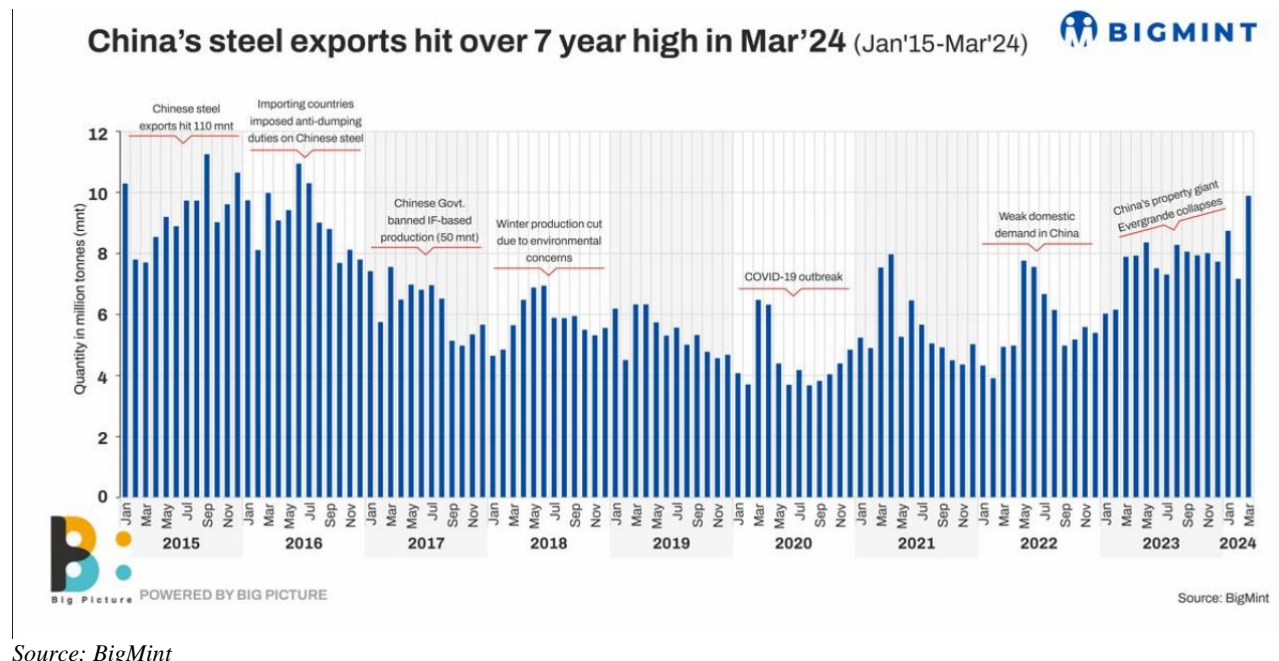
*global steel exports and the rise in China's steel industry and exports contribute to excess steelmaking capacity, which exerts significant pressure on the steel industry worldwide. It led to surges in steel exports from countries with excess capacity, depressed prices, and losses in market shares for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

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

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

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

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



Source: BigMint

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

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

### **Commission's consideration**

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

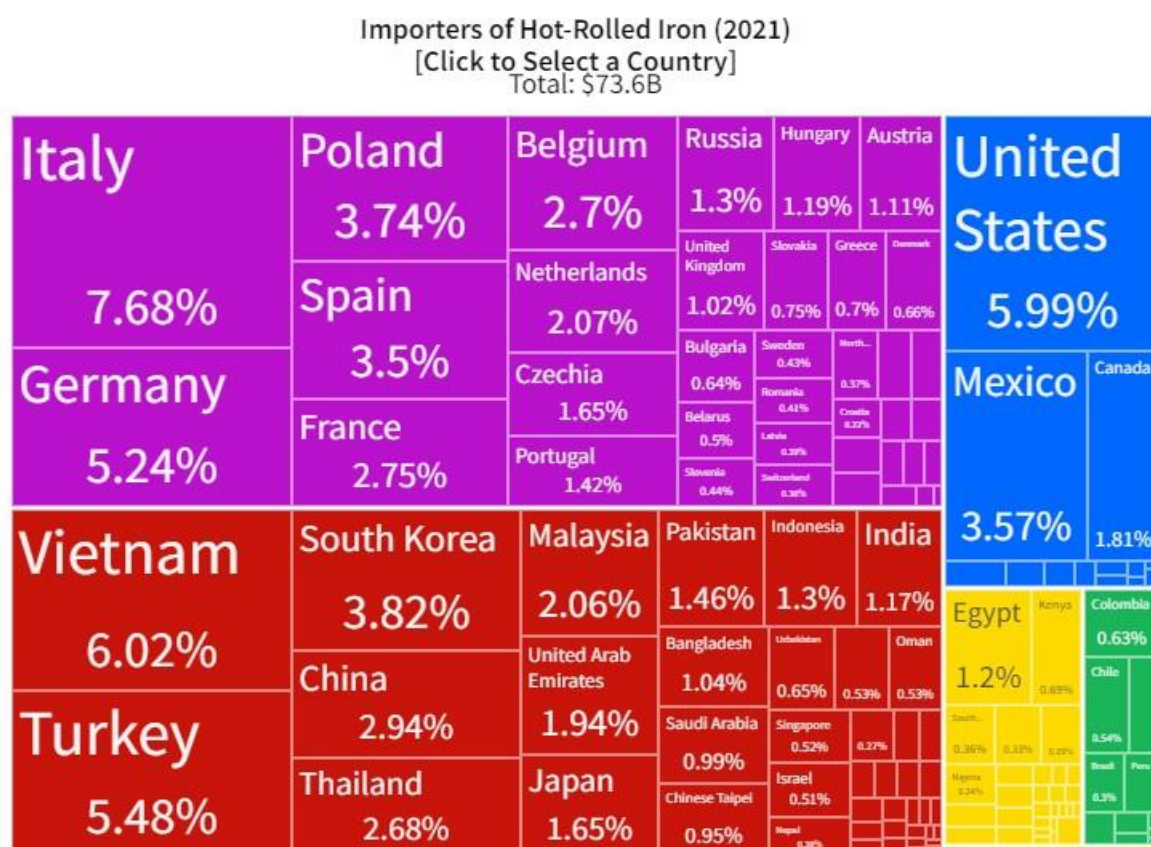
### **4) Trade Remedies on Hot-Rolled Products**

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

The European Union has also imposed safeguard duties until June 2024 on hot-rolled products, which has closed off three of the largest markets for Chinese products. Vietnam is currently investigating possible dumping duties on hot-rolled products against Malaysia, Thailand, and China. If these anti-dumping duties are imposed, it would close off the three largest markets for Chinese exports of hot-rolled products worldwide.

The Applicant provided a link to a 2021 publication by the Observatory of Economic Complexity (“OEC”), which indicates the three largest importers of hot-rolled products:

- The EU & the UK, representing \$31.6B or 42.93%;
- Vietnam, representing \$4.41B or 6.02%; and
- The USA, representing \$4.41 or 5.99%.

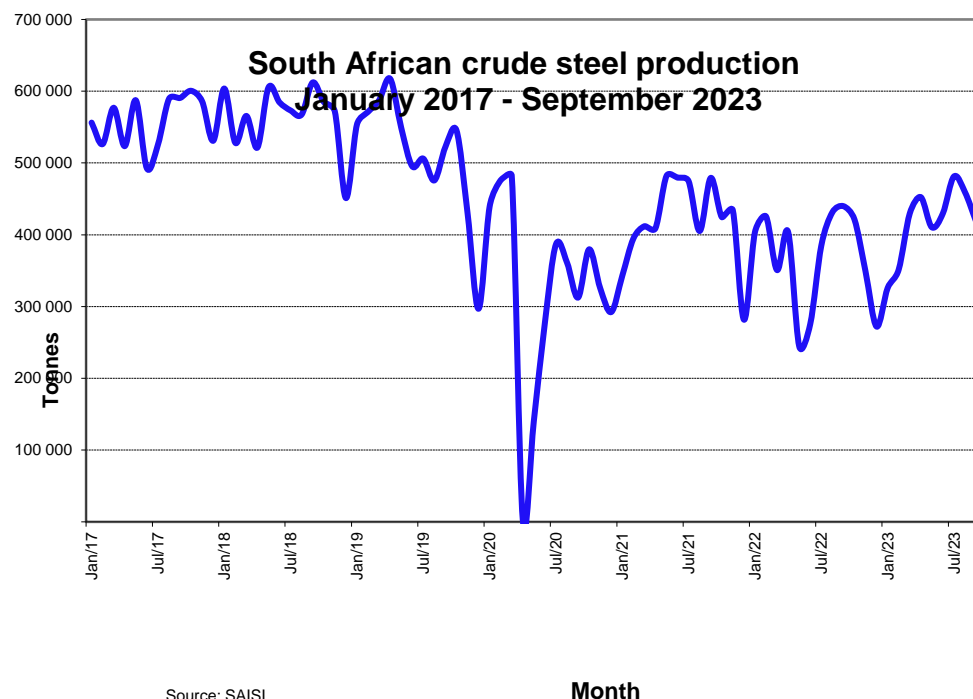


Source: <https://oec.world/en/profile/hs/hot-rolled-iron#:~:text=Imports%20In%202021%20the%20top.using%20the%20HS4%20product%20classification.>

The Applicant stated that three regional segments represent nearly 55% of all hot-rolled product imports, and that strict trade remedies have been in place

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

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



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

### **Comments by The Japanese Mills**

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

### **Comments by the Group**

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

### **Response by the Applicant**

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

**Commission's consideration**

*The Commission considered it is evident that several WTO member states are implementing trade remedies and tariff protection measures to protect their domestic industries.*

**Comments by the Group on the Commission's Preliminary Report**

*The Group emphasized that the developments cited by the Applicant as "unforeseen" were, in fact, predictable and aligned with known industry trends. They supported this with historical data and industry reports, highlighting that the cyclical nature of the steel industry was well understood, yet the Applicant failed to present this information to the Commission. The Commission misinterpreted the Group's argument regarding the cyclical nature of the steel market, dismissing it as irrelevant.*

*The Government was aware of factors like oversupply and changes in capacity, which were anticipated to be addressed through the anti-dumping trade remedy mechanism. As a result, these developments were not unforeseen. The Report accepted the Applicant's claims without critically evaluating the evidence provided by the Group. Article 3.1 of the WTO Safeguard Agreement demands a thorough investigation into unforeseen developments. The Group requested that the Commission reassess the evidence for its final determination, ensuring that any deemed unforeseen truly aligns with WTO criteria.*

**Response by the Applicant**

*The Applicant stated that the South African government negotiated South Africa's GATT concessions between 1986 and 1993 as part of the Uruguay Round negotiations. The WTO Agreement was signed in April 1994 and the WTO Agreement was implemented from January 1995. The very significant overcapacity in the worldwide steel industry, and especially in China, only established itself many years later and, as such, could not have been foreseen by the South African (or any other) government at the time.*



*The Applicant stated that in the usual course, economic policy would dictate that once there is overcapacity for a product, no new capacity would be built for the foreseeable future and that some production units would be closed down. However, for basic steel products worldwide capacity and overcapacity continued to increase, again something the South Africa government could not have foreseen when it negotiated South Africa's tariff concessions. It is denied that it could have been foreseen that worldwide steel developments would/should be addressed through anti-dumping, when government could not have known whether dumping would take place or not in any given circumstance. It follows that each investigation needs to meet the merits applicable to the trade remedy applied for. It would be an undue burden on the Applicant, or any Applicant, to forgo applying for a remedy wherein the merits are met because of opinions about the "fairness" of its implementation.*

*The Applicant further stated that the South African government could also not have foreseen that so many countries, including most of the major steel consumers, would close their markets through the adoption of various trade remedy measures, including anti-dumping, countervailing and safeguard measures, as well as through national security measures. The Applicant has provided an extensive list of these measures in its past submissions. This means that all the excess production had to find (relatively) unprotected markets. The South African market, which is one of the least protected markets in the world, happens to be one such market.*

### **Commission's consideration**

*The Commission considered that in the India Iron and Steel Products case<sup>2</sup>, the panel reviewed India's conclusion that there was a significant increase in steel excess capacity, decreased demand for steel in important markets, currency depreciation in Russia and Ukraine, and increased demand and prices in India, all of which were unforeseen developments. The panel reasoned that while "changes in production capacity or demand are not necessarily extraordinary circumstances, and can occur as part of normal business cycles, the extent and*

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

*timing of such changes, as well as the degree of their impact on the competitive situation in the market, can be unforeseen." The panel found that India had reasonably concluded that the developments constituted unforeseen developments, given that they were occurring simultaneously. Therefore, the assertion made by the Group that the Commission overlooked the cyclical nature of the steel industry and that the significant changes in the steel marketplace is not a relevant consideration is unfounded.*

**Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese mills asserted that the Commission's preliminary determination on unforeseen developments largely repeats the applicant's submissions without proper consideration. They argued that these developments were anticipated and that the use of safeguard measures is inappropriate given the focus on China. While the Commission recognized their submissions, it did not address this argument. The mills disagreed with the Commission's conclusion that unforeseen developments and GATT 1994 obligations caused a surge in imports of the subject product under Article XIX of GATT 1994.*

**Comments by the Group on the Commission's Preliminary Report**

*The group argued that focusing on China as a source of unforeseen developments is legally questionable, as market conditions and import trends align with historical data and forecasts. The Commission must clearly explain how Chinese imports qualify as unforeseen developments under Article 4.2(a) of the WTO Safeguard Agreement to meet legal standards for safeguards. Additionally, there seems to be confusion from the applicant regarding their challenge and the appropriateness of their application, particularly since the original anti-dumping application against China was poorly converted into a Safeguard application.*

**Comments by the Group on the Commission's Essential Facts Letter**

*The Group noted that steel oversupply and overcapacity were already issues during the Uruguay Round when South Africa joined the WTO. They disagreed with the claim that unforeseen developments led to a surge in imports. The reliance on the WTO case, European Union – Safeguard Measures on Steel (Turkey) (DS595), (“WTO Turkey Case”), was criticized as it involved EU safeguard measures in response to U.S. tariffs but did not result in increased imports into SACU. The Group highlighted rising import prices from China, with the average FOB price in South African Rand at ZAR 14,062, the highest since 2010. They argued there is no substantiated link between unforeseen developments and the increase in imports that harmed domestic producers, requesting the Commission to reconsider its conclusion on this matter.*

**Comments by the UK Government on the Commission's Essential Facts Letter**

*The UK Government indicated that it remains unconvinced by the Commission's justification for linking unforeseen developments to increased imports causing injury to local producers. While it acknowledges that government subsidies and overcapacity have led to excess steel supply, it questions the clarity of how this specifically affected South Africa from June 2022 to June 2023. Although the Commission references global safeguard measures as contributing to trade divergence, these EU and UK measures, introduced in 2018, respond to prior tariffs on steel, leaving unclear how they relate to the import spike in South Africa during that period.*

**Comment by The TATA UK and Netherlands on the Commission's Essential Facts Letter**

*The TATA UK and Netherlands indicated that they disagree with the conclusions reached by the Commission with respect to the legal tests established for the imposition of the safeguard measure. They are of the opinion that the Applicant and the Commission have not provided convincing evidence that unforeseen developments have resulted in the alleged surge in imports of the subject product to South Africa, which caused serious injury to the domestic industry. Therefore, imposition of a definitive safeguard measures is unwarranted and unjustified.*

### ***Response by the Applicant***

*The Applicant argued that a clear link between excess supply, increased global trade remedies, and imports to the SACU has been established. Citing the EU – Steel Safeguards panel proceedings, the Applicant noted three unforeseen developments: (1) persistent overcapacity in the steel sector despite government interventions, (2) increased trade-restrictive measures in third countries, particularly from the U.S., and (3) the U.S. Section 232 measures.*

*Regarding the use of trade remedies, the Panel found that the EU not only referred to the number of new trade remedies in general, but specifically referred to ‘the unprecedented and increased number of such measures taken by third countries and the trade diversion caused thereby. The Panel agreed with the EU that a sudden increase in the use of trade remedies could constitute an unforeseen development and that any trade restrictive measures applied by a WTO Member in violation of its GATT obligations could be regarded as an unforeseen development.*

*The Applicant reiterated that worldwide excess capacity is increasing exponentially. Many countries have imposed or are in the process of imposing barriers to these steel imports by increasing normal customs duties or imposing anti-dumping, countervailing and/or safeguard duties. This unprecedented increase in the number of such measures taken by third countries will result in the excess steel having to be exported elsewhere (‘trade diversion’), especially to those countries with little or no protection in place-such as the SACU.*

*The Applicant further reiterated that there is multiple anti-dumping, countervailing and safeguard measures in place from all over the world against China and other countries. These include Australia, Brazil, the EU, India, Indonesia, Vietnam, Russia, Mexico, Thailand, the US, and the UK and so forth on the subject product and like product. This is not considering other trade remedy actions and barriers, such as the United States’ Section 232 restrictions on imports of steel and aluminium leading to the closure of one of the biggest markets for crude steel in the world. As submitted previously the UK and EU have recently decided to extend existing safeguard measures until June 2026 on certain steel products,*

*which includes the subject product, thereby closing off multiple markets for Chinese and other countries' products.*

*Although it is important to specifically consider trade remedies on hot-rolled steel products, it is also important to note that trade remedies on other basic steel products play a significant role in exports of hot-rolled steel products. It is relatively easy and cheap to move up and down the hot-rolled and cold-rolled value chains. Thus, when trade remedies are imposed against cold-rolled coils or plates or sheets, producers may decide to process less hot-rolled steel into cold-rolled steel, thus resulting in higher exports of hot-rolled steel products.*

*The Applicant stated that these actions are resulting in a shift in export patterns, as China and other countries with surplus production or capacity need to move their excess production to other less restrictive countries, such as South Africa. This is underscored by the fact that China does not show any indication of effectively decreasing its output of the subject product despite undertakings made in this regard by the Chinese government.*

*The Applicant highlighted that interested parties have stated that there was significant oversupply in the world at the time South Africa negotiated its tariffs. The Applicant indicated that, although production increased significantly in the years leading up to 1994, demand also increased. The overcapacity only manifested itself after China had joined the WTO, more than 7 years after South Africa had made its commitments. Notwithstanding the statement by interested parties on developments in China, steel exports from China reached its highest level in nearly a decade in the past two years, following the crisis in its construction industry (amongst other factors). Therefore, the overcapacity was completely unforeseen by negotiators.*

*The Applicant indicated that interested parties also argued why various international developments did not lead to an even bigger surge of imports, which indicates how vulnerable the domestic industry would be if these events did occur. For example, it is clear that the unforeseen development in the form of the Russia-Ukraine war also contributed to the increased imports.*

*The Applicant highlighted that the period of the surge coincides with numerous trade remedies implemented and reports by the OECD on overcapacity of steel and the dangers associated with it. Therefore, the UK's and other interested parties' arguments that there is no clear evidence of how the oversupply has affected the South African steel market and resulted in a surge in imports is unfounded – the requirement of unforeseen developments has unequivocally been met. The Applicant reiterated that it is not just the above two factors which can be considered unforeseen but the confluence of all the factors raised previously.*

### **Commission's consideration**

*The Commission reiterated that from the information provided it is evident that the steelmaking production capacity gap increased significantly in 2022. Global steelmaking capacity increased for the fourth year in a row, reaching 2 463.4 mmt in 2022, while capacity utilisation decreased from 78.7% in 2021 to 74.3% in 2022. China, the major global producer of crude steel, has seen its exports increase by 3.1% in 2022, with estimated figures reaching 68 mmt. Furthermore, China's hot-rolled coil capacity has been expanding rapidly since 2019 the crude steel capacity growth of close to 70 million mt/year by mid-2023, Over 2019-2022, China had brought about 85 million mt/year of brand-new hot strip mills on stream. Therefore, it is clear that the negotiators could not have foreseen the current global steel oversupply.*

*The Commission emphasized that unforeseen developments in the present case constitute the following: The increase in the production capacity of crude steel and the subject product at the levels stated could not have been foreseen prior to 1994. This increased production therefore filtered through all crude steel producing markets in the world, especially led by the increase in production from China as both a high producer and consumer of crude steel including the subject product.*

*This unforeseen development, although it is a global phenomenon, may affect producers in different territories differently and in the case of SACU producers has resulted in increased imports by 105%, meaning to such level as to cause serious injury. The information as analysed shows a logical connection how the cited unforeseen events still led to such increased imports. The injury indicators showing a downturn can logically be connected with the surge in imports.*

*The Commission further reiterated that WTO panels have established that investigating authorities must demonstrate the existence of unforeseen developments and their logical connection to increased imports causing injury to domestic producers. The panels have developed a 3-part enquiry to determine if this requirement is fulfilled (for example, European Union (“EU”) – Safeguard Measures on Steel (Turkey)).*

*The first part of the enquiry requires authorities to identify the events or (confluence of) events that are claimed to be unforeseen. The Applicant stated that a confluence of events forms the basis of the unforeseen development. The Applicant claimed, amongst other things, that South African negotiators did not anticipate global steel overcapacity in general and, in particular, the increase in China’s hot-rolled capacity, shrinking demand in China and increased trade defence and other measures on imports of hot-rolled steel products, when making concessions during the Uruguay Rounds. Consequently, the Applicant has clearly outlined the unforeseen developments that are alleged to have led to the surge in imports, fulfilling the first part of the 3-step requirement.*

*For the second part of the enquiry, authorities must provide evidence-based explanations for unforeseen circumstances when relevant concessions or obligations were made. Mere allegations are not sufficient, an explanation must be provided as to why the circumstances were unforeseen.*

*At the time of the trade concessions, although negotiators were aware of global overcapacity, they did not anticipate the sudden and continued increase in Chinese production capacity fuelled by massive state subsidies. The concessions were negotiated assuming consistent market competition and no*

*significant government interventions. There was no historical precedent for the scale of government subsidies later introduced by China in the steel sector.*

*Similarly, the imposition of trade defence measures was not, as such, unforeseeable as there had been a history of such measures being imposed. However, it was the unprecedented number and impact of measures targeting the subject products, and the resulting trade diversion and increased imports into South Africa, that made the measure unforeseen.*

*Finally, changes in demand for hot-rolled steel in China was also not, as such, unforeseeable as its economy has been subject to business cycles. However, the extent and timing of the change (decrease) in demand and the impact on domestic and international markets was unforeseen.*

*In EU–Safeguard Measures on Steel (Turkey), Turkey argued that the EU had failed to explain why steel overcapacity was an unforeseen event as overcapacity had existed for decades and predated the Uruguay Round. (Para. 7.97) The EU noted the following to explain why the overcapacity at issue was unforeseen:*

*“[T]his was because steel production capacity continued to increase after 2011 (following a dip between 2009 and 2011) despite being already excessive then and despite the fact that it was economically expected to decline, and because this overcapacity persisted despite the important number of measures taken to reduce it”. (Para. 7.98)*

*The Panel accepted the EU’s explanation noting that –*

*“With respect to overcapacity, we understand the explanation in the published determinations to be that what was unexpected was that overcapacity would continue to increase, reaching “unprecedented” levels, contrary to economic logic and efforts to contain the increase ....”*

*The European Commission drew a distinction between an underlying situation – i.e. overcapacity per se, which was known at the time of the Uruguay Round – and its development into a new situation, i.e. the fact that overcapacity greatly increased, contrary to economic expectations and measures taken to address it.*



*We do not consider that more was required in this case to identify the unprecedented overcapacity as a development that was unforeseen in this instance. A development that was unforeseen at the time of contracting an obligation can evolve from a situation that was known at that time. (Para. 7.101) Regarding the trade measures cited by the EU as unforeseen developments, Turkey argued that the increase in trade defense measures on steel products was foreseeable because such measure are provided for by the WTO rules and because there had been periodic increases in the use of anti-dumping measures before the Uruguay Round. The EU agree that trade defense measures were not, as such, unforeseeable. However, it was the “extent, timing and degree of impact of such increases” that could make them unforeseen. In essence, the EU argued that it was the unprecedented increase in the number of measures targeting steel which had been introduced and which created trade diversion resulting in increased imports into the EU that was unforeseen.*

*The Panel once more agreed with the EU noting that the increase in trade defense measure in the broader context of increased overcapacity and the US Section 232 measures, and the fact that the average number of steel-related anti-dumping investigations initiated per year had increased from 77 in 2011-2013 to 117 in 2015-2016 and that the United States had, in February 2018, 169 AD/CV orders in place on steel and 25 ongoing investigations.*

*Finally, regarding the 3rd part of the enquiry, the EU–Safeguard Measures on Steel (Turkey) Panel stated that authorities must provide a reasoned and adequate explanation for the existence of a “logical connection” between the unforeseen development and the increase in imports the increase in imports being “the result of” unforeseen developments, rather than just referring to them separately.*

*The Commission took note of that the unforeseen government subsidies and overcapacity in the steel industry have resulted in an excess supply of steel products. This surplus steel, produced at significantly lower costs, has been dumped into global markets. As a result, some countries have imposed trade remedies measures to protect their markets, leading to trade diversion. Steel*

*products initially destined for these markets have been redirected to countries like South Africa. The situation has been further exacerbated by the declining demand for hot-rolled steel products worldwide, resulting in an excess supply. This has led to a significant increase in export volumes by countries with excess capacity. In this investigation, the imports in absolute terms increased by 105% during the period of surge and over the POI by 33%. Even post the POI the imports remain at high levels.*

*Based on the analysis above, the Commission considered that the 3-part inquiry requirement was satisfied to demonstrate the link between the unforeseen developments and the increase in imports causing injury to domestic producers.*

*In addition to the above analysis, the South African government committed to binding the ordinary customs duty on the imported products of flat hot-rolled steel at 10% ad valorem.*

*The Commission further considered that global excess capacity is one of the main challenges facing the global steel sector. The global steel capacity has more than doubled since the early 2000s and investment projects continue to increase in several economies, while steel consumption has declined. From the information submitted by the Applicant, it is also evident that this growth shows no indication of slowing down, despite a clear decrease in demand for the product in China, leading to an over-production of the product, which needs to be exported to get rid of the high stock levels. Furthermore, the allegation that unforeseen development is not product related is unfounded. The Applicant used the subject product and also used an estimate on the composition of the subject product from the total global steel production.*

*The Commission noted that unforeseen developments under Article XIX of GATT 1994 are the following:*

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

*the subject product.*

*This increased production led to an oversupply of steel in the global markets, and this oversupply was unforeseen. The oversupply of steel is a world phenomenon, as producers and consumers of steel reduced their consumption patterns, however, production continued, leading to steel filtering through to all world markets as exports from producing countries, such as China increased. This is seen by the massive exports of steel by China with other steel-producing economies imposing and considering trade remedies measures to deal with this global increase in steel production that led to an oversupply of steel in the world markets which has filtered through their markets.*

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

## **Conclusion**

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

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

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

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

Based on the above information, the Commission made a 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

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

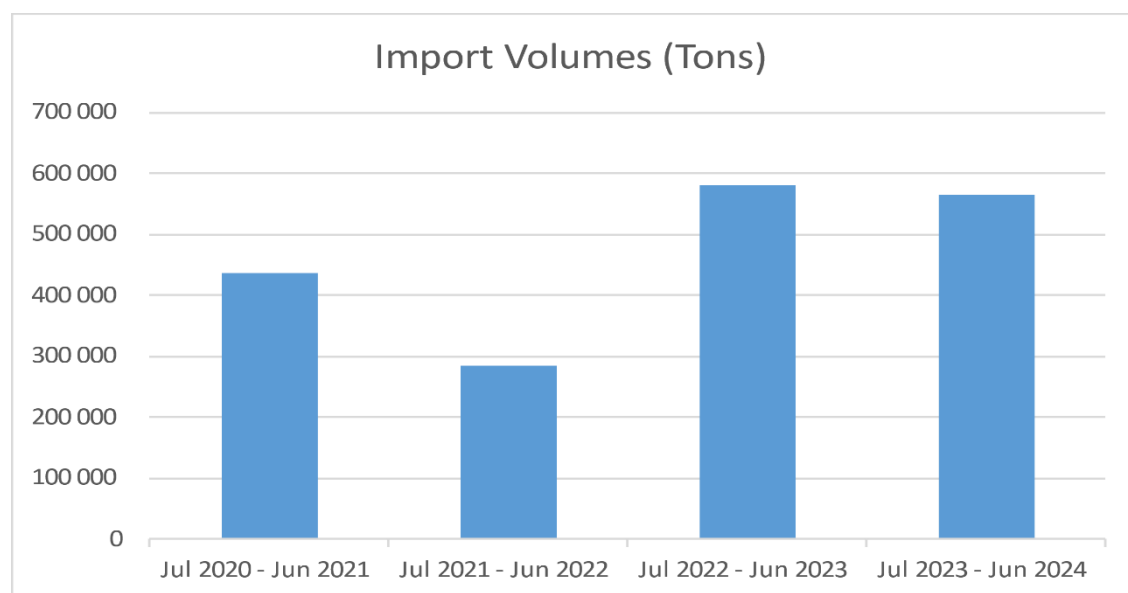
The following table shows import volumes as sourced from SARS for the period 01 July 2020 to 30 June 2023.

**Table 5.1: Import volumes (tons)**

Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023 (Period of surge)	Jul 2023 - Jun 2024 (Period post POI)
All countries import volumes*	437 108	283 891	580 778	564 791
Change from 2021			105%	(3%)

\*All Countries imports volumes represent the rest of the world excluding SACU imports

**Table 5.1.1**



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

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

The period after the POI was also analysed because interested parties suggested that imports decreased and that the Commission should have extended the POI until December 2023. Based on the information in the table above, imports after the POI continued to flood the SACU market at high levels, although there was a slight decrease between June 2023 and June 2024.

### **Comments by the Group**

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

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

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

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

### **Comments by the Group on the Commission's Preliminary Report**

*The Group indicated that with regard to the most recent 12-month period, the imports present an undeniable decreasing import volume trend, focus on recent information does not amount to an "influence of the data". It is submitted that as a result of high October 2023 volume, any historical data starting point prior, will result in an increasing trend narrative; - even the import volume drops to zero. It is reiterated that the Commission must not only look at the period of investigation summaries, but especially at the most recent monthly data that exists. The Commission is advised that the surge in imports that did occur is not an ongoing event and with imports in recent months declining, the allegation of imports will*

*lead to the overall impairment of the domestic manufacturing industry is not true.*

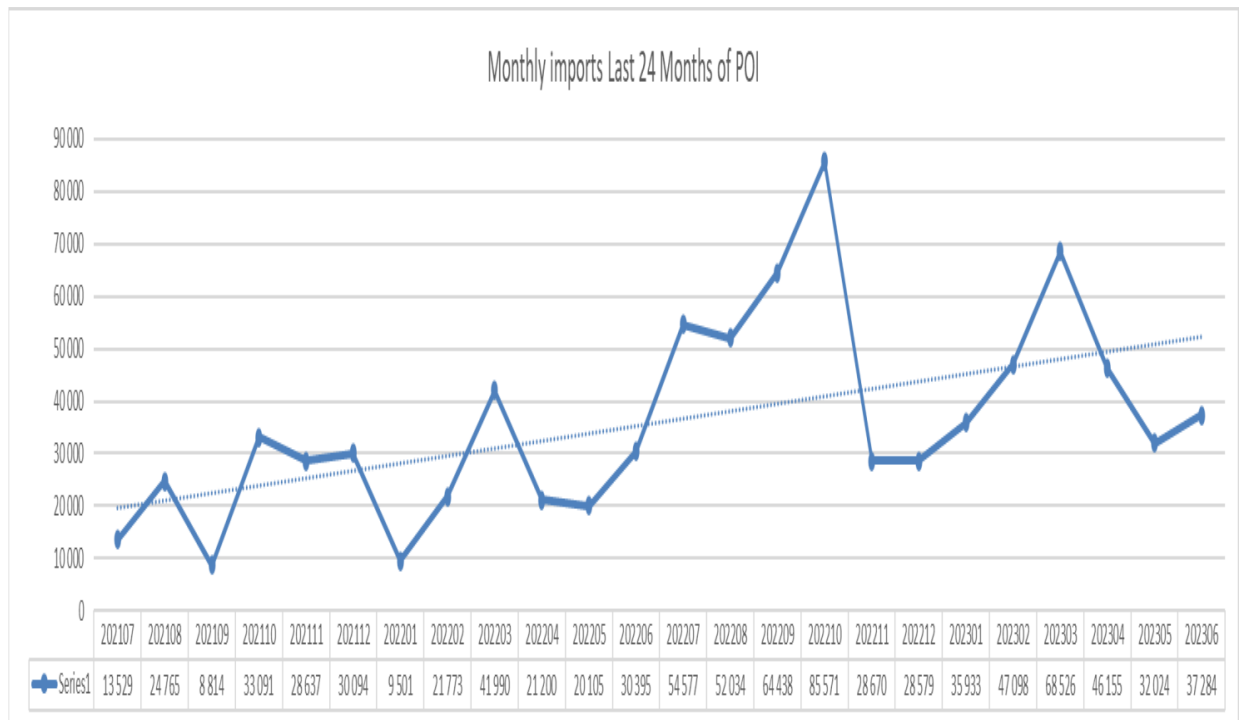
**Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills noted that the Commission has made a factual error in its analysis of the alleged surge in imports when it stated that "it was found that there was a surge in imports during two periods - July 2021 to June 2022 and July 2022 to June 2023". It is clear from the figures provided by the Commission that there was a decrease and not a surge in July 2021 to June 2022 when imports declined from 437 108 kg to 283 891 kg. The Commission also doesn't explain how it reconciled the decrease in the period July 2021 to June 2022 with its finding that there has been a surge in imports.*

**Response by the Applicant**

*The Applicant stated that it has already provided in its application a thorough and detailed analysis of imports of the subject product into the SACU, as well as their effect on the domestic industry. It is evident that there was a surge in imports in absolute terms of the imports of the subject products from 283 891 tonnes for the year ending July 2021 to 580 778 tonnes for the year ending June 2023. This represents an increase of 105% in absolute terms. In considering the increase on an end-to-end analysis, an increase of 33% is observed between the period of July 2020 to June 2023. There is a surge in imports that is significant and recent. The Applicant further stated that on an analysis at a monthly level, imports are still increasing, as can be seen from the last 24 months of the POI, where the increasing trend remains apparent.*





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

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

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

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

### **Commission's consideration**

*The Commission considered that in US — Line Pipe<sup>5</sup>, the Panel found that “there is no need for a determination that imports are presently still increasing. Rather, imports could have ‘increased’ in the recent past but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination.*

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

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

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

*It should be noted that the period after the POI was analysed to determine whether the imports decreased as claimed by the interested parties. It was found that imports did decline slightly, but they are still coming in at high levels, as shown in the table above 5.1.1.1. Therefore, even if the Commission were to extend the POI, the situation regarding the imports would remain the same.*

#### **Comments by the European Union on the Commission's Essential Facts Letter**

*The European Union noted that imports increased and doubled between 2021/2022 and 2022/2023 and highlighted that it is important to also take into account in the analysis that imports significantly decreased between 2020/2021 and 2021/2022 by more than 35%, most likely due to the Covid pandemic, while the subsequent surge of imports coincides with the post covid recovery. Thus, both years appear exceptional, the first for an exceptional decrease and the latter for an exceptional increase. It is therefore important to also include data post IP in the analysis.*

*The European Union highlighted that a substantial portion of imports during the investigation period originated mainly in China, Japan, and Taiwan, with Germany and the Netherlands contributing only about 6% of total imports, primarily consisting of non-local products.*

#### **Comment by the Botswana Government on the Commission's essential facts letter**

*The Botswana Government indicated that it has undertaken an analysis of the country's imports for the subject product for the period July 2020 to 2024. The analysis revealed that there has been a surge of imports of hot-rolled steel products over this period.*

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

*The volume of imports experienced a decline from July 2020 to June 2022. However, subsequent levels of imports have remained higher than those recorded during the July 2020 to June 2021 period. The Commission observed a significant increase in imports during the July 2022 to June 2023, which can*

*be classified as a surge. Following the period of investigation, imports continued to enter the SACU market at high levels.*

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

**Table 5.1.2: Imports volumes of countries with substantial interest**

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

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

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

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

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

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

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

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

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

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

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

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

## 6. SERIOUS INJURY

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### 6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

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

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

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

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

#### 6.2.1 Actual and potential decline in sales

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

**Table 6.2.1: Sales volume**

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

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

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



### **Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills reported that the preliminary report indicates a slight increase in sales volumes by 2 index points. This suggests that the surge did not cause a decline in sales volumes. The only time sales volumes decreased was before the surge when import volumes also decreased. This indicates that changes in sales volumes are caused by other factors, particularly the decline in demand in the SACU market, and not by an increase in imports.*

### **Response by the Applicant**

*The Applicant indicated that sales had decreased by 22 basis points in the preceding period, showing that its sales had decreased by 20 basis points over the investigation period. In contrast imports increased by 33% over the same period. For the final year of the POI, imports increased by 105% (more than doubled), whereas the Applicant's sales recovered only by a very small margin to a figure still 20 basis points lower than in the first year of the investigation period. A surge in imports may be determined with reference to production in South Africa. The preliminary Report clearly indicates that domestic production decreased by 5 basis points, from 97 to 92, in the year that imports increased by 105%. Thus, there is a clear correlation between increased imports and the decrease in domestic production.*

### **Commission's Consideration**

*The Commission considered that despite a slight increase of 2 index points between July 2021- June 2022 and July 2022- June 2023, the rate of increase is lower than in the initial year of the investigation period. Furthermore, the Applicant experienced a significant decrease of 22 index points from 100 to 78 between July 2020 and June 2022 and a decrease of 20 index points over the period of investigation.*

### 6.2.2 Profit

The following table shows the Applicant's profit situation:

**Table 6.2.2: Profit**

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

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

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

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

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

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

the extent that it will no longer be viable to produce the subject product. This will provide importers with the necessary foothold to overrun the market and push the domestic industry out.

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

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

***Comments by the Japanese Mills on the Commission's Preliminary Report***

*The Japanese Mills have stated that the Commission referenced the Applicant's claim that "there is a clear correlation between the decrease in sales and the decrease in profits due to an increase in imports." However, this claim is incorrect, as the Applicant's profitability increased in the year ending June 2022 despite a decrease in sales and decreased in June 2023 despite an increase in sales volume.*

***Comments by New Concept Mining (NCM) on the Commission's Preliminary Report***

*NCM stated that their report indicated a significant decrease in the applicant's profits during the surge between 2021 and 2023. However, they failed to recognize that a portion of this decline was due to increased costs. AMSA's financial statements explicitly acknowledge the negative impact of rising raw material costs and logistical challenges on their production costs and overall profitability. The omission of this important context skews the representation of the applicant's injury. By failing to consider these contributing factors, the Commission's assessment lacks the necessary depth for a comprehensive analysis of the serious injury. NCM argued that a 5% decline in demand does not meet the definition of "serious injury" according to the WTO Agreement on Safeguards.*

### **Comments by the Group on Commission's Preliminary Report**

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

### **Commission's consideration**

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

#### **6.2.3 Output**

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

**Table 6.2.3: Output**

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

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

The Applicant stated that the table above shows a significant decline in the total production since the surge in imports between July 2021 – June 2022 and July 2022 – June 2023. As imports increased their share of the market, local production volumes have decreased further. The Applicant further stated that this decline has had a significant impact on employment, adversely affected the profitability of operations, and is no longer sustainable.

### **Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills stated that based on the preliminary determination, it was clear that the Applicant's production decreased by 4 index points during the surge period and by 8 index points over the investigation period. However, this assessment does not take into account that the production volume of Columbus, the other SACU producer, did not decrease in 2023 despite an increase in imports. This supports the argument that the significant injury is specific to AMSA and is caused by factors directly related to AMSA, not imports (as imports would affect both AMSA and Columbus). Additionally, it is important to note that AMSA's production volumes declined in 2023 despite an increase in sales volume, indicating that the decrease in production was not due to changes in sales or demand (which could be linked to imports) but was caused by other factors.*

### **Response by the Applicant**

*The Applicant stated that comments on Columbus' production volumes are irrelevant and misleading. Since the industry for purposes of this investigation has been defined as ArcelorMittal South Africa only, only ArcelorMittal South Africa's information is taken into account in the serious injury determination. This information not only clearly shows serious injury when all factors are considered holistically, but also specifically in respect of production. Columbus' still shows an overall decrease over the investigation period, and, if considered along with that of ArcelorMittal South Africa, shows a decrease in both the second and third years of the investigation period.*

### **Comments by the Group on the Commission's essential facts letter**

*The Group reiterated that the Commission must recognize that almost half of AMSA's hot rolled steel production is used to feed its downstream operations and is not sold to unrelated end users. Hence, it is of the utmost importance that production that is aimed at the downstream operations of the Applicant must also be excluded when evaluating serious injury.*

### **Response by the Applicant**

*The Applicant stated that has submitted extensive comments on why this is incorrect. The Applicant made reference to the Appellate Body in US – Hot-Rolled Steel, while an authority may focus on one part of the industry's production or sales, it still had to consider the whole. The panel in Morocco – Hot-Rolled Steel (Turkey) came to the same conclusion, finding that "an unbiased and objective investigating authority, in analysing the state of the domestic industry, would not disregard a guaranteed market which held 'good commercial prospects' for the domestic industry's performance, and which accounted for half of that industry's production, and would therefore have taken that captive market into consideration in its analysis." It should be understood that if the Commission disregards the Applicant's captive sales, the impact of the imports would have been much more severe because imports market share would increase. These arguments are contrary not only to established WTO law, but also its own clients' interests.*

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

### **Commission's consideration**

*The Commission considered that the information provided is about the Applicant's sales to the domestic downstream market. The Commission further considered that it is evident that the Applicant's production declined by 5 index points during the surge period and by 8 index points over the period of investigation. Analysing Columbus production volumes, the table illustrates a*

*reduction in the total SACU production during the surge in imports between July 2021 and June 2022, and July 2022 and June 2023, by 4 index points and 7 index points over the investigation period.*

#### 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**

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

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

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

The Applicant stated that the 22 index points decline in the SACU market share as a whole, was captured by the imports. Imports' market share increased by 50 index points during the period of surge, from 88 index points in 2021 to 137 index points in 2023. This trend is showing no sign of slowing down, and the

serious injury experienced because of it is significant. The Applicant also stated that the import statistics indicate an acceleration in imports.

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

***Comments by the Japanese Mills on the Commission's Preliminary Report***

*The Japanese Mills previously submitted that the SACU market shrunk by 4 index points, or around 56,356 tonnes, between July 2020 and June 2021 and July 2022 and June 2023. The Commission noted this, but it did not include any findings in this regard in its consideration.*

***Response by the Applicant***

*The Applicant stated that comments on market share are misplaced. Japanese Mills indicated that the size of the market decreased by 4 index points. The Applicant indicated that despite this, import increased by more than 100%. As stated previously, increased imports in a decreasing market have a significantly greater impact than increasing imports in an expanding market. Thus, the combination of significantly increased imports in a decreasing market very clearly underscores the significant negative impact on the industry.*

***Commission's consideration***

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



*surge in imports. The market share held by imported products has grown significantly from 87 to 137 index points in the same period.*

### 6.2.5 Productivity

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

**Table 6.2.5: Productivity**

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

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

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

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

### **Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills pointed out that they deny that AMSA's decline in output is caused by imports, given that the decline in output coincided with an increase in sales volumes. They also noted that although the Applicant attempts to shift focus to the decline in AMSA's employment figures, productivity has improved over the period, which does not support a finding of serious injury.*

### **Commission's consideration**

*The Commission considered that due to an increase in imports, the Applicant's output decreased by 4% during the surge period. The applicant also experienced a reduction in employment from 103 to 97 index points during the same period.*

#### **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**

<b>Tons</b>	<b>Jul 2020 - Jun 2021</b>	<b>Jul 2021- Jun 2022</b>	<b>Jul 2022 - Jun 2023</b>
Capacity	100	100	100
Total production	100	97	92
Capacity utilisation	100	97	92

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

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

**Comments by the Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills have stated that they do not believe imports cause the decrease in output by AMSA. They argued that the production decline happened at the same time as an increase in sales volumes. Therefore, they believe that the drop in capacity utilization is caused by factors other than increased imports. Despite acknowledging the Japanese Mills' concerns about the long-term underutilization of capacity by the SACU domestic industry, which they attribute to the lack of access to rail services, frequent power outages, and unfavorable exchange rates, the Commission has not addressed these concerns or made any findings regarding them.*

**Response by the Applicant**

*The Applicant has highlighted that Japanese Mills argued that the Commission disregarded the "well-known long-term underutilization of capacity by the SACU domestic industry." However, in trade remedies, the level of capacity utilization itself is not the primary concern. The critical issue is whether capacity utilization has decreased over the investigation period, which is the case in this investigation.*

**Commission's consideration**

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

**6.2.7 Employment**

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

**Table 6.2.7: Employment**

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

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

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

### **Comments by the Japanese Mills on Commission's Preliminary Report**

*The Japanese Mills stated that the Commission noted that the decrease in imports coincided with the increase in imports but failed to note that it also coincided with an increase in sales volumes. Japanese Mills maintains that the decrease in employment is AMSA's operational inefficiency and lack of competitiveness. The Commission has not considered these submissions and has not made any finding in this regard.*

### **Commission's consideration**

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

## **6.3 Summary - serious injury**

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

**Table 6.3.1: Serious Injury Indicators**

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

### **Comments on by the Group on the Commission's essential facts letter**

*The Group stated that the Applicant's production and employment decreased by only 8 and 3 index points, which do not indicate serious injury, as defined by Regulation 8.1, which requires a "significant overall impairment" of the*

SACU industry.

*The Group emphasized that the Applicant did not demonstrate such impairment during the period of investigation (POI) due to increased imports. They noted that serious injury involves substantial negative impacts on the industry's financial and operational health, but no significant overall impairment was observed in production and employment. Additionally, the Group lacked access to profitability information, making it difficult to assess the Applicant's profit situation, which is crucial in claiming serious injury.*

*Furthermore, the Group argued that serious injury does not automatically imply a threat of serious injury. The Applicant failed to provide financial evidence regarding the impact of imports, and there was insufficient support for claims of significant overall impairment. Consequently, the Commission was unable to assess any potential threat. Lastly, the Group highlighted that higher import prices did not undercut the Applicant's selling prices, indicating that serious injury from imports was unlikely.*

### **Commission's consideration**

*When evaluating serious injury, the Commission considered the volume of increased imports both in absolute and relative terms, along with the relevant injury factors. The information provided clearly indicates that imports have increased in both absolute and relative terms. The Commission emphasize that in analysing the injury during the period of surge from July 2021 to June 2023, it is evident that the Applicant has experienced serious injury in the form of a decline in output, net profit, market share, capacity utilisation, and employment.*

*Furthermore, in analysing the period of investigation from 2020 July to June 2023, the Applicant has experienced serious injury in the form of a decline in sales, output, net profit, market share, capacity utilization, and employment.*

Based on the above the Commission made a final determination whether the SACU industry is suffering serious injury.

## **7. CAUSAL LINK**

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### **7.1 GENERAL**

In order for the Commission to impose provisional measures, it must be satisfied that there is sufficient evidence to indicate that the serious injury experienced by the SACU industry is a result of the surge in imports of the subject product.

### **EXISTENCE OF A CAUSAL LINK**

Neither the SGR nor the Safeguard Agreement provides any specific methodology as to how the existence of a causal link has to be determined. However, the Commission must provide a reasoned, reasonable, and adequate explanation of its finding that there is a causal link between the increased imports and the serious injury suffered by the domestic industry. Previous panels in assessing whether a Member has fulfilled the causation requirement considered, among other factors, (i) whether an upward trend in imports coincides with downward trends in the injury factors, and if not, whether an adequate, reasoned, and reasonable explanation was provided as to why nevertheless the data show causation; and (ii) whether the conditions of competition between the imported and domestic products as analysed demonstrate the existence of a causal link between the imports and any serious injury.

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

text of Article 2.1 of the Safeguard Agreement, which refers to the increased imports occurring "under such conditions" as to cause or threaten to cause serious injury to the domestic industry.

The second sentence of Article 4.2(b) requires that a competent authority examine factors other than increased imports that are causing injury to the domestic industry simultaneously with the increased imports and ensure that the injury caused by such other factors not be attributed to the increased imports.

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

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

## 7.2 VOLUME OF IMPORTS AND MARKET SHARE

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

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

**Table 7.2 (a): Market share**

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

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

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

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



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

### **Comments by the Japanese Mills**

*The Japanese Mills previously submitted that the SACU market shrunk by 4 index points between July 2020 and June 2021 and July 2022 and June 2023. The Commission noted this, but it did not include any findings in this regard in its consideration.*

### **Response by the Applicant**

*The Applicant stated that comments on market share are misplaced. Japanese Mills indicated that the size of the market decreased by 4 index points. The Applicant indicted that despite this, import increased by more than 100%. As stated previously, increased imports in a decreasing market has a significantly greater impact than increasing imports in an expanding market. Thus, the combination of significantly increased imports in a decreasing market very clearly underscores the significant negative impact on the industry.*

### **Commission's consideration**

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

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

<b>Tons</b>	<b>Jul 2020 - Jun 2021</b>	<b>Jul 2021 - Jun 2022</b>	<b>Jul 2022 - Jun 2023</b>
Applicant sales volumes	100	78	80
Other SACU producers	100	78	80
Total SACU sales volumes	100	78	80
Rebated Imports	78 415	79 931	50 689
Competing Imports	358 693	203 961	530 079

Total Imports	437 108	283 891	580 778
<b>Total Market</b>	100	74	96
Applicant market share	100	105	84
Other SACU producers	100	100	86
Total SACU market Share	100	106	84
Rebated Imports	100	140	80
Competing Imports	100	76	152
Import market share	100	87	137

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

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

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

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

### 7.3 CONSEQUENT IMPACT OF SURGE OF IMPORTS

**Table 7.3.1: Serious Injury Indicators**

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

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

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

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

- **Quality**

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

- **Delivery times**

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

- **Service and after sales**

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

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

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

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

***Comments by interested parties***

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

- *Very poor on-time delivery performance, resulting in delayed delivery of orders to customers;*
- *Unable to supply certain hot-rolled steel products due to various reasons such as dimension, specification, production limitations, or commercial*

*viability;*

- The surface quality of the hot-rolled plate that is produced by the Applicant is not of the quality of acceptable international standards, making it unsuitable for applications where the visual appearance is important. This has led to quality concerns by the Automotive Industry and other downstream users; and*
- The Applicant is currently unable to produce the required product grade and there have been instances of end-users not approving of steel produced the Applicant.*

### ***Response by the Applicant***

*The Applicant denied being unreliable or unable to deliver orders on time. Although the lead times for order confirmation are typically 6-12 weeks, 70% of hot-rolled product orders were dispatched within 8 weeks during the period under investigation. The Applicant confirms orders in the month; it can deliver and accept orders based on its production capacity. No order has ever been declined. The Applicant prioritizes local supply and has helped customers with urgent requirements regardless of the expense. The Applicant is capable of meeting domestic demand. The Applicant compared its lead times for imports, which typically take 6-12 weeks to produce in international mills and another 4-6 weeks to ship, to its local lead times. The Applicant pointed out that orders of hot-rolled products from China are confirmed in March/April for supply in August, which is a 5-month delay time.*

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

*The Applicant confirmed that deliveries are conducted efficiently and effectively. The domestic market is always considered a priority above export orders, and such orders are only not accepted when the local market is unable to order*

*sufficient quantity to meet the minimum required production volumes. The Applicant acknowledged that there may be delays or supply issues when interested parties import. This includes factors such as delays in production in international mills, weather events, logistics issues, port congestion, and other unknown factors. The Applicant's performance is being compared to mills globally in various countries with their own supply chains. The Applicant is still the local supplier with the shortest delivery lead time versus any international supply source for the products regularly sourced by customers from it. The Applicant confirmed that it has all the certifications required for quality standards, including ISO 9001, 14001, etc. These certifications confirm processes to ensure quality standards can be achieved and consistently maintained.*

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

## **7.5 ATTITUDE OF THE WORKFORCE TOWARDS THE COMPANY**

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

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

cost and productivity improvement, the performance targets, dynamic and flexible workforce plans as well as competitive conditions of service.

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

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

## 7.6 FACTORS OTHER THAN THE INCREASED IMPORTS CAUSING INJURY

**Table: 7.6**

<b>Strikes, go-slows, or lockouts during the past twelve months</b>	The Applicant stated no. As mentioned above, despite the continued economic slump in the Steel Industry, in general, it is in a very favourable position with regard to the relations with organised labour.
<b>Contraction in demand or changes in patterns of consumption</b>	The Applicant stated that the demand has remained relatively stable over the POI despite weak economic activity. This is especially apparent in the mining and construction sectors which are large consumers of hot-rolled products. This was further compounded by electricity shortages which is hampering manufacturing activity. What is notable is the clear shift away from the local product in favour of the imported product. In fact, between the first year of the POI and the last, total demand decreased from 100 basis points to 96 basis points (a 4 basis point decrease), whereas in the same period demand for the local product decreased from 100 basis points to 80 basis points (a 20 basis point decrease).
<b>Productivity of the domestic industry vis-a-vis that of the exporters</b>	The Applicant stated that its productivity is at par with that of other exporters, benefiting from benchmarking sessions with its global group members. However, the ArcelorMittal group faces challenges due to overcapacity, highlighting the significant impact of import surges on the industry. South Africa leads the Asia/Africa region in sales value, yet AMSA's current sales are only half of what they were in 2021, indicating untapped potential.

	AMSA gains insights from global innovations, particularly from Europe's green steel initiative. It leverages guidance from European mills to enhance productivity and competitiveness. This collaboration fosters innovation and supports the South African economy, making it essential to sustain this competitive edge within the SACU.
<b>Development in technology</b>	The Applicant indicated that is not aware of any other relevant factors.

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

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

***1. Closure of Saldanha plant***

*On 11 November 2019, AMSA released a statement through SENS, stating that its hot-rolled steel production facility located in Saldanha, Western Cape, would be closed. Despite benefiting from the first safeguard duties, the plant was closed down. The first safeguard duties were set at 8% in 2020, in addition to the ordinary customs duties, which also set the WTO-bound rate of 10%. According to Applicant's SENS statement, its decision was made based on the following critical factors: "loss of structural cost advantage to compete in the export market due to i) raw material prices and ii) regulated prices". Raw material prices and regulated prices affect Applicant's cost structure. The first safeguard duties did not help the Applicant, as the company's challenges are related to its own structural costs. The only way to address such challenges is by adjusting the operations, which the Applicant was unable to do at the Saldanha Works, despite the protection provided by the first safeguards duties. The first safeguard duties did not prevent the Applicant from closing the Saldanha Works because the real cause of Applicant's alleged injury was factors other than imports. These factors include raw material prices and regulated prices. If safeguard duties are imposed, this will have the same result, for the same reasons – Applicant's alleged injury is not caused by imports but by other factors.*



**Response by the Applicant**

*The Applicant stated that plant closures are materialising around the world as a result of steel overcapacity, with the most recent example being Chile's largest steel mill succumbing to surges in imports and closing as recently as August of 2024.*

*The Applicant further stated it previously applied for an extension of the first safeguard duties for the very reason that it needed more time to adjust. Notably, the implementation of provisional measures by the Commission had a direct positive impact on ArcelorMittal South Africa's decision not to close Newcastle. However, if effective remedial action is not taken at the final determination the industry may very well collapse like the situation in Chile.*

*The Applicant indicated that Tata Steel (UK) and British Steel closed down factories in the UK earlier this year as a result of the world market conditions. Any job losses in primary steel production typically led to six or seven times as many job losses in the secondary market. In South Africa, crude steel production decreased by 17.3% in April 2024 compared to the April 2023, and by 9.8% in May 2024 compared to the same month in 2023 which illustrates the high-level impact of the worsening situation.*

**Commission's consideration**

*Based on the information provided, the Commission considered that the global steel overcapacity issue does not just affect South Africa; it also impacts WTO members. Many countries take quick and defensive measures to protect their manufacturing industries from this global threat. The data shows that the import market share grew by 50 index points during the surge, resulting in a corresponding of 22 index points decrease in the market share held by SACU producers. The Commission also took note that the Applicant reported a decline in production during the surge and over the investigation period. As a result, the Commission believes it is necessary to protect local producers to ensure the survival of the local primary steel manufacturing industry.*

## **2. Lower Steel Market demand and lack of infrastructure investment**

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

### **Response by the Applicant**

*The Applicant mentioned that demand decreased by 4 basis points during the investigation period. Import market share increased by 50 index points during the surge period, and the domestic industry lost a 22-index points market share during the same period. Despite the lack of government infrastructure development, there is demand for hot-rolled steel in other industries, which the Applicant can and does supply. The industry's loss of market share in a decreasing market exacerbates the impact of increased imports, confirming the causal link between increased imports and serious injury. Despite the expected decrease in production in line with this trend, it continues to grow, leading to an increasing risk of plant closures domestically and globally.*

### **Commission's consideration**

*The Commission considered that the domestic industry's loss of market share in a decreasing market exacerbates the impact of the increased imports, affirming the causal link between increased imports and serious injury.*

## **3. Foreign exchange exposure**

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

### **Response by the Applicant**

*The Applicant highlighted that the exchange rates and the markets are volatile and unpredictable therefore, no inference can be drawn in*

*relationship to the causal link between the surge in imports and the serious injury. For the purposes of determining the level of the duty what the Commission can consider is that the USD-ZAR exchange rate has changed from USD 1 = ZAR 19.30 to USD 1 = ZAR 17.80 in the last few weeks, resulting in a massive decrease in the landed price of imported products. This alone has wiped out any impact the provisional measure had and supports the Applicant's calls for an effective measure to be imposed in line with the measures imposed by other steel producing countries.*

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

*The Commission noted that the fluctuation of the exchange rate affected imported raw materials and production costs, but it was not sufficient to offset the injury caused by the surge in imports.*

#### **4. Input costs, challenging local environment including availability of energy/load-shedding and poor parastatal performance**

*The significantly increased cost of input materials, especially electricity contributed to any material injury suffered by the Applicant. As a major consumer of electricity, any shortage of electricity can have a significant impact on the operations of the Applicant. These disruptions can lead to delays in production, reduced output, increased costs, and postponed deliveries, ultimately resulting in lost business. Additionally, the logistical challenges faced by the Applicant in accessing iron ore and distributing their products have further affected their operational performance and financial results.*

#### **Response by the Applicant**

*The Applicant argued that loadshedding and logistics costs are simply a reality of doing business in South Africa. It is fallacious to attribute economic realities beyond the industries control as detracting from the established causal link. The Applicant has where possible invested in alternative energy and in reducing its reliance on Eskom. The downstream industry also experienced loadshedding and this would have also affected their businesses similarly. Thus, loadshedding should have had a similar impact*

*and reduced the volume of imports. Although loadshedding costs put strain on the industry, the impact was minor when compared to the impact of the increased imports.*

*The Applicant submitted that although constraints in transportation had an effect on the Applicant's profits it does not justify the significant losses in market share and sales. The cost to import will almost always outweigh domestic logistic. To this effect the Applicant has also concluded agreements with Transnet in order to enhance efficiency and cut unnecessary costs. Therefore, the effect of transport on the Applicant was temporary and negligible at best, it does not break the causal link established.*

### **Commission's consideration**

*The Commission agreed with the Applicant that loadshedding has proven to be a substantial challenge impacting businesses across South Africa including downstream sector, which is beyond the control of industries. To mitigate this, the Applicant has made strategic investments in alternative energy sources to reduce reliance on Eskom. Moreover, the Applicant has successfully engaged in agreements with Transnet to improve operational efficiency and decrease unnecessary costs in the logistic process.*

*Therefore, the effect of loadshedding and transport logistics on the Applicant was temporary and not significant enough to break the causal link between the surge in imports and injury experienced by the Applicant.*

### **5. Many imports are not manufactured in SACU**

*Many of the imported products are imported because they are not manufactured in South Africa. For example, the quotes from the Steel Industry Masterplan: "South Africa has discontinued or has never made many of the steels required for the auto, mining equipment, and yellow metal industries. About 50% of the 750 000 tons per year of steel imported are flat steel products not manufactured in South Africa."*

### **Response by the Applicant**

*The Applicant maintains that only a small percentage of products are not manufactured locally and that they produce the majority of the products needed in the market. Importers can still apply for rebates if necessary, and this duty will not affect them. They also clarified that any claims stating that they will 'never increase their product range' are unfounded. The Applicant's product range has actually decreased due to increased importation, which has driven them out of certain markets. Given the opportunity to make adjustments, they can start producing products they used to make in the past and invest in improving production capabilities as technology advances. ArcelorMittal South Africa is committed to enhancing supply to industries such as the automotive industry to support localisation goals.*

### **6. The industry is not competitive or innovative**

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

### **Response by the Applicant**

*The Applicant indicated that the industry has submitted details of present and ongoing investments and initiatives which directly contradict these statements. The Applicant's 2023 financial statements in fact illustrate how efficient the Applicant actually is. Its USD/t cost for the 2023 financial year was USD 934/tonne, which compares favourably to the USD 1,092/tonne of*

*ArcelorMittal's global costs. This shows that the Applicant is highly efficient when compared to international producers which are not subsidised like Chinese producers. Additionally, the industries adjustment plan provides details on how it will enhance its competitiveness and use the breathing room that safeguards will provide to advance further innovation. It is only logical that if the industry is suffering serious injury, then its ability to raise capital investment has been impaired and addressing this impairment is a goal of remedial safeguard measures.*

## **7. Environmental Compliance**

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

### **Response by the Applicant**

*The Applicant has expressed that its decarbonization roadmap and the initiatives it has taken so far, such as investments in Vanderbijlpark's electric arc furnace, are clear evidence of its commitment to becoming environmentally compliant. Additionally, it is suggested that increased importation could have a negative impact on the environment. Replacing domestically manufactured steel with imports from China may lead to a rise in global carbon emissions. It is noted that about 99 percent of the 540 million urban Chinese residents breathe air that would be considered unsafe in Europe. The emissions of pollutants from Chinese steel mills, including sulfur dioxide and particulate matter, have significantly contributed to environmental issues. According to the AAM, Chinese steelmakers emit 4.94 kg of particulate matter (pollution) per ton of steel produced, while the equivalent figure in the U.S. is about 0.25 kg.*

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

*As a major consumer of electricity, any shortage of electricity can have a significant impact on the operations of the Applicant. These disruptions can lead to delays in production, reduced output, increased costs, and postponed deliveries, ultimately resulting in lost business. Additionally, the logistical challenges faced by the Applicant in accessing iron ore and distributing their products have further affected their operational performance and financial results.*

### **Response by the Applicant**

*The Applicant pointed out that the impact of security costs on the subject product was less than 1% of its total costs. The Applicant has invested in mitigating these risks and ensuring that products are delivered to its customers safely. If security costs are reduced, the likelihood of theft increases, which will result in greater losses and supply chain disruptions. The Applicant's initiatives in this regard actually illustrate its commitment to the safety of its plant and its employees and investment into security cannot detract in any way from the causal link.*

## **9. Increased cost of security**

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

#### **10. Standards and client requirements for the products**

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

##### **Response by the Applicant**

*The Applicant stated that its quality and performance are in line with industry and international standards. The lead times for the Applicant are usually 6-12 weeks from the date of order confirmation, with 70% of orders being dispatched within 8 weeks for hot-rolled products over the POI. In comparison, imports typically take 6-12 weeks to produce and an additional 4-6 weeks to ship, not including unpredictable port delays. The applicant emphasized that its deliveries are efficient and effective, with priority given to the domestic market over export orders.*

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

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

##### **Comments by The Group on the Commission's Essential Facts Letter**

*The Group highlighted that the Commission overlooked the significance of the October 2021 strike and its impact on the labor strike threat in May 2022. Following the October strike, downstream steel buyers in SACU were quick to increase inventory levels, indicating a shift towards more cautious procurement practices due to recognized vulnerabilities in the supply chain. This caution prompted South African buyers to boost import orders from Asia, as reported in June 2022.*



*Significant delays in hot rolled steel shipments to South Africa occurred between April and October 2022, aggravated by global supply chain disruptions, logistical challenges, and labor strikes at South African ports. The situation was further complicated by the Russia-Ukraine war, which shifted demand to Asian markets and increased shipment delays.*

*The Group pointed out that the independent SACU re-roller industry, notably Duferco and Safal Steel, has been impacted by Duferco's exit from the SACU market due to AMSA's dominance. This led many clients to seek imports for quality and reliability, rather than relying on AMSA. The Group submitted that claimed unforeseen government subsidies, an overcapacity in the steel industry and an excess supply of steel products were not the cause of a significant increase in imports into SACU, but the effect of events that occurred at, or decisions that were made by AMSA.*

### **Response by the Applicant**

*The Applicant indicated that strike, which took place in 2021, does not coincide with the period of the surge in imports. The alleged threat of a strike referenced to have occurred in 2022 never actually materialised consequently operations were not impeded during this time. The strike was temporary and only lasted for a month at the beginning of the POI refuting its impact on serious injury. At present while volumes continue to increase, and prices continue to decrease, the Applicant is in a favourable position with the workforce. This fact is evident from the trade union Solidarity supporting the safeguard in their submission dated 25 July 2024. The Commission is reminded that the risk of job losses is significant at over 200 000 jobs throughout the value chain should effective final duties not be imposed.*

### **Commission's consideration**

*The interested parties acknowledged that there was a surge in imports during the analysis period. The Commission considered that the strike mentioned by interested parties occurred in 2021 and, therefore, does not fall within the twelve months specified in this investigation as period of surge. However, it is important to emphasize that this factor did not persist throughout the period*

*of investigation and did not detract from the causal link between the surge of imports of the subject product as it.*

### **Comments by the Interested Parties on the Commissions Preliminary Report**

*The interested parties emphasized that operational issues within AMSA, such as quality and supply problems, were the main causes of claimed injury, not imports. They provided specific instances and evidence to challenge the Applicant's narrative and argued that the report inadequately addressed the crucial causal link required by Article 4.2(b) of the WTO Safeguard Agreement. They criticized the Commission's conclusion about temporary factors, noting it failed to specify which factors did not persist and how this affected the causal link between imports and injury. Additionally, many identified factors have existed long before the investigation period, and there's no evidence to suggest that removing these would resolve the injury.*

### **Response by the Applicant**

*The Applicant pointed out that interested parties alleged that the Safeguards Agreement "requires" that the impact of other factors contributing to the industry's injury must be quantified. This is incorrect. There is no such wording in the Agreement, and the panel in "US – Steel Safeguards" categorically indicated that "We note, first, that the text of the Agreement on Safeguards does not require quantification", (para 10.336) while acknowledging that "quantification may occur." Although the panel also indicated that "quantification could help in identifying the share of the overall injury caused by increased imports, as distinct from the injury caused by other factors," it also noted that quantification may not necessarily be determinative, indicating that "Having said that quantification may be desirable, useful and sometimes necessary depending on the circumstances of a case, the Panel recognizes that quantification may be difficult and is less than perfect. Therefore, the Panel is of the view that the results of such quantification may not necessarily be determinative." (para 10.341). Accordingly, contrary to interested parties' allegation, there is no requirement in the Safeguards Agreement that the impact of other factors must be*

*quantified, and even if the Commission did quantify those factors, it would not be determinative in its findings.*

*The Applicant noted that there is no specific methodology for determining a causal link, as mentioned by the SGR, the Agreement on Safeguards, and the WTO Appellate Body. Therefore, it is up to the Commission to decide how to conduct its analysis, as correctly stated in its report. The Applicant supports the Commission's findings as it has adequately demonstrated the direct connection between increased import volumes, reduced import prices, and the serious injury suffered by the industry.*

### ***Comments by the Interested Parties on the Commission's Essential Facts Letter***

*Interested parties argued that the Applicant's injury was self-inflicted due to the Applicant's failure to supply products in sufficient quantity, quality, and on time, exacerbated by strikes and plant downtime that led customers to seek alternatives abroad. They highlighted that the Commission's awareness of other factors, including dumping from China, Japan, and Taiwan. The parties asserted that the Commission must investigate the causal link between the alleged injury from dumped imports and the surge in fair imports, particularly since 68 percent of these imports are reportedly linked to dumping. They requested the Commission to quantify the domestic industry's injury from both dumping and increased imports, noting that 32 percent of imports from other countries, with higher prices, shouldn't significantly harm the industry. The Commission was urged to reassess its stance on the causal link between the surge in imports and the alleged injury to the Applicant.*

*The interested parties pointed out that the Commission's assertion that the decline in output, net profit, market share, capacity utilization, and employment was due to imports lacks clarity. They argued that this decline coincided with an increase in sales volumes, suggesting other contributing factors. They disagree with the Commission's final determination, asserting that while various factors, such as reduced market demand and labor unrest, contributed to the injury, a proper contribution analysis would show that these*

*factors, rather than imports, were primarily responsible. They referenced the WTO Appellate Body's ruling in "US – Line Pipe," emphasizing the importance of non-attribution and the need for investigations to isolate the injury caused by imports.*

*The interested parties argued for a contribution analysis to correctly attribute injury portions to imports versus other factors, suggesting that, if only 50% of the injury was attributable to increased imports, only 50% of the duty should be imposed. The proposed 13% duty should be reduced to 6.5%. taking into account the other factors which account for at least 50% of the alleged injury.*

### **Response by the Applicant**

*The Applicant stated that interested parties raised the application of the non-attribution test. The Applicant pointed out that interested parties provided no evidence to support that 50% of the injury was Applicant's own making. The Applicant highlighted that it is, furthermore, not possible to quantify the alleged 'other factors' as most of them are the consequence of business dealings in South Africa. On this basis alone the argument should fail.*

*The Applicant indicated that even if it were correct that 50% of the injury was caused by other factors, which is denied, this would not result in the duty imposed being half of the proposed duty as the question would be whether, after excluding the effect of other factors, there would still be serious injury? The Commission has already confirmed this. It then had to determine the level of protection necessary to remedy the serious injury caused by increased imports and found this level to be 13%.*

*Additionally, the Applicant highlighted that it has proven in its previous submissions that a measure set at the exact level of price disadvantage does not consider the need to remedy serious injury and to facilitate adjustment (requirements of the SGR). The Appellate body in US - Line Pipe has stated that the phrase "only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment" (emphasis added) sets the "maximum permissible extent" for the application of a safeguard measure under the*

*Agreement on Safeguards. Considering the recent decline in import prices the proposed duty in fact will have little effect on even levelling the playing field. Therefore, an assessment of what is necessary, especially to facilitate adjustment, has not yet been conducted.*

*The Applicant agreed with the Commission that other factors have not detracted from the causal link and if this is the case then ArcelorMittal South Africa has experienced serious injury as a result of the surge in imports. Therefore, the remedial measure implemented must reduce imports to non-injurious levels and the only level which can achieve this outcome is at least 25% as detailed in previous submissions. Therefore, the arguments on non-attribution are inconsistent with the application of the WTO rules.*

### **Commission's consideration**

*The Commission considered that the Safeguard Agreement does not provide any specific methodology as to how the existence of a causal link has to be determined. However, the Commission must provide a reasoned, reasonable, and adequate explanation of its finding that there is a causal link between the increased imports and the serious injury suffered by the domestic industry. It is worth noting that other factors did not persist throughout the period of investigation. It is the Commission's view that in analysing the injury the Applicant's production declined by 5 index points during the surge period and by 8 index points over the period of investigation period. Taking into account Columbus's production volumes also indicated a reduction in total SACU production since the surge in imports between surge in imports between July 2021 and June 2022, and July 2022 and June 2023, by 4 index points and 7 index points over the investigation period as a result of increase imports. Other indicators also show a downturn coinciding with rising imports.*

In addition to the foregoing discussion, the Commission took the following into account:

- An analysis of the competitive conditions shows that the Applicant experienced price depression and suppression during the surge period. The selling prices went down by 7 index points, while production costs increased by 40 index points during the same period. As a result, prices were depressed, leading to a negative impact on gross profits, which declined by 175 index points between July 2021 – June 2022 and July 2022 - June 2023. The cost-to-price ratio increased by 34 index points, further suppressing prices during the same period;
- This analysis also shows that, based on import prices from the top three countries, which collectively represent 68% of total imports, there were no price anomalies. Unlike imports from other countries, the SACU industry suffered from a price disadvantage of 13% against such imports;
- There has been a recent, sudden, and significant surge in imports; during the period of surge, imports increased by 105% in absolute terms and over the period of investigation, imports increased by 33%;
- As a direct result of a surge in imports, the market share held by SACU producers has decreased by 22 index points. Meanwhile, the market share held by imported products has grown significantly, increasing from 88 index points to 137 index points during the same period. During the surge period, the Applicant experienced serious injury resulting in a decline in output, net profit, market share, capacity utilization, and employment.

Regarding factors that may detract from the causal link, the Commission further noted that despite the government's lack of infrastructure development, there continues to be a demand for hot-rolled steel in other industries, which the Applicant can meet. Moreover, the industry's loss of market share in a decreasing market exacerbates the impact of the increased imports, affirming the causal link between increased imports and

serious injury. The Applicant has made investments in alternative energy where feasible and has also taken steps to reduce its dependence on Eskom. The Applicant has reached agreements with Transnet to improve efficiency and reduce unnecessary costs. The strike mentioned by interested parties occurred in 2021 and, therefore, does not fall within the twelve months specified in this investigation.

Based on the above, the Commission concluded that the factors mentioned by the interested parties did not sufficiently detract from the causal link between the import surge of the subject product and the material injury experienced by the Applicant, as they did not persist throughout the period of investigation.

## **7.7 Summary - Causal link**

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

## 8. PUBLIC INTEREST

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Interested parties were invited through Notice No. 2622 of 2024 of *Government Gazette* No. 50929, dated 12 July 2024, to make public interest submissions on or before 02 August 2024.

Provision for a public interest hearing is made in SGR 20 and Article 3 of the Safeguards Agreement.

Article 3.1 provides as follows:

“A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest.....”

The SGR provide as follows with regard to the final determination and public interest:

“20.1 In its final determination the Commission shall consider whether

- (a) the SACU industry is experiencing serious injury or threat of serious injury, as contemplated in sections 8 and 9;
- (b) there were increased imports;
- (c) any increase in imports can be attributed to unforeseen developments;
- (d) the increased imports resulted in serious injury or threat thereof to the SACU industry;
- (e) other factors contributed significantly to the serious injury; and
- (f) the imposition of a safeguard measure would be in the public interest”.



20.2 “In determining whether a safeguard measure would be in the public interest the need to take note of the trade distorting effect of the surge in imports and the need to restore effective competition shall be given special consideration.”

The trade distorting effects of the surge in imports and the need to restore effective competition are not defined or given any parameters against which they should be considered. The two are therefore given the following interpretation:

- **Trade distorting effects of a surge**

The trade distorting effects of a surge can be taken into account following a determination that a surge in imports has caused serious injury to the domestic industry. This is in line with the fact that the surge has been such that trade is distorted resulting in unusually high level of imports to SACU than could otherwise be expected. Therefore, the trade distorting effects of a surge in imports are manifested in the performance of the SACU industry during the POI, that is, whether or not the SACU industry is suffering serious injury as a result of a surge in imports. The consideration then has to do with how and the extent to which a safeguard action may be taken to guard the domestic industry from those effects of a surge.

- **Restore effective competition**

In the case of restoration of effective competition as well, it is submitted that this is a consideration that can be made following a determination that there has been a disturbance in the market, as a result of a surge in imports. The disturbance has had an effect of altering the competition in the market. The competition to be restored is the competition between the domestic industry and the imports. Effective competition would be restored when the situation before the surge in imports is achieved to allow the industry to ready itself for the eventuality that, even if safeguard measures are imposed, they will ultimately be lifted, and should be ready then to compete with imports. In this case therefore the aim would be to take a measure that it is expected would

reduce the volume of imports to levels before the surge, which is the period ending in June 2022 import level.

A public interest hearing was held on 20 August 2024, wherein interested parties raised public interest issues that the Commission needs to consider prior to making a final determination.

A summary of issues that interested parties raised regarding public interest is provided below.

## **8.1 Trade distorting effects of the surge in imports**

### ***Comments from Interested Parties***

- *Interested parties indicated that the surge in imports in the period July 2022 – October 2022 can be attributed to the threatening “mother of all strike” talks in April 2022 that resulted in parties ordering steel, which typically takes up to 3 months to be delivered in South Africa, when ordered from international suppliers.*
- *Interested parties noted that there may have been a "trade-distorting effect of the alleged import surge" on production until December 2022. However, Applicant production increased after that, indicating that the alleged trade-distorting effect of the import surge has been rectified. Imposing a safeguard duty would not be in the public interest, as the trade-distorting effect of the alleged import surge on the domestic industry's trade has already been remedied despite increased import prices and shipping costs.*
- *The imposition of a safeguard duty on the alleged three “loophole” tariff subheadings would also not be in the public interest, as there was no surge in imports for these tariff subheadings and thus no distorting effect by imports.*
- *The alleged surge in imports of the subject product is due to AMSA's inability to meet industry demand and its ongoing operational and structural issues. Imports fulfil customers' needs, which AMSA is unable to meet.*
- *Interested parties referred to the WTO Appellate Body in the United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon*

*Quality Line Pipe from Korea ("US – Line Pipe") has held that a contribution analysis is required to determine which portion of serious injury was attributable to increased quantities of imports and which portion of serious injury was attributable to other factors as the safeguard measure should be limited to addressing only that portion attributable to imports. So, for example, if only 50% of the injury was attributable to increased imports, only 50% of the duty should be imposed. The Commission calculated the duty on the basis that imports entirely caused the injury. Had the Commission done a non-attribution analysis, it would have determined the duty would have been at much less than half the amount. This also applies to any final safeguard measures recommended by the Commission.*

#### **Comments from the Applicant**

- *The Applicant stated that the purpose of a safeguard duty is to reduce the volume of imports to a non-injurious level. This does not mean it has to be at 50% of the level at which all injuries would have been removed. Such an interpretation would be overly simplistic and incorrect.*
- *The Applicant stated that there has been a surge in imports, which has had a trade-distorting effect on the market, altered competition, and resulted in serious injury to the domestic market.*
- *The Applicant highlighted that the curbing of imports is instrumental not only to effectively redress the serious injury suffered by the domestic industry but to achieve economies of scale, enhance innovation and increase production. This is the foundation of the industries adjustment plan and the Steel Master Plan.*

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

*The Commission is of the view that the trade-distorting effects of the surge were manifest in the performance of the SACU industry during the investigation period.*

*The Commission found that the SACU industry has been adversely affected by a surge in imports during the POI. The verified information provided by the Applicant indicated that the SACU industry has suffered serious injury due to this surge in imports. The imports of the subject product increased by 105% during the period of surge in imports, and there was a 33% increase over the POI. Although there was a slight decline in imports after the POI, they remained at high levels, as indicated in the table above 5.1.1 of the Report.*

## **8.2 Restoration of Effective Competition**

### **Comments from Interested Parties**

- The interested parties stated that the safeguard measure will not restore effective competition; AMSA has been uncompetitive due to its structural problems. Despite the substantial protection it has been given, it has failed to adjust and become competitive, and it has failed to make any meaningful capital investments.*
- Effective competition has already been restored. The imposition of the safeguard will entrench AMSA's position as a dominant supplier, leading to higher prices, limited consumer choice, and harm to innovation. This harm can be long-lasting and irreversible, with the previous safeguard measure still negatively affecting the SACU downstream steel industry and South African consumers.*
- The effective competition in the downstream market of HRC will be permanently and irreversibly harmed. As a monopolist facing no competition from either local or offshore suppliers, AMSA will have both the ability and the incentive to increase HRC prices from their current levels to import parity levels, as well as a premium reflecting the risk associated with imports, such as timing, potential delays, exposure to price risk, and financing costs, for local buyers.*
- In economies with more than one large manufacturer, even after implementing a safeguard measure, local customers will generally still benefit from some competition between local suppliers. In such more competitive domestic markets, customers can choose between local suppliers and their products during the safeguard period. Thus, the public*

*interest would not be harmed. The normal competitive process of bargaining with local suppliers for lower prices, better quality, and improved service levels still occurs – the only difference under a safeguard is that these producers are temporarily shielded from unprecedented import competition to adjust and better meet import competition. If a safeguard duty is imposed and no provision is made to allow to claim back a portion of the safeguard duty in the case where the final product is exported, the companies will be completely uncompetitive in the international market and the closures will be enhanced. Clearly this is not in the interest of the public.*

- *The downstream sector will become uncompetitive leading to further job losses, impact Deindustrialization.*
- *The steel production market structure in South Africa has remained relatively unchanged since the establishment of Iscor Ltd ("Iscor") in 1927 as a state-owned company under The Iron and Steel Industrial Corporation Act No. 11 of 1928 (the "ISIC"). In 1977, Iscor commenced production at the Newcastle integrated steelworks and long products mill. The company benefited from significant government protection, which limited imported steel and supported Iscor's expansion into the export market. In the early 1990s, during a period of financial difficulty, a joint venture with the South African government's Industrial Development Corporation (the "IDC") facilitated the construction of a new steel production plant in Saldanha. Iscor maintained its dominant position in the domestic steel market, reaching up to 85 percent, until the late 1980s, while being a state-owned enterprise until 1999.*
- *The interested parties further stated that it is highly improbable that the proposed safeguard measure will enable AMSA to adjust and become competitive. AMSA has failed to do so in the past despite the imposition of the previous safeguard measure protection.*
- *AMSA already commands 90% of SACU production, which makes it extremely dominant or a de facto monopoly. The imposition of safeguard measures will keep imports, AMSA's only real competition, out of the SACU market, thus rendering AMSA effectively a monopoly producer of the subject product within SACU.*

- *The imposition of the safeguard will also negatively impact competition in the downstream Hot Dipped Galvanized (“HDG”) market. The Commission is aware that AMSA had to compete with Duferco and Safal Steel to supply HDG to local and international customers. When the previous safeguard duty was imposed, the Commission was warned that it was likely that Duferco, among others, would be forced to close, leaving AMSA as the only local producer of HDG.*
- *NAACAM indicated that preventing serious injury to the SACU steel industry is vital. And recognise the ongoing efforts of AMSA to ensure they have a competitive business case for the continuation of SA production.*

#### **Comments from the Applicant**

- *The Applicant indicated that the SA Steel Master Plan is a turnaround action-oriented plan based on identified competitiveness improvements in the firms, measures to reduce levels of imports and reposition the industry to be resilient in the intense global pressures.*
- *The Applicant further indicated that the domestic steel production depends on a healthy and competitive SACU industry, and surge in imports adversely impact on the country's economic survival and security.*
- *The Applicant also indicated that the industry needs the necessary breathing room to implement its adjustment plan and for effective competition to be restored. This will also enable the implementation of the goals of the Steel Master Plan. The Applicant submitted that ensuring the long-term sustainability of the SACU steel manufacturing capability is in the public interest.*
- *The Applicant further stated that the support to the steel industry ensures long-term sustainability, elevates competitiveness, and will increase production outputs. The Applicant submitted that this will benefit all sectors in the steel value-chain.*

### **Commission's consideration**

- *The existence of a surge signifies the extent of disruption of competition.*
- *The Commission considered that the Applicant is experiencing serious injury in a form of decline in output, net profit, market share, capacity utilisation, and employment for the period that coincides with the surge of imports i.e. July 2022 to June 2023.*
- *The Commission further considered that the measure is put in place to temporarily allow the domestic industry to adjust and be internationally competitive. It should also be noted that with the time the duty will be liberalised.*

## **8.3 Import Trends**

### **Comments from Interested Parties**

- *NCM stated that it cannot be in the public interest to impose a safeguard duty on a key raw material if it leads to an increase in imports of the final product.*
- *It was stated that since July 2022 the import trend of the subject product, shows a declining trend – thus although a surge took place in it actually returned to “normal” and the import volumes subsequently showed a declining (slowing down) trend, while the prices showed an increasing trend.*

### **Comments from the Applicant**

*The Applicant stated it has already provided in its application a thorough and detailed analysis of imports of the subject product into the SACU, as well as their effect on the domestic industry. It is evident that there was a surge in imports in absolute terms of the imports of the subject product from 283 891 tonnes for the year ending July 2021 to 580 778 tonnes for the year ending June 2023. This represents an increase of 105% in absolute terms. In considering the increase on an end-to-end analysis, an increase of 33% is observed between the period of July 2020 to June 2023. There is a surge in imports that is significant and recent. The Applicant further stated that on an analysis at a monthly level, imports are still increasing, as can be seen from the last 24 months of the POI, where the increasing trend remains apparent.*

### **Commission's consideration**

- *The imports of the subject product increased by 105% during the period of surge in imports, and there was a 33% increase over the POI. Although there was a slight decline in imports after the POI, they remained at high levels, as indicated in table 5.1.1 of the Report.*

## **8.4 Price Impact**

### **Comments from Interested Parties**

- *The interested parties stated that the downstream sector is significantly affected by its dependence on AMSA. It is bound by AMSA's pricing model, which tends to increase when more protection is provided for the primary raw material at globally uncompetitive prices.*
- *AMSA pricing practices do not fix prices at time of order, but at the time of delivery creating a significant uncertainty when completing tender.*
- *Excessive and uncompetitive steel prices are embedded in the prices of finished products, compromising competitiveness against imported products and hindering the ability to compete effectively in export markets.*
- *The increase in the landed price will be passed on to clients. As a result, it will negatively impact the steel supplier, the downstream industry, and companies, which will have to restructure and may result in job losses. Additionally, it will drive inflation up.*
- *This safeguard duty will shrink an already pressured economic steel and fabrication sector. Increased costs will lead to higher prices for specialized steel products, pushing Original Equipment Manufacturers (OEMs) to seek alternative countries for fabricating their equipment. This shift will have a negative ripple effect, causing further economic strain and potential job losses within the local market.*
- *The likelihood that AMSA can and will raise HRC prices well above current levels – and ultimately, above import parity - is borne out by AMSA's past conduct. AMSA has previously been found by the Competition Tribunal ("Tribunal") to have abused its dominance by charging excessive prices in contravention of section 8(a) of the Competition Act, No. 89 of 1998 in the*



*Harmony Complaint. The Tribunal accepted that AMSA explicitly incorporates a 5 percent premium for the hassle of importing.*

- *Steel mill profitability is linked to high utilisation rates. When output is high, the fixed costs per ton fall. In the case of a rolling mill, this means maximising the running of standard products as changing the gauge, width or grade requires downtime of the mill. Therefore, there is no incentive to supply smaller market requirements, which reduces choice for consumers and as a result importers play an important role in the SACU economy to service these niche markets. Although AMSA has stated that it is willing to consider producing such product, it has not done so to date. Research suggests that monopolists are unlikely to act to in such manner, as the strategy is to reduce competition and market choice.*

#### **Comments from the Applicant**

- *The Applicant indicated that it bases its pricing on its costs as well the market dynamics and will continue to price in terms of these principles. It approaches pricing in a lawful and responsible manner.*
- *The Applicant indicated that to the extent that itself or any members of the Applicant resorts to pricing in a manner that is unlawful, a complaint may be laid and investigated by the Competition Commission. In this regard it should be noted that the Applicant has priced in line with an international basket price agreed with government in the past. The agreement has expired and market participants through the process of the Steel Master Plan discussions have indicated a preference for a market-based pricing system not linked to the basket.*
- *The Applicant also indicated that Columbus Stainless is a producer of the subject product and Scaw Metals is developing capacity to produce hot-rolled steel products in 2024. It is anticipated that the safeguard measure will serve to assist all these companies' developments, which will enhance fair and competitive domestic pricing and thereby provide sufficient security in supply.*

- *The Applicant further indicated that the concerns regarding an abuse in pricing are unfounded and there are sufficient checks and balances to ensure responsible and lawful pricing of the subject product.*

## **8.5 Employment Impact**

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

- *Interested parties indicated that AMSA employs a maximum 10 270 people, while Steel and Engineering Industries Federation of Southern Africa (SIEFSA) estimates that the downstream steel industry provides work for at least 200 000 people (some parties have the estimate as high as 270 000). Only 5 percent of the SACU steel industry will benefit from the safeguard duty.*
- *NCM stated that about 10 000 tons of Hydrabolts are exported annually under 7308.40.10. By imposing the safeguard duty, NCM will lose out on international projects which will impact loss of export sales plus lower production and retrenchments of direct factory workers.*
- *The interested parties indicated that potential closure of the downstream companies (including the re-rollers) will not be in the public interest, in that some of these companies are strategic companies situated in disadvantaged regions across SACU. Clearly, the shedding of jobs at these companies will have a dire consequence on the vulnerable regions of the country, which is not in the public interest. slow economic growth and large-scale imports.*
- *Safal steel indicated that it has been involved in enhancing skills, employment, and local community development in the region. If the safeguard duty is imposed, Safal Steel's direct employment of people will cease, and the company's downstream value adding customer base in South Africa will no longer exist. Safal Steel urges the Commission to assist the re-rollers in SACU by way of tariff relief if the destructive safeguard duty is imposed.*
- *All Duferco's employees took a 15 percent salary cut from June to September 2023. From September 2022 to December 2023, there were 28 resignations from permanent employees.*

- *Downstream industries create more jobs than AMSA which is a supplier of primary products. The supply, quality and service challenges confronting AMSA discourage investment in these downstream industries. This comes at the expense of job creation, which is particularly in the public interest for South Africa which has extremely high unemployment levels (more pronounced among the youth) and a large portion of the population (approximately 27 million) dependent on social grants.*

### **Comments from the Applicant**

- *The Applicant indicated that its members are significant employers in South Africa. The Applicant alone is a major contributor to domestic employment, employing a significant number of employees (directly and indirectly, including fixed term contracts). However, this significant number does not take into account the employment AMSA and other primary steel manufacturers have the potential to create. Scaw Metals alone has predicted that its new development project will create more permanent jobs.*
- *The Applicant stated that it has generated job opportunities and fostered thriving communities, thereby also benefiting downstream sectors. The Applicant's commitment to investing further in training and skills development, demonstrates its commitment to the creation of jobs, and alleviating poverty and unemployment.*
- *The Applicant also indicated that in 2023, vendors located within a 50-kilometer radius of AMSA's plant benefited from funds procured from them. This significant local impact supported thousands of jobs in the economies surrounding the relevant sites.*
- *Independent studies have shown that about 80 000 jobs in the value chain are dependent on primary steelmaking, including jobs in the mines, the downstream, as well as suppliers and service providers to steel mills these commitments are intrinsically linked to the imposition of definitive safeguard duties.*
- *The Applicant further indicated that as committed in its development plan, the industry accepts responsibility and will work with all stakeholders to support the growth and development of the industry by preserving level-*

*playing field, promoting investment particularly in a skilled workforce, and by creating a favourable business environment.*

- The Applicant stated that South Africa has already experienced the devastating effects plant closures have on employment when the Applicant placed its Saldanha Plant in care and maintenance. This resulted in 400 people being retrenched, and a lingering negative effect on the whole community, businesses supported by the plant, as well as the downstream steel sector. The safeguard measure will assist in preserving jobs and creating new employment opportunities. The Applicant submits that the employment that will be lost without the requested safeguard protection will be devastating to the families impacted.*
- The Applicant further stated that any job losses in the primary steel production typically led to six or seven times as many job losses in the secondary market. In South Africa, crude steel production decreased by 17.3% in April 2024 compared to the April 2023 and by 9.8% in May 2024 compared to the same month in 2023 which illustrates the high-level impact of a worsening situation.*

### **Commission's consideration**

- The Commission noted that total employment decreased from 103 in (July 2021- June 2022) to 97 index points in (July 2022- June 2023)*
- If safeguard duties are not imposed, employment in this sector will decline further, leading to the closure of plants. South Africa has already seen the severe consequences of plant closures, as demonstrated when the Applicant placed its Saldanha Plant in care and maintenance, resulting in 400 job retrenchments. Job losses in primary steel production typically led to six or seven times as many job losses in the secondary market in South Africa. This will also have a devastating impact on the manufacturing sector, which is already shedding jobs.*
- The Commission further noted that primary steel producers, like AMSA, are essential for the steel sector in South Africa for several reasons. They provide raw steel for downstream industries, create jobs, contribute to the economy, maintain global competitiveness, and support industrialization*

*and development. The Steel Master Plan emphasizes the need to modernize production facilities, support local manufacturing, address input challenges, and promote job creation. It aims to stabilize and enhance the viability of the primary steel sector through targeted interventions and a sustainable, locally driven approach.*

**Comments by New Concept mining on the Commission's essential facts letter**

*NCM highlighted the potential impact of employment changes due to challenges in maintaining competitiveness, particularly regarding their Hydrabolt production line, which employs 250 people. The overall workforce of 750 faces indirect risks, with safeguard measures posing a threat of job losses in NCM and related industries. Increased costs from these measures could further affect local employment and the economy.*

*NCM also noted that these measures threaten not only its viability but also the underground mining industry in South Africa. Hydrabolts are essential for various mining applications, and NCM has a significant market share in pre-stressed units. Moreover, only AMSA can produce the specific steel grades and thicknesses needed for Hydrabolts. Therefore, import safeguard duties would severely disrupt the mining industry and overall safety, affecting nearly all underground mines in South Africa.*

**Response by Applicant**

*The Applicant indicated that "NCM stated that its product, the 'Hydrabolt', will become uncompetitive. The Hydrabolt is made from Mining Bar Smooth Length Kocks, which is a long product. Although a small portion of the subject product may be included, this would account for less than 10% of the total input cost." Therefore, there is little to no relationship between the Hydrabolt and the ongoing investigation.*

*Similarly, in reviewing Erdvark's submission, it is unclear from both its public interest submissions and its March submission which categories the '50%' input costs for producing the farming implements fall under. This aspect should be closely examined. The Applicant requests that the Commission not*

*take the comments regarding input costs at face value, as it seems that the interested parties conflating these costs with the subject product may create an inaccurate representation.*

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

*NCM indicated during its hearing presentation that hot-rolled coil (HRC) steel, imported under the tariff code 7208.27.00, accounts for 70% of the cost of producing Hydrabolts locally. They requested that the Commission introduce a rebate for products imported under this tariff code. Suppose the existing rebate provisions do not cover this product. In that case, the Commission will investigate the possibility of creating a new rebate provision for this product and other products that are not manufactured domestically.*

### **8.6 Capacity, quality, reliability, and delivery time and safety considerations**

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

- Interested parties highlighted that the local manufacturer is unable to meet the demand, it cannot supply variety and volume.*
- Interested parties indicated AMSA cannot always supply the required products with regard to the volume, quality and on time, parties need to import product to be able to service domestic.*
- The Applicant's quality of hot-rolled steel is not at the required level for some of the components. The local mills do not have the technical capability to produce all the technical grades required in the automotive industry. The local steel industry cannot meet the volumes required by the automotive industry.*
- AMSA limited capacity availability, which falls short of the volumes required by South African steel market.*
- Unable to supply certain hot-rolled steel products due to various reasons such as dimension, specifications, quality and production limitations.*
- Very poor on-time delivery performance, resulting in delayed delivery of orders to their customers which in turn hinders the ability to supply their downstream customers effectively.*

- *Duferco initiated discussions with the Applicant at the end of 2018, with the objective of reaching an agreement well before the expiry of the previous agreement in May 2020. However, Duferco was not able to conclude a new supply agreement on similar terms with the Applicant, due to its protracted approach. The terms proposed by the Applicant were neither realistic, nor feasible considerations for Duferco, which terms would have resulted in Duferco operating at a loss. Duferco's recent and current state of affairs are challenging as a result of local market share loss, a direct consequence of the over-protection by the Government to the Applicant without taking the important role the SACU rerollers pay in the SACU market.*

### **Comments from the Applicant**

- *The Applicant denied being unreliable or unable to deliver orders on time. Although the lead times for order confirmation are typically 6-12 weeks, 70% of hot-rolled product orders were dispatched within 8 weeks during the period under investigation. The Applicant confirms orders in the month; it can deliver and accept orders based on its production capacity. No order has ever been declined. The Applicant prioritizes local supply and has helped customers with urgent requirements regardless of the expense. The Applicant is capable of meeting domestic demand. The Applicant compared its lead times for imports, which typically take 6-12 weeks to produce in international mills and another 4-6 weeks to ship, to its local lead times. The Applicant pointed out that orders of hot-rolled products from China are confirmed in March/April for supply in August, which is a 5-month delay time.*
- *The Applicant confirmed that deliveries are conducted efficiently and effectively. The domestic market is always considered a priority above export orders, and such orders are only not accepted when the local market is unable to order sufficient quantity to meet the minimum required production volumes. The Applicant acknowledged that there may be delays or supply issues when interested parties import. This includes factors such as delays in production in international mills, weather events, logistics issues, port congestion, and other unknown factors. The Applicant's performance is being compared to mills globally in various countries with*

*their own supply chains. The Applicant is still the local supplier with the shortest delivery lead time versus any international supply source for the products regularly sourced by customers from it. The Applicant confirmed that it has all the certifications required for quality standards, including ISO 9001, 14001, etc. These certifications confirm processes to ensure quality standards can be achieved and consistently maintained.*

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

## **8.7 Rebate exemption on product not manufactured locally**

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

- *Grades and qualities of flat-rolled steel not produced by locally should be exempted from the safeguard measures.*
- *There are a number of products used in the SACU market which are not manufactured by the SACU domestic industry or do not meet customers' requirements. This includes specialized products for the automotive industry and hot-rolled coil used in rerolling operations. If a safeguard measure is imposed, these products should be exempt from the safeguard measure or should qualify for duty free treatment in terms of existing or new rebate provisions.*
- *In the Gazetted notice, the tariff heading 7225.99 is listed in relation to the investigation imports of hot-rolled coil, not further worked, not clad, plated or coated – which they believe is an error. Trident and its customers urged ITAC to revisit the inclusion of this code in the provisional safeguard duty of 9% as this material does not meet the parameters of the original investigation.*



### **Comments from the Applicant**

- *The Applicant indicated that it reiterates that it produces the majority of all steel grades and products. Where it does not currently manufacture a product it not only supports the imposition of rebates, but is investing to produce those products locally too, provided there is sufficient demand for the product in question. The Applicant further indicated that it reminds the Commission that this is also a specific goal of the industries development plan. However, in a market where the surge in imports has ravaged the domestic producers and imports continue to increase unabatedly, the ability for the Applicant and other domestic producers to localise becomes increasingly difficult.*
- *The Applicant argued that the products mentioned by interested parties are “like and directly competitive products” and therefore, fall within the scope of the investigation. Granting rebates on these broad categories of products would harm AMSA and the industry as a whole. Rebates should only be granted on a case-by-case basis through an application-based system, as this has always been the correct procedure. The Applicant and its members support rebate facilities for specialized products that are not locally produced. However, it wouldn't make sense to have rebate facilities for general or standard products, which have been correctly determined by the Commission to be like or directly competitive products and have caused injury through imports.*
- *Additionally, the Applicant submitted that the safeguard measure must apply to products imported for the production of exports, as such exports could have (and ought to have in line with localisation goals) been produced from locally produced products. Thus, if rebate permits were available for material inputs for exported products, the downstream industry would not purchase of the locally produced product and production volumes of the Applicant's members would decrease significantly. This would erode the efficacy of the intended remedial measures.*

### **Commission's consideration**

- *The Commission noted that there are existing safeguard rebate provisions for products not manufactured by the Applicant, which are considered highly specialized and do not directly compete with the Applicant's products. The previous investigation established these provisions for specific non-manufactured products deemed highly specialized. These rebate permits are issued upon a permit issued by the Commission in consultation with the Applicant.*
- *The Commission made a preliminary decision to impose provisional measures partially because the downstream sector can utilize these rebate provisions. After consulting with SARS about the existing rebate provisions on provisional payments, SARS stated that rebate provisions, whether future or existing, cannot be applied to provisional payments. Rebate provisions only apply to a duty established in Schedule No. 2 as a definitive duty.*
- *However, if the definitive safeguard duty is imposed by 20 January 2025, interested parties can apply for a retrospective safeguard rebate permit, enabling a refund of the provisional duty paid on steel products. This process will be managed through the Commission's permit provision processes, covering relevant products. After the investigation and implementation of the safeguard duty, import permit applications can be made under relevant rebate provisions.*
- *After completing this investigation, the Commission will also consider creating new rebate provisions for products not manufactured by the domestic industry.*

### **Comments by the Group on the Commission's Essential Facts letter**

*The Group stated that Commission has indicated its notice of the existing certain rebate provisions that cater for Schedule 1 and Schedule 2 duties, for certain specialised products that are not manufactured by the Applicant. However, there are certain existing rebate provisions that only cater for Schedule 1 and not for Schedule 2 duties, such as the 470.03 rebate provisions. The Commission is requested to confirm that the existing Schedule*

*2 rebate items will remain in force and where existing rebates do not cater for Schedule 2 duties, that a final determination is made for the update of the existing rebate provisions to include Schedule 2 duties.*

### **Commission's consideration**

*The Commission is of the view that the rebate provisions will be applicable to both Schedule 1 and Schedule 2 duties.*

### **Comments by the interested parties on the Commission's essential facts letter**

*The interested parties urged the Commission to distinguish between arguments concerning causal links and those that affect public interest in its decision-making. They highlighted that during the investigation, many stressed the impact of other causal factors, including the Applicant's actions that contributed to increased imports, which the Commission should not overlook.*

*They requested the Commission to evaluate the potential negative effects of imposing a safeguard measure on competition in the SACU market and on producers using imported goods as inputs, particularly in the downstream industries. Concerns were raised by downstream users in sectors like mining, agriculture, and automotive regarding the provisional safeguard measure, cautioning that a definitive measure could hinder their ability to obtain essential steel products.*

*The interested parties emphasized the need to maintain traditional trade flows to ensure a diverse steel supply, which is crucial for the economy and critical industries reliant on imports, including those from long-standing suppliers.*

*Reference was made to Article 3.1 of the WTO Safeguard Agreement which stipulates that a member can apply a safeguard measure only after an investigation by its competent authorities, with established procedures and public notice. This includes opportunities for importers, exporters, and other interested parties to present evidence and views, especially regarding the*

*public interest of the measure. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.”*

*The interested parties further stated that the Commission claimed that measures are in the public interest without adequate explanation or analysis. The Commission is therefore required to justify its conclusions, which it has not done.*

### **Response by the Applicant**

*The Applicant reiterated that without a domestic industry, the downstream industry will be at the mercy of suppliers in foreign countries who would then be able to charge any price they want. This will decimate the downstream industry in the long run, with many more job losses.*

### **Commission’s consideration**

*The Commission considered that the trade-distorting effects of the surge were manifested in the performance of the SACU industry during the investigation period. The Commission found that the SACU industry has been adversely affected by a surge in imports during the POI. The Commission further considered that the Applicant is experiencing serious injury in a form of decline in output, net profit, market share, capacity utilisation, and employment for the period that coincide with the surge of imports, i.e. July 2022 to 30 June 2023. The existence of a surge signifies the extent of disruption of competition. NAACAM supported that preventing serious injury to the SACU steel industry is vital to ensure AMSA have a competitive business case for the continuation of SA production.*

*If safeguard duties are not imposed, employment in this sector will decline further, leading to the closure of plants. South Africa has already seen the severe consequences of plant closures, as demonstrated when the Applicant placed its Saldanha Plant in care and maintenance, resulting in 400 job retrenchments. Job losses in primary steel production typically led to six or seven times as many job losses in the secondary market in South Africa. This*

*will also have a devastating impact on the manufacturing sector, which is already shedding jobs.*

*The Commission noted that primary steel producers, like AMSA, are essential for the steel sector in South Africa for several reasons. They provide raw steel for downstream industries, create jobs, contribute to the economy, maintain global competitiveness, and support industrialization and development. Supporting the Government in achieving its national priorities. The Steel Master Plan emphasizes the need to modernize production facilities, support local manufacturing, address input challenges, and promote job creation. It aims to stabilize and enhance the viability of the primary steel sector through targeted interventions and a sustainable, locally driven approach. The primary steel industry has also resulted in the establishment of numerous downstream and upstream industries.*

*The Commission considered that the measure is put in place to temporally allow the domestic industry to adjust and be internationally competitive. It should also be noted that with the time the duty will be liberalised. Safeguard Measures are therefore necessary to remedy the trade-distorting effects the surge in imports has had and to restore effective competition.*

*The Commission further considered that the implementation of a 13% safeguard duty would offer a fair and balanced approach to facilitate the adjustment of the SACU industry. It is emphasized that the safeguard duty is intended as a temporary measure to provide the industry with an opportunity to adjust, with the duty scheduled to be phased down over 3 years. Additionally, consideration will be given to products or grades not currently manufactured locally by the SACU industry, as highlighted during the public hearing which will be eligible for rebate permits.*

Based on the information submitted, the Commission made a final determination that it will be in the public interest to impose a safeguard measure.

## 9. SUMMARY OF FINDINGS

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### 9.1 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 alleged surge in imports of the subject product, as per the provisions of Article XIX of GATT 1994.

### 9.2 Serious injury

The conclusion on injury indicators is as follows:

**Table 9.2.1: Serious injury**

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

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

### 9.3 Surge of Imports

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

### 9.4 Causal link

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

serious injury experienced by the Applicant in particular because some of these factors were temporary and did not persist throughout the period of investigation.

#### **9.5 Public interest**

Based on the information submitted, the Commission made a final determination that it will be in the public interest to impose a safeguard measure.

## 10. APPLICANT'S ADJUSTMENT PLAN

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According to SGR 21, a safeguard measure shall, amongst others, only be applied to facilitate adjustment of the SACU Industry.

It is therefore required from the Applicant to submit a plan indicating how it would adjust to increase its competitiveness.

### 10.1 Applicant's adjustment plan

The adjustment plan submitted by the Applicant highlighted the following measures it will put in place to improve competitiveness of the industry:

The Applicant has indicated that implementation of safeguard duties is essential to protect it from import-related harm. These measures aim to prevent further injury and encourage adjustment. Increased production of hot rolled products is expected to enhance plant efficiency, boost competitiveness, and support vital investments for long-term sustainability after the duty expires. The Applicant further indicated that its strategy focuses on becoming an industry enabler by investing in specialized product technologies and developing a competitive supply chain in South Africa. Additionally, it has signed a Memorandum of Understanding (MOU) with Sasol, CSIR, and IDC to collaborate on Carbon Capture and Use (CCU) technologies and Green Hydrogen for "Green Steel" production. The Applicant specially highlighted the following measures:

- **Execute capital expenditure to increase efficiencies and output:**

The Applicant indicated that strategic investment plan is to allocate R16.3 billion (R12 billion in Vanderbijlpark) in capital expenditures from 2024 to 2028, contingent upon business performance and fund availability. The investment aims to enhance operational capacities, improve efficiency, increase production capacities, and facilitate sustainable growth. This capital expenditure initiative encompasses the modernization of existing production lines and new



production lines and the incorporation of advanced technology to enhance output.

- **Invest in and develop new products:**

The Applicant plans to invest in its flat steel production capacity. The capital expenditure (CAPEX) is allocated for the Hot Strip Mill (HRC), Plate Mill, and for other operational categories.

Investments in flat steel are poised to generate high returns through advanced technologies that enhance product quality and lower operational costs. Significant funding for environmental upgrades and energy-efficient technologies aligns with global sustainability trends, mitigating regulatory risks and boosting market competitiveness. It prioritizes product development as part of its sustainability strategy, leveraging over 16 global R&D centres and 1,500 researchers to maintain competitiveness. In South Africa, more than 30 products are currently in development, including:

- Upgrades to rolling mills and galvanizing lines to reduce imports in the Automotive and Appliance sectors
- Enhancements to plate mills for increased capacity in Renewable Energy and Mining
- Advanced corrosion protection coatings like Optigal.

The Applicant has indicated that it has established collaborations with local research institutions such as Industrial Minerals and Metals Research Institute (IMMRI) of the University of Pretoria in new product development and improvement of existing ones. The strategic capital expenditures focus on increasing production and strengthening local supply capabilities, enhancing competitiveness by reducing costs and optimizing efficiencies, ultimately positioning ArcelorMittal for sustainable growth in Africa.

- **Ensure competitive pricing:**

The Applicant indicated that until 2022, it used a pricing mechanism based on an international basket price system, excluding artificially low prices from China and Russia. This system was agreed upon with the South African government and remained in place for five years. With the Steel Master Plan's inception in 2021, a new workstream was established to review pricing mechanisms. After extensive discussions within the industry, it was concluded that an open market pricing method would best reflect market dynamics in South Africa.

- **Implement the Decarbonisation Road map for the benefit of the industry and the country:**

The Applicant released its Decarbonisation Roadmap in January 2023, committing to a 25% reduction in carbon emissions by 2030 and achieving carbon neutrality by 2050. The Applicant is investing in a 200-megawatt solar power plant in Vanderbijlpark, expected to provide 45% of the site's electricity needs and save costs by Q3-2025. New Electric Arc Furnaces for melting scrap and green Direct Reduced Iron (DRI) are set to begin operations in 2028. Partnerships with Sasol, CSIR, and IDC focus on developing Carbon Capture and Use (CCU) technologies and Green Hydrogen for "Green Steel". Protecting local production is crucial for the industry's sustainable future.

- **Responsible Corporate Citizenship and Social Investment:**

The Applicant indicated that it focused on enhancing local skills while managing a 17% rise in labor costs, which reached R5,053 million in 2023. Employment slightly decreased. The company has allocated funds for training from 2022 to 2024 to build an efficient workforce. The ArcelorMittal Foundation invests in socio-economic initiatives, including education and adult training. In 2024, social impact spending rose to R17.4 million, benefiting learners through three Science Centres.

In 2023, over 24000 learners received R9.2 million in curriculum support, while a Soup Kitchen feeds 6,373 people monthly. R3 million was spent on road infrastructure upgrades, and R12 million from the Thabazimbi mine supported

a pipeline project for better water access. The Matlafatso incubation hub assisted eight start-ups in 2023, generating about R10 million in orders. The Applicant stated that it views its community programs as vital for social development and maintaining a responsible business, though their success depends on protective import measures.

### **Comments by NCM on Commission's Preliminary Report**

*NCM defined a safeguard duty as temporary relief from import competition to allow the local industry to become competitive. NCM stated that the Applicant's adjustment plan doesn't address how they will improve industry competitiveness. Instead, it focuses on current activities related to decarbonisation, CSR programs, and value-added exports. Additionally, the Applicant hasn't provided clear criteria to assess the effectiveness of the safeguard measures and their adjustment strategies. There is also no indication of how the Applicant will meet increased demand. As previously mentioned, ensuring a secure supply is crucial. The development plan should outline how the Applicant will handle the increased demand. The Applicant hasn't provided a clear and actionable plan to show how it will use the protection period to enhance competitiveness and address the factors causing the injury.*

### **Comment by the Group on Commission's Preliminary Report**

*The Group stated that the report incorrectly states that the application was lodged "on behalf of AMSA ", representing the SACU industry, which resulted in the Commission incorrectly accepting only the development plan of AMSA as an adjustment plan (which it is not) and not for the other SACU industry manufacturers.*

### **Commission's consideration**

*According to SGR 21.2, the "SACU industry" must submit a plan to improve its competitiveness. The "SACU industry" refers to the domestic producers as a whole of similar or directly competitive products or those whose output constitutes a significant portion of the total SACU production. As AMSA's production of the like products accounts for over 90 percent of total SACU production, AMSA's output indeed constitutes a "major proportion." Because of*

*this, and the fact that Columbus Stainless (Pty) Ltd ("Columbus") is considered a supporting entity in this investigation, Columbus is not required to submit an adjustment plan to the Commission.*

### **Comments by the Group on Commission's essential facts letter**

*The Group highlighted that the Applicant submitted a "Development Plan" that focuses on downstream improvements, such as upgrading rolling and plate mills, rather than addressing the need for primary production enhancements. This follows a similar trend from a previous safeguard investigation, which failed to improve competitiveness at the primary level, leaving the SACU downstream industry facing ongoing challenges.*

*They indicated that SAISI has noted that while safeguard duties may offer temporary relief, they must align with sustainability goals; otherwise, AMSA will struggle to adapt in a changing global environment. The Group urged the Commission to reassess the SACU industry as a whole, evaluating the adjustment plans and strategies of all players to enhance competitiveness. Additionally, the Commission should review AMSA's previous development efforts and their effectiveness in improving primary steel production efficiency.*

### **Commission's consideration**

*The Commission conducted a thorough review of AMSA's development plan. In accordance with SGR 21.2, in its review of the Applicant's adjustment plan, the Commission concluded that the plan did not adequately demonstrate how the Applicant would ensure pricing that does not disproportionately harm its downstream customers, following the imposition of a safeguard measure. Further, informed by the public interest hearings, the Commission was of the view that, notwithstanding rebates for grades not produced by the Applicant, that there are latent input price risks for downstream users and re-rollers.*

*In light of the above, the Commission made a final determination to recommend to the Minister that the Commission be instructed to monitor the prices of the subject products in terms of section 18(a) of the ITA Act.*

## 10. FINAL MEASURES

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**10.1** In terms of SGR 21.1, “A safeguard may be applied only -

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

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

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

### ***Comments by the Government of UK on the Commission's Preliminary Report***

*The UK government stated that imports from the UK have not contributed to the alleged serious injury, while imports from countries like China have increased. They argue for targeted actions instead of focusing on the UK and propose a tariff rate quota to maintain traditional trade flows with South Africa. The UK believes these quotas should be country-specific to prevent unsustainable price competition and avoid favoring Chinese imports, which are seen as a major cause of the import surge.*

### ***Comments by the Applicant on the Commission's Preliminary Report***

*The Applicant highlighted that it is generally accepted that there are three possible safeguard remedies: safeguard duties, quotas, and tariff quotas (a combination of a quota and a duty). According to Article 5.1 of the Agreement and SGR 21.11, the quota volume should equal the average import volume from the last three representative years to prevent or remedy serious injury. A safeguard duty should similarly decrease imports to a level that avoids serious injury. The provisional duty of 9% is insufficient, as prices have dropped by more than that, meaning a final 9% duty would be ineffective.*

*The Applicant urged the Commission to set a duty level of at least 30% to effectively restrict imports and address serious injury. While Tariff Rate Quotas (TRQs) were considered, the Applicant requested that the Commission refrain from implementing them for now, as immediate action is needed. The goal is to reduce imports to a non-injurious level.*

### **Commission's consideration**

*It is important to note that the SGR and the WTO Safeguards Agreement do allow for other forms of measures to be considered in addition to a customs duty.*

*However, the Commission is of the opinion that the quota system imposes the following challenges:*

- A quota is useful for the management of trade volumes. However, it imposes a higher burden than a tariff system in terms of administration;*
- It will require the implementation of an import licensing regime;*
- It will require establishment of rules covering the distribution of quotas;*
- It will require import surveillance i.e. monitoring reports on a quarterly basis;*
- The competent authorities must ensure that its administration is carried out in accordance with the principle of non-discrimination as stated in Article XIII of the GATT; and*
- A quota would be less effective in redressing the serious injury experience by the domestic industry:*
- The Safeguard Agreement states that: "A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives."*

- *In this investigation, the average import level for the last three years prior to initiation, was 433 926 tonnes;*
- *The imports prior the surge were 283 891 tones;*
- *If the Commission were to use 433 926 tonnes as a quota, as prescribed by the Safeguard Agreement, the investigators are of the opinion that this quota will not have a remedial impact as the imports will still be higher than the period before the surge in imports (283 891 tonnes). A quota will in this case not be effective to prevent or remedy serious injury; and*
- *The Safeguard Agreement states that each supplying country should have the same historical share of the import market, which in this case means that 43% of the quota would be allocated to China.*

*In view of the above-mentioned challenges, the Commission decided not to deviate from the methodology of applying a safeguard duty, if any.*

***Comments by the Government of UK on the Commission's essential facts letter***

*The UK challenged the Commission's claims about practical barriers to implementing a tariff rate quota system, arguing that these issues are manageable and that the benefits outweigh the challenges. It clarified that WTO law does not mandate an import licensing regime for quotas and that GATT principles allow quota allowances with safeguard measures. The UK believes country-specific quotas are necessary to maintain historic trade flows while addressing injury from import volumes.*

*Moreover, the UK disputes the Commission's assertion that tariff rate quotas are ineffective in remedying serious injury, stating that a three-year average import quota would significantly lower current import levels. It also noted that the Agreement on Safeguards permits alternative quota levels if justified and expressed concern that the proposed ad valorem duty would excessively disrupt traditional trade flows.*

***Comments by TATA UK and Netherlands on the Commission's essential facts letter***

*TATA UK and Netherlands advocated for a tariff-rate quota (TRQ) if the Commission imposes definitive safeguard measures, citing that the Commission's concerns about administrative burdens do not justify flat tariffs and lack support from the Safeguard Agreement. They noted that countries like the EU, UK, US, and Brazil effectively use TRQs for various products.*

*The Commission referred to the WTO Safeguard Agreement requirement that import levels not drop below recent averages without justification, which has not been provided for flat tariffs that would reduce imports. TATA UK and Netherlands also questioned the allocation of 43% of the TRQ to China, suggesting anti-dumping measures instead if the focus is primarily on Chinese imports.*

*TATA and Netherlands requested the Commission to terminate the investigation or, if a measure is deemed necessary, to implement a TRQ that considers traditional suppliers' interests in South Africa.*

***Comments by the Group on the Commission's Essential Facts Letters***

*The Group disagreed with the Commission's assertion that global quotas could lead to unsustainable price competition and favour imports from China. They argued that quotas protect the domestic industry by limiting import competition to a maximum quantity, providing more stability than safeguard duties, which raise prices without limiting trade volume.*

*The Group also criticized the Commission's claim that quotas impose a higher administrative burden, pointing out that considering price undertakings is more burdensome. They highlighted that the Commission previously acknowledged the need for a healthy re-roller industry and provided duty protection for viable raw material supply, which seems to be overlooked now.*



*The Group requested the Commission to reconsider its stance on quotas, distinguishing between general and re-rolling sector importers of HRS. They asserted that this distinction would not increase the administrative burden or raise discrimination concerns.*

### **Commission's consideration**

*The Commission took note of Article 5.1 of the Safeguard Agreement and SGR 21.11 that set out specific rules on the determination of the volume of a quota, essentially indicating that the size of the quota should be equal to the average volume of imports in the last three representative years. Thus, the Agreement regards this volume as the “extent necessary to prevent or remedy serious injury.” Consequently, if a safeguard duty is imposed, it must have a substantial impact. Specifically, it should reduce the volume of imports to a level that would not cause serious injury.*

*SARS was consulted and indicated that their current systems do not support the implementation of safeguard quotas. If the Commission requires SARS to implement quotas, developing the necessary systems will take several months. Additionally, if there is an expectation that SARS will need to accommodate this requirement in the future, further discussions with the Commission will be essential.*

*The Commission made a final determination to reject the proposal to use quotas as an alternative method in this investigation. The Commission considered that currently there are no systems in place to manage quotas. The investigation involves numerous tariff codes and countries, and the Commission believe that implementing quotas would be less effective in addressing the serious injury experienced by the domestic industry.*

*However, the Commission will conduct comprehensive research and engage more with SARS regarding the potential use of quantitative restrictions (quotas) as an alternative method for future safeguard investigations.*

## 10.2 Unsuppressed selling price

Table 11.2(a) Prices and profits

R/Tons	Jul 2020 - Jun 2021	Jul 2021 - Jun 2022	Jul 2022 - Jun 2023
Ex-factory price	100	147	140
Production cost	100	127	167
Gross profit	100	218	41
Gross profit %	100	145	
Production cost as a % of selling price	100	87	121

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

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

### **Comments by interested parties on the Commission's Preliminary Report**

*The interested parties reiterated that the application did not provide evidence that the Applicant experienced a significant injury or price depression. They noted that the Applicant seemed to be manipulating its selling prices to argue that their unsuppressed selling price in the SACU market should be calculated based on a reasonable profit due to alleged price suppression.*

### **Comments by interested parties on the Commission's Essential Facts Letter**

*The interested parties emphasized that the Applicant failed to prove serious injury regarding price, as they did not experience price depression. They claimed the Applicant was manipulating selling prices by arguing that price suppression justified a reasonable profit calculation for unsuppressed prices in the SACU market. The Commission's assertion that the Applicant faced price depression and suppression during the surge period lacked explanation linking this injury to the surge in imports. There was no evidence of price undercutting by the SACU industry, and while the Commission noted a 13% price disadvantage compared to imports from the top three countries, this alone does not indicate harm. Additionally, data from AMSA's anti-dumping investigation showed that imports did not undercut the SACU industry, and the remaining imports from other countries were, on average, 23.70% more expensive than the Applicant's unsuppressed price.*

### **Commission's consideration**

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

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

1. As a starting point, the current year's cost of production from the cost build-up was used.
2. The selling, general, and administrative expense from the cost build-up for the current year was used.
3. The selling, general, and administrative expense was then added to the production cost to calculate the reasonable cost to make and sell for the

year.

4. A profit was then calculated based on a reasonable profit percentage.  
Reasonable profit margin: The 15.22% was calculated from Companies Industries Market (CSIMarket Inc.) data. CSIMarket Inc. is an American independent digital financial media company providing integrated financial information and analytical applications to the global investment community. The 15.22% was based on an average of quarter three of 15,38% and quarter four of 12,14% for the year 2022 as well as quarter one of 15,75% and quarter two of 17,6% for 2023 ( [Iron & Steel Industry Profitability by quarter, Gross, Operating and Net Margin from 2 Q 2023 \(csimarket.com\)](https://www.csimarket.com/iron-steel-industry-profitability-by-quarter-gross-operating-and-net-margin-from-2-q-2023) )
5. A reasonable profit was added to the selling, general and administrative expenses, and production costs to calculate the un-suppressed price.

#### **Comments by Japanese Mills on the Commission's Preliminary Report**

*The Japanese Mills stated that in calculating the unsuppressed selling price, the Commission used the highest profit level provided by the Applicant and the total costs from the Applicant's cost price build-up with no regard to the objections of other interested parties. In particular, the Commission has not considered the submissions by Japanese Mills that applying an EBITDA margin (which would exclude interest, depreciation, and amortization) to a cost figure that includes interest, depreciation, and amortization has likely overstated its unsuppressed selling price.*

#### **Comments by the Group on the Commission's Preliminary Report**

*The Group argued that a maximum reasonable profit margin in the current economic environment, considering the company's size and technology, would be 9 percent. The global steel industry EBITDA margins have averaged eight to ten percent for the last decade. They disagreed with the Commission's view that AMSA's reported profit of 15.22% is reasonable and presented reliable data suggesting a lower profit margin. They also disputed the necessity of a 15 to 17 percent profit margin for long-term sustainability, considering it outdated and overstated compared to the industry average EBITDA margins of eight to ten*

percent.

### **Comments by Applicant on the Commission's Preliminary Report**

*The Applicant stated that the industry welcomes the Commission's decision to accept CSIMarket Inc. as a reliable source to ascertain a reasonable profit for the industry. They urge the Commission to consider using a 17.6% profit margin instead of 15.22% for the second quarter of 2023 in line with McKinsey's 17% sustainability ratio. They submitted that the McKinsey study is forward-looking and focused on sustainability, complying with a fundamental adjustment objective in the SACU industry. The Applicant stated that the request above is common as the Commission has made similar re-considerations on reasonable profit. In Report No. 596 of 2019, the Commission, having due consideration for "the depressed state of the industry" and the fact that the duty would be gradually phased down over the three years, increased the bar for a reasonable profit by 5%.*

### **Commission's consideration**

*The Commission noted that in relation to the profit margin used in the previous investigation, the Applicant suggested a 17% profit margin based on a study conducted by McKinsey. However, the Commission chose not to adopt the 17% proposed by the Applicant. Instead, the Commission determined to use a 10% profit margin in line with the 2016 Competition Commission's ruling. This ruling stipulated that AMSA's EBITDA should not exceed 10%, and could reach 15% in prosperous times, over a period of 5 years. It is worth noting that the five-year settlement agreement between AMSA and the Competition Commission concluded in November 2021. Consequently, the 10% ruling by the Competition Commission is outdated and no longer relevant to the ongoing investigation.*

*The Applicant made a request for the Commission to use the 17.6% profit margin from the second quarter of 2023 for the calculation of an unsuppressed selling price. It is the Commission's practice to use a reasonable profit margin over the entire 12-month period that aligns with the period of investigation.*

*According to information from finmodelslab.com, which was shared by the interested parties', "When evaluating Steel industry profitability, it is insightful to look at industry benchmarks. For example, the average EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) margins for the steel industry hovered around 15-20% in 2022, which is relatively healthy". It is worth noting that the provided 15%-20% margin corresponds to a reasonable profit margin of 15.22% for the period covering the 12 months from July 2022 to June 2023, as reported by a reliable source, CSIMarket Inc.*

*The Commission considered that the profit margin for hot-rolled products reported by the Applicant for the period July 2022 to June 2023 and for the year ending 31 December 2022 were lower than the required 17% rate for a sustainable steel business. However, the Commission finds the Applicant's reported profit of 15.22% reasonable and obtained from a reliable source on iron and steel industry profitability. Additionally considering the industry's current state and the gradual reduction of the duty over three years, the proposed 15% seems reasonable.*

***Comments by the Group on the Commission's Essential facts letter***

*The Group reiterated that a reasonable profit margin allowed for the Applicant will be 9 percent at a maximum, as the global steel industry EBITDA margins have averaged 8 to 10 percent for the last decade. The Commission was advised that a profit margin of 15 to 17 percent that were allegedly necessary for long-term sustainability is completely overstated.*

***Comments by Japanese Mills on the Commission's essential facts letter***

*The Japanese Mills stated that the Commission considered using the profit margin of 15.22 percent in the calculation of the Applicant's unsuppressed selling price for the final determination". They stated that it is clear that, as was the case in the preliminary determination, the Commission has made use of the highest profit level provided by the Applicant and the total costs from the Applicant's cost price build-up with no regard to the objections of other interested. In particular, the Commission has not taken into account the submissions by Japanese Mills that applying an EBITDA margin (which would*

*exclude interest, depreciation and amortization) to a cost figure that includes interest, depreciation and amortization has likely overstated its unsuppressed selling price. They requested the Commission to reconsider its calculation of the unsuppressed selling price and to take the above submissions into account in making its final determination.*

***Comments by the Applicant on the Commission's essential fact letter***

*The Applicant stated that the Commission is considering implementing a safeguard duty of 13%. This duty was calculated using the weighted average FOB import price of China, Japan and Taiwan during the last year of the POI (June 2022- July 2023). The price disadvantage was calculated between the average FOB import price and the Applicant's unsuppressed selling price using an EBITDA margin of 15.22%. The Applicant submitted that a duty higher than the 13% proposed is more appropriate for the reasons set out below:*

- The Commission should apply the EBITDA margin as a percentage of revenue;*
- The Commission should build into the EBITDA margin a level for addressing serious injury and facilitating adjustment; and*
- The Commission cannot ignore recent low FOB import prices and global trade interventions.*

*The Applicant highlighted that the Commission should apply the 15.22% EBITDA margin as a percentage of revenue. While the Applicant maintains that a strict mathematical approach is not the appropriate way to obtain the duty level required, this alternative method at least conforms with general accounting principles. According to the definition of an EBITDA margin, it is a profitability ratio that measures how much in earnings a company is generating as a percentage of revenue. Instead, the Commission's calculation applied the EBITDA as a markup on the cost of production instead of as a percentage of revenue. As a result, the calculated unsuppressed selling price is understated. Using the Commission's methodology, and changing only the application of the EBITDA margin, the safeguard duty should be 14.3%.*

*The Applicant indicated that to obtain a margin to redress serious injury it has conducted a comparison of the weighted average landed cost of imports from China, Japan and Taiwan and determined the price weakness (undercutting) against Applicant's unsuppressed selling price. The price weakness confirms the need for remedial action and also provides an indication of the level of protection needed. Therefore, there is a direct link between the proposed EBITDA margin increase, its ability to remedy the serious injury and ability to prevent further impairment of the SACU industry.*

*The Applicant highlighted that this increased margin will allow it to regain lost market share by reducing imports volume to non-injurious levels to address the trade distortion caused by the surge in imports. The Applicant stated that the Commission is reminded that a safeguard duty can never be set at the exact extent of the price disadvantage because this rate cannot redress serious injury and facilitate adjustment. Considering that import market share has displaced domestic industry market share considerably, the measure needs to have a reversing effect.*

*The approach the Applicant is proposing is more comprehensive and will allow Applicant to start recovering from the serious injury and position it to potentially be able to achieve its investment objectives submitted in the adjustment plan. As stated below, the determination of the appropriate remedy cannot happen in a vacuum and the Commission should also consider the decrease in recent prices before determining the final appropriate relief.*

*The Applicant proposed that the EBITDA margin can justifiably be increased from 15.22% (by adding the adjustments of 1.82% and 2.40%) to 19.44%. Factoring in these adjustments reflects a more appropriate EBITDA aligned to the requirements of the SGR and ensures the efficacy of the final duty throughout its lifespan. The Applicant calculated a duty of 21% to obtain the appropriate level of the safeguard duty in its first year of implementation when its impact needs to be immediate.*

*The proposed 21% duty is justified as a mathematical basis to strengthen South*



*Africa's trade defences against the surge in hot-rolled steel imports. However, due to a notable decrease in FOB prices from China and the risk of trade diversion, the Applicant believes that a 21% duty may not fully achieve the intended remedial objectives. They noted that other WTO members have implemented higher duties, often exceeding 25%, purely based on trade diversion concerns.*

### **Commission's consideration**

*The Commission noted the Applicant's request to consider a profit margin of 19.44% for justifying an increased duty. However, the Commission disagreed with this proposal. The Commission's goal is not to set a profit margin that increases the duty but to adopt a profit margin that accurately reflects what is reasonable for this industry. It is also worth noting that it has been the Commission's practice to use either the EBITDA profit margin or the operating profit margin as it is, whichever it deems more reasonable, or to use any other reasonable basis. The Commission made a final determination to use the EBITDA margin of 15.22% in this case to establish a reasonable profit margin.*

### **Landed cost calculation**

During the preliminary determination it was found that FOB prices per kilogram for the majority of the other countries had many price anomalies. For example, import volumes from Argentina were found to be 1 kg imported at a price of R1 732/kg, imports from Brazil were found to be 188 kg imported at a price of R143/kg and imports from Angola were found to be 622 kg imported at a price of R6/kg. China's FOB prices were used to calculate the landed cost, China being the biggest exporter and represented the prices of the subject product.

In determining a method to accurately calculate the definitive safeguard duty, it was found that despite China being the largest exporter, it only represents 43% of the total imports to SACU. Additionally, China's share of total export volumes to SACU is below 50%. Based on these findings, it is the view of the Commission that using China alone to represent the FOB price would not be appropriate. The Commission, in its final determination, considered the top three countries, collectively representing 68% of the total imports to SACU.

These countries are as follows: China (43%), Japan (17%), and Taiwan (8%). This approach is believed to provide a more accurate reflection of the FOB price, particularly in light of the numerous price anomalies observed in imports from other countries.

Therefore, the Commission decided to use the landed cost calculated by using the weighted average FOB price of the top three countries, that collectively represents 68% of the total imports to SACU for the period July 2022 – June 2023 as obtained from the import statistics. The Commission added 10% for duties and freight and handling costs.

***Comments by the Group on the Commission's Preliminary Report***

*The Group pointed out that in the report, the Commission stated that excluding rebated imports would violate the SRG, which requires analysing all imports. However, the Commission only used Chinese imports to determine the landed cost. No provision allows the Commission to selectively use one country's data in a safeguard investigation to determine the landed costs - ALL imports must be used and analysed. The Group disagreed with the Commission's opinion that China's FOB prices are representative of the subject product's prices. They stated that the Commission cannot solely use one country's data, it must use information from all countries.*

***Comments by the Applicant on the Commission's Preliminary Report***

*The Applicant emphasized that the Commission has the authority to take into account all relevant facts and circumstances when determining the duty level. They specifically requested the Commission to consider the duty levels in other countries and to address the injury and allow for adjustment. The Applicant suggested that Japan and Taiwan should be included in the landed prices and proposed using a higher reasonable profit. This would result in a minimum definitive safeguard duty of 18% without considering any other factors. Additionally, they suggested considering the latest pricing, which would result in a minimum definitive safeguard duty of 23-24%, again without considering any other factors. It was also emphasized that the duty level should be sufficient to allow for liberalization while effectively addressing the industry's adjustment*

*plan throughout its lifespan. The Applicant argued that a 9% safeguard duty would not effectively address the injury and allow for adjustment.*

*The Applicant argued that a safeguard duty should be applied to prevent serious injury and facilitate adjustment. The Commission must consider all relevant facts and circumstances and is not restricted to a purely mathematical calculation. If a mathematical calculation is appropriate, the Applicant believes the methodology used by the Commission is incorrect in two ways: first, the use of only China prices instead of an average of the top three exporters is incorrect, and second, the Commission should have used the most recently updated pricing.*

*The Applicant requested the inclusion of Japan and Taiwan in calculating the final duties. Firstly, Japan and Taiwan's export prices to the SACU and their contribution to the surge in imports should be considered. It is acknowledged that China alone does not account for more than 50% of the total export volumes to the SACU. Therefore, China's volumes alone cannot be regarded as representative of FOB prices during the POI. The Applicant argued that including China, Japan, and Taiwan is necessary for determining the level of the final safeguard duty, as these three countries together represent more than 65% of the total import volumes to the SACU market during the surge, with a notable increase from Japan and Taiwan.*

*Secondly, as the Commission for other countries noted, Japan and Taiwan's prices were not found to have abnormalities. Therefore, their inclusion will not distort the figures, which is a significant concern of the Commission in its report.*

*Thirdly, Japan and Taiwan's impact on global trade is significant. Japan has experienced a substantial 447.27% increase in exports to the SACU from the first year of the POI to the end of the POI. The Commission's report confirms that Japan has substantial interest in the SACU market, increasing its interest from 4% to 16% over the POI. In contrast, imports from other countries remained at 28%, and most countries' interest decreased over the POI. Japan's significant export capacity and position as the world's second-largest exporter*

*make it a major player in the global markets. Ignoring Japan in the duty calculation will skew competitive conditions and fail to address the influential role it played (and continues to play) in the surge in imports and the accompanying serious injury. Additionally, the depreciation of the Japanese yen from 138.7 to the USD in June 2023 to 157.0 by the end of May 2024, a depreciation of 13%, allows it to decrease its USD-denominated export price further.*

*Taiwan's proximity and strategic location enhance the likelihood of trade diversion. It is situated a mere 120km from China's coast, and its exports to the SACU increased by 45%. China is Taiwan's largest trading partner, with significant bilateral trade volumes. In 2022 alone, China accounted for 22.6% of Taiwan's total trade and 19.6% of its imports, highlighting its critical place in the global steel market and the interconnectedness between the two countries' economies. For this reason, Taiwan is often subject to trade remedy investigations alongside China and Japan.*

*Based on the above, Japan, Taiwan, and China represent the impact of the import surge, which resulted in the serious injury suffered by the Applicant.*

***Comments by the Applicant regarding the use of updated pricing information***

*The Applicant highlighted that the prices of Chinese products have decreased significantly since the start of the investigation. The average FOB price from March 2024 to May 2024 was R11,984, representing a 14% decrease from the R13,943 FOB price used by the Commission to calculate the preliminary duties. The Applicant urged that the 9% provisional duty, considering the current situation where imports have increased, and FOB prices have declined, will not effectively address the serious injury experienced during the period of investigation. They claimed that China has already absorbed more than the duty even before its implementation, resulting in a zero net effect and rendering the present duty level ineffective in providing any advantage or remedial relief to the domestic industry, which continues to face significant challenges.*

**Commission's consideration**

*The commission is of the opinion that China despite being the largest exporter represents only 43% of the total imports to SACU. Given that China alone does not account for more than 50% of the total export volumes to SACU the Commission considered the top three countries which collectively account for 68% of the total imports to SACU. Specifically, China contributes 43% Japan 17% and Taiwan 8%. Utilizing the data from these three countries will offer a more accurate representation of the FOB price as the other countries display numerous price anomalies.*

*The Commission opposed the Applicant's suggestion to use updated/last pricing information as it falls outside the POI and is not in line with the SGR.*

*The Commission considered that the implementation of a 13% safeguard duty would offer a fair and balanced approach to facilitate the adjustment of the SACU industry. It is emphasized that the safeguard duty is intended as a temporary measure to provide the industry with an opportunity to adjust, with the duty scheduled to be phased down over 3 years. Additional consideration will be given to products or grades not currently manufactured by the SACU industry, which will qualify for existing rebate permits.*

**Comments by the Group on the Commission's essential facts letter**

*The Group strongly objected to the Commission using only data from China, Japan, and Taiwan for its calculations, arguing that excluding 32 percent of countries' information due to identified anomalies is unjustified. They claimed the Commission is violating the WTO Safeguard Agreement by basing measures on just three countries while affecting all imports. The Group asserted that since the Applicant alleges serious injury from all imports, the average price should reflect all countries, emphasizing that the actual selling price is higher than the import prices, indicating no price undercutting. Consequently, they argued that serious injury cannot arise from imports competing with the Applicant. The Group also disagreed with the Commission's belief that a 13 percent safeguard duty offers a balanced adjustment for the SACU industry, citing past failures to monitor adjustments and questioning the appropriateness*

*of the Applicant's development financing, particularly highlighting a R 1000 million short-term loan from the Industrial Development Corporation drawn on June 30, 2024.*

**Comments by Japanese Mills on the Commission's essential facts**

*The Japanese Mills argued that the Commission should not limit its analysis of imports to the three countries with the highest export volumes. They suggested that if the Commission is concerned about potential price anomalies, it should identify and justify these imports before excluding them. The alleged price anomalies, involving small volumes from Argentina, Brazil, and Angola, represent less than 0.0001% of total imports and have no impact on the average FOB price of R15,689 per tonne.*

*The Japanese Mills also noted that including just the next two countries by volume, Germany and Sweden, would reduce the estimated price disadvantage margin from 11.58% to 4.91%, while increasing the import volume considered to 77.08%. Neither the Commission nor the Applicant have explained why these additional imports should be deemed anomalous.*

**Commission's consideration**

*The Commission is of the opinion that other countries had several price anomalies, and the list is not limited to the three examples provided. Prices for each country were calculated for the period from July 2022 to June 2023, and these prices ranged from R6 to R1,732. It is worth noting that, according to the Commission's practices, when there are price anomalies in imports data from other countries, they rely on the largest exporter that represents a significant proportion of the imports to SACU in order to obtain a true representation of the FOB price. In this investigation, China, as the largest exporter, accounted for only 43% of the total imports to SACU, which is less than 50% of the total export volumes to the SACU. Therefore, The Commission made a final determination to use the top three countries that collectively make up 68% of total imports to SACU.*

### **Comments by The UK Government on the Commission's essential facts letter**

*The UK Government indicated that the Commission is now using imports from China, Japan, and Taiwan to calculate product costs, instead of relying solely on Chinese imports. However, the UK noted that there is no evidence confirming these are indeed the largest exporters. The preliminary findings also do not specify Taiwan's imports and show that India and Germany had higher import levels than Japan during the surge period from June 2021 to 2022.*

*The UK Government further indicated that it questions the Commission's decision to exclude import data from countries like the UK and EU, which export significant quantities of the impacted product. It also noted that while inconsistencies in pricing from Argentina, Brazil, and Angola were cited, no information was provided on FOB pricing from the EU and UK. Excluding these countries seems flawed, especially since the safeguard will apply equally to all exporters.*

### **Commission's consideration**

*The Commission used the audited import statistics from SARS to determine the landed cost of the subject products entering the SACU from the countries under investigation, as it considers these statistics to be the most reliable. In calculating the price disadvantage, the Commission analysed imports from July 2022 to June 2023. The analysis revealed that China accounted for 43% of the imports, Japan for 17%, Taiwan for 8%, Germany for 5%, and India for 3%. Notably, Germany and India do not rank among the top three exporters.*

**Table 10.3.2: Safeguard duty calculation**

<b>(R/ton)</b>	<b>July 2022 - June 2023</b>
Price disadvantage as a % of FOB	13%

### ***Comments by the Government of UK on the Commission's preliminary report on Developing countries***

*The UK government believes that all products regardless of their source should be subjected to safeguard measures to comply with MFN's obligations. The only exception to this rule is the developing country exemption. There are no definitions for 'developed' or 'developing' country at the WTO and countries self-identify at the time of joining. However, Members can challenge a 'developing country' designation. The UK government has urged the Commission to review the developing country exemptions list to accurately reflect current WTO designations.*

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

*It is the Commission's practice to utilize the list of the developing countries categorized by the WTO as developing countries. Additionally, the Commission provides exemptions to those developing countries in accordance with Article 9.1 of the Safeguard Agreement, utilizing the 3% and 9% thresholds.*

*Article 9.1 of the Safeguard Agreement stipulates that, "safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned".*

## **11.3 Liberalisation of the safeguard measure**

SGR 21.8 provides as follows:

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

The Commission made a final determination to liberalize the safeguard measure as follows:



**Table 10.3: Liberalisation of the safeguard measure**

Period	Rate of safeguard measure
Year 1	13%
Year 2	11%
Year 3	9 %

***Comments by the Applicant on the Commission's essential facts***

*The Applicant previously demonstrated that a 9% duty would still allow imported products to undercut domestic prices and stressed the need for the duty to remain effective throughout its duration. They pointed out that undercutting continues even with a 13% duty and urged the Commission to adopt a less liberal phase-down schedule. They also noted that if the Applicant needs to apply for a future extension, the Commission may face limitations.*

*The Applicant proposed the following phasedown schedule:*

Period	Rate of phasedown required
Year 1	Full duty implemented
Year 2	-0.4%
Year 3	-0.4%

*The Applicant further indicated that the SGR does not provide any guidelines on the phasedown schedule, and it is within the investigating authorities discretion regarding its implementation. Some WTO Members, like Indonesia, have phased down in increments of -1% or less. The Commission has also previously implemented phasedowns starting from higher bases, such as a reduction from 31.8% to 30.8% in Bolts, amounting to just 3.14% of the base value. If applied similarly in this case, with a base value of 13%, the phasedown would be only -0.4% annually.*

*The Applicant argued that the global steel overcapacity crisis is expected to worsen, emphasizing the need for a less liberal phasedown schedule to provide the industry with the necessary time to adjust and improve competitiveness.*

**Comments by the Japanese Mills on the Commission's essential facts**

*The Japanese Mills stated that the proposed liberalization schedule set out by the Commission which only reduces the duty by 31 percentage points over the three-year period, does not constitute progressive liberalization as required by the Regulations and the Safeguard Agreement. By only reducing the duty by 31 percentage points over the three-year period, the safeguard measure proposed by the Commission will not facilitate the adjustment of the domestic industry and will, instead, create a disincentive for the domestic industry to undertake appropriate efforts at adjustment from the outset of the period of application. The safeguard measure should be at least 66 percentage points lower over the three-year period.*

**Commission's consideration**

*The Commission agrees with the Applicant that the SGR does not provide any specific methodology or guidance on how to liberalize the safeguard measure, leaving its implementation to the discretion of the Commission. The Commission applies this discretion on a case-by-case basis. In this instance the Commission made a final determination to phase down the duty by 2% over three years.*

*The Commission is of the opinion that this proposed phase-down represents a fair compromise, taking into account the struggling state of the domestic industry and the entire steel value chain, including downstream operations. The Commission took into account that this measure is intended to temporarily allow the domestic industry to adjust and enhance its international competitiveness.*

## 12. FINAL DETERMINATION

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The Commission made a final determination that there were unforeseen developments and that these unforeseen developments and the effect of the obligations incurred under the GATT 1994, led to the increased volume of imports and that the surge in imports of hot-rolled steel products is causing serious injury to the SACU industry.

The Commission therefore made a final determination to recommend to the Minister that the following safeguard measures be imposed on imports of hot-rolled steel products classifiable under tariff subheadings: 7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, 7208.39, 7208.40, 7208.51, 7208.52, 7208.53, 7208.54, 7208.90, 7211.14, 7225.30, 7225.40, 7225.99, 7226.99.

Period	Rate of safeguard measure
Year 1	13%
Year 2	11%
Year 3	9 %

The Commission made a final determination to recommend to the Minister that the Commission be instructed to monitor the prices of the subject products in terms of section 18(a) of the ITA Act.

The Commission also made a final determination to recommend to the Minister that the measures should be imposed against imports from all countries, excluding imports from developing countries where the imports from each of these countries do not exceed 3 per cent of the total volume of imports or collectively for more than 9 per cent of total imports. A list of these countries is per the below table:

## DEVELOPING COUNTRIES TO BE EXCLUDED FROM THE DUTY

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